

CANADA / JUDGMENT

R. v. Latimer

2020 BCSC 697

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2020 BCSC 697 R. v. Latimer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Latimer,

2020 BCSC 697

Date: 20200220

Docket: 27798

Registry: Vancouver

Regina

v.

Kyle Latimer

Craig Latimer

Jacob Pereira

Anduele Pikientio

Csongor Szucs

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Before: The Honourable Madam Justice Ker

Oral Ruling re Disclosure Application for Laporte List

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Place and Date of Hearing:

Vancouver, B.C.

December 10, 2019

January 29, 2020

Place and Date of Judgment:

Vancouver, B.C.

February 20, 2020

- [1] These Reasons for Judgment were delivered as oral reasons. They have since been edited for distribution.

Introduction

- [2] On this application, the accused, Csongor Szucs and Kyle Latimer, apply for an order that the Crown provide a full and complete Laporte list outlining all materials in the possession of the police and/or Crown counsel, the disclosure of which is being withheld from the defence.
- [3] Two applications were filed in respect of this matter, one by Kyle Latimer ("Application 32") and one by Csongor Szucs, ("Application 24"). Application 32 was filed on July 26, 2019, and Application 24 was filed on July 23, 2019. They were adjourned from time to time through the fall of 2019, as Crown and defence endeavoured to resolve the disclosure issues. As they were unable to resolve the disclosure issues, the applications proceeded to a hearing. The application hearing commenced with the evidence of Detective Constable ("DC") Lisa Wu from the Vancouver Police Department (the "VPD"). DC Wu is the disclosure officer for this prosecution and has been since June 2019.

- [4] The two applications were heard together, subsumed into one matter under the umbrella of Mr. Szucs' Application 24. Mr. Latimer, as I understood his position, adopted Mr. Szucs' submissions. This ruling addresses both applications.
- [5] The term "Laporte list" comes from the Saskatchewan Court of Appeal decision in *R. v. Laporte* (1993), 84 C.C.C. (3d) 343 (Sask. C.A.) [Laporte] and has a fairly specific, circumscribed meaning. In essence, it is a tool employed to assist in conducting a judicial review of the Crown's discretion in how it is meeting and handling its disclosure obligations in a criminal proceeding. A Laporte list was a document that the Crown, in the context of the Laporte case, was required to produce. It consisted of a written, itemized inventory of the information in the Crown's possession except for information already disclosed. The list was to identify the items the Crown intended to disclose to the defence and those which it did not.
- [6] In so far as the items the Crown did not intend to disclose were concerned, the Saskatchewan Court of Appeal directed that the Crown state the basis for withholding each item and describe the nature of each item with sufficient detail that defence counsel could review the inventory and make an informed decision as to whether to seek disclosure of the item: Laporte at paras. 18-20.
- [7] The jurisprudence has clearly established that the Crown and police are generally obligated to disclose material from the investigative file, also referred to as the "fruits of the investigation", in respect of the accused's case: *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 [Stinchcombe]; *R. v. McNeil*, 2009 SCC 3 [McNeil] at para. 22; *R. v. Gubbins*, 2018 SCC 44 [Gubbins] at para. 21.
- [8] The disclosure obligation upon the Crown, and, correlatively, the investigating police force, is to disclose all relevant non-privileged information in its possession or control, whether inculpatory or exculpatory: Gubbins at para. 18. This has been interpreted to mean that the Crown and police must disclose everything from the investigative file of the accused except that which is clearly irrelevant or privileged. The nomenclature of privilege in this context includes third party privacy concerns, usually captured by a claim of third party privacy, witness protection, informer privilege, or public interest privilege redactions.
- [9] Later in this ruling, I will review the contours of the jurisprudence that address the meaning of relevance in the disclosure context. Suffice to say at this juncture, it is given a broad and purposive interpretation consistent with the Charter rights that disclosure is intended to protect. It is not narrowly construed and certainly is not confined to the amorphous label of "investigative significance".
- [10] The disclosure dataset on this particular file is massive and complicated, as the following background facts will demonstrate. The parties do not disagree over the background facts, and so my recitation of them is largely drawn from the factual outlines provided by counsel in their written and oral submissions on this application.

Background Facts

- [11] Kyle Latimer and Csongor Szucs are jointly charged on Indictment 27798 (the "Latimer Indictment") with drug conspiracy, criminal organization, and weapons offences that arise from a VPD investigation known as Project Territory. There are three other co-accused on the Latimer Indictment: Craig Latimer, Jacob Pereira, and Anduele Pikientio.
- [12] In March 2017, the VPD created "Task Force Tourniquet", an investigation into the illegal activities of at least five different alleged crime groups operating in Vancouver and the Lower Mainland. The groups were believed to be in conflict with one another and responsible for numerous acts of violence across the Lower Mainland. In many instances, firearms were involved in the spate of offences that the police were investigating. Public sentiment about the unprecedented level of gun violence in the community was running high. Task Force Tourniquet was created as a proactive task force to investigate and hopefully end or curb the ongoing turf war in which the groups appeared to be engaged.
- [13] The Project Territory investigation ran from approximately May 1, 2017, through August 7, 2018, concluding in a large "takedown" operation resulting in the arrests of many targets, including the accused charged in the Latimer Indictment.
- [14] When the targets of Project Territory were arrested, many of them were jointly charged on one of two companion informations, 247234-1 and 247235-1, both in the Vancouver Registry of the BC Provincial Court.
- [15] In January 2019, the Crown filed three direct indictments in the BC Supreme Court: Indictment 27786 (the "Kang Indictment") charges five members of the Kang group with offences similar to what the Latimer group face in the Latimer Indictment. The Latimer Indictment was preferred on January 28, 2019. A third indictment, 27787, charges two people with one offence of participation in a criminal organization contrary to s. 467.11 of the Criminal Code, R.S.C. 1985, c. C-46 [Code] (the "Second Kang Indictment"). All three indictments have been actively case managed pursuant to the BC Supreme Court Criminal Practice Direction for Complex Cases ("CPD-3"), since their preferment in this court.
- [16] Pursuant to CPD-3, disclosure was to be substantially complete within three months of the accused's first appearance in this court and all remaining disclosure made within five months of the accused's first appearance in this court: section 8 of CPD-3.
- [17] In respect of the Latimer Indictment, disclosure should have been completed by the end of June 2019, save, of course, for the continuing disclosure obligation that the Crown and investigating police agency have in relation to relevant material that subsequently comes into their possession and meets the requisite standard for disclosure to the defence.
- [18] At the first case management conference on the Latimer Indictment held March 5, 2019, the Court was advised that Version 7 of disclosure, a hard drive of electronic files and a chart, had been provided in response to a lengthy disclosure request by counsel for Kyle Latimer. In addition, on March 4, 2019, the Crown provided a separate hard drive to the defence that

contained the affidavit in support of the application for a Part VI wiretap authorization and the source materials for the affidavit by paragraph number. The court was also advised that Version 8 ("V-8") of the disclosure would be provided to the defence on another hard drive by March 29, 2019.

- [19] At the second case management conference on April 5, 2019, the Court was advised that the V-8 hard drive had been provided to the defence on March 27, 2019. The V-8 hard drive organized and incorporated all previous disclosure into the dataset and contained approximately 130,882 files. The Crown noted at that time that within two months of the arrests--by late September 2018--119,200 files, or 91 percent of the disclosure, had been made. Also at that time, the Crown anticipated releasing one more hard drive of disclosure with approximately 400 files, Version 9 ("V-9"), by the following week. V-9 was sent to the defence on April 5, 2019, with 581 new documents or files. Defence disclosure requests continued.
- [20] Between May 10, 2019, and December 23, 2019, the Crown has issued six more versions of disclosure, Version 10 through Version 15, comprising approximately 2,340 documents.
- [21] On January 29, 2020, the Crown advised that Version 16 ("V-16") of disclosure was about to be provided to the defence. V-16 was said to contain 21 documents, 17 of which were new and four of which addressed revised vetting issues.
- [22] Voir dires on the Latimer Indictment commenced on December 3, 2019. Three substantive voir dires have been conducted so far. Voir Dires 1 and 3 related to seizures of CCTV surveillance footage and key fob access records from two different residential complexes, Brighthouse Way and the Pacific Rim Residences. Voir Dire 4 related to the arrest of Mr. Szucs on June 19, 2017, as he was driving east on the Trans-Canada Highway towards Hope, BC. A search of his vehicle and a backpack inside his vehicle revealed a brick of cocaine and a bag of powder believed to be fentanyl.
- [23] All three substantive voir dires had late-breaking disclosure issues that were not insignificant and had an impact on how the defence conducted the voir dires.

Factual context to this application

A. Introduction

- [24] Task Force Tourniquet is the broad umbrella under which a number of discrete VPD project investigations were housed. Each of the project investigations, all beginning with the letter T, focused on different crime groups or offences committed by members of the groups.
- [25] One of the project investigations under the Task Force Tourniquet umbrella was Project Territory, which focused on the alleged drug trafficking activities of the Kang group and the Latimer group. In addition to Project Territory, there are approximately 15 other investigations, including Projects Tantrum, Temper, Treachery, Triforce, Triplet, and Twisted. There were also numbered files under the Task Force Tourniquet umbrella,

including file 17-76202, which involved an allegation of conspiracy to commit murder; Randeep Kang was the target of that investigation. Only Project Tantrum and file 17-76202 overlap with the Project Territory targets. According to DC Wu, Project Tantrum was the only investigation under the Task Force Tourniquet umbrella that generated material relevant to Project Territory. Thus, apart from Project Tantrum and file 17-76202, there was no overlap of Project Territory targets in the other Task Force Tourniquet project investigation files.

B. Disclosure Structure

- [26] The architecture of the disclosure dataset of Task Force Tourniquet is extremely complicated. While seemingly convoluted, there is a logic to its structure.
- [27] As I understood from the exhibits filed, the evidence of DC Wu, and the submissions of counsel, the architecture of the disclosure dataset is in the form of an electronic filing system divided by project or numbered investigation. All the investigative files are preserved electronically in various folders. All VPD investigative files are stored on the "M-drive" of the VPD server. In respect of Task Force Tourniquet, a file folder called "Project Tourniquet" was created. A subfolder was then created called "Tourniquet", which itself had approximately 169 numbered subfolders. Material, sorted by task, was kept within one of the numbered subfolders.
- [28] As the investigations advanced and it became apparent that two of the alleged crime groups were becoming viable investigations, subfolders Territory and Tantrum were created within the Project Tourniquet folder to continue housing the tasks for the two project investigations. Housed in the Territory and Tantrum folders were task folders created to contain the investigative material for each of those projects.
- [29] The 169 subfolders within the Tourniquet folder pertain to both Project Tariff and Project Territory as well as some numbered investigations. The Territory folder houses Tasks 200 to 764, which are exclusively Project Territory tasks. The Tantrum folder houses Tasks 1,000 to 1,018, which have been disclosed as part of Project Territory. Thus, as I understand the evidence, Territory, Tantrum, and Tourniquet are each subfolders within the Project Tourniquet folder. Each of these subfolders contain another layer of subfolders divided by task number.
- [30] According to DC Wu's affidavit and evidence, none of the documents within the M-drive folders are searchable. Rather, only the names of the documents are searchable.
- [31] Access to investigative folders, generally, is controlled by the IT Services of VPD, which relies upon the permissions granted by the command triangle on any given investigation, being the team commander, the lead investigator, and the file coordinators. Access to a particular investigative file is generally restricted to the command triangle and the investigators affiliated with the particular investigation, as well as civilian staff assisting with an investigation. In so far as Task Force Tourniquet is concerned, the file coordinator and

investigational assistant have access to and knowledge of all the project files under the Task Force Tourniquet umbrella, and are therefore able to access those files for disclosure.

- [32] Access to any particular project investigative file is restricted to members who were involved in the investigation. Thus, an investigator only involved in Project Territory would not automatically have access to the other project files. There are between 20 and 30 investigators who have access to the Project Territory investigative files. Of these investigators, between 10 and 15 of the Project Territory investigators also have access to other Task Force Tourniquet files.
- [33] In managing the disclosure generated by the Project Territory investigation, the police utilized a task system. The investigative materials are organized first by task number, then by action number. For example, surveillance is listed as Task 203. The first day of surveillance would be T203_1, which indicates that it is the first action number in the task. Surveillance on a subsequent day would be T203_2, and so on. All files, including documents, reports, and multimedia, are organized by reference to the task and action number. Action numbers are assigned sequentially. Thus if there is T203_5 and T203_7, there would be a T203_6.
- [34] In this case, disclosure has been made electronically. Materials are listed on an Excel spreadsheet as a cumulative disclosure ledger. Materials are listed on the disclosure ledger by document number, which is a unique arbitrary number assigned to that file. There are columns in Excel spreadsheet that contain the description of the document, date, file type, author, and task number. Due to the volume of materials and the system limitations of the Excel program, the cumulative disclosure ledger is not able to be hyperlinked.
- [35] The cumulative disclosure ledger was broken into three separate ledgers, each containing a maximum of 64,999 files, which is the maximum number of hyperlinks permitted in a single Excel spreadsheet. The separate disclosure ledgers are hyperlinked to the source documents. The materials are listed by document number. This has resulted in occasions where the task action report ("TAR"), the document that summarizes the actions and attachments for a particular task and action sequence, is listed on a separate disclosure ledger than the attachments or other materials associated to that TAR.

C. The Laporte List

- [36] The first request for a Laporte list was made on February 21, 2019, by counsel for Kyle Latimer. Crown counsel responded on February 27, 2019, and listed materials in their possession for which disclosure was being withheld. The materials listed as being withheld were only in response to items identified by defence counsel and not a comprehensive list of items in the police or Crown possession.
- [37] On July 2, 2019, counsel for Mr. Szucs requested a Laporte list. On July 3, 2019, counsel for Mr. Szucs requested a complete task list, as there were missing task numbers on the disclosure ledgers. Follow-up requests were made on August 1 and August 24, 2019. Crown

counsel replied on August 28, 2019, advising that a Laporte list was being worked on and would be provided by August 30, 2019. The Crown provided a Laporte list on August 29, 2019. Numerical task lists were disclosed on September 19, 2019, in disclosure hard drive Version 12.

- [38] Counsel for Mr. Szucs has inquired of Crown counsel whether anyone has reviewed the materials in the possession of the police in order to ensure disclosure is complete, accounting for inadvertent non-disclosure or intentional non-disclosure. As of October 7, 2019, when the Crown's written submissions were filed, no response had been provided.
- [39] In October 2019, when this application was originally scheduled to be heard, all counsel met with DC Wu and outlined their concerns. As a result, DC Wu and other VPD investigators started to review the various Project Tourniquet files. DC Wu's affidavit sworn October 4, 2019, outlined the review steps she was going to undertake in respect of Project Territory and estimated it would take about a month to complete.

D. Ongoing Disclosure Requests

- [40] As is evident from this background and chronology, defence continues to request more disclosure, often as a result of reviewing the materials received in a disclosure release. Disclosure continued well after the disclosure deadlines that CPD-3 provides and, as noted previously, disclosure of V-16 occurred in early 2020.
- [41] DC Wu outlined in her affidavit and was cross-examined on the discovery of inadvertent non-disclosure, intentional non-disclosure listed in the August 29, 2019, Laporte list, and explanations for the discovery of materials that were not disclosed but should have been, including: (1) materials not submitted by investigators; (2) materials not included as a result of human error; and (3) materials inadvertently corrupted in the disclosure process. I do not intend to elaborate on these points. Suffice to say DC Wu's evidence in and of itself establishes the extremely complicated nature of the disclosure process and the dataset in this case. Of significant concern, however, is the notion that there may be materials lost by these means or that the materials may be located elsewhere in the M-drive Project Tourniquet folders.

E. Email Inbox

- [42] In addition to the M-drive server where investigators were to upload their investigative materials, Task Force Tourniquet had a dedicated mailbox known as the "VPD Project Tourniquet Mailbox".
- [43] DC Wu's evidence establishes that Project Territory investigators were instructed to save any emails of "investigative significance" into the Project Territory dataset and to copy the email into the dedicated Task Force Tourniquet mailbox. Investigators were left to determine for themselves what was of "investigative significance", rather than being directed to forward all emails related to Project Territory tasks to the Project Territory Mailbox. While the latter

approach might have captured a large amount of clearly irrelevant material, for example, surveillance members emailing each other about lunch breaks, it would likely have avoided the potential loss of relevant emails. An example of one such email is DC Unheim's June 28, 2017, email to Mr. Sandhu of the Pacific Rim Estates requesting authorization to obtain certain CCTV surveillance footage and key fob access records related to particular dates and times in June 2017.

F. Remedial Steps to Overcome Deficiencies in Disclosure

[44] In her affidavit of October 4, 2019, DC Wu outlined the steps she and other Project Territory investigators intended to take in order to essentially audit the M-drive and Project Territory and Tantrum folders to ensure that disclosure was complete.

[45] By the time DC Wu testified on December 10, 2019, a fair amount of the audit had been conducted. However, the Project Territory investigators had not been asked to review their emails and to forward all the emails related to Project Territory to her. DC Wu had no real explanation as to why that had not been done, notwithstanding the known failure that an email from Mr. Sandhu to DC Unheim was not disclosed until the fall of 2019, although it existed in DC Unheim's files as of June 30, 2017.

[46] By December 10, 2019, DC Wu had not:

- i. taken any steps to determine and locate if there were documents that had not been uploaded to the dataset;
- ii. reviewed the TARs outlined in the disclosure ledger to ensure that all documents associated with the task and action sequence were in fact attached (although that is a process that the file coordinator engages in before uploading any completed task to the dataset);
- iii. taken any steps to determine why DC Unheim's email from Mr. Sandhu or DC White's early January 2018 notes had not made it onto the disclosure dataset;
- iv. taken any steps to determine whether there were other documents or emails in the possession of those two officers that had not been disclosed that should have been; or
- v. taken any steps to email all the investigators seeking all Project Territory emails that are not clearly irrelevant.

[47] The difficulties with disclosure in this case are not limited to the police and the Crown. In their written submissions, counsel for Mr. Szucs outlines at paras. 37(b) and (c) a number of materials they assert were not disclosed and not included in the August 29, 2019, Laporte list. The October 4, 2019, affidavit of Tanis Johnston, a paralegal with the Public Prosecution Service of Canada, establishes that all the materials enumerated in those two subparagraphs had been previously disclosed, and it provides the identification and location of the documents in issue on the hard drives provided.

[48] As a result of DC Wu's evidence on December 10, 2019, the Crown advised the defence on January 6, 2020, of further steps that DC Wu and the Crown were undertaking to ensure that the disclosure dataset for Project Territory was complete. Included in the list of steps being undertaken, Crown counsel advised the defence that DC Wu:

. . . continues to review all non-Territory material in Taskforce Tourniquet folders on the Vancouver Police Department M: drive to make sure that none relate to Project Territory targets or were mis-titled or mis-filed. We note that my letter to you dated February 27, 2019, pages 2-3 . . . lists details with respect to non-Territory Taskforce Tourniquet files for the purpose of explaining what we say is their clear irrelevance to your client's prosecution.

Issues and Positions of Counsel

[49] The overall issue raised by this application relates to the defence's concern that there are or may be further materials related to Project Territory either on the VPD M-drive filed under a different project or investigation, or there are materials that, for whatever reason, did not actually make it onto the dataset for the purposes of disclosure.

[50] The applicants argue that the uncertain state of the Project Territory disclosure is underscored by the instances of late-breaking disclosure in the three substantive voir dieres as well as the discovery that DC White's notes from January 2, 4, and 9, 2018, had not been attached to a TAR related to a seizure of CCTV footage from the Pacific Rim Residences. In addition, the applicants argue that the decision to let investigators determine whether their emails were of "investigative significance" has resulted in the potential loss or non-disclosure of material that is actually Stinchcombe disclosure. The defence points to the loss of DC Unheim's June 28, 2017, email to Mr. Sandhu at the Pacific Rim Residences as a concrete example of what may be lost or missing from the disclosure dataset.

[51] To remedy this state of affairs, the defence seeks an order from the Court that directs the VPD and the Crown to review the entire Project Tourniquet folder, determine which materials in the Project Tourniquet file have not yet been disclosed or otherwise accounted for, and either disclose those materials or, where disclosure is to be withheld, provide a Laporte list explaining the basis for withholding that disclosure.

[52] As I understand the breadth of the defence request, the Laporte list would seemingly include all the investigative materials related to the other Task Force Tourniquet investigations that do not relate to Project Territory or Tantrum and the reason for their intentional non-disclosure - thus, an extremely far-reaching and broad-based Laporte list.

[53] The Crown acknowledges the significance of its disclosure obligations, but resists the application on two bases: (1) what the defence seeks goes beyond the fruits of the investigation as it relates to the accused on the Latimer Indictment and (2) what the defence seeks is not a true Laporte list. The Crown maintains that, given all the reviews that have been conducted since this application was filed and since DC Wu testified on December 10, 2019, and the ongoing disclosure that has been made as a result, a Laporte list is neither

necessary, nor will it actually capture what the defence seems to be seeking--documents that may currently be unknown to police and the Crown. In essence, argues the Crown, a Laporte list will not capture what might be characterized as "unknown unknowns".

- [54] To put it another way, should a revised Laporte list be ordered to remedy the inadvertent non-disclosure of Project Territory material and to support the Crown's assurances that the material from the other investigations is clearly irrelevant? The Crown argues that a Laporte list should not be ordered.

Governing Legal Principles

- [55] The governing legal principles in respect of the disclosure obligations of the police and the Crown are not seriously in dispute, save, perhaps, for the breadth of the disclosure obligation on multi-file investigations where there may be cross-pollination, overlap, or the potential for materials being missed due to misfiling and/or failure to forward relevant materials to the dataset.
- [56] Recently in *R. v. Moazami*, 2020 BCCA 3 [Moazami], Justice Harris, writing for the court, succinctly reviewed the Crown's disclosure obligations as established in the jurisprudence:
- [36] The Crown has a duty to make "first party" disclosure of all relevant, non-privileged information in its possession or control to persons charged with criminal offences. The police have a corresponding duty to disclose to the Crown the "fruits of the investigation" into an accused. These obligations are captured by the principles enunciated in *Stinchcombe*: see *McNeil* at paras. 23, 53; *R. v. Gubbins*, 2018 SCC 44 at para. 23.
- [37] In *McNeil*, the Supreme Court of Canada considered the nature of disclosure obligations where police misconduct is involved in the investigation of an accused or might otherwise affect the accused's trial. These obligations survive trial and remain relevant to an appeal process. Even though the materials generated by an investigation into police misconduct are not in the possession of the prosecuting Crown and are not part of the "fruits of the investigation" into the accused, they may nonetheless fall to be produced as first party disclosure in certain circumstances. Justice Charron said, at para. 15:
- [15] . . . records relating to findings of serious misconduct by police officers involved in the investigation against the accused properly fall within the scope of the "first party" disclosure package due to the Crown, where the police misconduct is either related to the investigation, or the finding of misconduct could reasonably impact on the case against the accused.
- [38] The Court went on to explain the duty to disclose police investigative records and disciplinary records more fully at para. 59. A corollary to the Crown's disclosure obligation is the police duty to participate in the disclosure process. Discovery of some police misconduct records must not be left entirely to the third party process, where production is necessarily more happenstance than first party disclosure. Where "information is obviously relevant to the accused's case, it should form part of the first party disclosure package to the

Crown without prompting."

- [39] In Gubbins, the Court clarified the meaning and purpose of the "obviously relevant" standard. At para. 23, approving of Justice Watt's reasons in *R. v. Jackson*, 2015 ONCA 832, Justice Rowe said:
- [23] In addition to information contained in the investigative file, the police should disclose to the prosecuting Crown any additional information that is obviously relevant to the accused's case. The phrase "obviously relevant" should not be taken as indicating a new standard or degree of relevance: *Jackson*, at para. 125, per Watt J.A. Rather, this phrase simply describes information that is not within the investigative file, but that would nonetheless be required to be disclosed under *Stinchcombe* because it relates to the accused's ability to meet the Crown's case, raise a defence, or otherwise consider the conduct of the defence. *McNeil* requires the police to hand such information to the Crown.
- [40] The *McNeil* Court offered some illustrations of the type of police misconduct records that would be disclosable on a first party basis under this standard. At para. 53, Justice Charron noted that the accused "has no right to automatic disclosure of . . . police disciplinary matters with no realistic bearing on the case against [the accused]." As to the nature of material that must be disclosed, she said:
- [54] . . . To state an obvious example, if a police officer is charged under the applicable provincial legislation for excessive use of force in relation to the accused's arrest, this information must be disclosed to the Crown. Where the misconduct of a police witness is not directly related to the investigation against the accused, it may nonetheless be relevant to the accused's case, in which case it should also be disclosed. For example, no one would question that the criminal record for perjury of a civilian material witness would be of relevance to the accused and should form part of the first party disclosure package.
- [41] The Court in *McNeil* and in *Gubbins* has been careful to explain that the duty on the police to produce to the Crown "obviously relevant" material outside of the "fruits of the investigation" into the accused, so that the material can then be disclosed to the accused as first party disclosure, is an exception to the general rule that police records are third party records. At para. 25, the *McNeil* Court reminds us: "production of criminal investigation files involving third parties, and that of police disciplinary records, usually falls to be determined in the context of an O'Connor application." In *Gubbins*, at para. 24, the Court approved of the Alberta Court of Appeal's reasons in *R. v. Black*, 2011 ABCA 349 at paras. 37-38, where the court said:
- . . . Only records of misconduct that are obviously relevant form a part of first party disclosure.

For all other records held by a public body, including the police, the Stinchcombe-O'Connor distinction continues to be the rule. The police are required to disclose the investigative file as first party Stinchcombe disclosure and other files or records in the hands of the police are subject to the O'Connor process. This would include files relating to complaints of criminal activity by Crown witnesses and the operational records of the police force or government body from whom records are sought.

[Emphasis added in Gubbins.]

[42] It is important for this Court to ensure that McNeil is not evoked as a guise for disclosure requests that ought to be subject to an O'Connor application.

[43] While police departments are obliged to turn over the fruits of the investigation and other obviously relevant records, the Crown is simultaneously under a duty to make reasonable inquiries of the police. The Crown is not "simply a passive recipient of relevant information with no obligation of its own to seek out and obtain relevant material": McNeil at para. 48. The Crown is not entitled, in its role as a minister of justice, to blindly accept without inquiry that a police department has provided it with all necessary disclosure in all cases. Accordingly, where the Crown is put on reasonably founded notice of the existence of relevant and undisclosed information, it has a duty to make inquiries of other Crown agencies, including the police: McNeil at para. 49.

...

[47] The prosecuting Crown's duty to make reasonable inquiries when on notice of relevant material in the possession of other Crown agencies allows the Crown to "bridge much of the gap" between first party disclosure and third party production: McNeil at para. 51.

[57] Moazami related to a defence application for a complete inventory of all the materials relating to the police's "Fisher investigative file", an investigation into misconduct by one of the officers involved in the investigation of Mr. Moazami. The Court of Appeal dismissed the appellant's disclosure application, concluding that the information that was sought by the appellant was more properly third party records subject to an O'Connor application (see *R. v. O'Connor*, [1995] 4 S.C.R. 411).

[58] Moazami, Gubbins, McNeil, Stinchcombe, and the general disclosure jurisprudence make clear that the "fruits of the investigation" means material related to the accused's case. It does not extend to material from other investigations into other persons--third party accused. These materials, that is investigations into third party accused, are usually subject to the O'Connor disclosure regime instead of the first party disclosure regime of Stinchcombe: McNeil, para. 25.

[59] Recently in Gubbins, the Supreme Court reiterated the principles that animate the Stinchcombe disclosure regime:

- [18] In *R. v. Stinchcombe*, [1991] 3 S.C.R. 326, this Court held that the Crown has a duty to disclose all relevant, non-privileged information in its possession or control, whether inculpatory or exculpatory. This is referred to as first party disclosure. The Crown's duty to disclose corresponds to the accused's constitutional right to the disclosure of all material which meets the *Stinchcombe* standard: *R. v. Dixon*, [1998] 1 S.C.R. 244, at para. 22. The purpose of disclosure is to protect the accused's Charter right to full answer and defence, which will be impaired where there is a "reasonable possibility that the undisclosed information could have been used in meeting the case for the Crown, advancing a defence or otherwise making a decision which could have affected the conduct of the defence": *ibid.*
- [19] The Crown's duty to disclose is triggered upon request and does not require an application to court: *Stinchcombe*, at pp. 342-43. The duty is ongoing; new information must be disclosed when it is received: *ibid.* The Crown's duty to disclose is not absolute. The Crown considers relevance and the rules of privilege. Where the Crown refuses to disclose evidence for reasons of privilege or irrelevance, the defence can request a review; in such an instance, the burden is on the Crown to justify its refusal to disclose by showing that the information is "clearly irrelevant" or privileged: *Stinchcombe*, at pp. 339-40.
- [20] The "Crown" for the purposes of *Stinchcombe* does not refer to all Crown entities, but only to the prosecuting Crown: *McNeil*, at para. 22; *R. v. Quesnelle*, 2014 SCC 46, [2014] 2 S.C.R. 390, at para. 11. All other Crown entities, including police, are third parties for the purposes of disclosure. They are not subject to the *Stinchcombe* regime. This is because the law cannot impose an obligation on the Crown to disclose material that it does not have or cannot obtain: *McNeil*, at para. 22.
- [21] In *McNeil*, this Court clarified that "the Crown cannot explain a failure to disclose relevant material on the basis that the investigating police force failed to disclose it to the Crown": para. 24. The Crown has a duty to make reasonable inquiries when put on notice of material in the hands of police or other Crown entities that is potentially relevant: *McNeil*, at para. 49. As well, the police have a corresponding duty to disclose "all material pertaining to its investigation of the accused": *McNeil*, at paras. 23 and 52. Such material is often referred to as "the fruits of the investigation": *McNeil*, at paras. 14, 22-23. As well, the police may be required to hand over information beyond the fruits of the investigation where such information is "obviously relevant to the accused's case": *McNeil*, at para. 59.
- [22] The "fruits of the investigation" refers to the police's investigative files, as opposed to operational records or background information. This information is generated or acquired during or as a result of the specific investigation into the charges against the accused. Such information is necessarily captured by first party/*Stinchcombe* disclosure, as it likely includes

relevant, non-privileged information related to the matters the Crown intends to adduce in evidence against an accused, as well as any information in respect of which there is a reasonable possibility that it may assist an accused in the exercise of the right to make full answer and defence. The information may relate to the unfolding of the narrative of material events, to the credibility of witnesses or the reliability of evidence that may form part of the case to meet.

In its normal, natural everyday sense, the phrase "fruits of the investigation" posits a relationship between the subject matter sought and the investigation that leads to the charges against an accused.

(R. v. Jackson, 2015 ONCA 832, 128 O.R. (3d) 161, at paras. 92-93)

[23] In addition to information contained in the investigative file, the police should disclose to the prosecuting Crown any additional information that is obviously relevant to the accused's case. The phrase "obviously relevant" should not be taken as indicating a new standard or degree of relevance: Jackson, at para. 125, per Watt J.A. Rather, this phrase simply describes information that is not within the investigative file, but that would nonetheless be required to be disclosed under Stinchcombe because it relates to the accused's ability to meet the Crown's case, raise a defence, or otherwise consider the conduct of the defence. McNeil requires the police to hand such information to the Crown.

[24] These qualifiers are significant, as they contemplate that not all police records will be subject to first party disclosure

...

[29] To summarize, two different regimes govern disclosure in criminal cases. First party disclosure, as set out in Stinchcombe and supplemented by the duties on the Crown and the investigating police in McNeil, requires disclosure of all relevant information upon request. If the Crown refuses disclosure, it bears the burden to show that the information is clearly irrelevant. Third party disclosure per O'Connor requires an application to the court for third party disclosure (where the records sought do not fall under first party disclosure) for which the defence bears the burden to show that the record is likely relevant. In both instances, the purpose is "[to protect] an accused person's right to make full answer and defence, while at the same time recognizing the need to place limits on disclosure when required": World Bank Group v. Wallace, 2016 SCC 15, [2016] 1 S.C.R. 207, at para. 115. Such limits include avoiding fishing expeditions.

[Emphasis added.]

[60] From the foregoing, it is clear that Stinchcombe disclosure does not capture material from other investigations into other people unless it is obviously relevant to the accused's case, as explained in para. 23 of Gubbins.

- [61] In *McNeil*, Charron J. noted at para. 17 that relevant information in the first party production context includes not only information related to those matters the Crown intends to adduce in evidence against the accused, but also any information in respect of which there is a reasonable possibility that it may assist the accused in the exercise of the right to make full answer and defence. This edict has been interpreted to mean relevance is not limited to relevance to meeting the merits of the Crown's case. Relevance is wider and includes the potential usefulness of the information to the defence in advancing a defence, or the reasonable possibility that the information could be used by the defence to make a decision which could affect the conduct of the defence: *R. v. Basi*, 2007 BCSC 788 at paras. 19-25; *R. v. Pickton*, 2005 BCSC 1240 at paras 9-12; *R. v. Belcourt*, 2012 BCSC 737 at para. 12.
- [62] As investigations become more complicated and the use of electronic technology such as email, text messages, and other media, becomes more ubiquitous and integrated into investigations, including using such media for exchanging information and communications about investigations, the issue of relevance and disclosure becomes more intricate and complex. The issue of relevance of information also becomes complicated in a file of this magnitude where the Crown may not fully understand the parameters of relevance vis-à-vis a generalized defence disclosure request.
- [63] In *R. v. Pickton*, 2007 BCSC 718, Mr. Justice Williams addressed the issue of relevance in the disclosure context in the following manner:
- [10] It is well established that the Crown is required to disclose all relevant material in its possession or control to the defence. "Relevance" for the purposes of disclosure is defined broadly. The key is whether the information "can reasonably be used by the accused either in meeting the Crown case, advancing a defence or otherwise making a decision which may affect the conduct of the defence such as, for example, whether to call evidence": *R. v. Egger* (1993), 82 C.C.C. (3d) 193 at 203-204 (S.C.C.).
- [11] The Crown's disclosure obligations are not dependent upon the admissibility of the information in question at trial. As Hill J. wrote in *R. v. Barbosa* (1994), 92 C.C.C. (3d) 131 at 140 (Ont. G.D.):

In my view, there is an obligation on the prosecution to disclose all information, in its possession, control or custody, which is relevant to the guilt or innocence of the accused. The notion of relevance in this regard is not strictly limited to that information which would be strictly admissible in a criminal proceeding. Frequently, information which is apparently, or as a general rule, inadmissible, may either assist the defence with pre-trial inquiries in terms of locating witnesses or preparing witnesses or may become admissible evidence depending upon the advancement of a particular defence or defences. . . . [emphasis in original]

- [64] And, in an unpublished decision in *R. v. Bacon*, 2014 BCSC 865 [Bacon], after reviewing the jurisprudential progeny of the principles governing first party disclosure and the issue of relevance, I summarized the principles stating:

[108] Collectively, the following non-exhaustive summary of the principles describing the Crown's disclosure obligations can be derived from the jurisprudence:

- i. relevance for the purposes of Stinchcombe disclosure is broadly defined: Pickton 1240 at para. 10; Taillefer [R. v. Taillefer, 2003 SCC 70] at paras. 59-60; McNeil at para. 17;
- ii. the right to disclosure of all relevant material has a broad scope and includes material which may have only marginal value to the ultimate issues at trial: R. v. Dixon, [1998] 1 S.C.R. 244 at para. 23;
- iii. the threshold requirement for disclosure is set quite low: Taillefer at para. 60, citing Dixon at para. 21 and Chaplin [R. v. Chaplin, [1995] 1 S.C.R. 727] at paras. 26 - 27; Basi 2007 at para. 27;
- iv. relevance includes materials in the possession of the Crown whether inculpatory or exculpatory: Taillefer at para. 59;
- v. relevance of information includes that which may be useful to the defence in making full answer and defence and so if it might be of some use it is relevant, if it is of no use it is irrelevant: Egger at para. 20; Taillefer at paras. 59-60; Pickton 1240 at para. 15;
- vi. the concept of relevance favours the disclosure of information: Taillefer at para. 60;
- vii. little information will be exempt from the duty to disclose: Taillefer at para. 60; McNeil at para. 18;
- viii. the Crown should err on the side of inclusion of information: R. v. Daly, [1992] O.J. No. 1504, 57 O.A.C. 70 at para. 38; Dixon at paras. 27-28; Taillefer at paras. 59-60;
- ix. if the information in issue appears to be of marginal relevance, the benefit of the doubt favours disclosure: Pickton 1240 at para. 14;
- x. if there is a reasonable possibility of the information being useful to the accused in making full answer and defence, the duty to disclose is triggered: Taillefer at para. 60; Basi 2007 at paras. 23-24;
- xi. the right to make full answer and defence includes the ability to seek a stay of proceedings: Creswell [R. v. Creswell, 2000 BCCA 583]; Castro [R. v. Castro, 2001 BCCA 507]; White [R. v. White, 2010 ONSC 6987]; Campbell [R. v. Campbell (1997), 32 O.R. (3d) 181 (C.A.)]; Rutigliano [R. v. Rutigliano, 2013 ONSC 6589];
- xii. in light of the decision in McNeil, disclosure obligations do not end with the police production of the investigative file but expand to furnishing the Crown with "all material pertaining to the investigation of the accused": McNeil at paras. 14 and 52. As can be seen from the result in McNeil, this includes information that may affect the credibility of police witnesses and as such can extend to internal police or employment records.

- [109] The authorities on disclosure mandate an expansive and inclusive approach to relevance. Relevance should be defined by the underlying purpose of the duty to provide disclosure, being the protection of the right to make full answer and defence.
- [65] In *Bacon*, I also concluded that the term "fruits of the investigation" had to be afforded an expansive and flexible meaning to accord with the variety of investigations that are undertaken by the police. Some investigations are straightforward and relatively simple. Others can be exceedingly complex and intricate. The case at bar falls into the latter category.
- [66] The decision in *McNeil* at paras. 23-25 also made it very clear that the police have a duty to participate in the disclosure process and to disclose to the Crown all relevant material in their possession relating to the investigation of the accused, which includes information about third party accused that is in some way related to the accused's case. This observation, however, does not make other investigative files into other accused under the same large umbrella task force automatically relevant from a disclosure perspective. However, when assessing the relevance of information from those other investigative files, the police must govern themselves with both their disclosure obligations and the expansive definition of relevance in mind.
- [67] Another area of the disclosure jurisprudence that informs the analysis of the issues raised on this application is the correlative duty on the defence to be involved in the disclosure process.
- [68] In *R. v. McKinnon*, 2014 BCSC 2051 [McKinnon 2051], Madam Justice Fisher, as she then was, outlined the correlative obligation of the defence in the disclosure process. In *McKinnon* 2051, the court was dealing with a mistrial application on the grounds of late disclosure by the Crown of a substantial volume of documents, largely undisclosed emails, that actually related to the fruits of the investigation of five accused in a case involving charges of conspiracy to kidnap, kidnapping, and assault-related offences.
- [69] The defence had, at various times, made fairly broad requests for disclosure of various forms of police communication, including emails and text messages. The initial position of the Crown was that the request was too broad and unfocused such that it amounted to a fishing expedition as emails and texts were not generally considered to be part of the investigative file and therefore not subject to *Stinchcombe* disclosure. Just before the last Crown witness was to testify, one defence counsel renewed her application for further disclosure of documents. That application was dismissed, in part because Fisher J. had assumed all relevant materials had been disclosed in response to a defence request a year earlier. When the officer started to testify, it became apparent that a significant body of information had been included in emails and text messages that had not been disclosed. The conclusion of the trial was adjourned for approximately four months for the Crown to have the police conduct a comprehensive review of all material related to the prosecution to confirm whether there was any other material of possible relevance to be disclosed, which

would then be reviewed by the Crown.

- [70] Disclosure of emails and text messages continued between May 26, 2014, and September 2014, resulting in late disclosure of approximately 5,000 pages of emails and text messages: see McKinnon 2051 at paras. 36-42.
- [71] Significantly, in May 2014, the Crown was not in a position to assert that there were no undisclosed emails in existence that related to the fruits of the investigation, as no one had looked at them. During the process of the McKinnon 2051 disclosure application, the Crown advised that there were approximately 67,452 emails sent to or from the accounts of 13 officers that the defence were interested in for a specified period of approximately nine months, from just before the start of the investigation to a few weeks after the arrests were made.
- [72] The circumstances from the McKinnon 2051 prosecution--the non-disclosure of emails and text messages that the investigating agency deemed not to be fruits of the investigation--appears to be a variation of what is occurring in the current prosecution. In McKinnon 2051, it became apparent that a significant amount of electronic communications between investigators did fall within the category of the fruits of the investigation of the accused, as they dealt with efforts to secure the cooperation of one of the accused: McKinnon 2051 at paras. 34-37.
- [73] In McKinnon 2051 and an earlier ruling, *R. v. McKinnon*, 2014 BCSC 749 [McKinnon 749], Fisher J. was clear that in the context of long trials and multiple accused, and where disclosure has been substantial and ongoing, defence has a duty to assist the Crown in defining the issues of importance to the defence: McKinnon 749, paras. 37-39. The observations of Fisher J. in McKinnon 2051 at paras. 91-93 are similarly apposite to the circumstances of the case at bar.
- [74] I note that the requests by the defence in the case at bar have, perhaps out of necessity, been rather broadly based. Nevertheless, when the Crown seeks assistance in defining the parameters of the request in the post-Jordan/Cody landscape of criminal trials, all parties have a duty to be vigilant and move matters forward: *R. v. Jordan*, 2016 SCC 27; *R. v. Cody*, 2017 SCC 31. To that end, I adopt Fisher J.'s observation in McKinnon 2051:
- [93] From a practical perspective, cooperation between the defence and the Crown is critical to enabling the Crown to discharge its disclosure obligations, particularly in large and complex prosecutions. As Williams J. explained in *R. v. Pickton*, 2005 BCSC 1240 at para. 15:

The authorities also indicate that one measure of relevance is the usefulness of the information to the defence. In a complex, multi-faceted case such as that presented here, the Crown cannot be expected to recognize every instance in which information meets that criterion. Consequently, there must necessarily be a high degree of communication between the Crown and the defence whereby issues of relevance can be discussed and, hopefully, resolved.

Analysis

- [75] I turn now to the issue of whether a Laporte list should be ordered in this case. I begin with what should be obvious--a Laporte list is not a mandatory item; rather, it is a tool that facilitates the assessment and review of the Crown's decision not to disclose materials that it has in its possession. Thus, it is a tool employed to assist in the process of assessing and reviewing the issue of intentional non-disclosure by the Crown, not inadvertent non-disclosure by the prosecution team or the investigative agency: *R. v. Chu*, 2016 SKCA 156 at paras. 48 and 54; *R. v. Anderson*, 2013 SKCA 92 at paras. 96 to 97; and *Laporte* at paras. 18 to 20.
- [76] The Saskatchewan authorities, *Laporte* in particular, demonstrate that such a list relates to items that the Crown possesses but refuses to disclose to the defence. In order to assess the reasonableness of the Crown's position and to streamline the judicial review process, the notion of a list inventorying the items that the Crown possesses but refuses to disclose and the basis for the refusal was born in *Laporte*. With such a list in hand, the defence can then meaningfully assess which claims of irrelevancy or privilege they will seek to challenge and have the Crown justify the intentional non-disclosure. Implicit in this whole process is the notion that the materials the Crown is refusing to disclose are the fruits of the investigation as it relates to the accused.
- [77] I do not interpret *Laporte* as creating a mandatory approach to how intentional non-disclosure is dealt with. Indeed, *R. v. Chaplin*, [1995] 1 S.C.R. 727 provides another route. While extremely practical and likely a best practice, a Laporte list is not the only answer to assessing the appropriateness of the Crown's decision to withhold the material.
- [78] More significantly, however, a Laporte list does not cover items that relate to inadvertent non-disclosure. Such items are, generally speaking, either items that the Crown has not received from the investigating body or items the Crown has received, believes it has disclosed, and subsequently discovers it has not because of some sort of mistake or miscommunication. As the cases on disclosure make clear, the disclosure process will not be perfect: *R. v. Pereira*, 2007 BCSC 1533 at para. 63, citing *R. v. O'Connor*, [1995] 4 S.C.R. 411 at paras. 192-194; *R. v. Russell*, 2012 BCSC 373 [Russell] at para. 35 (unpublished). It will be prone to human error. Where such an error is discovered, it is incumbent on all parties to move with dispatch to resolve the problem.
- [79] I do not interpret our Court of Appeal's decision in *Hu v. British Columbia Securities Commission*, 2010 BCCA 306 as authority for the proposition that the applicant appears to advance - that the Crown must ensure all material, even that outside the investigative file, has been screened for relevance vis-à-vis this investigation.

- [80] The fact that Project Territory is housed within a larger task force structure does not automatically transform the other investigative files under that umbrella into fruits of the investigation in respect of the Latimer Indictment accused or the two Kang indictments, for that matter. Nor does the fact that some of the investigators from Project Territory worked on other investigations that are also housed under the Task Force Tourniquet umbrella.
- [81] The suggestion that a Laporte list must be created for all the investigations housed under the Task Force Tourniquet umbrella is, in my view, but a variation of the O'Connor applications addressed by Madam Justice Stromberg-Stein, as she then was, in Russell. There, the accused were seeking, through the third party record application process, numerous investigative files that pertained to rivals in the gang context as it then existed. The applications, save one, were dismissed. In doing so, Stromberg-Stein J. relied upon para. 45 of McNeil to twice reiterate in the context of endless disclosure applications in that case that "care must be taken to remain focused on the criminal proceeding at hand and not turn the trial into a conglomeration of satellite hearings on collateral matters": Russell at paras. 35-48.
- [82] Having said that, the investigating agency - here the VPD's Project Territory investigators, especially the file coordinators and disclosure officers - as well as the Project Territory prosecutors, have a duty and obligation to ensure that the Project Territory defence teams have received the materials they are entitled to: the fruits of the investigation into these accused. The fruits of the investigation is the information generated or acquired during or as a result of the specific investigation into the charges against the accused and, as the Supreme Court of Canada noted in Gubbins at para. 23:
- . . . the police should disclose to the prosecuting Crown any additional information that is obviously relevant to the accused's case. . . .
- [83] In my view, the defence application for a Laporte list is misconceived at this juncture. A Laporte list for entirety of the Task Force Tourniquet folders on the VPD M-drive reaches far beyond the Project Territory and related Project Tantrum investigations. Moreover, it is clear that a Laporte list is only meant to cover materials the Crown and police have in their possession that constitute the fruits of the investigation into the charges against the accused that they are refusing to disclose because they have determined that the materials are clearly irrelevant or privileged and not subject to Stinchcombe disclosure obligations. To put it differently, a Laporte list is not going to capture materials that the prosecuting Crown does not have either because the police have not provided them (e.g. emails) or there has been some error in the filing and disclosure process within the police context (e.g. investigators failing to forward materials to the file coordinator or misfiling of materials in the wrong file).
- [84] Accordingly, the application for a Laporte list as described by the applicant is dismissed at this juncture.

- [85] However, that is not, in my view, the end of the matter. I say, with respect, that given the VPD's approach to emails as they relate to the Project Territory investigation, something must be done to rectify that matter.
- [86] To be frank, DC Wu's evidence that individual investigators were left to their own devices to determine whether their email communications were of "investigative significance" and to forward only those that were to the Tourniquet mailbox is a deeply troubling revelation. One only needs to look at the difficulties that arose in the McKinnon case in respect of electronic communications and their non-disclosure to see the folly in such a course of conduct.
- [87] The seemingly misplaced email DC Unheim sent to Mr. Sandhu on or about June 28, 2017, seeking CCTV surveillance footage and fob access records from the Pacific Rim Residences provides at least one example of the problem that has potentially been created for this case.
- [88] Moreover, the standard of clearly irrelevant, not "investigative significance", is where the divide occurs on the disclosure/non-disclosure line. This has been the governing standard on the withholding of materials contained in the investigative file since Stinchcombe was decided on November 7, 1991--more than 28 years ago.

Conclusion

- [89] While I am not prepared to make an order that the Crown provide a Laporte list at this juncture, that does not mean there is nothing to be done.
- [90] As the appointed case management judge and trial judge for this indictment, there are ancillary orders and directions that I can make pursuant to my trial management powers and the specific provisions of s. 551.3(1)(g)(i) of the Code, which states:

551.3 (1) In performing their duties before the stage of the presentation of the evidence on the merits, the case management judge, as a trial judge, exercises the powers that a trial judge has before that stage in order to assist in promoting a fair and efficient trial, including by

...

- (g) subject to section 551.7, adjudicating any issues that can be decided before that stage, including those related to
 - (i) the disclosure of evidence . . .
- [91] DC Wu testified about some of the review steps that had been undertaken by that time, including notebook reviews. Crown counsel, in her submissions on January 29, 2020, advised that a review had been conducted of most of the non-Project Territory folders in the Project Tourniquet folder on the VPD's M-drive and was nearly complete. The file corruption issue has been addressed through a full review and further disclosure. In my view, these are steps analogous to those the Crown agreed to in McKinnon (para. 40)--having the police conduct a comprehensive review of all the material related to this prosecution to confirm whether there was any other material of possible relevance to be disclosed, which would

then be reviewed by the Crown.

- [92] At the end of the Project Tourniquet folder review process, I expect either the disclosure officer, the file coordinator, or the Crown to be able to advise the defence and the Court whether there is any other material of possible relevance to be disclosed. I use the term "relevance" in its broad and purposive sense, as it has been defined in the authorities including Gubbins, McNeil, and the two decisions in Pickton.
- [93] In so far as the emails and electronic communications are concerned, if this has not been done already, I am directing that DC Wu communicate with all officers and civilians involved in Projects Territory and Tantrum and request they forward to her immediately any emails and/or electronic communications in which they communicated about any matter or target related to Project Territory or Tantrum. The Crown can then assist DC Wu and the file coordinators in assessing the materials for clear irrelevance or privilege and develop a standard for disclosure of the materials that should be disclosed.
- [94] The Crown and the file coordinator and/or disclosure officer should provide a list of officers and civilian members to whom requests have been made for electronic communications and include when the request was made, when a response was received, and when the materials sought can be provided. The request by DC Wu should indicate that it is imperative that responses be received as soon as practicable.
- [95] By March 6, 2020, I expect both an update on the progress of this endeavour and to be advised of a projected time for completion of this task.
- [96] Although I am not ordering the preparation of a Laporte list at this juncture, the Crown would be well advised to turn its mind to the issue in so far as the Project Territory and Project Tantrum investigative files are concerned once the review of the Project Tourniquet folder and email production is complete. As a tool, it assists in streamlining the process of determining if challenges to any intentionally withheld material needs to be advanced by the defence.
- [97] That concludes my ruling.

"Ker J."

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