In the Provincial Court of Alberta

Citation: R. v. Gateway Collections Inc., 2004 ABPC 93

Date: 20040531
Docket: 030048789P101001, 01002, 01003, 01004, 01005, 01006, 01007, 01008, 01009, 01010, 01011
Registry: Calgary

Between:

Gateway Collections Inc. doing business as Executive Collections

Applicant (Accused)

- and -

Her Majesty the Queen

Respondent

Reasons for Judgment of the Honourable Judge S.A. Hamilton on Application for Costs

[1] This case involved 11 charges laid under the *Fair Trading Act*, R.S.A. 2000 Chapter F-2 against the Applicant (Accused) and a co-accused . All 11 charges were ultimately stayed by the Court, at the request of the Crown, due to failure by the Crown to provide defence counsel with disclosure of a number of documents clearly relevant to this prosecution. The Crown conceded that the non-disclosure constituted a breach of the rights of the accused under Section 7 and Section 11(d) of the *Canadian Charter of Rights and Freedoms* ("the *Charter*").

[2] Section 24(1) of the *Charter* provides:

> "Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

[3] Counsel for the Applicant (Accused) has made application to this Court for an order for costs against the Crown as a remedy for the *Charter* breach. The Crown agrees that this Court has jurisdiction to make such an order for costs, but argues that such a remedy is not appropriate in the circumstances.

[4] After receiving written and oral argument from both parties, I have concluded that the conduct of the Crown in this case constitutes "a marked and unacceptable departure from the

reasonable standards expected of the prosecution" ***R. v. 974649 Ontario Inc***., (2001) 3 S.C.R. 575 at paragraph 7, and that beyond the remedy of a stay of proceedings already granted, the further remedy of costs against the Crown is appropriate. My reasons follow.

Facts

[5] Crown counsel, Ms. Mah, accepted the facts presented in written argument by Mr. Bates, counsel for the Applicant, and also agreed with certain facts raised by this Court during argument. The facts are:

[6] Charges against the accused were laid on January 15, 2003 and initial disclosure was provided to counsel for the accused at the first court appearance on February 20, 2003. Subsequently the matters were scheduled for trial October 29th and 30th, 2003, and the parties were directed to attend a pre-trial conference on September 9th, 2003. Several direct requests were made over the next two months by the president of the accused company of both the Crown prosecutors' office and Alberta Government Services for disclosure of the complaints filed against the Accused (Applicant). When these requests were not addressed, counsel for the Applicant (Accused), sent a formal disclosure request to the Crown prosecutor, Ms. Mah, by letter dated May 22nd, 2003. That letter specifically requested copies of all complaints filed against Gateway Collections, and further asked that any information regarding this matter which had yet to be disclosed and was in possession of the Crown, or which may come into the Crown's possession before trial, be disclosed to counsel as soon as possible.

[7] Ms. Mah failed to attend court for the pre-trial conference on September 9th, 2003, and defence counsel was instructed to return the next afternoon to speak to the matter. In the interval, Crown and defence counsel had lengthy discussions about the relevance of a package of seven letters of previous correspondence from Alberta Government Services to the accused's company that the Crown had vetted from the initial disclosure packet. It was the Crown's position that the letters in question were not required to be disclosed due to lack of relevance, inadmissibility at trial, and the lack of an intention to use the letters in the Crown's case. The Crown also indicated that sensitive personal information of complainants was in the letters which precluded them from being disclosed.

[8] On September 10th, 2003, defence counsel, Mr. Bates, attended court to make new arrangements for a pre-trial conference. Mr. Bates advised the Court that a disclosure issue would be raised, and a new pre-trial conference date of September 17th, 2003 was scheduled. Mr. Bates followed up his court appearance with a letter September 12th, 2003 to Ms. Mah giving notice of his intention to seek disclosure of the disputed letters at the pre-trial conference. The Crown failed to respond to this letter.

[9] On September 17th, 2003 Judge Gilbert of this court heard submissions by both counsel regarding the disclosure of the letters. Ms. Mah for the Crown took the position that a formal Notice of Motion to compel disclosure was required. As Judge Gilbert had not seen the letters,

he made no order regarding the disclosure, but directed that the issue be heard by the trial judge. Accordingly, Mr. Bates prepared a Notice of Motion returnable October 6, 2003 which was served on the Crown's office September 25, 2003. That motion sought disclosure of the letters and all records relating to the proceedings that had not been previously disclosed and that were not subject to privilege, as well as costs of the disclosure application.

[10] Prior to the commencement of the application on October 6, 2003, Ms. Mah advised Mr. Bates that a co-accused, Nicole Chriqui, had met with investigators for the purposes of providing a Chartered and cautioned statement. Mr. Bates immediately requested full disclosure in respect of that meeting, and Ms. Mah agreed to provide it. The disclosure application then proceeded and Ms. Mah maintained the Crown's objections to the requested disclosure of the letters, characterizing the application as a "fishing expedition". After hearing submissions and reviewing the letters, the Court ordered:

(a) that the Crown disclose within seven days the letters in question;

(b) that the Crown need not disclose the complaints which formed the basis of the seven letters, as the complaints are sufficiently identified by the letters themselves;

(c) *that the Crown disclose any and all other documents, correspondence, or other records contained in Alberta Government Services file number 11079 which have not previously been disclosed, and which are not subject to privilege*; and

(d) that the issue of costs be reserved to the conclusion of the trial.

[11] Subsequent to the disclosure application Mr. Bates sent a letter to Ms. Mah dated October 8th, 2003 confirming the order made by the Court, and indicating "**I note that you advised the Court that you did not believe any further disclosure is necessary pursuant to (the Court's order); however, I trust that you will review the file to ensure that this is the case. Once you have completed such review, I expect that you will confirm the satisfaction of your obligations in writing."** (emphasis added) In the same letter he indicated that he was awaiting the Crown's disclosure of the statements and investigator's notes arising from the meeting between investigators and the co-accused Chriqui.

[12] Having received no response, Mr. Bates on October 17th, 2003 sent a further letter advising that having not yet received proper disclosure, his intention was to bring an application for a stay of proceedings. That resulted in a letter being received from the Crown on October 20th, 2003 containing further disclosure including an 11 page statement of the co-accused Chriqui dated September 26, 2003. The statement consisted of a pre-typed form of questions with several handwritten answers signed by Chriqui. That was followed up on October 22nd, 2003 by disclosure received directly from Linda Purpur, the investigator for Alberta Government Services, in the form of a copy of a tape-recorded message left in the voice mailbox of one of the

complainants. A written transcript and a photocopy of the physical tape had been previously provided in the initial disclosure package.

[13] On October 23rd, 2003 Mr. Bates sent a further letter again raising concerns over outstanding disclosure issues arising from the order given by this Court on October 6, 2003.

[14] The trial proceeded as scheduled on October 29th and 30th, 2003. There was insufficient time to complete the trial necessitating the setting of a date for continuation. As trial judge I suggested to Ms. Mah that the trial be continued during the first week of December, when time had become available due to the adjournment of a trial scheduled to be heard by me, coincidentally with Ms. Mah as the assigned prosecutor. Ms. Mah indicated she could not confirm that she was available during that week, as she did not have her diary with her. Ms. Mah undertook to the Court to contact the Case Management Office the following day in order to schedule a day during the first week of December before those dates were re-assigned to other cases. The following day the Case Manager notified me that Ms. Mah had not contacted him, and that several telephone calls from his office to her had received no response. Consequently, the December trial time was assigned to other matters, and a further court appearance on November 6, 2003 was required to schedule a trial continuation date. At that time an agent appeared for Ms. Mah, and the matter was adjourned to January 14, 2004 for trial continuation.

[15] Subsequently, Mr. Bates came to suspect that investigative notes of Linda Purpur, the Alberta Government Services investigator in this matter, may have existed which had not been disclosed. Accordingly, Mr. Bates, by letter dated December 23, 2003, asked that the Crown disclose these notes if they existed. In response, Mr. Bates received on January 8, 2004 from Ms. Mah, Ms. Purpur's investigative notes. These notes revealed the existence of undisclosed evidence including potential witness names, witness statements to Ms. Purpur in telephone conversations, statements made by Nicole Chriqui (the co-accused) to Alberta Government Services investigators, photographic records, and a transcript and tape recording of the September 26th, 2003 interview of Ms. Chriqui. The notes further indicate that Ms. Mah has previously specifically directed Ms. Purpur that the tape of the September 26th, 2003 interview of the co-accused Chriqui <u>not</u> be sent to defence counsel, Mr. Bates. As a result of this new information, Mr. Bates served a Notice of Motion on the Crown seeking a stay of the charges.

[16] On January 14th, 2004 Ms. Mah, on behalf of the Crown, conceded to the application of defence counsel and invited the Court to impose a judicial stay of proceedings against the Applicant (Accused), and the co-accused. The application for costs was adjourned to a later day.

[17] Mr. Bates followed with a letter to Ms. Mah on February 18, 2004 pointing out that upon the disclosure of Linda Purpur's investigative notes it became evident that defence had not received a copy of the tape or the transcript of the tape of the interview of Nicole Chriqui; and that he was requesting that these items be disclosed forthwith for the purpose of conducting the costs application scheduled for March 24th. Ms. Mah responded with a letter advising that she wished to have the matter brought forward on March 12th, 2004 for rescheduling. Mr. Bates followed with three further letters requesting the tapes and transcript of the Chriqui interview.

These were finally provided to him on March 24, 2004. The transcript consisted of a 32 page document during which a number of items which had been brought up at trial were discussed with Ms. Chriqui. Among them was discussion of steps taken by the Applicant (Accused) to notify employees of the relevant legislation, and the training of employees in proper collection techniques, both of which items were key to the defence of the Applicant (Accused), as they contradicted evidence given at the trial.

Standards Required Of The Crown

[18] The Supreme Court of Canada in ***R. v. Stinchcombe*** (1991) 3 S.C.R. 326 at paragraph 17 stated:

> "The right to make full answer and defence is one of the pillars of criminal justice on which we heavily depend to ensure that the innocent are not convicted."

Further, the court stated at paragraph 12:

> "The fruits of the investigation which are in the possession of counsel for the Crown are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done."

[19] The Supreme Court of Canada returned to the issue of Crown disclosure in ***Chaplin and Chaplin v. The Queen*** (1995), 96 C.C.C. (3d) 225 at paragraph 21:

> "This Court has clearly established that the Crown is under a general duty to disclose all information, whether inculpatory or exculpatory, except evidence that is beyond the control of the prosecution, clearly irrelevant or privileged... The Crown obligation to disclose all relevant and non-privileged evidence, whether favourable or unfavourable, to the accused requires that the Crown exercise the utmost good faith in determining which information must be disclosed and in providing ongoing disclosure. Failure to comply with this initial and continuing obligation to disclose relevant and non-privileged evidence may result in a stay of proceedings or other redress against the Crown, and may constitute a serious breach of ethical standards. With respect to the latter, of necessity, great reliance must be placed on the integrity of the police and prosecution bar to act in the utmost good faith. It is for this reason that departures from this onerous obligation are treated as very serious breaches of professional ethics."

[20] In 1991 Sopinka, J., of the Supreme Court of Canada in ***R. v. Stinchcombe***, *supra*, stated at paragraph 23:

> "I am confident that disputes over disclosure will arise infrequently when it is made clear that counsel for the Crown is under a general duty to disclose all relevant

> information. The tradition of Crown counsel in this country in carrying out their role as 'ministers of justice' and not as adversaries has been very high. Given that this fact, and the obligation on defence counsel as officers of the court to act responsibly, these matters will usually be resolved without the intervention of the trial judge..."

[21] One wonders if Sopinka, J.'s, confidence would remain unshaken, given the alarming number of disputes over disclosure that have arisen subsequently, culminating in the Alberta Court of Appeal stating in ***R. v. Robinson*** (1999) 142 C.C.C. (3d) 303:

> "We can not ignore the fact that disclosure issues continue to occupy much of the Court's time and attention in criminal trials, despite the existence of rules relating to disclosure..."

[22] Subsequent to that decision, the Supreme Court of Canada yet again visited the matter of disclosure in ***Krieger v. Law Society of Alberta*** (2002) 217 D.L.R. (4th) 513. At paragraph 54 the Court stated:

> "In ***Stinchcombe***, *supra*, the court held that the Crown has an obligation to disclose all relevant information to the defence. While the Crown attorney retains the discretion not to disclose irrelevant information, disclosure of relevant evidence is not, therefore, a matter of prosecutorial discretion, but, rather, is a prosecutorial duty. Absent an explanation demonstrating that the Crown attorney did not act dishonestly or in bad faith, it is settled law, per Sopinka, J., for the court in ***Stinchcombe***, *supra*, at page 339, that '[t]ransgressions with respect to this duty constitute a very serious breach of legal ethics'..."

[23] Despite these strong pronouncements, cases involving disclosure issues continue to proliferate in the courts, causing Brown, Provincial Court Judge in ***R. v. Canadian Bonded Credits Limited***, 2003, ABPC 205, to remark in November 2003:

> "It is astonishing to me that, the twelfth anniversary of the ***Stinchcombe*** decision having occurred at the beginning of this month, its principles still seem to be honoured in the breach."

[24] It is noteworthy that Crown counsel on the ***Canadian Bonded Credits Limited*** case (supra) was Ms. Mah, the same Crown counsel in the matter before me; and that the ***Canadian Bonded Credits*** prosecution also involved a failure to disclose notes of an Alberta Government Services investigator in prosecutions under the *Fair Trading Act*. In that case, Brown, J., ruled that the failure to disclose the notes of the Alberta Government Services investigator is a serious breach of an accused person's Charter rights to disclosure, and to make full answer and defence in a fair trial. Consequently the Court stayed the charges. Brown, J., in making her ruling stated:

> "In measuring the magnitude of the breach, there is sometimes a tendency to equate the size of the case with the size of the breach. This is an error. We are governed by the rule of law and that means that every person charged with an offence, from shoplifting to murder, is entitled to due process."

Brown, J., further stated:

> "... the principles of the law are applied evenhandedly across the board, whether the accused is rich or poor, big or small, charged with a complex crime or a simple crime, an horrific offence or a minor, quasi-criminal offence."

[25] In determining whether to award costs against the Crown for a failure to meet disclosure obligation the Supreme Court of Canada in ***R. v. 974649 Ontario Inc***., *supra*, at paragraph 87 set out the tests when it stated:

> "Crown counsel is not held to a standard of perfection, and cost awards will not flow from every failure to disclose in a timely fashion. Rather the developing jurisprudence uniformly restricts such awards, at a minimum, to circumstances of a marked and unacceptable departure from the reasonable standards expected of the prosecution."

[26] The courts in Alberta have determined that:

> "Some degree of misconduct or an unacceptable degree of negligence must be present before costs are awarded against the Crown under Section 24(1) of the Charter."

R. v. Robinson, *supra*; ***R. v. Henkel*** (2003) A.J. No. 51 at paragraph 26: ***R. v. Neil*** (2003) A.J. No. 140 at paragraph 7; ***R. v. McKay*** (2003) A.J. No. 807 at paragraph 41.

[27] In ***R. v. Logan*** (2002) O.J. No. 1817 (C.A.) the Ontario Court of Appeal upheld an award of costs against the Crown in a case where notes of an eyewitness interview conducted by Crown counsel were not disclosed to defence until six months after the interview, after nearly two weeks of trial. The Court held that:

> "Disclosure of the notes of the eyewitness interview should have been automatic and, in our view, no adequate explanation has been provided for the omission. In all the circumstances, this omission and failure to disclose constitutes a 'marked and unacceptable departure from the reasonable standards expected of the prosecution'."

[28] In **R. v. O'Connor** (1995) 44 C.R. (4th) 1 (S.C.C.) L'Heureux-Dubé, J., held, at page 466:

> "...non-disclosure due to a refusal to comply with a court order will be regarded more seriously than non-disclosure attributable to inefficiency or over-sight. It must be noted, however, that while a finding of flagrant and intentional Crown misconduct may make it significantly more likely that a stay of proceedings will be warranted, it does not follow that a demonstration of mala fides on the part of the Crown is a necessary precondition to such a finding."

Conduct Of Crown In This Case

[29] Ms. Mah, on behalf of the Crown, concedes that an abundance of material was not disclosed to defence, but states that the non-disclosure was inadvertent. Ms. Mah points out that prior to the *Fair Trading Act* being passed in 2000 the previous legislation provided little, if anything, in the way of criminal sanctions and that consequently investigators in the Consumers Services office who routinely investigated complaints were not conversant with disclosure obligations. In this case, Ms. Mah advises that initial disclosure was done by the Consumer Services office, not by herself as Crown counsel. Ms. Mah advises that one copy of disclosure was sent by Consumer Services to the Crown, one to defence, and that she simply assumed that defence was provided with the same materials as were provided to her. She further explained that at the time of this prosecution, her office was under-staffed, resulting in her having a heavy case load and inadequate assistance in dealing with it.

[30] Accepting Ms. Mah's explanations for the deficiencies in the disclosure provided, I nevertheless find that a number of events should have triggered a thorough review of the file by reasonable Crown counsel to ensure that defence counsel had indeed received all relevant disclosure. Those triggers include:

1. The fact that numerous letters were sent by defence counsel after initial disclosure had been provided, requesting further disclosure.

2. The order of this Court made October 6, 2003 specifically requiring all documents in Alberta Government Services file number 11079 to be disclosed.

3. The ruling by Brown, J., in ***R. v. Canadian Bonded Credits Limited*** (*supra*) on November 27, 2003. That case involved charges remarkably similar to those faced by the Applicant (Accused) herein; involved Ms. Mah, the same Crown counsel as involved in the case before me; and clearly brought to light problems with disclosure obligations in the Consumers Services offices.

[31] Apparently, none of these events ever prompted Ms. Mah to take the time to adequately ensure that the Crown's obligation of making full disclosure had been fulfilled. The Crown had a duty to ensure that full disclosure had been provided, and certainly upon a Court order for disclosure having been given should have ensured that no relevant information and documentation

had been omitted. Inefficiency or over-sights due to inexperienced investigators and problems due to under-staffing in the Crown office in my view fail to sufficiently mitigate the disregarding of an order of the Court which took place when the Crown prosecutor continued to blithely assume that the investigation branch had complied with disclosure requirements. Certainly Ms. Mah should have gone into full alert mode, if not upon the order of this Court, then certainly upon receiving the judgment of Brown, J., in the ***Canadian Bonded Credits*** case (*supra*). However, it was not until March 24th, 2004 that the audio tapes and transcript of the Alberta Government Services interview of Nicole Chriqui were provided to defence counsel. This was despite his numerous entreaties, and only after he finally managed to persuade Ms. Mah that those materials continued to be required in the application for costs, as they would be relevant to the determination of the seriousness of the breach and the degree of misconduct of the Crown. On reviewing the transcript of the interview of Ms. Chriqui, I find it most disconcerting that the Crown did not immediately recognize its relevance and provide it without question to defence counsel. Among other things, Ms. Chriqui, in her taped interview, discussed the training material provided by her employers (the Applicant/Accused herein); the posting of relevant legislation in the workplace; and the procedures which she was trained to follow in effecting collections by telephone. Significant portions of her testimony at trial were inconsistent with what she had told Ms. Purpur, yet the Crown did not disclose either the tape or the transcript of her interview until after she had completed her testimony. Indeed, the notes of the investigator, Ms. Purpur, which were not obtained by defence until January 8th, 2004, clearly reveal that Crown counsel, Ms. Mah, specifically directed Ms. Purpur that the tape of the September 26th interview of Ms. Chriqui <u>not</u> be sent to defence counsel.

[32] I find the conduct of the Crown in this matter regarding its disclosure obligations to be generally consistent with Crown counsel's conduct throughout these proceedings, which left an overall air of neglect pervading this prosecution. Failing to appear for pre-trial conference, failing to follow the Court's directions regarding setting continuation dates, and failing to respond to telephone communications from the Court all display a pattern of neglect akin to the lack of response received by defence counsel to numerous entreaties for proper disclosure. I find this conduct on the part of the Crown to be egregious and unacceptable, and in the circumstances prejudicial to the defence in preparing their case and making full answer and defence to the charges.

<u>Availability Of Multiple Remedies</u>

[33] Given that a stay of proceedings has already been granted by the Court in this matter, can the further remedy of costs be awarded, and if so, in what circumstances?

[34] In ***R. v. Robinson*** (*supra*) Berger, J.A., writing in the minority at paragraph 59 implies that multiple remedies are available when he says:

> "It does not follow, however, that an award of costs against the Crown should be made only when a judicial stay has been ordered."

Indeed, there are a number of cases where courts have found it appropriate to award both a judicial stay and costs. Among those cases are ***R. v. LaPointe*** (2003) A.J. No. 985; *R. v. Logan* (2002) O.J. No. 1817 (C.A.); ***R. v. Leduc*** (2001) O.J. No. 931, (2002) O.J. No. 3627, (2002) O.J. No. 3880; ***R. v. Agat Laboratories Ltd.*** (1998) A.J. No. 304; *R. v. H.S.* (1994) O.J. No. 1787.

[35] In ***R. v. Agat*** *(supra)* Fradsham, J., stated:

> "In my view, there is nothing which prohibits the combination of a monetary remedy and a judicial stay of proceedings. Without doubt, the entry of a judicial stay is an extreme measure to be resorted to only when no other remedy or remedies will adequate address the prejudice suffered by the accused as a result of the Charter breach. However, that does not mean that the judicial stay alone will address all aspects of the prejudice suffered by the accused. The judicial stay may be a necessary part of effecting a complete remedy, but likewise an economic component to the remedy provided may also be necessary to achieve a complete remedy."

[36] As defence counsel pointed out herein, costs are not being sought as a remedy for an unfair trial; the stay of proceedings provided that remedy. Rather, costs address all other consequences arising as a result of an unfair trial. Those consequences were clearly contemplated by L'Heureux-Dubé, J., in ***R. v. O'Connor*** (*supra*) when she stated:

> "Every adjournment and/or additional hearing caused by the Crown's breach of it obligation to disclose may have physical, psychological and economic consequences upon the accused, particularly if the accused is incarcerated pending trial."

She went on to say:

> "... in determining whether the prejudice to the integrity of the judicial system is remediable, consideration must be given to the societal and individual interests in obtaining a determination of guilt or innocence. It goes without saying that these interests will increase commensurately to the seriousness of the charges against the accused."

[37] In this case, the charges facing the accused, while they carry upon conviction the possibility of significant financial penalties, cannot be said to be as serious as charges which could involve lengthy incarceration. However, in this case the fact that the Crown conducted part of the trial and then stayed charges mid-trial greatly increased the prejudicial consequences to both the accused's interests and societal interest. Considerable media coverage both by television and newspapers focussed public attention upon the allegations against the accused. The testimony of Nicole Chriqui was reported, stating that her employers (the Applicant/Accused) condoned

threatening tactics she is alleged to have used to extract overdue parking fines. Clearly, had the defence been provided with the taped interview of Ms. Chriqui, the defence would have been aware of a number of points in that interview which might contradict that testimony. In the end, due to the charges being stayed mid-trial, and the inability of defence to carry out a fully informed cross-examination, the Applicant (Accused) suffers the psychological consequences of the damaging testimony without having had access to the previous inconsistent statements. It also bears a potential economic consequence of being portrayed as a company which does not comply with fair trading practices, regardless of whether or not these allegations were ever proven.

[38] Equally important is the consequence of this unfairly conducted prosecution to societal interests. The public has a right to expect that charges will be prosecuted fully and fairly by the Crown resulting in an ultimate determination of guilt or innocence. By that means, society can take measures to protect itself from the guilty, and ensure that those who are innocent are not unfairly convicted. In this case, we have the public having been informed of highly prejudicial evidence against the Applicant/Accused without the totality of the evidence being brought forward, leaving a most unpalatable result for both the public and the accused.

[39] The Courts must be vigilant in ensuring that the public interest in ensuring fair trials involving all accused, guilty or innocent, is adequately protected. In cases where a fair trial has not occurred due to "a marked and unacceptable departure from the reasonable standards expected of the prosecution" remedial measures in the form of costs are appropriate, even when a stay of proceedings has been entered. This is such a case.

Quantum

[40] In ***R. v. 974649 Ontario Inc***. (*supra*) McLaughlin, J., for the court at paragraph 1 stated:

> "To the extent that it is difficult or impossible to obtain remedies for Charter breaches, the Charter ceases to be an effective instrument for maintaining the rights of Canadians."

She went on to say at paragraph 19:

> "Section 24(1) must be interpreted in a manner that provides a full effective and meaningful remedy for Charter violations."

And further at paragraph 20:

> "Section 24(1) interpretation necessarily resonates across all Charter rights, since a right, no matter how expansive in theory, is only as meaningful as the remedy provided for its breach."

[41] If, as a consequence of a *Charter* breach, costs have been incurred, these costs may be ordered as a Section 24(1) remedy. In ***R. v. Agat*** (*supra*) and ***R. v. LaPointe*** (*supra*) an order for the amount of legal costs incurred by an accused in attempting to obtain Crown disclosure, including the costs of a Section 24(1) application resulted in an order for the legal costs incurred. Unless indemnity for the costs of a Section 24(1) application is made where appropriate, an accused may be precluded from being able to seek a remedy for a *Charter* breach due to the costs involved in pursuing that remedy. Such a situation would result in a diminution of the value of an accused's *Charter* rights.

[42] In the case before me, the Applicant/Accused was unfairly prejudiced in his defence from the time that the Crown failed to comply with the order of this Court regarding disclosure. Accordingly, I award costs in the amount of $8,409.83 computed as follows:

(a) $5,859.83 representing "thrown away" costs incurred subsequent to the Crown's failure to comply with the Disclosure Order made by this Court,

(b) $2,550.00 for fees and disbursements incurred in the course of this costs application.

Dated at the City of Calgary, Alberta this 31st day of May, 2004.

S.A. Hamilton
A Judge of the Provincial Court of Alberta

Appearances:

M.G. Bates
for the Applicant (Accused)

K. Mah
for the Respondent