

CANADA / JUDGMENT

R. v. Basi

2010 BCSC 26

COURT

Supreme Court of British Columbia

DECIDED

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2010 BCSC 26 R. v. Basi IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Basi, 2010 BCSC 26 Date: 20100112 Docket: 23299 Registry: Vancouver Regina v. Udhe Sing (Dave Basi), Bobby Singh Virk & Aneal Basi Before: The Honourable Madam Justice MacKenzie Reasons for Judgment Counsel for the Crown: J. Winteringham, Q.C. & A.N. MacKay Counsel for the Accused, Dave Basi: C. Hatcher Counsel for the Accused, Bobby Virk: T. Russell Counsel for the Accused, Aneal Basi: E. Dance Place and Date of Hearing: Vancouver, B.C. December 18, 2009 Place and Date of Judgment: Vancouver , B.C. January 12, 2010

- [1] The Crown has refused disclosure of material on the basis of informant privilege and, as to most of that material, lack of relevance. The defence seek to have the Court review these documents with a view to determining whether the Crown's assertions are valid and to ordering their disclosure with editing as necessary to protect legitimate claims of informant privilege. Two categories of materials are at issue on this application. The first have been referred to as the "miscellaneous informer vets." These consist of approximately 30 documents that have been disclosed to the defence in redacted form. The second category consists of 427 source witness debriefing reports (the "reports") that have not been disclosed.
- [2] On December 18, 2009, I gave an abbreviated oral ruling in which I dismissed the application with respect to both categories of material. I indicated then that a full written ruling would follow. This is that ruling.

Background

- [3] In 2002, the Island District Drug Section of the RCMP (the "IDDS") commenced an investigation into a number of drug targets alleged to be involved in the distribution of narcotics on Vancouver Island and in other locations across Canada. The RCMP turned to various investigative techniques during the course of the investigation, code-named Project Everywhichway, including the use of confidential informants. Approximately 11 confidential informants were involved; three of them provided information with respect to Dave Basi. These informants were described as Informants "A", "C" and "G" in affidavits supporting wiretap authorizations.

- [4] Each of these confidential informants was assigned an RCMP handler. A handler meets or speaks with informants, receives their information and prepares source debriefing reports. A source debriefing report generally includes the following information:
- a. The name of the handler who prepared the report;
 - b. The names, addresses and other personal information of persons named in the report;
 - c. The information provided by an informant at a particular debriefing;
 - d. Whether the information was received directly from the informant; and
 - e. The handler's views on the reliability of the information provided by the informant.
- [5] A total of 448 reports were prepared with respect to Informants A, C and G. The three informants provided information about Mr. Basi on approximately 21 occasions. The 21 reports containing information about Mr. Basi were disclosed to defence counsel in vetted form in February 2007. The remaining 427 reports relate to Informants A, C and G but do not contain information regarding Mr. Basi. These are the reports at issue on this application.
- [6] In addition to the use of confidential informants, 145 warrants and four wiretap authorizations were issued during the IDDS investigation. The four wiretap authorizations were designated P.32/2003, P.53/2003, P.67/2003 and P.73/2003. Mr. Basi was a named target in the last two of these authorizations, P.67 and P.73. All four affidavits in support of the wiretap authorizations and many of the general warrants relied on information provided by confidential informants.
- [7] Because Mr. Basi's name came up in the drug investigation, the Crown disclosed the entire IDDS disclosure package to the accused in the present case. That package contained the materials that were disclosed to the accused in the various drug-related proceedings which arose out of the IDDS investigation. Positions of the Parties Position of the Defence
- [8] In their "Further Particularization of Defence Request for Disclosure of Material Over Which the Crown Claims Informant Privilege", the accused set out the basis upon which they seek disclosure of the reports (referred to as "SWDRs"), as follows:
7. The defence seeks disclosure of all SWDRs, including all SWDRs relating to each informant who provided information which was included within P.67 and P.73, which authorizations adopt and rely upon information contained within P.32 and P.53. An example would be an informant who provided information contained within the Authorizations generally, or about Mr. Basi specifically, who also provided information about other targets, and that information was assessed with respect to its reliability and credibility by the police.

8. Another example would be with respect to all informants whose information was relied upon in P.67 and P.73, and who provided information which the police knew was contradicted or inconsistent with other informant information. The defence will argue that the Authorizing Judge was entitled to know this information in assessing whether there was a sufficient basis to rely upon the information to grant the Authorizations.
9. This disclosure material relates to the defence challenge to the reasonable and probable grounds on P.67 and P.73, full and frank disclosure to the Authorizing Judge and the defence challenge to the search warrants, which ITOs relied upon, almost exclusively, the evidence gathered from the Authorizations.
- [9] The defence elaborated in their oral submissions, stating that since the outstanding reports relate to the same three informants who provided the information in the 21 disclosed reports relating to Mr. Basi, disclosure will permit them to assess for themselves the reliability and consistency of the information the informants provided overall. The defence point out that the sole basis upon which Mr. Basi was named as a target in two of the four wiretap authorizations was his alleged connection to the drug investigation. That alleged connection, in turn, derived solely from the information provided by Informants A, C and G. Counsel for Mr. Dave Basi says that Mr. Basi has never been charged with drug offences, money laundering or conspiracy to possess proceeds of crime (Transcript of Proceedings, December 15, 2009, pp. 33-36). Thus, when the defence later seek to cross-examine the affiant in respect of the two authorizations, they intend to focus upon whether it was reasonable for him to include the claims of the informants in his affidavits. In this way, the defence say, the outstanding reports are clearly relevant to their challenge to the reasonable and probable grounds underpinning the authorization and to the question of whether the authorizing judge was misled with respect to the overall information the three informants could provide.
- [10] In short, the defence seek the reports in order to develop a basis for an application to cross-examine the affiant on the wiretap authorizations and to challenge the information in the affidavits upon which those authorizations were granted.
- [11] To this end, the defence submit that this Court must review the reports to assess whether they tend to inform the defence regarding the reliability and consistency of the three informants. They say that contrary to the submissions of the Crown, it is not premature to consider the relevance of the documents in advance of their filing notice of their anticipated s. 8 Charter challenge, as their grounds for challenging the wiretap authorization have been articulated on this application and will not change in the interim. Indeed, they submit that they are entitled to receive as much disclosure as possible before filing their s. 8 application.
- [12] Having set out the relevance of the reports in this way, the defence contend that they are entitled to disclosure insofar as it does not reveal the identity of an informant. They say that they do not know over which reports the Crown asserts informant privilege. With respect to those reports, the defence submits that the Court must assess the validity of the Crown's

assertions. If the claim is upheld, the Court must then go on to determine whether any part of the document can be disclosed without breaching the privilege. In this regard, the defence submit that the Crown has failed, on the affidavit evidence that it has tendered, to provide a sufficient basis for the Court to conclude that disclosing any part of the reports would undermine informant privilege.

- [13] The defence similarly challenges the Crown's claims of informant privilege and lack of relevance with respect to the miscellaneous informer vets. Again, they submit that the Court must review those documents to determine the validity of the Crown's claims. Position of the Crown
- [14] The Crown submits that this application raises two distinct issues. The first is the relevance of the materials at issue. At this stage, it says, relevance has not been established given its assertion that much of the material is not relevant and the absence of a s. 8 Charter notice filed by the accused. The second is whether and to what extent the Crown must prove an informant privilege with respect to materials for which relevance has not yet been determined.
- [15] With respect to the miscellaneous informer vets, the Crown submits that it is able to establish informant privilege with respect to each of the vets at issue. It further submits that the irrelevance of many of the vets is clear on their face, and that the disclosure of this material should not be re-visited in the absence of a filed s. 8 Charter notice and the establishment of a factual and legal foundation upon which the Court can properly assess their relevance.
- [16] As for the reports, the Crown explicitly says that it does not take the position that reports of this nature are never relevant to a Charter challenge or to a matter at issue at trial. Rather, it submits that in the circumstances of this case, it is difficult to conceive of what information the reports could contain that has not already been disclosed to the defence in the affidavits in support of the authorizations or as a result of the distinct review processes undertaken by two different Crown counsel and the RCMP in relation to the reports. Those reviews looked into whether there were material differences in the RCMP's assessments of the credibility and reliability of the confidential informants as between the reports and the affidavits sworn in support of the authorizations. The results have been reported to the defence. The Crown says that to the extent that the defence wish to challenge the credibility and reliability of the informants who provided information about Mr. Basi, the Crown has provided defence counsel with any facts capable of supporting any argument in this regard.
- [17] Further, the Crown submits that the application is premature, as the Charter notice setting out the grounds upon which the authorizations will be challenged has yet to be filed. At the present stage, there is no application to cross-examine the affiant and no evidence to suggest any impropriety in the authorization process. As their relevance has not been established, the Court should not order their production. It follows, the Crown submits, that it would be an unproductive use of counsel and court time to embark upon an evidentiary hearing to

establish claims of privilege in relation to the large number of reports when their relevance has not, and cannot at this stage of the proceedings, be determined.

[18] For these reasons, the Crown submits that the application should be dismissed. Discussion

[19] The legal principles that govern Crown disclosure have been reviewed in detail in earlier rulings, and it is not necessary that I do so again here.

[20] I turn first to the miscellaneous informer vets.

[21] The Crown provided me with a binder containing unedited versions of the 30 documents that are the subject of this part of the application. (The defence has these documents in edited form.) The Crown also prepared a chart summarizing its position on the relevance of each document and setting out the manner in which it says privilege can be established. As to the latter, the chart refers primarily to the affidavit evidence of either Insp. Ian Lawson or S/Sgt. Brian Gateley that a particular redaction was necessary because it related to a "confidential human source." Those paragraphs in their affidavits refer, in turn, to the specific paragraphs in the affidavits of Cst. Ralph Lea of June 16, 2003 or November 6, 2003 that mention the confidential informants in question (A, C, and G). Cst. Lea's affidavits were sworn in support of wiretap authorizations by which evidence was obtained that the Crown intends to adduce in this case. The Crown took me through this chart in open court, and I reproduce it below: TAB DOCUMENT DESCRIPTION CROWN POSITION ON RELEVANCE MANNER IN WHICH THE PRIVILEGE CAN BE ESTABLISHED 1 90021306 Source information related to Basi Lawson Affidavit, Para. 7 2 90034884-87 Not relevant to any anticipated section 8 Charter challenge Crown submissions 3 90041688-73 Wholly unrelated to EWW[1] Crown submissions 4 90055472 Not relevant to any anticipated section 8 Charter challenge Crown submissions 5 90055486 Not relevant to any anticipated section 8 Charter challenge Crown submissions 6 2003/02/12 Continuation report Bazowski Source information relating to drug target Mike Fisher and others/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Lawson Affidavit Para. 8 7 2003/02/18 Continuation report Hartwig Source information regarding MacDuffs/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Lawson Affidavit Para. 9 8 2004/02/24 Continuation report Hartwig (Source info on Bains) Source information regarding Bains/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Lawson Affidavit Para.10 9 2003/04/26 Continuation report Gateley (Source info on MacDuffs and Jas Bains) Source information regarding Bains/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Gateley Affidavit para. 6 10 2003/08/29 Email (Pages 8305 and 8306 of 17839) Source information regarding Bains/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Gateley Affidavit para. 7 11 2003/09/12 Continuation report Illingworth Source information regarding Basi Gateley Affidavit para. 8 12 August C237 (Page 166 of 7429) Report approved by Clarke Source information regarding Tony Singh/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused

Gateley Affidavit para. 9 13 August C237 (Page 167 of 7429) Report approved by Clarke Source information regarding Bains/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Gateley Affidavit para. 10 14 Pages 9090 to 9096 of 17839 - Date of 2002/10/23 (For page 9091) Not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Crown submissions 15 2002/07/10 - Continuation report Pollard Not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Crown submissions 16 Profiles 2002/07/17 Connected to Tab 1 17 2003/10/30A pmr - Continuation report Not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Crown submissions 18 Page 1714 - 2003-2004 1393 Wholly unrelated to EWW 19 Page 2444 2004-2005 1454 Wholly unrelated to EWW 20 Page 3553 Surveillance reports 20030409 Source information relating to Fisher/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Lawson Affidavit para.11 21 Page 5616-7 - Members folder Robinson Not relevant to any anticipated section 8 Charter challenge Crown submissions 22 20020722a djc.pdf Source information relating to Bains/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Gateley Affidavit para. 26 23 20020828 djc.pdf Source information relating to Bains/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Gateley Affidavit para. 12 24 20030115 drb.pdf Source information relating to Fisher/ not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Lawson Affidavit para. 12 25 20030611 wrm.pdf Not relevant to any known or anticipated section 8 Charter challenge that could be brought by these accused Counsel submissions 26 20030827 bpg.pdf Source information relating to Bains/ not relevant to any known or anticipated section 8 Charter challenge Gateley Affidavit para. 13; Lawson Affidavit para. 13 27 20031020 idl.pdf Source information relating to Basi Lawson Affidavit para. 14 28 90041092 Wholly unrelated to EWW 29 90041093 seq 90041094 Wholly unrelated to EWW 30 90041095 Wholly unrelated to EWW

- [22] I have reviewed unedited versions of each of these documents. I conclude with respect to each redaction that the Crown's refusal to disclose on the grounds of informer privilege is valid. I further conclude that each is "clearly irrelevant" within the meaning of *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 [*Stinchcombe*], and *R. v. Egger*, [1993] 2 S.C.R. 451, for the reasons put forth by the Crown. The Crown was quite accurate in its submission that the irrelevance of much of the redacted material is evident on its face. Accordingly, I decline to order disclosure of the miscellaneous informer vets.
- [23] I turn next to the 427 reports relating to Informants A, C and G.
- [24] The first issue is whether this Court ought to review those reports to assess the Crown's assertion that they are not relevant in any way to the case before the Court. I should note at the outset that I acknowledge the defence position that the June 4, 2007 ruling (indexed at 2007 BCSC 788) of Bennett J. (as she then was) precludes the Crown from making any assessment as to relevance, thus requiring this Court to make that determination. In my

view, it is unnecessary to address this submission since Stinchcombe clearly authorizes the Court to review Crown decisions regarding disclosure where challenged by the defence. That is the situation here.

- [25] The defence articulate the relevance of the reports in question as relating to "the defence challenge to the reasonable and probable grounds on P.67 and P.73, full and frank disclosure to the Authorizing Judge and the defence challenge to the search warrants, which ITOs relied upon, almost exclusively, the evidence gathered from the Authorizations." However, they have yet to file a notice in respect of their anticipated s. 8 Charter challenge particularizing the specific grounds upon which that challenge will be based. The defence insist that that notice will not contain anything further than what they have set out in paras. 7 to 9 of their "Further Particularization of Defence Request for Disclosure of Materials over Which the Crown Claims Informant Privilege", quoted earlier in this ruling. If that is indeed the case, then I would only observe that they appear to have a weak foundation for a challenge to the wiretap authorizations.
- [26] "Relevance" is defined broadly in the context of disclosure. Paragraphs 59-60 in *R. v. Taillefer*; *R. v. Duguay*, 2003 SCC 70, [2003] 3 S.C.R. 307, provide a convenient synthesis of the prevailing authorities: The Crown must disclose all relevant information to the accused, whether inculpatory or exculpatory, subject to the exercise of the Crown's discretion to refuse to disclose information that is privileged or plainly irrelevant. Relevance must be assessed in relation both to the charge itself and to the reasonably possible defences. The relevant information must be disclosed whether or not the Crown intends to introduce it in evidence, before election or plea (p. 343). Moreover, all statements obtained from persons who have provided relevant information to the authorities should be produced notwithstanding that they are not proposed as Crown witnesses (p. 345). This Court has also defined the concept of "relevance" broadly, in *R. v. Egger*, [1993] 2 S.C.R. 451, at p. 467: One measure of the relevance of information in the Crown's hands is its usefulness to the defence: if it is of some use, it is relevant and should be disclosed -- *Stinchcombe*, supra, at p. 345. This requires a determination by the reviewing judge that production of the information can reasonably be used by the accused either in meeting the case for the Crown, advancing a defence or otherwise in making a decision which may affect the conduct of the defence such as, for example, whether to call evidence. As the courts have defined it, the concept of relevance favours the disclosure of evidence. Little information will be exempt from the duty that is imposed on the prosecution to disclose evidence. As this Court said in *Dixon*, supra, "the threshold requirement for disclosure is set quite low... . The Crown's duty to disclose is therefore triggered whenever there is a reasonable possibility of the information being useful to the accused in making full answer and defence" (para. 21; see also *R. v. Chaplin*, [1995] 1 S.C.R. 727, at paras. 26-27). "While the Crown must err on the side of inclusion, it need not produce what is clearly irrelevant" (*Stinchcombe*, supra, at p. 339). Nevertheless, I am not satisfied that the defence have established a basis for the potential relevance of the reports so as to meet even this low threshold to justify the Court's review. In my view, *R. v. Barzal* (1993), 84 C.C.C. (3d) 289 (B.C.C.A.) [Barzal], is determinative

on this issue.

- [27] In *Barzal*, the case for the Crown depended upon the admissibility of evidence obtained pursuant to wiretap authorizations. Information provided by informants was used to obtain these authorizations. The accused sought disclosure of police debriefing notes regarding those informants on the grounds that they were necessary in order to challenge the validity of the authorizations, in particular, to test the reliability of the informants. The debriefing notes had not been part of the material which had formed the basis for the granting of the authorizations. The Crown opposed disclosure of the reports in an unedited form and urged the trial judge to review the material to determine what part of them, if any, should be made available to the defence to exercise their right to make full answer and defence. The trial judge declined to proceed in this fashion and instead ordered that the notes be disclosed to the accused.
- [28] The Court of Appeal held that the trial judge had erred, explaining, at paras. 43-44: On a review of an authorization the trial judge is endeavouring to determine whether in the totality of the circumstances the authorizing judge could have concluded that the informants were sufficiently reliable to support a finding of reasonable and probable grounds. Subject to the existence of fraud, non-disclosure, or misleading evidence, none of which were alleged here, the indicia of reliability must be in the material before the authorizing judge. Otherwise the authorization cannot stand. It is reliability in this context which is relevant in respect to the validity of an authorization, not reliability at large. In this case the accused wanted access to the debriefing notes in order to test the reliability of the informers. A detailed inquiry into police files is not required for that purpose. Sufficient reliability is established, or is not established, by reference to the material filed in support of an application for an authorization. The right to make full answer and defence in this context is a right to the disclosure of material which had been before the authorizing judge. It is not a right to embark on a fishing expedition of all the material in the possession of the police. Such an enquiry could be endless, including access to police files, cross examination of police officers, cross examination of informants (which is not permitted; *Garofoli* at p. 1465), and consideration of the details of each case in which the informer had been involved.
- [29] *Barzal* has been applied in a number of cases where an accused has sought disclosure of material that was not before the authorizing judge: see, for example, *R. v. Hazelwood*, [2000] O.J. No. 459 (Q.L.) (S.C.J.) [*Hazelwood*], and *R. v. Terezakis*, 2005 BCSC 850 [*Terezakis*]. In *Hazelwood*, the accused, prior to the hearing of their application challenging the validity of wiretap authorizations, sought the disclosure of an undercover investigation file to which reference had been made in the wiretap affidavit. In support of the authorization, the affiant had referred to the undercover investigation as an example of the limits of ordinary investigative techniques, such as undercover operations, in stopping the drug trafficking in the area.

- [30] Glass J. wrote, at para. 13: The Crown suggests that if the whole file for the 1995 undercover investigation is to be provided, then it follows that the defence might request the files for every undercover drug investigation in Durham Region so that the defence can determine if the affiant was misleading the authorizing judge about the lack of success with undercover investigations. That would take the court to a tremendously broad review. Such a procedure is not correct. The court would be advancing to remote considerations. The bottom line is that the affiant outlined what had been done in the past and the judge gave the order to intercept private communications. The affiant believed in the information supplied to him before swearing the affidavit. The defence is not entitled to enter upon a fishing expedition. It is the information that was before the authorizing judge that is to be reviewed.
- [31] Glass J. then cited and adopted the reasoning in Barzal, and dismissed the accused's request for the undercover investigation file.
- [32] In Terezakis, leave had been granted to the accused to cross-examine the affiant in a Garofoli voir dire. He then sought disclosure of police notes and reports of dealings with an informant in order to support an assertion that the informant was also acting as a police agent.
- [33] Holmes J. stated that the first difficulty with the application was that it rested on a proposition "no better than that" the police dealings with the informant were consistent with the informant being an agent in addition to being an informant as he or she was represented to be. Essentially, she noted, the defence sought to inquire further and sought the material in question to further than inquiry. At para. 22, she wrote: The balance is a delicate one between preventing fishing expeditions, on the one hand, and releasing the defence from the catch-22 restrictions it may find itself in, on the other. Where, as here in this voir dire and at this stage, it is essentially the investigation (rather than the case to be tendered against the accused people) which is under scrutiny, the balance is not usually found in the application of the principles of potential relevance.
- [34] Holmes J. cited Barzal, quoting paras. 43-44. She held that on the basis of the reasoning in that decision, she did not consider that the potential relevance of the material sought, in the context then existing, required its disclosure. Accordingly, she denied the application.
- [35] Even though Barzal and the authorities that have followed it are dispositive of this application, at least insofar as the question of relevance is concerned, the defence did not address these decisions in their submissions.
- [36] As Holmes J. observed in Terezakis, the balance on applications such as this can often be delicate. However, the grounds of relevance that the defence advance in the present case were expressly rejected by the Court of Appeal in Balzal. Moreover, their position is weakened further by the fact that the Crown and the police have already undertaken the review that they seek to have the Court undertake.

- [37] Both the Crown and the RCMP undertook separate reviews of the 448 reports for the purpose of advising the defence whether there were material differences in the RCMP's assessment of the credibility and reliability of Informants A, C and G as between the reports and the affidavits sworn in support of the authorizations. The Crown reported the results of this review to the defence. At the request of the Crown, Sgt. Hartwig of the RCMP's Human Source Unit also conducted a similar review regarding the assessments of the reliability of the three informants and reported those results in an affidavit filed in these proceedings. Furthermore, the reports were also the subject of a disclosure application in *R. v. Bains* (March 5, 2008), Victoria 127870-3-C (B.C.P.C.) [Bains].
- [38] Mr. Bains faced drug charges arising out of the IDDS investigation, and sought disclosure of the reports during proceedings in Provincial Court in March 2008. He made similar submissions before Higinbotham P.C.J. as the accused make here. He submitted that the potential relevance of the reports lay in the fact that they might form the basis of a Charter application, though he was not in a position to assess this without first reviewing the material in question. As Higinbotham P.C.J. summarized Mr. Bains' position, he wished to "ascertain for himself if a review of the informant debriefing notes might reveal any inaccuracies or overstatements made in the affidavit put before the judicial officer authorizing the search or wiretap, presumably to support an argument of fraud". The federal Crown resisted disclosure, primarily on the basis that no specific relevance had been asserted.
- [39] Higinbotham P.C.J. commented that while the Crown's disclosure obligations were broad, it was not required to embark upon a potentially limitless examination of material that was not, on the face of it, sufficiently connected to the proper trial of the issues. He also noted that the federal Crown had advised that he "already had the lead investigator review the debriefing materials that supported the affidavits on the warrants upon which the accused clearly has standing and on one of the four wiretap authorizations", and that the other three wiretap authorizations would also be similarly checked (Bains, at paras. 14-15). The Crown additionally assured the Court that he would personally check the debriefing notes against the affidavits respecting all wiretap or other authorizations which the accused in that case had standing to challenge.
- [40] Higinbotham P.C.J. reviewed the Stinchcombe principles, and then concluded: In the present case, I am satisfied that the general disclosure obligation, in the absence of defence counsel raising a specific issue, has already been substantially met. It will be completely met upon Crown counsel personally reviewing the affidavit material presented to any authorizing judicial officer respecting either the wiretap authorizations or other authorizations upon which the accused has standing to challenge and the debriefing notes supporting that material, and reporting to defence counsel any information gleaned from those notes that might call into question any sworn assertion contained in any of those affidavits. There will be no obligation upon the Crown to provide actual debriefing notes except to the extent that any extract may be necessary in order to highlight a matter that is

disclosed pursuant to this order.

- [41] The Crown in the present case indicates that the fruits of the federal Crown review in Bains are available to the defence and are found, in part, at Exhibits "I" and "J" to the affidavit of Kelly Allen contained in the Crown's Motion Book. Furthermore, the Crown says that it will disclose any attachments to that correspondence not currently in its possession. Thus, the defence have, or will have, the benefit of the federal Crown review in Bains of all reports associated with the four wiretap authorizations to discern any inaccuracies or misattributions in the affidavits.
- [42] In light of the foregoing, I decline to review the reports. In my view, it would be a waste of judicial resources to embark upon what would essentially be a fishing expedition given the failure of the defence to establish the potential relevance of the materials, particularly in light of Barzal. Moreover, my views with respect to the Crown's assertions of informant privilege over the reports further undermine the utility of any such exercise.
- [43] In *R. v. Basi*, 2009 SCC 52, the Supreme Court allowed the Crown's appeal from a decision to permit defence counsel to attend the in camera hearing the Crown sought in order to establish its claim of informant privilege. The Court began its decision by repeating the well-established principle that while an accused person's constitutional entitlement to full and timely disclosure of all relevant material under the control of the Crown must be broadly construed, that entitlement is neither absolute nor unlimited. The limit on disclosure that concerned the Supreme Court in that decision, and that concerns this Court now, is the exception with respect to information that could disclose the identity of confidential informants.
- [44] As was observed in *R. v. Leipert*, [1997] 1 S.C.R. 281, it is almost impossible for a court to know what details may implicitly reveal the identity of a confidential informant. Of course, the Crown is able to assist in this regard, as are police officers informed about the matter. Here, the Crown has made submissions that the reports are protected by informant privilege and has adduced the affidavit evidence of Sgt. Hartwig in support of its position. Sgt. Hartwig deposes that disclosure of the 427 reports, even in a heavily vetted format, could identify the three informants. She explains that this is because the reports contain information about people and patterns of events which, in the opinion of the RCMP, is known to so few people that the informants' identities may be revealed. She further deposes that disclosure of the reports could impact ongoing or contemplated investigations. The defence oppose any reliance by the Court on the Crown's affidavit evidence, and instead submit that the Court is obliged to review the reports in order to assess the validity of the Crown's assertions in this regard.
- [45] It would be entirely speculative, and thus dangerous, for the Court to be determining what information in the reports could reveal the identity of a confidential informant. In my view, the Court is entitled to rely on the affidavit evidence and the Crown's submissions on the issue of informant privilege. I accept the Crown's submissions and the evidence of Sgt.

Hartwig that disclosure of the reports, even in a heavily vetted format, could identify the three informants. I would add that there is no suggestion that the "innocence at stake" exception to informant privilege is engaged here.

[46] In summary, I conclude that the defence have failed to establish the potential relevance of the reports so as to justify this Court reviewing each of the 427 documents. The grounds of relevance they advance were expressly rejected by the Court of Appeal in Barzal. I further conclude that those reports are subject to informant privilege.

[47] In declining the defence request to review the reports, I am also mindful of the guidance given to trial judges by the Supreme Court of Canada in *R. v. Pires*; *R. v. Lising*, 2005 SCC 66, [2005] 3 S.C.R. 343, at para. 35. Writing for the Court, Charron J. gave this caution, at para. 35: The concern over the constructive use of judicial resources is as equally, if not more, applicable today as it was 15 years ago when *Garofoli* was decided. For our justice system to operate, trial judges must have some ability to control the course of proceedings before them. One such mechanism is the power to decline to embark upon an evidentiary hearing at the request of one counsel when that party is unable to show a reasonable likelihood that the hearing can assist in determining the issues before the court. Charron J.'s comments are apposite here.

[48] The Court will not review the reports and they will not be disclosed to the defence in any form at this time.

Conclusion

[49] The defence applications are dismissed. "A. MacKenzie J."

The Honourable Madam Justice MacKenzie

[1] EWW is a reference to "Everywhichway"

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