

CANADA / JUDGMENT

HMTQ v. Wilder et al

2004 BCSC 304

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Supreme Court of British Columbia

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2004 BCSC 304 HMTQ v. Wilder et al

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

HMTQ v. Wilder et al,

2004 BCSC 304

Date: 20040305

Docket: CC901654

Registry: Vancouver

HER MAJESTY THE QUEEN

AGAINST

ROGER E. LAWRENCE, MICHAEL L. VAZ,

MICHAEL B. RICHARDS, VICTOR J. ATTRILL,

RONALD L. JOHNSON, DARA M. WILDER, GERALD M. BYERLAY

SEONA J. WILDER, & MID-PACIFIC SERVICES INC.

Before: The Honourable Mr. Justice S.R. Romilly

Mack Application

Reasons for Judgment

Counsel for the Crown

Lindsay Smith

Veda Kenda

The Accused, Dara M. Wilder

In Person

Date and Place of Hearing:

March 5, 2004

Vancouver, B.C.

A. Nature of the Application

- [1] Under the rubric of a Mack application the accused, Dara Wilder, seeks to re-argue many of the Charter applications that were unsuccessfully argued at his trial.
- [2] Mr. Wilder has launched a number of motions seeking orders that the Court find:
1. that the Crown contravened its ethical and constitutional obligations in the presentation of its evidence and submissions concerning Dara Wilder's s. 11 Fair Trial rights;
 2. that s. 12 of the Criminal Code is inconsistent with the rights guaranteed by Section 7 of the Canadian Charter of Rights and Freedoms;
 3. that the overlong subjection to the vexations and vicissitudes of a pending criminal accusation have violated Dara Wilder's Charter Rights;
 4. that the Government of Canada contravened its ethical and constitutional obligations in the manner in which it administered the Income Tax Act violating Dara Wilder's Sections 7,11,12 and 15 Charter rights;
 5. that the loss of evidence due to deceased and missing witnesses has prejudiced Dara Wilder's right to a fair trial;
 6. that the Government of Canada caused delay from May 1987 to November 1990 violating Dara Wilder's Charter rights;
 7. that the Crown caused Delay from November 1990 to December 1992 violating Dara Wilder's Charter Rights;
 8. that the Crown caused delay from December 1992 to October 1995 violating Dara Wilder's Charter Rights;
 9. that the Government of Canada contravened its ethical and constitutional obligations in the manner in which it administered the Income Tax Act violating Dara Wilder's Sections 7, 11, 12 and 15 Charter Rights;
 10. that the Crown contravened its ethical and constitutional obligations in the presentation of its evidence and submissions concerning Dara Wilder's s. 11(b) rights.

- [3] The first thing that is noticeable about these motions is that they are an attempt to re-argue motions made by the accused during his trial. I am not sure that that is the purpose of a Mack application.
- [4] In any event, for the reasons stated below, it is my view that, except for the Mack application, the only way for Mr. Wilder to be able to re-argue these motions is for me to grant him an application to reopen the trial. For the reasons stated below and in view of the history of this trial I am not prepared to grant such an application to reopen.
- [5] With respect to the Mack application I do not propose to be taken on any wild goose chase by the accused. Before I hear evidence or argument in support of this Mack application for Charter relief, the accused must first satisfy the threshold requirement and present grounds that disclose a basis upon which I may grant the remedy sought. Assuming that he satisfies this initial requirement, he must be able to show that there is an air of reality to his contention that his Charter rights have been violated - that is, there must be an offer of proof or an outline of evidence or other admissible material capable of establishing an air of reality to his allegation of Charter breach.
- [6] If it is apparent to the Court that the facts as alleged by the defence do not disclose a Charter violation, the application may be dismissed without the hearing of evidence.

B. BACKGROUND

- [7] After a two year long trial the accused was found guilty on all counts with which he was charged in the indictment. The judgment convicting that accused was 350 pages in length and was entered in the court registry on December 17, 2003 (see R. v. Wilder et al., 2003 BCSC 1840). Mr. Wilder represented himself throughout most of these proceedings. He was however represented by counsel, Mr. Anderson, for part of the Crown's case, the Jarvis application, and for his entire defence. The accused has now "laid off" his counsel. I understand that he intends to deal with this Mack application on his own behalf and to re-hire Mr. Anderson for sentencing should his application be unsuccessful.
- [8] This Mack application was set to be heard today, March 5, 2004. On my return from a long needed vacation last Friday, however, I was greeted with a long list of motions by the accused that he wished to argue in support of his Mack application. These applications indicate quite clearly that the accused does not understand that my role on a Mack application is a very limited one. The various motions also illustrate that the accused misunderstands my role as a trial judge. He also seems to believe that he has an absolute entitlement to a voir dire in this matter.
- [9] In correspondence with Crown Counsel in this matter which has been filed as an exhibit in these proceedings, the accused stated that he intends to call 69 named witnesses, some of whom have already testified at this lengthy trial, with the right to call other witnesses. In his correspondence with Crown Counsel the accused also indicated the desire to reopen the issue of prosecutorial discretion. It would appear that the accused has estimated to Crown

Counsel that each witness that he intends to call would testify for half a day and that his argument would take two weeks. In her reply to the accused's correspondence Crown Counsel noted:

"This equates to forty five court days. As noted above, the hearing of your motion is currently set for one day.

Given the history of these proceedings, the Crown is of the view that tying up the Court for nine weeks is unnecessary and unreasonable. I have enclosed a copy of the Quebec Court of Appeal's decision, *R. v. Fabrikant*, (1995), 97 C.C.C. (3d) 544, [leave to appeal to SCC refused 98 C.C.C. (3d) vi,] as I may refer to it on March 5, 2004."

- [10] While acting on his own behalf the accused made many Charter applications, one of which was an abuse of process argument. Many of these arguments went on for days without much focus. In *R. v. Wilder*, 2002 BCSC 1333 (Written Ruling No. 8), an application by the Crown to have evidence admitted under the principled exception to the hearsay rule and under s. 715 of the Criminal Code, the accused raised this abuse of process argument. In particular, Mr. Wilder's argument of subornation on the part of the Crown was discussed at paras. 71-86. The key issue was whether Mr. Morriss was utilized by Revenue Canada to commit illegal acts that impacted on the fairness of the trial. I found that any application to enter a stay of proceedings on the grounds of abuse of process was premature at that point of the trial.
- [11] Because the accused has seen fit to "lay off" his counsel for this application, I have to explain even the trite areas of law to him. I have to explain to him why, except for the Mack application, I am not prepared to reopen this trial in order that the accused can re-argue these notices of motion that are presently before me. Before I do that, however, I first propose to deal with my role as a trial judge in these types of proceedings.

C. ROLE OF THE TRIAL JUDGE

- [12] In *R. v. Felderhof*, [2003] O.J. 4819 (Ont.C.A.), the Ontario Court of Appeal gave trial judges a Christmas present. The Court recognized the difficulties that trial judges now face in lengthy trials, especially since the promulgation of the Charter. In *Felderhof*, supra, the accused was facing eight counts of violating the Securities Act, R.S.O. 1990 c. S.5, arising out of the affairs in Bre-X. After 70 days of trial, an application was made for certiorari to halt the prosecution. Rosenberg J.A. for the Court took the opportunity to succinctly state our role as trial judges in these lengthy and complex proceedings. At para. 40 he stated:

Whatever may have been the case in the past, it is no longer possible to view the trial judge as little more than a referee who must sit passively while counsel call the case in any fashion they please. Until relatively recently a long trial lasted for one week, possibly two. Now, it is not unusual for trials to last for many months, if not years. Early in the trial or in the course of a trial, counsel may make decisions that unduly lengthen the trial or lead to a proceeding that is almost unmanageable. It would undermine the administration of justice if a trial judge had no power to intervene at an appropriate time and, like this trial judge, after hearing submissions, make

directions necessary to ensure that the trial proceeds in an orderly manner. I do not see this power as a limited one resting solely on the court's power to intervene to prevent an abuse of its process. Rather, the power is founded on the court's inherent jurisdiction to control its own process.

[13] At para. 57, Rosenberg J.A. sets out the role of trial management power of the trial judge as follows:

I think something should be said about the trial management power. It is neither necessary nor possible to exhaustively define its content or its limits. But it at least includes the power to place reasonable limits on oral submissions, to direct that submissions be made in writing, to require an offer of proof before embarking on a lengthy voir dire, to defer rulings, to direct the manner in which a voir dire is conducted, especially whether to do so on the basis of testimony or in some other form, and exceptionally to direct the order in which evidence is called. The latter power is one that must be exercised sparingly because the trial judge does not know counsel's brief.

[14] I intend to bear these principles in mind when dealing with the applications which are presently before this Court.

D. REOPENING THE CASE

[15] The discretion to reopen a case arises from the recognition that a judge may permit an accused who has pleaded guilty to a charge to change his plea to not guilty at any time before the imposition of a sentence. This is because the proceedings in a matter have not yet been completed until the imposition of a sentence. In *R. v. Lessard* (1976), 30 C.C.C. (2d) 70 (Ont.C.A.), Martin J.A. states at p. 73:

In *S. (An Infant) v. Recorder of Manchester*, [1970] 2 W.L.R. 21 at p. 25, Lord Reid said:

Much of the difficulty has arisen from the fact that "conviction" is commonly used with two different meanings. It often is used to mean final disposal of a case and it is not uncommon for it to be used as meaning a finding of guilt. It is proper to say that a plea cannot be changed after "conviction" in the former sense. But it does not at all follow that a plea cannot be changed after "conviction" in the latter sense.

I see no reason why a trial Judge who has made a finding of guilt on disputed facts is not also empowered to vacate the adjudication of guilt at any time before the imposition of the sentence, although it is a power which, I cannot stress too strongly, should only be exercised in exceptional circumstances and where its exercise is clearly called for.

[16] Clearly then, a trial judge has discretion to reopen a case before the sentence is passed but only in exceptional circumstances. Two cases from the Ontario Court of Appeal provide guidance as to how this discretion is to be exercised prior to or after the finding of guilt. *R. v. Hayward* (1993), 86 C.C.C. (3d) 193 (Ont.C.A.), provides a test for reopening a case prior to a finding of guilt. Doherty J.A. states at pp. 197-198:

A trial judge sitting without a jury may permit the reopening of the evidence at any time before sentence is passed: *R. v. Lessard* (1976), 30 C.C.C. (2d) 70 at pp. 74-5, 33 C.R.N.S. 16 (Ont. C.A.); *R. v. Scott* (1990), 61 C.C.C. (3d) 300 at pp. 319-20, [1990] 3 S.C.R. 979, 2 C.R. (4th) 153 (S.C.C.). The decision to permit either party to reopen its case and call further evidence is within the discretion of the trial judge, and where that discretion is exercised judicially an appellate court will not interfere: *R. v. Scott*, at p. 319.

When faced with an application to reopen the evidence, the trial judge should first be satisfied that the proposed evidence is relevant to a material issue in the case. That determination can usually be made on the basis of counsel's summary of the anticipated evidence.

Once it is determined that the proposed witness has relevant evidence to give, the trial judge must consider the potential prejudice to the other party should he or she permit the reopening of the evidence.

The trial judge must also consider the effect of permitting a reopening of the evidence on the orderly and expeditious conduct of the trial.

[17] In *R. v. Kowall* (1996), 108 C.C.C. (3d) 481 (Ont.C.A.), the Court dealt with a situation where, as in this Court, the trial judge had found the accused guilty but the defence applied to have the case reopened prior to sentencing. The Court states on pp. 493-494:

The test for reopening the defence case when the application is made prior to conviction has been laid down by this court in *R. v. Hayward* (1993), 86 C.C.C. (3d) 193 (Ont. C.A.). However, once the trial judge has convicted the accused a more rigorous test is required to protect the integrity of the process, including the enhanced interest in finality. It seems to have been common ground in this case that the most appropriate test for determining whether or not to permit the fresh evidence to be admitted is the test for the admissibility of fresh evidence on appeal laid down in *Palmer and Palmer v. The Queen* (1979), 50 C.C.C. (2d) 193 (S.C.C.) at page 205 (see *R. v. Mysko* (1980), 2 Sask. R. 342 (C.A.)). That test is as follows:

- (1) the evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases ... ;
- (2) the evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial;
- (3) the evidence must be credible in the sense that it is reasonably capable of belief, and

- (4) it must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

These criteria provide helpful guidance to a trial judge faced with an application to reopen after conviction. In addition to the Palmer criteria, a trial judge must consider whether the application to reopen is in reality an attempt to reverse a tactical decision made at trial. Counsel must make tactical decisions in every case. Assuming those decisions are within the boundaries of competence, an accused must ordinarily live with the consequences of those decisions. Should the trial judge find that the test for reopening has been met, then the judge must consider whether to carry on with the trial or declare a mistrial.

- [18] To be clear, the test enunciated in *Hayward*, *supra*, applies in circumstances where fresh evidence is sought to be admitted prior to a finding of guilt. The Palmer test applies after a finding of guilt has been made and it is at this point that fresh evidence is sought to be admitted. It is the Palmer test that is relevant in this matter.
- [19] Applying the Palmer test to the situation before me then, it is amply clear that Mr. Wilder has no evidence to admit that could not have been adduced at trial. Bearing in mind that the trial was two years long, Mr. Wilder had that much time to bring forth evidence that would have been decisive in his favour. He failed or was unable to do so at trial and would now attempt to call 69 witnesses and take an additional 45 days of court time in a trial that has already lasted two years. Considering the interest in protecting the integrity of the process and the enhanced interest in finality, the applications of Mr. Wilder to reopen this case are dismissed.

E. THE MACK APPLICATION

- [20] Because the accused has seen fit to "lay off" his counsel and he is presently unrepresented by counsel it is my duty to advise him about some of the legal principles that were laid down in *R. v. Mack* (1988), 44 C.C.C. (3d) 513 (S.C.C.). In *Mack*, *supra*, a stay of proceedings was entered on the basis that there was "a need to preserve the purity of the administration of justice". In *R. v. Conway* (1989), 49 C.C.C. (3d) 289, L'Heureux Dubé J., writing for the majority, expressed the following view at p. 302:

Under the doctrine of abuse of process, the unfair or oppressive treatment of an appellant disentitles the Crown to carry on with the prosecution of the charge. The prosecution is set aside, not on the merits (see *Jewitt*, *supra*, at p.23), but because it is tainted to such a degree that to allow it to proceed would tarnish the integrity of the court. The doctrine is one of the safeguards designed to ensure "that the repression of crime through the conviction of the guilty is done in a way which reflects our fundamental values as a society": *Rothman v. The Queen* (1981), 59 C.C.C. (2d) 30 at p.69, 121 D.L.R. 578, [1981] 1 S.C.R. 640 (S.C.C.) per Lamer J. It acknowledges that courts must have the respect and support of the community in order that the administration of criminal justice may properly fulfil its function. Consequently, where the affront to fair play and decency is disproportionate to the societal interest in the effective prosecution of criminal cases, then the

administration of justice is best served by staying the proceedings.

[21] The Court must first make a finding of guilt before the issue of entrapment could be considered. In *R. v. Mack*, supra at p. 565, Lamer J. (as he then was) states:

Finally, I am of the view that before a judge considers whether a stay of proceedings lies because of entrapment, it must be absolutely clear that the Crown had discharged its burden of proving beyond a reasonable doubt that the accused had committed all the essential elements of the offence. If this is not clear and there is a jury, the guilt or innocence of the accused must be determined apart from evidence which is relevant only to the issue of entrapment. This protects the right of an accused to an acquittal where the circumstances so warrant. If the jury decides the accused has committed all the elements of the crime, it is then open to the judge to stay the proceedings because of entrapment by refusing to register a conviction. It is not necessary nor advisable in this case to expand the details of procedure. Because the guilt or innocence of the accused is not in issue at the time an entrapment claim is to be decided, the right of an accused is not in issue at the time an entrapment claim is to be decided, the right of an accused to the benefit of a jury trial in s. 11(f) of the Charter is in no way infringed.

[22] At its essence, entrapment, which was at issue in *Mack*, is simply an application of the abuse of process doctrine. As described in *R. v. Pearson*, [1998] 3 S.C.R. 620, paras. 6-12:

Entrapment is a unique area of the criminal law. In our view, it has been somewhat inappropriately referred to as an affirmative defence. In our opinion, that misdescribes it.

It is, in fact, completely separate from the issue of guilt or innocence as is reflected by the fact that it is dealt with at a separate proceeding from the trial on the merits, as directed by *Mack* and implemented in this appeal.

A claim of entrapment is in reality a motion for a stay of proceedings based on the accused's allegation of an abuse of process. It does not rely on the underlying charge and does not affect the admissibility of any evidence which might influence the jury on the merits.

In particular, unlike a claim of not criminally responsible on account of mental disorder which was the issue raised in *Warsing*, entrapment does not go to or involve mens rea or "criminal responsibility" in any way.

That entrapment is not a conventional avenue of defence is clear from the circumstances under which it is raised. It arises after a fair trial has found the accused guilty.

Entrapment concerns the conduct of the police and the Crown. The question to be answered is not whether the accused is guilty, but whether his guilt was uncovered in a manner that shocks the conscience and offends the principle of decency and fair play.

One of the most important distinguishing features of entrapment is that it does not bring into play the presumption of innocence. Unlike other defence protections, entrapment is not related to the innocence of the accused but to the faulty conduct of the state. Once the accused is found guilty of the offence, the accused alone bears the burden of establishing that the conduct of the

Crown and/or the police amounted to an abuse of process deserving of a stay of proceedings, a standard this Court has held will arise only in the clearest of cases: see *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97, and *R. v. O'Connor*, [1995] 4 S.C.R. 411.

[23] Weiler J.A. summarizes the test for entrapment in *R. v. J.S.*, [2001] O.J. No. 104 (Ont.C.A.), at paras. 4-5:

The test for entrapment has two branches. The appellant need only establish that one of the two branches of the test is not met in order to succeed. The first branch is whether the authorities acted on a reasonable suspicion that drug trafficking was occurring when they targeted the individual or area...

The second branch of the test presupposes that the police have reasonable suspicion in targeting the area or individual in question. However, if the appellant can show that the police went beyond simply providing an opportunity to commit the crime and actually induced the commission of an offence, entrapment will be made out: *R. v. Mack* (1988), 44 C.C.C. (3d) 513.

[24] In *R. v. Mack*, supra, Lamer J. (as he then was) lists some of the factors that may be considered in an entrapment application at paras. 129-130:

To determine whether the police have employed means which go further than providing an opportunity, it is useful to consider any or all of the following factors:

- the type of crime being investigated and the availability of other techniques for the police detection of its commission;
- whether an average person, with both strengths and weaknesses, in the position of the accused would be induced into the commission of a crime;
- the persistence and number of attempts made by the police before the accused agreed to committing the offence;
- the type of inducement used by the police including: deceit, fraud, trickery or reward;
- the timing of the police conduct, in particular whether the police have instigated the offence or became involved in ongoing criminal activity;
- whether the police conduct involves an exploitation of human characteristics such as the emotions of compassion, sympathy and friendship;
- whether the police appear to have exploited a particular vulnerability of a person such as a mental handicap or a substance addiction;
- the proportionality between the police involvement, as compared to the accused, including an assessment of the degree of harm caused or risked by the police, as compared to the accused, and the commission of any illegal acts by the police themselves;

- the existence of any threats, implied or express, made to the accused by the police or their agents;
- whether the police conduct is directed at undermining other constitutional values.

[25] As the accused is unrepresented by counsel, I also have a duty to advise him of the general test for abuse of process.

F. General Test For Abuse Of Process

[26] In determining whether there has been an abuse of process, the judge must weigh the affront to fair play and decency with the societal interest in the effective prosecution of criminal cases. If the former is clearly disproportionate then the administration of justice is best served by staying the proceedings. The threshold for a stay is high: it is only exercised in the clearest of cases. In weighing this, the judge must consider the following questions:

- is the evidence tainted to such a degree that allowing the prosecution to proceed would tarnish the integrity of the Court?
- would proceeding offend the principles of fundamental justice?

[27] The Court may exercise its discretion to exclude evidence if its admission would render the trial unfair. The trial judge has a duty under the common law to exclude evidence, however obtained, that would result in an unfair trial. (See *R. v. Harrer* (1995), 101 C.C.C. (3d) 193 (S.C.C.), especially paras. 23 & 24). For example, "to admit evidence gathered in an abusive fashion may well violate the principles of fundamental justice." (*R. v. Terry* (1996), 106 C.C.C. (3d) 508 (S.C.C.), McLachlin, J., at 517).

[28] *R. v. Young* (1984), 40 C.R. (3d) 289 at 329, (1984) 46 O.R. (2d) 520, per Dubin, J.A., (Howland, C.J.O. and Martin, J.A. concurring), affirmed by the Supreme Court of Canada in *R. v. Jewitt*, [1985] 2 S.C.R. 128, is the leading authority defining the test for abuse of process:

There is a residual discretion in a Trial Court judge to stay proceedings where compelling an Accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency and to prevent the abuse of a Court's process through oppressive or vexatious proceedings. This is a power, however, of special application which can only be exercised in the clearest of cases.

[29] That a stay of proceedings should only be entered in the "clearest of cases" has been supported by *R. v. Conway*, supra; *R. v. O'Connor*, [1995] 4 S.C.R. 411; *R. v. Carosella*, [1997] 1 S.C.R. 80; *R. v. La*, [1997] 2 S.C.R. 680; and *R. v. Campbell*, [1999] 1 S.C.R. 565.

G. threshold requirements

[30] Before I hear evidence or argument in support of an application for Charter relief, Mr. Wilder must first satisfy the threshold requirement and present grounds that disclose a basis upon which I may grant the remedy sought. Assuming that he satisfies this initial

requirement, he must be able to show that there is an air of reality to his contention that his Charter rights have been violated - that is, there must be an offer of proof or an outline of evidence or other admissible material capable of establishing an air of reality to his allegation of Charter breach.

- [31] If it is apparent to the Court that the facts as alleged by the defence do not disclose a Charter violation, the application may be dismissed without the hearing of evidence, as Esson J.A. noted in *R. v. Hamill* (1984), 14 C.C.C. (3d) 338 (B.C.C.A.), aff'd on other grounds 33 C.C.C. (3d) 110 (S.C.C.) at pp. 366-67:

In those cases where the accused does apply to exclude the evidence, it will be for the trial judge to decide what procedure should be followed but, at the least, counsel for the accused should be required to state with reasonable particularity the ground upon which the application for exclusion is made. That much is essential for an orderly trial of the issue. It follows that, if the statement of grounds does not disclose a basis upon which the court could make an order excluding the evidence, the application may be dismissed without hearing evidence.

- [32] The case of *R. v. Vukelich* (1996), 108 C.C.C. (3d) 193 (B.C.C.A.) is illustrative of this principle. In that case, the accused sought to challenge the validity of a search warrant by alleging that certain portions of the supporting affidavit contained false or misleading information. The court held that there was no need for a voir dire to determine this issue because even if the defence's allegations were true and the offending portions of the affidavit were expunged, there remained sufficient information in the affidavit to support the warrant. In other words, a voir dire was unnecessary since no Charter remedy could result even if the defence's case was taken at its highest.

- [33] Although the above cases deal with applications to exclude evidence pursuant to s. 24(2) of the Charter, the same principles have been applied to applications for remedies under s. 24(1) of the Charter: *R. v. Deroose*, [2002] A.J. No. 478, 2002 ABPC 53 at para. 38; *U.S.A. v. Quintin*, [2000] O.J. No. 791 (S.C.J.) at para. 45.

H. CONCLUSION

- [34] The applications by Mr. Wilder that amount to a reopening of the case are dismissed. The only application that I will hear from Mr. Wilder is the Mack application relating to the alleged illegal acts on the part of Revenue Canada that impacted on the fairness of the trial.
- [35] Mr. Wilder will need to satisfy the threshold requirement and present grounds that disclose a basis upon which I may grant the remedy sought. He must offer some proof or an outline of evidence or other admissible material that would establish an air of reality to his allegation of Charter breach.
- [36] If it is apparent to the Court that the facts as alleged by the defence do not disclose a Charter violation, the application may be dismissed without the hearing of evidence.

[37] If Mr. Wilder presents some proof capable of establishing an air of reality, then he will need to structure his argument according to the criteria set out in Mack, supra. This requires establishing either: 1) that the authorities did not act on a reasonable suspicion when they targeted the individual or area, or 2) that the authorities went beyond simply providing an opportunity to commit the crime and actually induced the commission of an offence or 3) there is "a need to preserve the purity of the administration of justice" by upholding values that society views as essential. In the case of Mack, Lamer J. provides a non-inclusive list of factors to consider for the second heading at paras. 129-130 in Mack, supra. Bearing in mind that a Mack application is simply an aspect of abuse of process, the remedy of a stay will only be granted in the clearest of cases.

"S.R. Romilly, J."

The Honourable Mr. Justice S.R. Romilly

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