

CANADA / JUDGMENT

R. v. Lee et al.

2002 BCSC 260

COURT

Supreme Court of British Columbia

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2002 BCSC 260 R. v. Lee et al

Citation:

R. v. Lee et al.

Date:

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2002 BCSC 260

Docket:

CC010051

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

HER MAJESTY THE QUEEN

AGAINST

SEE CHUN LEE, GOU DIN HO, CHUK FONG TAO

WEI BO CHEN, CHAK NAM CHAN, SIU WAN CHAU and CHEUNG HUNG

PUBLICATION BAN PURSUANT TO S. 648

OF THE CRIMINAL CODE

RULING RE AUTHORIZATION P45/99

OF THE

HONOURABLE MR. JUSTICE CULLEN

Counsel for the Crown:

M.M.M. Devlin

J.K. Torrance

Counsel for See Chun Lee:

P. Leask, Q.C.

D.J. Jevning

J. Gellis

Counsel for Gou Din Ho:

P.A. Hart

Counsel for Chuk Fong Tao:

D.B.L. Sokol

Counsel for Wei Bo Chen:

D. Gaffar

J.C. Henderson

Date and Place of Hearing:

January 25, 28, 29, 30,

February 4, 5, 6, 7, 8, 11, 12 & 13, 2002

Vancouver, B.C.

[1] Authorization P45/99 was issued August 12, 1999 effective up to and including October 10, 1999. The primary targets who fell within its scope were:

Li, Yu Kwong;

Lee, See Chun ("Lee");

Ho, Gou Din ("Ho")

Vongvilay, Yuk Kuang ("Vongvilay");

Ho, Ko Shui ("Ko Shui")

Tsang, Andy Sui Wan (Tsang"); and

Chu, Pui Hei (also known as Sor Jai Hay).

- [2] The affidavit sworn in support of P45/99 by Constable Robert Montgomery Tan is an imposing edifice of 691 paragraphs set out in 363 pages embracing events taking place between August 1st of 1998 and August 4th of 1999. It contains informer information from informants A, B, C, E and I, police surveillance of various of the targets, summaries of intercepted private communications among the targets and involving others, as well as some information acquired from other investigative sources.
- [3] Authorization P45/99 was the fifth authorization issued since February 15, 1999 in connection with an investigation code named CONGEE centred on the importation of heroin from Southeast Asia and its subsequent distribution in the Vancouver area.
- [4] To a significant extent the CONGEE investigation and authorizations depended upon evidence acquired through an earlier investigation, code named EIDER, during which five authorizations were issued, the final one terminating January 18, 1999.
- [5] The accused Lee and the accused Ho were targets common to each of the preceding nine authorizations utilized in EIDER and CONGEE, although in the initial two EIDER authorizations, P14/98 and P30/98, Ho was named as a secondary target only.
- [6] As with the earlier authorizations, of the present accused, only Lee and Ho have standing to challenge the validity of P45/99 insofar as it permitted the interception of their private communications as primary targets. Both Lee and Ho have made such an application and they do so on the basis that the affidavit, as amplified, fails to establish a basis upon which an issuing judge could find a credible probability that the interceptions sought would afford evidence of a particular offence being, or about to be committed.
- [7] A convenient summary of the basis of the authorization said to be established by the affidavit is set out in paragraph 648 detailing the present status of the investigation. It reads as follows:
648. The present status of the investigation may be summarized as follows:
- a. LI, LEE, HO, VONGVILAY, TSANG, HO, Ko Shui and CHU are being investigated because of the level of their heroin operation and because a lot of information was known about them;
 - b. The subject of the investigation are involved in heroin trafficking and heroin importations to Canada, and that their heroin shipments arrive in Canada more than once a year;
 - c. LI is considered to be a major international importer of heroin from South East Asia into Canada who is also continually involved in heroin exportations from South East Asia to other countries. LI is believed to be the highest level person within the group being investigated. Informant information indicates that LI and LEE are regularly involved together with heroin importations to Canada and elsewhere;
 - d. Earlier this year, LEE was in Hong Kong and stayed at a residence owned by his uncle LI. LEE returned from Hong Kong on June 6, 1999;

- e. LI visited Vancouver for a couple of weeks in late April 1999 and then returned to Hong Kong. While in Vancouver LI attended the grand opening of a restaurant which is believed owned by LI and his brothers. The restaurant is believed to be a means for laundering money. Financial inquiries conducted by the Hong Kong Police have determined that in March 1999, a major drug suspect in Hong Kong remitted cash (Hong Kong dollars) equal to \$200,000.00 Canadian to a business bank account co-registered to one of LI's brothers in Vancouver;
- f. Intercepted conversations between LI and LEE about money matters indicate that they may be arranging a heroin shipment from China to Canada. TSANG is believed to have been in China since late April 1999. Telephone interceptions indicate that TSANG is involved in money matters and meets with other persons including "Git" on LEE's behalf. Informant information indicates that TSANG is LEE's man ____ who's responsibility is to arrange shipment of heroin for LEE. Both LI and LEE have also mentioned "Git" in their conversations and they appear to have knowledge of what TSANG and "Git" are arranging.
- g. On August 4, 1999, LEE flew to Toronto with PANG, Chak Yan and CHAN, Wing Yan ("Carman"). The purpose of his trip is not known.
- h. During June and July, 1999, HO has travelled from Toronto to Vancouver on 2 occasions and he stayed with his brother HO, Ko Shui both times. On July 9, 1999, HO arrived in Vancouver from Toronto. A few hours later a male named CHANG, I Kuo also arrived in Vancouver from Toronto. Soon after HO's arrival that evening, HO contacted HUI, Chi Keung. The next day HO had telephone contact with both HUI, Chi Keung and CHAN, Kwok Yung. Both persons are believed to be involved together with high level heroin trafficking. HO's conversations with HUI, Chi Keung and CHAN, Kwok Yung were believed to have been about a substantial sale of heroin to HUI, Chi Keung. Telephone interceptions also indicated that HO met with HUI, Chi Keung at a Richmond hotel being used by CHANG, I Kuo early the next morning after his arrival. Telephone contact and meetings the next day between LEE and Ho also indicated that LEE was knowledgeable about the arrival of CHANG, I Kuo and HO's involvement with HUI, Chi Keung and CHAN, Kwok Yung;
- i. On August 4, 1999, intercepts indicated that Ho had returned to Vancouver.
- j. It has not been determined whether CHANG, I Kuo's association with the subjects of this investigation is related to heroin trafficking, illegal alien smuggling or both;
- k. Informant information indicated that a "lot" of heroin was arriving in Vancouver from Toronto during the same period that HO was making his trips to Vancouver;
- i. VONGVILAY returned from Hong Kong on May 28, 1999. The purpose of his trip there was not determined. VONGVILAY is believed to be a unit level heroin trafficker working for and being supplied by HO, and possibly other persons. VONGVILAY has a number of persons who traffic drugs for him. VONGVILAY often uses pay telephones for what is believed to be drug related business;

- m. VONGVILAY recently has been involved in renovations and preparations for the opening of the Viva Las Vegas Club in Richmond which is expected to open at the end of July 1999. LEE, HO, VONGVILAY and other persons are believed to all have a share in the ownership of this club. According to police inquiries and informant information the business license for this club is registered in another person's name. Informant information indicates that the club will be used by LEE, HO, VONGVILAY and others to discuss their criminal activities and to launder money;
 - n. Recent intercepted conversations between LEE, HO and VONGVILAY have determined that they have detected police surveillance and are reluctant to meet or use certain vehicles when they anticipate a police presence. Their behaviour substantiates the belief that they are involved in high level criminal drug activities;
 - o. Informant information indicates that HO, Ko Shui is involved in trafficking heroin and collecting money for HO. Surveillance and interceptions of HO, Ko Shui support Informant information that HO, Ko Shui may have used the former apartment at 1204-4825 Hazel Street, Burnaby, for heroin storage for HO. HO, Ko Shui has also been present during meets between LEE and HO;
 - p. Informant information has indicated that CHU is a unit level heroin trafficker being supplied by HO and that he associates with HO, Ko Shui. Informant information indicated that recently HO was with CHU in Vancouver.
- [8] As with the previous authorizations brought within the compass of review on this voir dire, the issues engaged for my consideration are:
- (1) whether and to what extent the issuing judge could have found the informant information reliable; and
 - (2) whether he could have found the grounds sufficient to warrant the interceptions sought against Lee and Ho.
- [9] There are, of course, authorities which govern a determination of the reliability of informant information and whether the standard of proof justifying the issuance of an authorization has been met. There is also authority which limits the role of a reviewing judge in such endeavours. While I have canvassed those authorities in my previous rulings on the validity of earlier authorizations in the CONGEE and EIDER series, it is necessary to have regard for them in the present review because of the particular issues that have arisen.
- [10] In *R. v. Garofoli* (1990), 60 C.C.C. (3d) 161 (S.C.C.), Sopinka J. synthesized a test for the reliability of informant evidence which he drew from *R. v. Debot* (1986), 30 C.C.C. (3d) 207 (Ont. C.A.); (1989), 52 C.C.C. (3d) 193 (S.C.C.); and *R. v. Greffe* (1990), 55 C.C.C. (3d) 161 (S.C.C.). Sopinka J.'s formulation of the test is set out at p. 191 as follows:

(i) Hearsay statements of an informant can provide reasonable and probable grounds to justify a search. However, evidence of a tip from an informer, by itself, is insufficient to establish reasonable and probable grounds.

(ii) The reliability of the tip is to be assessed by recourse to "the totality of the circumstances". There is no formulaic test as to what this entails. Rather, the court must look to a variety of factors including:

- (a) the degree of detail of the "tip";
- (b) the informer's source of knowledge;
- (c) indicia of the informer's reliability such as past performance or confirmation from other investigative sources.

(iii) The results of the search cannot, ex post facto, provide evidence of reliability of the information.

[11] A review of the authorities reveals that the court's concern with using hearsay statements of informants as the basis for a prior authorization is met by the imposition of an analytical process to resolve the issue of reliability. In the case at bar, counsel for the accused Ho and Lee and counsel for the Crown are divided over the extent to which the Garofoli test permits variability of its factors to govern the analysis. The Crown submits, in effect, that the Garofoli test is non-formulaic in the application of the identified considerations (source, detail, past performance and confirmation through other investigative sources) and is at least somewhat open to a consideration of other factors. Counsel for the accused on the other hand, while acknowledging the Garofoli test is not strictly formulaic, submit that the reasons of Wilson J. in *Debot*, supra, are instructive, and, insofar as they offer a template for analysing the reliability of informant information, should be regarded as the proper manner of applying the Garofoli test. It is counsel's submission that there is no authority to support the Crown's submission that the Garofoli test is open to factors other than those clearly identified in that judgment.

[12] In my view, the paramount concern of the court in *Garofoli* lies not with the creation of a distinct algorithm for the assessment of the reliability of an informant's tip, but rather with ensuring within the overall authorization process a meaningful analysis of such information in determining whether the totality of the circumstances justifies the order sought. The propositions accepted by the court in *Garofoli* emphasize that the analysis is not "formulaic" and involves "recourse to the totality of the circumstances". It seems to me that connotes an open and flexible analysis conducive to the permutations that different cases bring, rather than a closed and rigid one unyielding to variations in the mix of evidence, its nature, quantity and quality.

- [13] The affidavit in support of P45/99 proceeds from the information contained in the affidavit in support of P35/99, the preceding authorization. As with the case of the prior authorization, the evidence said to justify the interceptions sought in relation to Lee and Ho involve informant information, police surveillance of the targets and others, summaries of intercepted private communications and some information acquired from other investigative sources.

The Informant Information

- [14] As with the affidavit in support of P35/99, the P45/99 affidavit contains information from informants A, B, C, E and I.
- [15] The police terminated contact with informant A and informant B; the former on June 22, 1999 and the latter on June 11, 1999. The termination was due to their involvement with matters being investigated by the police. Edited reasons for the termination of informant A are set out in paragraphs 432 and 433 of the affidavit. Similarly, edited reasons for the termination of informant B are set out in paragraph 91 of the P45/99 affidavit.
- [16] The first instalment of informant information was provided by informant B on October 2, 1998 and was set out in paragraph 166. In that information, informant B characterized Lee as a major heroin player and said that Lee had a new car which was a white coloured Infinity and was associated to a person nicknamed Gong Tou Wah and Sai, Gua Lo ("Ho"). Ho had control of dealing heroin for Lee and B knew three underlings who worked for Lee. B also identified Tsang as the delivery person for Lee who would show up and pass over the heroin as pre-arranged by Lee. B said there were other deals that Lee would negotiate locally and receive payment for in Honk Kong or China. B also asserted that Lee's uncle was a major heroin player and that he owned a restaurant in Kowloon, Hong Kong.
- [17] In paragraph 170, information received from informant B on October 7, 1998 was set out and included information that Lee had two cellular phones, one numbered 760-3339 and the other 889-8063, and that Ho was holding an unknown amount of heroin for Lee and that there were no set locations for heroin pickups but the locations would usually be picked at random at a main street and certain avenues where the parties would meet briefly for the pick-up. B also asserted that there was a load of about 50 kilos of heroin that arrived in Vancouver some time in late July or early August of 1998, and that part of the heroin load belonged to Lee. He asserted that Hui was in control of the heroin load because he was able to have someone pay cash for holding it.
- [18] In paragraph 178, information received from informant C on October 16, 1998 was set out and included an assertion that Ho frequently used the courtesy phone at the Ying Kee restaurant in Richmond to return pages, that he carried a cell phone but did not give out the number and that informant C believed that Ho was currently busy selling heroin. On October 19, 1998, informant C provided information that he believed that Ho went to Toronto to visit his family. That was set out in paragraph 180.

- [19] Information was received from informant A on October 23, 1998 and set out in paragraph 183. According to informant A, Lee had lost a lot of money gambling in Macau when he was overseas previously and that he was currently waiting for an unknown amount of heroin to arrive in Vancouver. Informant A said that Lee worked for his uncle "Ng Yat" ("Li") in Hong Kong who was a big boss and had lots of money. According to informant A, Li was well connected with Ah Chut ("Chang, Keung") and they had worked together in the past. Informant A said that Li had previously shipped a large shipment of heroin and he could not depend solely on Lee. Informant A said Chan had the confidence and contacts because he had the ability to distribute large heroin shipments. Informant A also said that Ho was in Vancouver two weeks previously at the Golden Swan restaurant and that he had elevated himself in the heroin scene, that Ho had a new cellular and pager number and that he had arranged a load of heroin from China. Informant A described the quality and shape of some heroin brought in by Ho and detailed what he paid for it and asserted that he had paid for it on credit. He also asserted that Ho had sold some heroin to the owner of a restaurant formerly named "Tin Tin" Restaurant on Hastings Street in Burnaby.
- [20] On October 26, 1998 informant A asserted that Ho was presently in Toronto but was to arrive in Vancouver that night from Toronto on a domestic flight. According to informant A Ho would bring "edited" heroin either by himself or through an unknown underling or underlings. Informant A said the heroin might be flown in or driven in from Toronto and due to the large amount Ho had to attend Vancouver to verify the amount.
- [21] On October 30, 1998 the police received information from informant E set out in paragraph 190 in which informant E asserted that Vongvilay had been a drug trafficker for many years and had been arrested by the police previously for drug trafficking and served a jail sentence (Vongvilay was in fact convicted in February 1996 of two counts of drug trafficking and was sentenced to a total of two years less a day incarceration). Informant E said Vongvilay lived in an apartment at a high-rise building and had a good looking girlfriend named Joey who lived with her brother in a townhouse in Richmond.
- [22] On November 3, 1998 informant A provided information set out in paragraph 191 to the effect that Vongvilay worked for a lot of drug traffickers over the years and that when a load of heroin arrived in Vancouver, Vongvilay used to retrieve the heroin. According to informant A, Vongvilay had a good reputation among the "Big Circle Boys", his reputation was that he would do a good job on any task he agreed to take. According to informant A, Vongvilay now had a lot of younger "boys" working for him trafficking heroin and they were very loyal to him. Informant A also asserted that Ho had successfully transported edited heroin from Toronto to Vancouver and had sold those products already having only seven units left.
- [23] On November 20, 1998 informant A provided further information set out in paragraph 201 in which he asserted that a recent load arrived in Canada organized by Chan, Wu and Ah Gong also known as Gong Ji. He said that when Ho came to Vancouver from Toronto in October he organized heroin to be brought to Vancouver from Toronto. He asserted that Ho probably

had his boys bring it on a flight after him or had them take it to Greyhound bus. According to informant A, the top heroin importers to Canada were Ng Yat ("Li") Chan, Lee Lai Ji (Ho, Hong Cheung) Jyu Wing ("Pang Yeu Wing"), Gong Tou ("Fong Ming Po") and Fai Jai Hong (Wu, Bao Kang. Informant A asserted that Chan and Lee were partners in the heroin business. Chan brought in 80 to 100 units of heroin several times per year and Lee also brought in heroin several times per year and relied on his uncle Li's connections, although sometimes Lee would organize heroin shipments on his own. According to informant A, Li was an international crime figure who was very wealthy and had lots of property. Although Li was Lee's uncle, Lee could not deal with Li directly and would have to go through one of Li's underlings. Informant A asserted that Chan was very well established in China among high-ranking police and government officials and believed that he was untouchable. According to informant A, all heroin proceeds generally go back to South East Asia, specifically China. He said Canadian currency is not liked in China, it is generally transferred to Hong Kong and converted to Hong Kong currency. From Hong Kong the money is transferred to China. He also asserted that not just anyone can put a heroin load together, and that in order to do so one had to have the contacts in China with a set group of people.

- [24] On December 24, 1998 informant E provided information to the police set out in paragraph 213. In that information he asserted that Vongvilay returned from a trip to the U.S. about two days previously and that he was supplying both cocaine and heroin to an edited person. He asserted that Vongvilay speaks Cantonese, Thai and English and presently had several "boys" both working with him and for him in the drug trade. He said that "Steven" and Wong, Albert Chi Wai ("Albert") were two males who were considered to be at the same level as Vongvilay who worked with him. Both Wong and Stephen spoke fluent English and they spoke Cantonese, but not as well. On January 6, 1999 informant A provided information set out in paragraph 217 in which he asserted that See Chun Lee had a small share in the heroin shipment which had been earlier seized by the police.
- [25] He also asserted that Vongvilay was busy selling heroin and cocaine and always had a lot of people working for him. He also asserted that when people discussed heroin business deals they preferred to meet in Hong Kong, because if something went wrong, Hong Kong had easier access for escape routes at the international airport.
- [26] On January 26, 1999 informant A provided information to the police as set out in paragraph 227. He asserted that he had not seen Ho recently but said that Ho was continually busy selling heroin and just recently some Vietnamese guys were talking about it. He said that Gong Ji's heroin when it arrived would likely be given to people like Ho and Hui for distribution. He said Vongvilay was busy selling heroin right now and believed that Vongvilay was involved in heroin with Hui. He also said that drug traffickers liked to conduct money exchanges in casinos. He said the drug trafficker could then have the casino as an explanation for the money if they were stopped by the police.

- [27] On March 4, 1999 informant A provided information to the police as set out in paragraph 263 that Li gave money to one of his younger brothers, one of Lee's uncles, to buy a restaurant on Main Street in Vancouver and that the purchase occurred recently, sometime within the past year.
- [28] On March 10, 1999 informant A gave information to the police set out in paragraph 277 that Ho and his brother Ko Shui and a female known as Sui Yen had tea together in a restaurant in Richmond. On March 17, 1999 informant A provided information to the police set out in paragraph 291. He asserted that in the last two weeks there had been a lot of heroin on the market in Vancouver and the price was between \$50,000 and \$52,000 per unit. He said that drug exchanges were more likely to occur in Richmond because the traffickers were able to blend in easier and because they were not bothered as much by the police. He said that Sui Yen has been involved in drug trafficking for several years and was selling units of heroin for Ho and she had several girls working in the massage business for her and many of them are drug addicts who were sometimes paid with drugs.
- [29] According to informant A, Ho kept his heroin at his older brother's house (Ko Shui's) and he used that location because his older brother was a legitimate person with a wife and children. Informant A said it was believed that Ho used that location as a cache site because in the past Ko Shui's place had been mentioned in reference to what was believed to be a drug meet. He said Ho was seen mostly in Richmond and often went to places like the Floata restaurant.
- [30] On April 7, 1999 A provided further information to the police set out in paragraph 316. He said Ho and his elder brother Ko Shui and Chu were together in a restaurant in Richmond. He said Chu was associated with Ho's brother, Ko Shui and described him as an oriental male, mid-forties, skinny with long hair. He said several Yens or units of poor quality heroin were believed to be stored in Ko Shui's place and the poor quality heroin was from Wu's shipment. He said some local customers were unhappy with the heroin and returned it to Ho and Ho was waiting for a load of good quality heroin and holding onto the poor quality heroin. Informant A also said that Vongvilay was selling drugs to a restaurant owner located at 860 Burrard Street in Vancouver called the Uforia Restaurant.
- [31] On April 14, 1999 informant C provided information to the police set out at paragraph 330. Informant C said that people have said that Ho's older brother, Ko Shui, was involved in illegal activities. Informant C believed that Ho stayed with his older brother and that Ko Shui was believed to be involved in drug trafficking with Ho because of the people that he knew and associated with. He also said that Ko Shui knew a lot of people closely associated to Lee. C also identified a person known to the police as Lun as a person who came from Montreal, who gambled, who was seen frequently in Richmond and who used to operate a restaurant on Hastings Street near Boundary Road.

- [32] On April 28, 1999 informant A provided information to the police set out in paragraph 358 of the affidavit. He said Ko Shui and Chu were at a location in Richmond early this past Tuesday and were concerned about police following them earlier that night. He said they were scared and curious of how the police knew they presently had heroin. He said Ho, Ko Shui and Sor Jai Hay (Chu) presently had heroin for sale and that Chu sold heroin for Ho. He said Ho's role was not that of an importer but rather he was involved in selling the heroin locally. He said one of Lee's uncles, Li, was the money man behind the opening of a Vancouver restaurant called the Stylish Chinese Seafood Restaurant at 2949 Main Street in Vancouver. He said there was presently a shortage of heroin and the price of a unit was about \$60,000 to \$70,000.
- [33] On May 21, 1999 informant A provided information to the police set out in paragraph 380. According to informant A, at that time heroin was scarce in Vancouver. Ho had some heroin but he was scared to sell it because of the police surveillance of his group and he had asked some unknown person to sell his heroin for him. He said Ho had not been seen recently and that Pang Yeu Wing and Ho did not work together.
- [34] In addition, he said Lee had not been seen for the past few months but that Lee was the boss locally and Ho was his worker. He said Li in Hong Kong was the bigger boss within this group and he worked on heroin importation with other unknown shareholders who were also considered to be in charge. He said Chan was sometimes a shareholder with Li. He considered that Ho was a higher level person than Vongvilay in that Ho could get up to ten units of heroin at a time as opposed to Vongvilay who got two or three units at a time. He said Vongvilay negotiated the price of drugs and that he got drugs through many different suppliers. He was trusted and got his drugs "fronted" to him. He asserted that Vietnamese Ming also sold drugs for Lee and that he was the boss of the Vietnamese and had about 50 to 60 boys working for him. He said Ho and Wu were believed to be involved separately. He said Ho had in the past fallen behind on his payments to Wu and as a result Wu was no longer involved with Ho in that way. He said Hui was closely involved with Chan Kwok Yung and he also knew Lee and Ho.
- [35] On May 21, 1999 informant C also provided information to the police set out in paragraph 381. He said that Pang, Yku Wing's group worked separately from Ho's. He said both groups were involved in heroin trafficking but that Ho and Pang had not worked together for over a year. He said Pang still owed a substantial amount of money to Ho and presently they did not get along. He said in the past Vongvilay and Ho were also involved in cocaine. According to C Ho and Vongvilay were part of a group involved in heroin trafficking together and that Lee was a higher level person within the group and Ho was working for him. He said that Ho and Vongvilay worked together and he believed that Vongvilay may now be a higher level person than Ho. He said that Wu had been seen with Ho and Vongvilay some months ago but Ho had not been seen lately. Informant C did not think that Hui was associated with Ho's group and he confirmed that heroin was scarce right now in Vancouver.

- [36] On May 31, 1999 informant A provided information to the police that was set out in paragraph 385. He asserted that Ho had not been seen lately but that his brother Ko Shui spent a lot of time at the No. 3 Road casino and was always with Chu. He asserted that Chu was selling heroin for Ho and that Chu was an older oriental male in his late forties. He said Ko Shui had been followed by the police.
- [37] On June 1, 1999 informant I provided information to the police set out in paragraph 386. He asserted that a large quantity of good quality heroin had recently arrived and was available in Vancouver. He said a few hundred units had arrived in total. He attested to the quality of the heroin and said that because of the recent abundance, the price had dropped from close to \$70,000 per unit to just above \$50,000 per unit. He itemized the types of heroin that were available in Vancouver. There were four types, a double-brick unit, a single-brick unit, broken pieces of heroin sold by the unit, and the double-uoglobe brand hero. He said the double-uoglobe brand units were very clean and were not wrapped in a thin wax coating but he said units of heroin were often dipped into wax to avoid detection from police or customs' dogs. He described how the heroin was being shipped and explained that is why some of the heroin was in broken pieces. Informant I said that Li was the person in Hong Kong common to both Chan's and Lee's groups at the heroin exportation level. He said Li was a very wealthy and powerful person who the informant believed was untouchable by law enforcement. He said Chan Kwok Hung was Chan Kwok Keung's older brother in Hong Kong and that Hung was considered to be equal in status to Li. He said Li and Hung were both in contact with each other about heroin matters. He said Li was See Chun's uncle and Lee worked closely with Li with heroin exportations from Southeast Asia to Canada and other places. He also said Lee's partner involved in heroin distribution in Vancouver was Ho and that Lee was also involved with heroin shipments destined to Toronto. He said that Tsang was considered to be Lee's right-hand man and that the unit level heroin traffickers working under Ho were Vongvilay, Lun and a male known as Sor Jai Hay ("Chu"). He said that within the past week, Lun had sold a couple of units of heroin, that he was quite wealthy and used to live in Coquitlam and used to own a restaurant. He said Lee, Ho, Vongvilay, Lun, Tsang, Ko Shui and Chu were all part of a group involved together in distributing heroin. He said Lee's group was considered to be involved separately in heroin matters from Chan Kwok Kueung's group, he said when Lee returned from Hong Kong he would be in contact with Ho directly. He also gave some general information about how heroin importers and distributors worked.
- [38] On June 7, 1999 informant I provided information to the police set out at paragraph 392. He said that soon after Lee returned from Hong Kong Ho could be expected to come back and meet with them. (The informant was not aware that Chun had just returned from Hong Kong the previous day). He said groups involved in importing heroin usually had shipments arrive in Canada about twice a year and Lee's group was also expected to import about two shipments of heroin each year although the informant believed that not all of Lee's heroin shipments would be shipped to Canada. He asserted that so far Lee's group had not imported heroin to Canada but that when a major heroin importer returned to Canada from

Southeast Asia it was highly probable that a heroin shipment would arrive in Canada sometime afterwards. He said it was likely that Lee would use Canadian born Chinese boys to retrieve the heroin once he imported a heroin shipment to Canada and that Lee had contact with Canadian born Chinese boys through persons like Pang, Chak Yan and Al ("Wong, Albert Chi Wai"). He said Pang Chak Yan was very trusted with handling money and it was expected that Lee would have frequent contact with Pang Chak Yan once he returned to Canada. He said that Lee was very wealthy and well established because he was being backed by his uncle, Li. He indicated that prior to going to Hong Kong earlier this year, Lee was going to meet Ho to discuss a money matter and was on his way but cancelled the meeting because police were following him. He said Ko Shui collected the money from heroin sales and loan sharking for Ho. He said it was expected that Ho was contacting his older brother Ko Shui frequently to check on the status of the money being collected. He said when heroin was received from persons outside their own group Ho's brother, Ko Shui, would also be involved in returning the money to the other supplier. He said Ko Shui was frequently with Chu and they spent a lot of time together at the casino on No. 3 Road in Richmond and that Chu was involved in selling units of heroin for Ho. He said Ko Shui was also expected to meet frequently with Lun in order to collect money from heroin sales and that Lun had been trafficking heroin for the past year and a half. He gave some general information about the nature of heroin trafficking which included the assertion that heroin meets were usually done in two stages. First the persons involved would meet at a restaurant to discuss the exchange then meet again sometime afterwards to exchange the heroin. He also said that units of heroin were now being sold for \$52,000 per unit if it was uncut and above \$40,000 if it was cut.

- [39] Information was received from informant I in June of 1999 and set out in paragraph 396. Informant I asserted that Lee had recently returned from Hong Kong and was expected to have contact with Ho now that he had returned. He said that Lee's girlfriend was wealthy and drove a Mercedes 320C. He said Ho's older brother Ko Shui drove a Honda, licence plate number HSR 166 and that Ko Shui was recently selling wax type brick units of heroin. The informant believed the heroin belonged to Lee because Ko Shui was selling it. The informant also believed the broken piece type of heroin presently being sold in Vancouver also belonged to Lee's group.
- [40] On June 21, 1999 informant A provided information to the police set out in paragraph 417. He said Lee was seen within the past week and was back in Vancouver and was driving a new model grey Mercedes convertible. He said during the early morning Ko Shui had frequently been seen at the No. 9 restaurant in Richmond and was seen using the pay phone and courtesy phone at this restaurant. He described where the pay phone was located and where the courtesy phone was located. The informant said he had not seen Chu lately and confirmed that heroin was plentiful in Vancouver and was selling at between \$50,000 to \$55,000 per unit.

- [41] Also on June 21, 1999, informant I provided information to the police which was set out in paragraph 418. He said Lee was being followed by the police since he had returned from Hong Kong and was looking for investors for drug shipments. He said the arrangements for drug shipments usually took two to three months to complete and he knew no further details of these drug shipments. He said Tsang was a runner for Lee in Hong Kong. Tsang travelled to China to arrange the shipments of drugs for Lee because Lee did not get directly involved. He said Tsang was in Vancouver near the end of April and the informant believed that Tsang was here to arrange for the receipt of the shipment of heroin which was now being sold by Lee's group. He said Lee returned to Vancouver in order to receive the money obtained from the sale of the heroin and that Ho was responsible for collecting the money and he somehow got the money to Lee. The informant said he did not know just how the money was exchanged between them but heroin was abundant and was actively being sold in Vancouver and was now worth less than \$50,000 per unit.
- [42] On July 10, 1999 informant I provided information to the police set out in paragraph 491. Informant I asserted that Lee was expecting Ho to return to Vancouver within the next two days. Lee was in Vancouver to collect the money from heroin sales and was expected to return to China at the end of July and that Lee, Ho and Vongvilay were all still involved in heroin matters. He said Ko Shui was seen with a person associated to Vietnamese Ming and he believed that those dealings were drug meets. He said Vongvilay was opening a disco on No. 3 Road near the casino in Richmond and that Vongvilay used another person to register the business because he would not be able to get his liquor licence under his name. He asserted that the disco would be used to launder money and as a meeting place and that Vongvilay was driving a grey Forerunner with a partial licence plate H__ 833.
- [43] Informant I gave information to the police on July 24, 1999 which is set out in paragraph 614. According to informant I, people said that Lee was the person with heroin available and that Lee was expected to leave Vancouver at the end of the month and return to Hong Kong. He said Lee was not that concerned about police following him because he does not handle the heroin and that Ho was seen in the Vancouver area within the past 10 days but was last seen a few days ago. He said recently Ho, Chu, Hui and an unknown male were seen together somewhere in Richmond.
- [44] Informant I said Ah Git was the person responsible for orchestrating the shipments of the broken type of heroin that the informant previously reported. He said Ah Git was closely associated to Ho, even closer to Ho than he was to Lee. He said Ah Git also knew Tsang. He said Ho's wife's name was Elaine and that Ho and Chan Kwok Yeung used to be very close with each other. He said police should pay more attention to people coming to Vancouver from Toronto lately as heroin was constantly coming to Vancouver from Toronto. Informant I believed that Ho might be involved in the heroin arriving here because Ho recently made two trips from Toronto. He said that Ho had been with Chu in Vancouver lately and also was very closely associated with Hui lately. He described Chu as about 45 years old, dark complexion, skinny with a thin face and crooked teeth. He said that Lun had not been seen

at all recently. He said the disco club which Vongvilay was involved in was still expected to open at the end of the month and a white guy had an edited ownership in the club because his name was being used for the business licence. He said other persons who had shares in the disco were Vongvilay, Lee and Ho. He said the disco club was expected to be good for laundering money and would be used to meet to discuss criminal activities. He said recently the quality of heroin was quite high and units of heroin were selling for about \$50,000 per unit. The units were the double-brick type.

- [45] That concluded the informant information put forth in the P45/99 affidavit. All of it save paragraphs 417, 418, 491 and 614 were advanced as part of the grounds for the order sought in the previous authorization, P35/99.
- [46] The additional context for the informant information is formed by evidence gathered by police surveillance of Lee, Ho and the other targets, evidence of summaries of intercepted communications involving them and others, and some additional evidence acquired by other investigative means.
- [47] I do not propose, in these reasons, to set out in any detail the context of my reasons for upholding the validity of P35/99. These reasons should be read in light of that ruling, (see R. v. Lee at al. 2002 BCSC 121.)
- [48] It is sufficient for the purposes of these reasons to note that in connection with authorization P35/99 as it related to Lee, I found some basis for the authorization in "a complex of evidence relating to the probability of Lee's past involvement in heroin shipments, his involvement and role within the group consisting on himself, Ho, Tsang, Lun, Vongvilay and others, the nature of his relationship with his uncle, Ng Yat, the fact that he went to Hong Kong and was with Ng Yat who, probably is a substantial source of his heroin for import into Canada, the fact that in late May of 1999 there was a scarcity of heroin in Vancouver, making for a receptive market and, finally, the fact that Lee arrived back in Vancouver around the time a large shipment of heroin probably arrived in Vancouver...."
- [49] Similarly, in connection with Ho, I found some basis for the P35/99 authorization in "a body of evidence ... of his role in a group consisting of himself, Lee, Ho Ko Shui, Lun, Vongvilay and Tsang, Sor Jai Hay and others", and in "credible probability of Ho's ongoing involvement in the distribution of heroin through Lun and ... Ho Ko Shui and Sor Jai Hay". In addition in connection with Ho I found "the credible probability of his relationship to Lee provides a basis upon which the issuing judge could have concluded that Ho would probably be involved in the distribution of any heroin shipped by Lee from Hong Kong to Canada."
- [50] The issue before me on this application is whether the basis for the validity of P35/99 against Lee and Ho is sustained or attenuated by the additional evidence, as amplified, advanced in support of P45/99.

- [51] The basis for the P45/99 authorization against Lee and Ho, as summarized by the affiant in paragraph 648, is incremental to that for P35/99. It is the position of the Crown that the roles, relationships and activities established to a credible probability in P35/99 so as to justify the order against Lee and Ho are maintained and advanced through the additional evidence tendered in support of P45/99 and thus provide justification for an ongoing authorization to intercept their private communications.
- [52] It is this precept which counsel for Lee and counsel for Ho challenge. It is their position that the additional evidence, as amplified, unveils significant deficiencies in the reliability of the evidence which formed the basis for the P35/99 authorization and which is repeated with additional evidence in support of P45/99. It is further their position that when the totality of the circumstances are assessed those deficiencies are amplified in the evidence said to form the basis for P45/99.
- [53] The attack by counsel for Lee and Ho on the reliability and sufficiency of the grounds for P45/99 involves an assertion that the reliability of informant A's and informant B's information is substantially compromised by the implication that arises from the police termination of their services in June of 1999; that the significance of the agreement of informant A, B, C and I on some of the information provided is attenuated by the evidence achieved through amplification that they have some associates in common; that in relation to informant I, the failure of his predictions advanced in support of authorization P35/99 and the unattributed nature of his current information advanced in support of P45/99 undermine its reliability; that contradictions among the informers similarly reduce their reliability and that of their information; that the affiants' interpretations of certain evidence and the inferences to be drawn from it are not merited; and that the totality of the circumstances do not provide any basis upon which the issuing judge could have granted the order sought.

The Validity of the Order Against Lee

- [54] The essential basis said to justify the interception of Lee's private communications in P45/99 as with P35/99 is his relationship with Li, Yu Kwong ("Ng Yat") Ho and Tsang. It is the assertion that Lee and his uncle Li have as the purpose of their relationship the regular exportation of heroin from Southeast Asia to Canada and elsewhere that founds the premise that Lee's involvement in heroin importation and distribution is ongoing and the interception of his private communications is accordingly justified. It is said that the evidence of his relationship to Ho and Tsang augments the evidence of the nature of his relationship to Li as it is asserted that it is through Tsang and Ho that Lee physically acquires and distributes the heroin which he arranges for import to Canada with Li.
- [55] In the affidavit in support of P45/99 the evidence of Lee's relationship to Li and its nature is described by informant A in paragraphs 183, 201, 263, 358, 380, informant B in paragraph 166, and informant I in paragraphs 386 and 392.

- [56] Some evidence of Lee's relationship with Li also emerges from evidence that when Lee was in Hong Kong between March 9th and June 6, 1999 he stayed at a residence owned by Li and picked Li up from the airport when he returned to Hong Kong from visiting with his family in late April 1999.
- [57] Further illumination of the nature of Lee's relationship with Li can be found in a series of intercepted private communications involving Lee and Li, Lee and Tsang, and Lee and a person nick-named "Ah Git". That series of calls begins with a call shortly after midnight on July 15, 1999 between Lee and Li set out in paragraph 560, a call on July 20, 1999 shortly before 11:00 p.m. between Lee and Li set out in paragraph 600, a call shortly after midnight on July 21, 1999 from Tsang to Lee set out in paragraph 601, another call from Tsang to Lee at 2:15 a.m. on July 21, 1999 set out in paragraph 603, a call at 3:05 a.m. on July 21, 1999 from Lee to Git set out in paragraph 605, a call at 8:30 p.m. on July 22, 1999 from Lee to Git in paragraph 609, a call at 10:49 p.m. on July 23, 1999 from Li to Lee set out in paragraph 613, a call from Lee to Tsang at 1:43 a.m. on July 26, 1999 set out at paragraph 617, a call on July 26, 1999 at 2:45 a.m. from Tsang to Lee set out in paragraph 618 and a call on July 26, 1999 at 3:50 a.m. from Tsang to Lee set out at paragraph 620.
- [58] In the call between Lee and Li in paragraph 560 the affiant's opinion is that Li called Lee to confirm a certain amount of money and asked Lee's advice about how to convert foreign currencies, at which point Lee mentioned Git's name as a person who "could do that". It appears that Ho was present with Lee as he could be heard in conversation with Lee in the background. It was the affiant's opinion that money exchanges of the sort discussed by Lee and Li "may be drug related".
- [59] In the second call set out in paragraph 600 Tsang called Lee in response to a message left by Lee for Tsang. In the opinion of the affiant Lee asked Tsang whether Li had contacted him yet about the matters referred to in the call between Lee and Li set out in paragraph 560.
- [60] In paragraph 601, approximately an hour and half later, Tsang called Lee to tell him that the person had just called him and that he was going to see that person. Lee asked Tsang to give him a call when he got back. Approximately an hour and a half later, Tsang called Lee back and discussed the price of \$170 per truck that he wanted to check out with Lee. Lee then told Tsang to get in touch with Git. It was the affiant's opinion that this conversation related back to the original conversation between Lee and Li on July 15th and established an association between Lee, Tsang, Git and discussions about money.
- [61] The next call, approximately 45 minutes later, was from Lee to Git in which Lee told Git to call Tsang later on and asked Git for the exchange rate between remimbi (Chinese currency) and Honk Kong dollars. They had a discussion about a sum of money believed by the affiant to be about \$100,000 Canadian which Git said he put "in there the last time" and Git also said he still had the \$40,000 U.S. with him. Lee then told Git to phone Tsang later on and Git asked if there was any amount there to which Lee responded "yes" and told him to give Tsang a call. Git asked if Lee knew how much there was and Lee said 170. Git asked if all of it

was in Chinese currency and Lee said yes. According to the affiant, this call related to the earlier conversation between Lee and Tsang and showed the relationship between Lee, Tsang and Git and that Lee and Git discuss money matters together.

- [62] The next call set out at paragraph 609 between Lee and Git, placed the next day at 8:30 p.m., involved Lee asking Git if he had contacted Tsang yet and Git said he was on his way. Lee said he would call Git later.
- [63] The next call set out at paragraph 613, approximately a day later, from Li to Lee, Li asked Lee whether he had received a call and Lee said he had and was going to call Li a bit later on. Li asked Lee why he did not call the day before when he received the call and Lee said because of a banquet they were going to. Lee asked if somebody gave Li a call and Li said yes Ah Git did and he said it would have to be Monday or Tuesday. Li said he would call Lee then.
- [64] The next call between Lee and Tsang at paragraph 617 was one in which Lee told Tsang that somebody would be looking for him and Tsang said okay, no problem. Lee said after Tsang saw that person then Tsang was to give him a call and Tsang said okay. Lee also told Tsang that he could take \$20,000 to spend in the meantime.
- [65] According to the affiant, this call showed Lee's knowledge of an arrangement with an unknown person who would be in contact with Tsang. The affiant indicated that the meeting "appeared suspicious and may be drug related" and it also showed that Lee had money to give to Tsang.
- [66] The next call, approximately an hour and a half later, from Tsang to Lee at paragraph 618 involves Tsang telling Lee that he had been contacted and was going to meet the person right now. According to the affiant, this called showed how Tsang followed Lee's instructions.
- [67] The final call in this series set out in paragraph 620 approximately an hour after the previous one from Tsang to Lee involved a discussion about money in which Tsang said "the price was right but one side was 145, on the other side the big one was 4". Tsang asked Lee if that was right, Lee said yes and Tsang indicated he would give Ah Git a call. There is some further discussion about the 4 and the 145. According to the affiant, this was an example of a guarded conversation and showed an association between Lee, Tsang and Ah Git.
- [68] These series of calls is said by the Crown to offer confirmatory evidence of some of the information provided by several of the informants. Specifically the Crown points to the information from informants A, B and I relating to the relationship between Lee and Li. The Crown also points to the information from informant I relating to Tsang's relationship to Lee, to the effect that Tsang was in Hong Kong and travelled to China to arrange the shipments of drugs for Lee because Lee did not directly get involved. (see paragraph 418). In addition, the Crown points to informant I's information provided on July 24, 1999 set out in paragraph 614 to the effect that Ah Git was the person responsible for orchestrating the shipments of the broken type of heroin that the informant referred to previously, that he

was closely associated to Ho, even closer to Ho than to Lee, and that Git also knew Tsang.

- [69] It was Lee's counsel's submission that the contradictions among the informants, the implications of the police termination of informants A and B and the failure of informant I's predictions about what Lee would be doing once he returned to Vancouver from China in June 1999 renders the basis for accepting the informers' characterization of the relationship between Lee and Li unwieldy. Counsel for Lee further submits that the conversation intercepted involving Lee, Li and Tsang and Git are simply too vague to be of assistance or do more than establish suspicion about the dealings involving those parties.
- [70] Dealing with informant I, he or she expressed the expectation set forth in paragraph 386 and 396 that once Lee returned from Hong Kong to Vancouver he would "directly" have contact with Ho and would frequently have contact with Pang, Chak Yan. It does not appear that these expectations were met, as when Lee returned to Vancouver on June 6, 1999, Ho, it appears, remained where he was in Toronto until June 21st. Upon his return to Vancouver from Toronto on June 21st, there was no evidence that Ho and Lee were together until three days later on June 24th. In connection with Pang, there was no evidence that Lee was in touch with Pang from the time he returned to Vancouver from Hong Kong on June 6th until they flew to Toronto together and with Lee's girlfriend on August 4, 1999.
- [71] Insofar as the termination of informant A and B are concerned, it was counsel's submission that there was an implicit agreement entered into between the police and those informants that during the currency of their status as informants neither A nor B would engage in the heroin trade. Counsel submitted that by their continued activity as informants while apparently carrying on in the heroin trade to the extent that they came under investigation and caused senior management to direct that they be terminated amounted to an ongoing act of deceit which would undermine the issuing judge's reliance on their credibility and the reliability of the information which they provided.
- [72] In my view, the failure of informant I's expressed expectations and the termination of informants A and B were both matters that were manifest to the issuing judge and which would factor into his assessment of the reliability of the evidence in light of the total circumstances. While it is true that Lee was not in touch with Ho "directly" on his return to Canada, it does appear that once Ho returned to Vancouver from Toronto he and Lee had frequent contact between June 24th and June 28th until Ho left once again for Toronto and then again after Ho's return to Vancouver from Toronto between July 10th and July 19th at which point Ho again returned to Toronto.
- [73] Lee's lack of contact with Pang does detract from the strength of informant I's prediction, but it is factor which would have been apparent to the issuing judge.

- [74] In dealing with this application, it is important to remember that the function of the reviewing judge is a limited one confined to a determination of whether there is any basis upon which the issuing judge could have granted the order. See *R. v. Garofoli*, supra; *R. v. Araujo et al.* (2000), 149 C.C.C. (3d) 449 (S.C.C.).
- [75] In that sense the reviewing judge is removed from the process once it is determined the totality of circumstances could have met the standard of reasonableness. Counsel for Lee and Ho have urged that an appropriate template for a review such of this can be found in the judgment of Wilson J. in *R. v. Debot*, supra.
- [76] It is important to note, however, that the court in *Debot* was not in the position of a reviewing court as the issue there concerned the reasonableness of an unwarranted search, and hence, the courts were looking at the sufficiency of evidence *de novo*. While that fact does not invalidate the general principles which emerge from *Debot* from having application on a review, it does render the decision more relevant to an issuing court than a reviewing one where the analysis is whether the issuing judge could have made the order not whether the reviewing judge would have.
- [77] Insofar as Lee is concerned, in my view, the totality of the circumstances are not such as to vitiate the basis for the issuance of an authorization. Lee's relationship with Li is given further definition in the P45 affidavit as one involving some mutual business interests. Lee and Li talk about the Stylish Seafood restaurant which informant A said Li advanced the money for, they talk about Lee being searched on his return to Canada, on a previous occasion, and they talk about money and the exchange rate of currencies. Lee also speaks with Tsang, who has been identified by informant B and informant I, as involved with him in the heroin business, and it appears that Lee is giving Tsang some instructions arising from his discussion with Li about money and the current exchange rates. Lee also speaks to a person named Ah Git who informant I identifies as the person who organized the broken pieces of heroin shipment and who, according to informant I, is also connected to Ho and to Tsang. Lee also discusses Git with Li as a person who can help exchange money. Lee also puts Tsang in touch with Git for some undetermined purpose. It seems to me that the issuing judge could conclude to the required standard the "Git" referred to by I and the "Git" spoken to and of by Lee are one and the same person.
- [78] There is also evidence that Lee has a bank account set up in Hong Kong permitting the transfer of a significant daily sum to other designated accounts. It also appears that his uncle Li had a similar account set up in Hong Kong, also permitting the transfer of significant sums on a daily basis.
- [79] In my view, in the totality of the circumstances, including all the additional information, the issuing judge could have concluded that the standard of reasonableness was met in connection with Lee. Specifically, the issuing judge could have concluded from that evidence that Lee's involvement with Li probably involved ongoing heroin importation and distribution and that his conversations with Git, Tsang and Li concerned some of the

financial aspects of that business, and further, that the enterprise was probably an ongoing one which could justify the interceptions sought. Additionally, the evidence of Lee's continued association with Ho and his asserted involvement in the nightclub could be accepted by the issuing judge as further evidence in support.

The Validity of the Order against Ho

- [80] As can be seen from the summary provided in paragraph 648 the evidence presented to the issuing judge addressed Ho's involvement with Li, Lee, Vongvilay, Ho Ko Shui and Chu in a heroin operation. The specific assertions involving Ho are that his brother Ho, Ko Shui was trafficking heroin and collecting money for him and at least some of the heroin involved was brought into the country by Lee. It is also asserted that Ho, along with Vongvilay and Lee had an interest in a nightclub which was to be used to conduct meetings and launder money in furtherance of the heroin operation.
- [81] There was also evidence of a transaction involving Ho, Hui, a person named Chang I Kuo and Chan Kwok Yung acquired through the interception of private communications and some police surveillance. The evidence of that transaction is advanced in support of a conclusion that Ho is involved in heroin trafficking on a continuing basis.
- (i) Ho's Involvement with Lee, Vongvilay, Ho, Kou Shui and Chu
- [82] The informant evidence is to the effect that Ho has an involvement with Lee, Vongvilay, Ho Ko Shui and Chu in the heroin trade. There is significant evidence of contact between Ho and Lee during the currency of the previous authorization, P35/99, while Lee and Ho are both in Vancouver. (Paragraph 437, 441, 442, 443 449, 453, 454, 484, 485, 510, 511, 513, 514, 516, 517, 523, 524, 541, 545, 547, 560 and 564). Similarly, there is evidence of contact between Ho and Vongvilay (paragraph 412, 425, 426, 429 and 551), some evidence of his contact with Chu (paragraphs 426, 429 and 633) and evidence of his contact with Ho Ko Shui (paragraphs 477, 480, 481, 535, 536, 537, 561, 565 and 594). In addition, there is evidence that Ho was sensitive to police surveillance on a number of occasions (paragraphs 412, 429, 524) and that he had an interest in the nightclub identified by informant I as being built to use to launder money and to conduct meetings concerning illicit matters (paragraphs 342, 412, 482 and 565).
- [83] The evidence of Ho's involvement in the nightclub tends to confirm informant I's information to that effect. Additionally, there is other evidence that tends to confirm other aspects of informant I's information concerning the nightclub including Vongvilay's involvement with it and the fact that the licence application was in the name of Anthony Sherba, apparently a caucasian, who claimed to be the sole owner of the club. Informant I had asserted that a "white guy" was being used for the licence because Vongvilay was unable to obtain one himself. Informant I's assertion that the club was being built to facilitate money laundering and illicit meetings is evidence that could justify an inference that the heroin trafficking was expected by the subjects to be an ongoing enterprise

- [84] In my view a review of the surveillance and intercepted private communication evidence relating to Ho Kou Shui offers some weight to the information as to his activities and role as asserted by informant I in paragraph 386 and 396, informant A in paragraph 277, 316 and 358 and informant C in paragraph 330 such that the issuing judge could find a credible probability of Ho Ko Shui's involvement in trafficking and money collecting activities.
- [85] Similarly, with respect to Vongvilay, the informant information concerning him is given weight by his extreme sensitivity to and frustration at police surveillance, his evident involvement with the nightclub, his involvements and associations with others said to be involved in the heroin trade and the highly cryptic nature of some of his communications.

(ii) The transaction involving Chan, I Kuo and Hui

- [86] A significant element of the evidence advanced in support of the authorization against Ho related to his dealings with Hui, Chang I Kou and Chan Kwok Yung commencing on his return to Vancouver from Toronto on July 9, 1999.
- [87] It was the theory of the affiant that the transaction in question related to the sale of eight units of heroin from Ho to Chang I Kuo through Hui, involved Ho seeking a guarantee from Chan Kwok Yung that if he "fronted" the heroin, his investment would be protected.
- [88] It was counsel for Ho's submission that the transaction was not about heroin at all, but involved Chang's request of Ho to borrow up to \$80,000 to help finance some 123 illegal immigrants who were being brought to Canada. Additionally, it was asserted by counsel that the evidence revealed that Chang had promised repayment of \$120,000 for the loan. Counsel submitted that in the totality of the circumstances there was insufficient support for the affiant's theory to cloak it with a credible probability particularly in view of the evidence supportive of the illegal immigrant theory and the context of Ho's call to Chan Kwok Yung on July 10, 1999, as set out in paragraph 509.
- [89] In my view, the evidence relied on by the affiant as evidence of a heroin transaction could not, in the totality of the circumstances, meet the standard of reasonableness. In light of all the cogent circumstances there is a strong likelihood the evidence relates to a loan sought from Ho in connection with the illegal alien smuggling not a heroin transaction.

Conclusion

- [90] In my opinion, despite the implications of the termination of informant A and informant B, the presence of some contradictions among the informants, and the evidence of informant I's failed predictions relating to Ho and Lee meeting directly on Lee's return from Hong Kong and Lee and Pang, Chak Yan meeting frequently, the issuing judge would not be obliged to find that none of the informant evidence was reliable.
- [91] The issuing judge could have found the presence of significant detail woven into the informants' evidence. He could have found some confirmation of the roles and relationships asserted in that evidence from the surveillance evidence, from the summaries of the

interception of private communications, from evidence of the targets' concern about surveillance, and from discussions about money matters and exchange rates involving those said to be involved with financing and organizing of the heroin shipments. For example, both informant B and informant A assert that the money from heroin sales in Canada goes back to Hong Kong and from there to China. The interaction of that information with Lee's discussions with Li, Tsang and Git concerning exchange rates and money, as well as the evidence of Lee's bank account in Honk Kong with a high daily transfer limit to other designated accounts contributes some meaning to the overall web of circumstances.

- [92] The matters raised by counsel for Lee and counsel for Ho were matters for the most part that were before the issuing judge. While they clearly were factors for him to consider on the issue of the reliability of the informants' evidence and whether the totality of circumstances met the standard of reasonableness, they were not such as to preclude that finding.
- [93] Counsel have also raised the issue of the protracted period during which authorizations have been in place in relation to Lee and to Ho. It is submitted that at some point in the process the failure of the interceptions sought to acquire evidence leading to charges or to the seizure of heroin weighs against the probability that they will continue to afford evidence of the specified offenses.
- [94] In my view those submissions must be weighed against the nature of the investigation involved, the difficulties inherent in acquiring evidence sufficient to charge, or seize, the objectives of the investigation and the nature of evidence obtained through the intercepts sought.
- [95] In the case at bar there is some complexity to the investigation as it involves people in different parts of Canada and overseas. It also involves subjects who are highly sensitive to police surveillance and investigation and appear cautious and guarded in their actions and conversations. Some evidence which assists in establishing probabilities has been acquired through the interceptions ruled valid. Again this issue is one which the authorizing judge would be alive to and in my opinion the state of the evidence in this regard at this point is not such that it vitiates the basis for the order.
- [96] In my view in connection with Lee, and in connection with Ho, counsel have failed to establish that there is no basis upon which the authorizations could have been granted and accordingly, I decline to quash authorization P45/99 as against either Lee or Ho.

"Cullen, J."

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