

CANADA / JUDGMENT

## R. v. Newby

2025 BCSC 2483

### COURT

Supreme Court of British Columbia

### DECIDED

4 November 2025

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2025 BCSC 2483 R. v. Newby

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Newby,

2025 BCSC 2483

Date: 20251104

Docket: 26479-1

Registry: Salmon Arm

Rex

v.

Sean Robert Newby

Before: The Honourable Justice D. Crerar

On Appeal from: Provincial Court of British Columbia, June 16, 2025

(R. v. Newby, Salmon Arm File EA60144691, 2025 BCPC 101)

Oral Reasons for Judgment re Summary Conviction Appeal

In Chambers

Counsel for the Appellant (Crown):

J.J. McNiven

Counsel for the Respondent (Accused):

P.C. Armour

Place and Date of Trial/Hearing:

Salmon Arm, B.C.

November 4, 2025

Place and Date of Judgment:

Salmon Arm, B.C.

### **November 4, 2025**

- [1] THE COURT: These are my reasons for judgment in this appeal of a decision of a Provincial Court judge. I make my usual reservations to edit or expand these reasons if a transcript is ordered or for any other reason. The result and the substance will not of course change.
- [2] The decision under appeal is indexed at 2025 BCPC 101. It was heard on May 13, 2025, and issued on June 16, 2025.
- [3] The learned Provincial Court judge sets out the background:
- [1] Sean Newby was issued a violation ticket under section 214.2 of the Motor Vehicle Act on September 4, 2023, for using an electronic device while driving. He disputed the ticket within the requisite 30-day timeframe by mailing his dispute to the appropriate processing center in Victoria, British Columbia. He did not request disclosure when he disputed the ticket.
- [2] According to the Court's records, on November 13, 2024, a Notice of Hearing document in respect of his dispute was created. There is no evidence when it was sent to Mr. Newby. The hearing date was set for January 28, 2025. That hearing was adjourned, and a new date set for May 14, 2025, when the matter came before me. Mr. Newby argued that his rights under s. 7 and 11(b) of the Canadian Charter of Rights and Freedoms were violated.
- [4] The other key dates to keep in mind are set out in paragraphs 6-7, with respect to Mr. Newby's receipt and reading of the notice of hearing on January 21, 2025, as well as his request the next day for disclosure. Those paragraphs also set out that on January 27, 2025, Mr. Newby received a disclosure package from a police officer at the Salmon Arm police detachment:
- [6] Mr. Newby testified that he had opened and read his mail on January 21, 2025, near the end of the day, including the Notice of Hearing. He opened his mail regularly and I find that was the date the Notice was delivered to him. The next day, January 22, 2025, he wrote and faxed a request for disclosure to the Salmon Arm registry, and he believed he also sent a request to the Crown's office. A copy of that written request was entered as an exhibit.
- [7] Mr. Newby received a disclosure package on January 27, 2025 by email, apparently sent by a police officer from the Salmon Arm police detachment. Mr. Newby was not prepared to proceed with the hearing the next day given the late disclosure. The hearing was adjourned

so he could review the disclosure and obtain legal advice. He received a new Notice of Hearing on March 5, 2025, (37 days after the first hearing was adjourned) with the hearing date set for May 14, 2025. In cross-examination, Mr. Newby acknowledged that he was aware that Canada Post mail delivery was interrupted by a strike in the fall of 2024.

[emphasis added]

- [5] Mr. Newby applied to the Provincial Court for a declaration that his Charter s. 11(b) rights were violated as the process from the issuance of the violation ticket to the hearing of his notice of dispute exceeded the R. v. Jordan, 2016 SCC 27 18-month Provincial Court upper limit:
- [25] The Crown did not rebut the presumption that total time was unreasonable. Further, there were no submissions or direct evidence of when the trial, if held, would end. It would not have ended on May 14. The period between when each Notice of Hearing was created until the scheduled hearing date was about two and a half months. From the adjourned date of January 28 until May 14 was about three and a half months. It is likely the next hearing date after May 14 would also be about three and a half months later. I find it is unlikely the hearing would have concluded in under 18 months even if I had dismissed Mr. Newby's application.
- [6] Before embarking on the analysis in this case, I would note that, in contrast to many Jordan hearings, there are no specific examples of egregious delay on the part of the Crown or on the part of the defence. Rather, the judge focussed primarily on the mathematical calculation of time between the issuance of the violation ticket and the hearing date.
- [7] I turn to the standard of review on this appeal. The parties, as I can discern it, are largely in agreement on the standard of review. With respect to the Court's interpretation of the Jordan principles, as well as the Court's interpretation of the obligation on the Crown to provide disclosure in relation to the demand or non-demand of the accused, it is a question of law that attracts a correctness standard of appeal.
- [8] Mr. Armour argued, and the Crown generally agreed, that the case before the Court today could engage a factual examination of the Provincial Court judge's assessment of whether the facts before it indicated that the delay exceeding 18 months was reasonable in the circumstances. If the focus of the present appeal is largely on that latter issue, I understand that the parties agree on a more deferential reasonableness standard.
- [9] I turn to the grounds of appeal.
- [10] Initially, the Crown advanced two grounds of appeal.

- [11] At the hearing of this matter, the Crown, very responsibly in my view, withdrew the first ground of appeal. Without going into detail, it asserted that the Provincial Court Judge in some of his comments and directions to the self-represented litigant, Mr. Newby, exceeded his role as a neutral arbiter and jumped into the fray as a counsel of sorts, excessively assisting Mr. Newby.
- [12] I agree, again, that this ground of appeal was properly abandoned. My review of the materials indicates that the Judge acquitted himself in a responsible manner that was fully in keeping with and indeed required by the Canadian Judicial Council's Ethical Principles for Judges.
- [13] The second ground of appeal advanced by the Crown relates to the issue of Jordan delay. The Crown emphasises that it is not arguing that the judge got it wrong in terms of his assessment of the evidence of the circumstances of the delay. Rather, the Crown cast this ground of appeal as follows: did the trial judge err in law in determining that a self-represented accused has no obligation under *R. v. Stinchcombe* [1991] 3 SCR 326 to pursue disclosure at the earliest possible opportunity?
- [14] The judge at paras 10-11 describes the Crown's arguments, as well as the Jordan principles, as well as providing a calculation of the delay that the Crown sought to attribute to Mr. Newby's delay in seeking disclosure:
- [10] The Crown argued that the failure to pursue or review disclosure in a timely way could amount to defence delay. In support of that proposition, the Crown referred to two cases, *R. v. Pugh* [2021 BCCA 293] and *R. v. Shlyk* [2021 BCCA 472]. Those cases deal with some delay relating to disclosure issues and how the cause of delay can be allocated, but I did not find them very helpful, in large measure because their facts are very different from the circumstances in this case.
- [11] The test to be applied is found in *R. v. Jordan*[viii]. Defence conduct that results in delay may be deducted from the overall time limit of 18 months if that conduct is solely or directly caused by the defence and the defence actions are not legitimate. The Crown argued that Mr. Newby's delay in seeking disclosure met that test, and attributed from January 28, 2025 to May 14, 2025, three months and 17 days, to defence delay. Subtracting that from the total time taken to May 14, 2025, would result in that date being less than 18 months after the violation ticket was issued. No submissions were made with respect to when the trial might end if Mr. Newby was unsuccessful.
- [15] In short, the Crown argued that Mr. Newby's delay of some 16 months between the receipt of the violation ticket in September 2023, and his demand for disclosure in late January 2025, was undue delay, and that three months and 17 days should be attributed to defence delay. Subtracting that from the total time to the hearing on May 14, 2025, would bring the hearing date below the Jordan ceiling.
- [16] At para 23, the Court rejected that proposition:

[23] I do not agree with the Crown's submission that Mr. Newby, by waiting to find out when he had a hearing date before requesting disclosure, is responsible for any delay that ensued. The Crown has not shown that his acts were a deliberate and calculated tactic, employed to delay the trial. As soon as he knew of the hearing date, he sought disclosure. The fact that he received notice of the hearing date so shortly before the scheduled date, and the disclosure the day before, was not his fault. Accordingly, I do not find there is any defence delay. As in *Kaur*, delay resulting from the late disclosure is attributable to the Crown.

[emphasis added]

[17] At para 12, the Provincial Court judge cited the well-known case of *Stinchcombe*:

[12] In *R. v. Stinchcombe*, the Supreme Court of Canada made it clear that the Crown has a legal duty to disclose all relevant information to an accused charged with an indictable offence. The Supreme Court of Canada noted that counsel for an accused must bring to a trial judge's attention, at the earliest opportunity, any failure of the Crown to comply with that duty. The Court also stated that there may be different procedures and disclosure obligations for different kinds of offences. Over time, the Crown has, at least in practice, conceded that the State must provide disclosure in summary proceedings even without a request.

[18] Parenthetically, that *Stinchcombe* discussion should be read in light of the discussion found on pages 342-343, specifically:

. . . The obligation to disclose will be triggered by a request by or on behalf of the accused. Such a request may be made at any time after the charge. Provided the request for disclosure has been timely, it should be complied with so as to enable the accused sufficient time before election or plea to consider the information. . . .

[emphasis added]

[19] At paragraph 13, the Provincial Court judge found that Mr. Newby's actions were generally reasonable with respect to demanding the disclosure, even though that disclosure request resulted in an adjournment, which adjournment knocked the proceeding above the Provincial Court Jordan ceiling:

[13] Assuming without deciding that the standard for a lawyer applies to unrepresented people, when Mr. Newby found out about the hearing date, he asked for disclosure. He received the disclosure, but with insufficient time to review it and prepare for the hearing. He brought that to the attention of the judicial justice (the equivalent of a trial judge), who granted an adjournment, apparently for those reasons. There was no evidence or submissions with respect to whether or how Mr. Newby could have brought the lack of disclosure to the attention of a judicial justice before the scheduled hearing date, or in what way, if any, he could have moved his case forward.

[20] The core paragraph in the decision is paragraph 14 in its entirety:

- [14] Mr. Newby sought disclosure that perhaps ought to be provided at the outset by the State. The Crown did not provide any authority for the proposition that a person who follows the dispute process set out on a violation ticket must ask for disclosure. There was nothing on the violation ticket that referred to any requirement to request disclosure. The possibility of disclosure was not even mentioned, let alone any instructions given on how to request it. That stands in stark contrast to all of the instructions on the violation ticket, and on the Notice of Hearing, on how to pay the fine, seek a lower fine or more time to pay, how to dispute the ticket, and how to seek an adjournment of a hearing date.
- [21] With respect to the observation cited at para 14 -- that "[t]he Crown did not provide any authority for the proposition that a person who follows the dispute process set out on a violation ticket must ask for disclosure," -- the Provincial Court proceeds in paras 15-20 to canvass various Provincial and Supreme Court authorities that might illuminate the issue of whether the accused has an affirmative obligation to ask for disclosure, or whether the expectation and obligation lies on the Crown, even in the more relaxed circumstance of a violation ticket for which no liberty concerns are at stake.
- [22] After canvassing these cases, the Court concludes:
- [21] In the absence of supporting case law or other compelling argument (which might include a consideration of evidence relating to how onerous disclosure would be), in cases where a person disputes their conviction for a violation ticket, I cannot conclude that the State's obligation to provide disclosure is only triggered upon request.
- [23] The Court concluded that disclosure was not onerous, and could have been provided by the Crown or the police in a brief and efficient manner:
- [22] The disclosure provided by the police in this case totalled nine pages, including a copy of the violation ticket, the Notice of Hearing, and a covering letter. Providing disclosure was not onerous, because it was provided within a few days. It may be that disclosure obligations could have been fulfilled with just three pages: a copy of the ticket, and copies of the police notes with information setting out the facts relied on for issuing the ticket.
- [24] In his vigorous and helpful submissions, Mr. Armour on behalf of Mr. Newby argues that the Provincial Court judge correctly analysed the case before him on the first principles of Jordan, citing the key paragraphs in Jordan: paras 60-67. Mr. Newby emphasises the two forms of defence delay. The first form of defence delay is waived explicitly or implicitly by the defence: para 61. The second form of defence delay is that caused solely by the conduct of the defence: para 63. This incorporates deliberate and calculated defence tactics. It also incorporates more benign situations where the accused's acts directly or indirectly caused the delay in a more neutral manner.
- [25] Again, Mr. Newby argues that the Provincial Court judge correctly applied a mathematical analysis of the considerable delay between the issuance of the ticket and the issuance of the notice of hearing. The defence notes that it was within the discretionary analysis of the

evidence before the Provincial Court judge, including cross-examination of Mr. Newby, to find that it was reasonable for Mr. Newby to demand the disclosure when he did. It was also within the discretion of the Provincial Court judge to find that it was reasonable for an adjournment to flow from that demand for disclosure just before the first scheduled hearing, and the necessary rescheduling of the hearing in May 2025: again, above the Jordan ceiling.

- [26] I will begin by noting that the cases relied upon by the Provincial Court judge are each distinguishable to some extent from the present factual circumstance.
- [27] In *R. v. Melrose*, 2013 BCSC 526, for example, the accused was actively demanding disclosure. The Crown specifically refused disclosure and hence shouldered some or all of the blame for the delay caused by that disclosure, which was ultimately ordered.
- [28] Not only did the Crown refuse disclosure in *Melrose*, but the judicial justice dismissed an application by *Melrose* for disclosure, dismissing that application as a fishing expedition.
- [29] Of course, here, in contrast, there was later disclosure. Neither the Crown nor the Court refused that disclosure, thus setting up a clear ground of appeal in *Melrose*.
- [30] Mr. Newby also cites the *Melrose* Court of Appeal leave to appeal decision (2014 BCCA 148), for the proposition that the Crown bears an affirmative obligation of *Stinchcombe*-type disclosure in those circumstances:
- [21] Costs are seldom awarded in criminal or, as here, quasi-criminal cases. However, in this case, Mr. *Melrose* was obliged to make many appearances in court because of the police officer's failure to provide the disclosure that the Supreme Court ultimately concluded he was entitled to in order to properly defend himself. The failure to make timely disclosure is the primary cause of the delay in the hearing of the case. In my opinion, this raises important questions about the ability of a citizen to access justice, and the potential entitlement to a costs order when the Crown fails to comply with its obligations in a timely way, or at all. The issues advanced by Mr. *Melrose* were not addressed by the summary conviction appeal judge and they have sufficient merit to be heard on appeal.

[emphasis added]

- [31] To be fair, the Court of Appeal did not rule on the issue categorically in its costs decision.
- [32] Similarly, in *R. v. Montgomery*, 2013 BCSC 1976, the unrepresented accused affirmatively demanded disclosure. The Crown did provide him with a DVD of the incident. Ultimately, however, there was a clear line in the appellate sand: the judicial justice ordered that the Crown was not obliged to disclose the DVD. This was in the face of Crown witnesses themselves referring to the contents of the video, creating clear prejudice to the accused.
- [33] In the course of the *Montgomery* reasons, Justice Fitch, before his translation to the Court of Appeal, states:

- [47] . . . Even adopting a relaxed disclosure standard in recognition of the context in which the offence was prosecuted, I remain of the view that the DVD ought to have been disclosed to the appellant. . . .
- [34] I emphasise the "relaxed disclosure standard" referred to by Justice Fitch, who of course is a notable authority on criminal law.
- [35] The final case cited by the Provincial Court judge is R. v. Kaur, 2025 BCPC 49. Kaur provides some guidance with respect to the present issue, indicating obligation on both sides:
- [43] The Crown bears the constitutional obligation to make disclosure, however, as the court in Jordan held, defence counsel are expected to "actively advanc[e] their clients' right to a trial within a reasonable time " Furthermore, the court in Cody held that defence inaction could result in a deduction from total delay.
- [36] As stated in Jordan:
- [113] The new framework also encourages the defence to be part of the solution. If an accused brings a s. 11(b) application when the total delay (minus defence delay and delay attributable to exceptional circumstances that are discrete in nature) falls below the ceiling, the defence must demonstrate that it took meaningful and sustained steps to expedite the proceedings as a prerequisite to a stay. Further, the deduction of defence delay from total delay as a starting point in the analysis clearly indicates that the defence cannot benefit from its own delay-causing action or inaction.
- [emphasis added]
- [37] As stated in R. v. Cody, 2017 SCC 31:
- [28] In broad terms, the second component is concerned with defence conduct and is intended to prevent the defence from benefitting from "its own delay-causing action or inaction" (Jordan, at para. 113). It applies to any situation where the defence conduct has "solely or directly" caused the delay (Jordan, at para. 66).
- .
- [35] We stress that illegitimacy in this context does not necessarily amount to professional or ethical misconduct on the part of defence counsel. A finding of illegitimate defence conduct need not be tantamount to a finding of professional misconduct. Instead, legitimacy takes its meaning from the culture change demanded in Jordan. All justice system participants -- defence counsel included -- must now accept that many practices which were formerly commonplace or merely tolerated are no longer compatible with the right guaranteed by s. 11(b) of the Charter.

[emphasis added]

- [38] These statements are consistent with the passages relied upon by Mr. Newby, specifically Jordan at para 63, speaking of defence attributable to the conduct of the defence:
- [63] The second component of defence delay is delay caused solely by the conduct of the defence. This kind of defence delay comprises "those situations where the accused's acts either directly caused the delay . . . or the acts of the accused are shown to be a deliberate and calculated tactic employed to delay the trial" (Askov, at pp. 1227-28). Deliberate and calculated defence tactics aimed at causing delay, which include frivolous applications and requests, are the most straightforward examples of defence delay. Trial judges should generally dismiss such applications and requests the moment it becomes apparent they are frivolous.
- [emphasis added]
- [39] Again, in light of the Cody culture shift exhortation that all court participants are expected to take all reasonable steps to move matters forward to be determined swiftly, less nefarious delay attributable to the defence can also be deducted from the Jordan calculation as defence delay, even if that delay is based upon a passive non-pursuit of any form of Charter right, including the Charter right of disclosure.
- [40] The Provincial Court judge questioned whether there was authority placing the onus on the accused to demand disclosure.
- [41] On appeal, the Crown provides specific authorities indicating that the onus lies on the person filing the notice of dispute to request disclosure, rather than there being a free-floating affirmative obligation on the Crown to provide disclosure. Both of these authorities, had they been presented to the Provincial Court, would have been binding on the Provincial Court as a matter of both horizontal and vertical stare decisis.
- [42] To be fair to the Provincial Court judge, neither of these authorities were presented to him in the first instance.
- [43] In the facts leading to R v Thiara, 2020 BCSC 482, a decision of Mr. Justice Blok, Mr. Thiara, a taxi driver, was issued a violation ticket for using an electronic device while operating a motor vehicle on a highway. At para 28, Thiara cites R v. Wong, 2016 BCPC 189, a decision of Judicial Justice Adair. At paras 40-42, Justice Blok accepts the Crown submission:
- [40] The essential complaint here is that the investigating officer did not disclose her notes to the appellant in advance of the hearing.
- [41] On appeal, the appellant did not provide any authority for the proposition that disclosure was mandatory in cases such as this. The Crown provided an authority to the contrary (Wong). The appellant did not argue that Wong was incorrect or otherwise inapplicable, but instead essentially abandoned the issue.
- [42] The appellant has failed to establish there is any substance to this ground of appeal.

- [44] I agree with the finding of Judicial Justice Adair, as accepted and endorsed by Justice Blok. First, the Crown or the police does not bear an affirmative duty of mandatory disclosure in a case such as the present. Second, judicial justices have full jurisdiction to order disclosure. But disclosure obligations only arise if the defendant asks for disclosure in a timely way prior to the start of the hearing.
- [45] A further authority that supports the Crown's proposition is *R v Dykman*, 2004 BCPC 367: an authority that the Provincial Court judge discusses in his reasons:
- [15] In *Dykman*, Dohm J. commented that it did not make sense to require full and automatic disclosure for every violation ticket issued in British Columbia. I agree that there need not be automatic disclosure for every violation ticket issued, simply because most tickets are not disputed. I am less inclined to agree with the proposition advanced by the Crown that where a conviction for a violation ticket is disputed, there is no obligation on the State to provide disclosure until a request has been made.
- [emphasis added]
- [46] That final sentence in *Dykman* butts up against the horizontal and vertical authorities represented by the *Wong* and *Thiara* decisions. Again, it is always regrettable to cite a case on an appeal that was not cited to the judge of first instance whose decision is under appeal. Nonetheless, that final sentence in para 15 is contradicted by the earlier binding authority in those two decisions.
- [47] I also agree with the Crown's submissions that the trial judge agreed with the *Dykman* obiter but failed to cite and follow the *Dykman* ratio decidendi. Specifically, Judge Dohm (before his translation to Associate Chief Judge), decided the same issue before the present Provincial Court judge.
- [48] In *Dykman*, the applicant argued that the RCMP's failure to provide full disclosure, automatically and without request, in respect of a traffic ticket, breached his Charter rights. Alternatively, the applicant argued that the disclosure failure constituted an abuse of process that should have resulted in a judicial stay of proceedings.
- [49] *Dykman* found that there was no such obligation on the Crown, even in the case, as was the case there as was here, of a self-represented individual:
- [31] The Disputant sought to make a distinction between cases in which accused are commonly represented by counsel, such as indictable offences, and those in which the person charged tends to be unrepresented. The point, as I understood it, was that those who represent themselves, being less able to do so, should be entitled to disclosure without request. For the reasons set out above, I reject that submission. In addition, one should not lose sight of the need in a healthy society for individuals to accept personal responsibility for safeguarding their own interests. In other words, one who defends one's self, whether by choice or by necessity, should take reasonable steps to ensure that he or she is properly informed and prepared for the task.

[emphasis added]

- [50] These three authorities, if not directly binding, ought to have been of heavy precedential and persuasive value. The conclusion that the obligation to provide disclosure is only triggered upon demand by the person filing a notice of dispute, is sensible in the context of dispute notices for violations, with more relaxed disclosure obligations, as recognised by Justice Fitch in *Montgomery*. The context weighs heavily in the court's consideration of this issue.
- [51] As recognized by the present Provincial Court judge himself, a very large number of violation tickets are issued annually in our province: para 16. The learned Provincial Court judge had no statistic on the number of notices of dispute, but one can assume that not an inconsequential number are filed by aggrieved drivers and other individuals receiving violation tickets. It would not be a trivial undertaking to impose upon the Crown and police an affirmative obligation to provide disclosure in all of those cases.
- [52] Certainly, the contents of any demanded disclosure could not be assumed in every circumstance. In some circumstances, simply the officer's notes might be anticipated to be provided. In other instances, the officer's discipline record might be demanded. The categories of possible disclosure that could be demanded in itself further indicates that it would place an unreasonable burden on the Crown and police to adhere to the *Stinchcombe*-type obligations applicable to a criminal proceeding where the liberty of the accused is at stake. Again, most violation tickets are not disputed: the person receiving that ticket will pay the fine and get on with their life.
- [53] This conclusion is consistent with the knowledge of a party filing a notice of dispute that there will be some further consideration or adjudication or reconsideration of the ticket. The person disputing the ticket expects that they will have some basis for disputing the ticket, or expect that the Crown will not be able to prove its case against them. The disputing party knows or ought to know at the moment he files his notice of the dispute that he will present some form of argument and evidence at an eventual hearing. The disputing party knows or ought to know at the moment of filing the notice of dispute that his grounds of dispute may be assisted by disclosure from the Crown or the police.
- [54] This moment of realisation should occur to the party filing the notice at the point he initiates the process disputing the violation ticket: a process outside of the norm of just paying the ticket.
- [55] This moment of realisation that he may need disclosure does not arise for the first time upon receipt of the notice of hearing. There is no special magic connected to the receipt of the notice of hearing. The notice of hearing is simply confirmation of the process that the disputing party himself initiated months earlier by filing the notice of dispute. It is not like a court deadline clock that starts to run when a party receives a notice of civil claim or a notice of application: reasonably considered a trigger for action by the recipient. Rather, the person in Mr. Newby's shoes is the very person initiating the dispute process.

- [56] The Provincial Court judge attached as an appendix to his reasons the very ticket that was provided to Mr. Newby. While the ticket is silent on the issue of disclosure, it does indicate to the recipient the next steps that will occur if the recipient opts to file a notice of dispute.
- [57] A black box with the heading of "How to Dispute the Ticket" sets how to dispute the ticket in person or by mail. In the bottom right corner, in its own box, under a bold all-caps heading, "WHAT HAPPENS AFTER YOUR NOTICE OF DISPUTE HAS BEEN RECEIVED?", it advises the violation ticket recipient that:

If [he disputes the] alleged offence, or (b) submits a request for a reduction in a fine for an alleged offence or additional time to pay without including a completed Violation Ticket Statement and Written Reasons form, a notice of hearing will be sent to you in the mail from the Provincial Court registry. The notice will tell you the date, time and location of your Provincial Court hearing.

[emphasis added]

- [58] In short, it is clear to the recipient of a violation ticket who wishes to pursue the option of filing a notice of dispute that that process will lead to a Provincial Court hearing. It is not an abstraction for the recipient of a violation ticket who makes the conscious decision to file a notice of dispute that they will attend a Provincial Court hearing at which evidence (including evidence obtained through disclosure) will likely be heard, and that disclosure may thus be desirable.
- [59] The Provincial Court judge noted at para 16 that the website portal for a person who wishes to file a notice of dispute expressly provides an option to request disclosure, by clicking on a hyperlink:
- [16] On a website that can be accessed for registering a violation ticket dispute, there is an option to request disclosure, which can be accessed through hyperlinks, although that option is far from obvious. That web-based process has apparently been available since July 8, 2021, but it was not used by Mr. Newby, it was not referenced on Mr. Newby's violation ticket, there was no evidence Mr. Newby even knew of it, and there was no evidence as to how it might come to the attention of the recipient of a violation ticket. I happened across it in conducting research. I will not comment on that process because it was not the subject of evidence or submissions before me.
- [60] I appreciate that there is no evidence that Mr. Newby saw or did not see the website alerting a user to that possibility, as he himself submitted his notice of dispute by mail.
- [61] That said, again, as is clearly stated on his violation ticket, the filing of a notice of dispute is going to lead to a Provincial Court hearing. A reasonable person anticipating a Provincial Court hearing might well be expected to research the process further if the violation ticket tip-off that I just quoted was not sufficient. The website dedicated to notices of dispute would be a logical place to look.

- [62] I set this all out, not for the purpose of re-examining the evidence before the Provincial Court. I do so to reiterate that it is contextually sensible that the Crown, in this specific context of violation tickets, bears no obligation to provide affirmative disclosure without a demand or request from the person filing the notice of dispute.
- [63] The Provincial Court judge ruminates at paragraph 13 that "[t]here was no evidence or submissions with respect to whether or how Mr. Newby could have brought the lack of disclosure to the attention of a judicial justice before the scheduled hearing date, or in what way, if any, he could have moved his case forward."
- [64] There are several problems with this observation. The first is an exaggerated emphasis on receipt of the notice of hearing as a trigger on the obligation of Mr. Newby, like any accused, to push his case forward and prepare himself as best as possible for the efficient and timely adjudication of his trial or hearing. Again, that obligation is triggered upon the receipt of the violation ticket. There is no special magic or importance to be ascribed to the receipt of the notice of hearing. The Provincial Court judge placed an exaggerated emphasis on the receipt of the notice of hearing as the trigger for Mr. Newby to take affirmative steps to seek disclosure if he wished to obtain that disclosure.
- [65] The next answer to paragraph 13 is provided by Thiara and Wong, which affirmatively conclude that judicial justices have full jurisdiction to order disclosure. But, again, disclosure obligations only arise if the defendant asks for disclosure in a timely way prior to the start of trial. We know that Mr. Newby did not ask for disclosure until 16 months after receipt of the violation notice.
- [66] Had Mr. Newby asked for disclosure in a timely manner, immediately after, say, filing his dispute notice, there is no indication that the Crown or police would have done anything other than what they in fact did in this case: that is, provide immediate disclosure to Mr. Newby. If, hypothetically, the Crown refused to provide that disclosure, it would have been open to Mr. Newby to apply to a judicial justice for that disclosure, as confirmed in Wong and Thiara.
- [67] I will address one final argument of the respondent, the substance of which I have already alluded to in these reasons.
- [68] The Crown focuses on para 21 of the decision:
- [21] In the absence of supporting case law or other compelling argument (which might include a consideration of evidence relating to how onerous disclosure would be), in cases where a person disputes their conviction for a violation ticket, I cannot conclude that the State's obligation to provide disclosure is only triggered upon request.
- [69] As a proposition of law, the Crown argues that the Provincial Court judge herein erred, in rejecting the proposition that the State's obligation to provide disclosure is only triggered upon request.

- [70] The respondent, Mr. Newby, argues that it is neither here nor there whether para 21 represents a correct statement of law in the light of Wong and Thiara. He says that the essence of the Provincial Court decision is found in paragraph 23, which I will quote again:
- [23] I do not agree with the Crown's submission that Mr. Newby, by waiting to find out when he had a hearing date before requesting disclosure, is responsible for any delay that ensued. The Crown has not shown that his acts were a deliberate and calculated tactic, employed to delay the trial. As soon as he knew of the hearing date, he sought disclosure. The fact that he received notice of the hearing date so shortly before the scheduled date, and the disclosure the day before, was not his fault. Accordingly, I do not find there is any defence delay. As in Kaur, delay resulting from the late disclosure is attributable to the Crown.
- [71] The respondent argues that paragraph 23 is primarily a finding of fact, entitled to a deferential review of reasonableness on this appeal.
- [72] Even viewing paragraph 23 as primarily an exercise of a weighing facts in attribution of delay to the defence, it contains two errors of law.
- [73] The first error is the proposition that the Crown is required to show that Mr. Newby's acts were "a deliberate and calculated tactic, employed to delay the trial". Again, as set out above in these reasons, defence delay is not limited to deliberate and calculated tactics. Rather, any actions, or, more germanely, inactions, on the part of the defence in failing to pursue his rights and generally bring the matter forward to a timely trial can be attributable to the defence delay.
- [74] The second error is evidenced by the phrase that "[a]s soon as he knew of the hearing date" he sought disclosure. Insofar as this particular emphasis is placed on the hearing date, when none should be in light of all of the authorities that I have canvassed, that in itself is an error of law.
- [75] Ultimately, however, I agree with the Crown that the conclusions in paragraph 23 are inextricably predicated and based upon the conclusions set out in paragraph 21, which flow from the entire analysis, including the case law canvassed in the reasons. Without the premise that the accused, Mr. Newby, had no affirmative obligation to demand disclosure, and, as a corollary, the Crown had an affirmative obligation to provide that disclosure, paragraph 23 cannot stand.
- [76] I am satisfied that the appeal should be granted.
- [77] I agree, however, with Crown's responsible concession that the remedy for the appeal should not foreclose Mr. Newby's ability to reassert that his s. 11(b) rights have been violated, if he wishes to bring a further Jordan application in this case.
- [78] I would reiterate in summary that if that application is pursued, the Provincial Court judge should consider the following conclusions of this Court:

- First: the obligation of disclosure is not triggered until the accused demands it;
- Second: by converse, the Crown in these circumstances bears no affirmative obligation to provide disclosure to Mr. Newby;
- Third: an accused in the position of Mr. Newby is expected, as per Jordan, Cody, and the entire jurisprudence, to take all reasonable steps to ensure that any Charter or disclosure issues are raised and disposed of well in advance of the hearing;
- Fourth: judicial justices have jurisdiction to order disclosure if the Crown or the police refuse to provide that disclosure. That remedy would have been available to Mr. Newby immediately upon any refusal by the Crown;
- Fifth: the issuance of the notice of hearing is of no import with respect to the accused Mr. Newby's obligation to pursue disclosure or otherwise ensure that his Charter rights have been complied with, and bring any applications in as reasonably timely a manner before the trial or hearing of the matter.
- Sixth: not only deliberate and calculated tactics on the part of defence can be attributed to the defence side of the delay ledger, to be deducted from the overall delay.

[79] Accordingly, I will send the matter back for a hearing before a Provincial Court judge without prejudice to Mr. Newby's ability to re-bring and re-argue a Jordan challenge to the proceedings.

[80] Anything arising from that, counsel?

[81] CNSL J. MCNIVEN: Nothing, thank you, Justice.

[82] CNSL C. ARMOUR: No.

[83] THE COURT: All right. Well, once again, I will be candid about this, and counsel probably suspected this, but I do not mind admitting, as a tip of the hat to both counsel, but in particular Mr. Armour, that this was a difficult appeal to decide. That difficulty is a credit to the excellent arguments advanced by both sides.

[84] Thank you very much, Madam Registrar, for staying late, and thank you, counsel.

[85] CNSL J. MCNIVEN: Thank you.

"Crerar J."

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Prepared on 28 October 2026 · Esheria