Date: 20011127
Docket: CAC 163508
and CAC 169169

NOVA SCOTIA COURT OF APPEAL
[Cite as: *R. v. Innocente*, 2001 NSCA 168]

Roscoe, Chipman and Flinn, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN
Appellant

- and -

DANIEL JOSEPH INNOCENTE and GILES POIRIER

Respondents

REASONS FOR JUDGMENT

Counsel: Craig M. Garson, Q.C. and Duncan R. Beveridge, Q.C. for the appellant
Kevin A. Burke, Q.C. for the respondent, Mr. Poirier

Appeal Heard: November 22, 2001

Judgment Delivered: November 27, 2001

THE COURT: The appeal is allowed, per reasons for judgment of Chipman, J.A.; Roscoe and Flinn, JJ.A., concurring.

Chipman, J.A.:

[1] This is an appeal by the Crown from two decisions of Boudreau, J., reported at (2000) 183 N.S.R. (2d) 1 and (2001) 190 N.S.R. (2d) 69, staying a charge against the respondents of conspiracy to traffic in cannabis resin and cocaine and awarding costs to the respondents against the Crown.

[2] The respondents were charged with conspiracy to traffic during the period March 25, 1996, to May 17, 1996. They were arrested shortly thereafter. The preliminary inquiry was held in September of 1997. Pre-trial motions and the first trial of the respondents took place before Cacchione, J., in January, February and March of 1999. The jury could not reach a verdict and Cacchione, J. declared a mistrial on March 13, 1999. The retrial was set to commence in February, 2000 before Boudreau, J.

[3] The respondents filed a motion before Boudreau, J. on January 26, 2000 returnable February 3, 2000, for the stay on the basis of alleged misconduct on the part of the Crown prosecutors and the R.C.M.P. Six issues were raised. In his decision dated April 7, 2000, Boudreau, J. set out findings of fact with respect to them. His decision to grant a stay was based on the findings respecting Issues 1, 4 and 5 which we summarize.

[4] The first issue related to a C237 Continuation Report, a document which is prepared by investigating RCMP officers for review by their senior management. The report at issue related to the events at the Halifax International Airport on May 3, 1996, when Michael Ogura - suspected of being involved in the conspiracy - was followed by five members of the RCMP drug squad. They obtained possession of a bag which he had checked, and conducted a warrantless search, noting that it contained bundles of money. They testified that they returned the bag to the luggage trolley and it was arranged that Ogura was to be arrested on his arrival at Montreal when he collected his bag. This did not happen. When Ogura went to collect his bag it was missing. It has never been found.

[5] Constable Marc Gorbet, the lead investigator, prepared the customary C237 Continuation Report, which is usually signed by the author and the Staff Sergeant in charge of the section. This report was forwarded to his superior, Staff Sgt. Delorey, who directed him to change it by removing any reference to the fact of the money bag and its loss. Gorbet then prepared another report, dated May 13, 1996, without the reference and forwarded it to Staff Sgt. Delorey as head of the drug section. It was signed by Sgt. Steve Doiron for Cst. Gorbet, and forwarded to senior management. Gorbet could not recall

what happened to the paper copy of the first draft of the report and it has never surfaced. His assumption was that it was destroyed.

[6] The respondents were advised in August, 1996, in a synopsis of the investigation, of the circumstances relating to the search of and loss of the bag but they were not provided with the C237 Continuation Report until after the preliminary inquiry, and did not learn about the previous draft of the report until the cross-examination of Cst. Gorbet on the *voir dire* in an application for **Charter** relief at the first trial in January, 1999. The relief sought in that application related to the warrantless search of Mr. Ogura's bag, non-disclosure of information and lost police notes surrounding that event.

[7] The respondents' argument in connection with the non-disclosure by the Crown of the alteration of the C237 Continuation Report focused on the issue of the impartiality and objectivity of the Crown in connection with this non-disclosure. There was a meeting of RCMP investigators and superior officers held on October 9, 1997 at the request of the Crown prosecutor, Ms. Paula Taylor, who did not, it seems, actually attend the meeting. Testimony by Sgt. Doiron before Boudreau, J. relating to this meeting indicated that "Ms. Taylor's main concern was that of the organization and how it would look". Minutes of the meeting made by Cst. Gorbet indicated that had she been aware of the depth of the issue surrounding the missing bag she would have reconsidered prosecuting the matter to spare the RCMP any undue bad press. Ms. Taylor later wrote defence counsel on July 21, 1998, indicating that the purpose of the meeting was to advise those present of the problems. She said it was her suggestion to seek further direction regarding more aggressive attempts to resolve the case to avoid anticipated adverse publicity which could unfairly damage the reputations of the individual officers and the RCMP as an organization.

[8] Counsel for the respondents were pressing the Crown following their receipt of the C237 Continuation Report in early 1998 for more details surrounding the events recorded therein, the preparation of the report and any other such reports. A disclosure application was made, and in subsequent correspondence the Crown advised the respondents that the only C237 relating to the events at the airport was the one which was already delivered.

[9] It appears that the defence proceeded with the disclosure application, because in a memorandum to Cacchione, J. Ms. Taylor wrote that she was advised by Cst. Gorbet that all C237 reports had already been disclosed. It will be

remembered that the original draft prepared by Cst. Gorbet had disappeared and there is no suggestion that it was anywhere in existence.

[10] In disposing of the respondents' submission, Boudreau, J. said:

> [37] In the circumstances of this case, I am satisfied that the Crown intentionally withheld relevant evidence and information from the defence, and in doing so, intentionally misled both the defence and the court. This information was never disclosed voluntarily and it only came to be known during cross-examination of Constable Gorbet by the defence during a voir dire in the first trial. It should be noted that the Crown has made no attempt to explain the patently misleading representations it made to the defence and the court, in spite of the apparent importance of this issue in the motion. I can only conclude that the crown remained silent on this very important issue because it had no explanation for its actions. The applicant's evidence is uncontradicted on this issue.

[11] The fourth issue pertained to a newspaper article which appeared on February 18, 1999, during the first trial before Cacchione, J. Following testimony at the trial the previous day about the missing bag, a reporter contacted Sgt. Bill Price, media spokesperson for the RCMP, who gave a statement relating to it. There had previously been a meeting on January 25, 1999, of senior RCMP officers, including Price, and the Crown prosecutors. The bottom line of this meeting appears to be that there would not be any press releases on the contentious or embarrassing events that would be coming out during the trial. There was no suggestion in the evidence that the giving of such a press release was discussed at the meeting.

[12] Following the press release, the respondents made a motion before Cacchione, J. for a stay. This motion was dismissed, but during its course Crown counsel joined with counsel for the respondent's criticisms of the press release and stated there was no evidence that the Crown was consulted in any way respecting it. Cacchione, J. dismissed the application for a stay.

[13] Boudreau, J. concluded that the Crown had misrepresented the matter before Cacchione, J.:

> 64 In my view, it is not very material whether there was one or two meetings for such purposes during the trial. The end result is the same. The Crown prosecutors were at a meeting with investigators, Senior RCMP officers and media spokespersons to discuss and decide on what would or would not be said to the media. The Crown prosecutors stood before Justice Cacchione and stated there was no evidence before him that the Crown had been consulted in any manner whatsoever on the issue; when in fact it had been consulted just twenty-three days prior to the press interview. This was disingenuous to the Court in the extreme and

> was misleading. The Court was in effect being told there had been no such consultation. The evidence of such a consultation meeting and the outcome or decisions made at that meeting were clearly relevant to the inquiry being conducted by Justice Cacchione and to the decision he was being asked to make. The Crown knew of this relevance because it was implicit in its own argument against the defence's stay application. The Crown was in effect arguing that Sergeant Price had in some way been approached unexpectedly or taken advantage of by the newspaper reporter, that the blame lay in large part with the reporter. That was far from the true state of affairs, as is shown by the evidence of the discussions and decisions emanating from the January 25, 1999 meeting. This evidence had the potential to drastically affect the course and possibly the outcome of the defence's stay application.
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> . . .
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> 67 The primary consideration was the reputation of the RCMP, without regard to the effects on the trial then in progress. This was precisely the type of "cohesive response" which had been agreed upon. I find this constituted serious misconduct on the part of the police, which would have been more evident to Justice Cacchione had he been apprised of the prior media issues meeting or meetings.

[14] The fifth issue related to the destruction of original wire tap tapes and theft of audio cassette copies relating to a drug investigation of the respondent Poirier in the early 1990's in Montreal. This led to charges against Poirier. He subsequently pleaded guilty to a charge of drug conspiracy. There were new wire tap tapes of conversations by Poirier to be offered in evidence at the trial before Cacchione, J. Sgt. Brian Redmond had testified at the preliminary inquiry to the effect that he could identify Poirier's voice on the later tapes on the basis of his having heard taped conversations which led to the earlier prosecution. In fact, Sgt. Redmond had heard copies of these tapes which he was keeping in his possession. The originals were still in Montreal at RCMP headquarters, kept in storage.

[15] On February 17, 1999, the copies of the tapes kept by Sgt. Redmond were stolen from his car in Ottawa and this matter was reported to the local police.

[16] After the first trial, counsel for the respondent Poirier continued to press the Crown respecting these earlier audio tapes and made one trip to Montreal to listen to a portion of them. Constable Mario Lamontagne of the RCMP in Montreal advised Ms. Legault, a civilian employee of the RCMP, to put a note on these tapes that they were to be preserved. Unfortunately, she did not do so and on August 13, 1999, they were destroyed by the RCMP in Montreal.

[17] By September 7, 1999, Crown counsel learned of the destruction of the original tapes. By this time counsel for Poirier was actively pursuing disclosure of these tapes and the exhibit report or logs and the monitor logs thereof. He was not aware of the destruction of the original tapes and on September 16, 1999, the Crown prosecutor wrote him but did not make mention of the destruction of the original tapes although she and her co-counsel had known of this since September 7.

[18] On October 27, 1999, Crown counsel wrote counsel for Poirier indicating that the monitor logs of the tapes would be provided after editing by the RCMP but that the exhibit locker logs were not relevant and would not be disclosed. She pointed out at this time that Sgt. Redmond had used, not the original tapes to prepare for his testimony, but cassette copies which were stolen from his vehicle.

[19] The defence was not advised of the destruction of the original tapes until sometime in December, 1999.

[20] On this issue, Boudreau, J. concluded:

> 98 On the question of the Crown's involvement in not advising the defence of the August 13, 1999 destruction of the original tapes, there is no question the defence was provided with this information in December of 1999. There is, however, no question that this information was not provided in a timely manner as required by the jurisprudence. The Crown only provided the defence with this information and copies of the exhibit logs when prior attempts to put the defence off the trail had not succeeded. This is evidence of further recent disingenuous and misleading behaviour on the part of the Crown when it comes to disclosure and fulfilling its role as impartial quasi-judicial officers in our justice system.

[21] Boudreau, J. then reviewed the law relating to the granting of a stay of charges, including **R. v. Regan** (1999), 179 NSR (2d) 45 (NSCA) and **Canada v. Tobiass,** [1997] 3 S.C.R. 391, as well as cases dealing with the obligation of the Crown to disclose its case to the defence and the law relating to lost evidence, including **R. v. F.C.B.** (2000), 183 NSR (2d) 315 (NSCA).

[22] Boudreau, J. commenced his analysis with a general statement:

> 115 I have no hesitation whatsoever in finding that the accused's rights have been violated by the police and by the Crown prosecutors on more than one occasion. I am also satisfied and find that the Prosecution departed, early on in this prosecution, from its traditional and lawful roles. Both prosecutors did not fulfill their roles as impartial quasi-judicial officers in our justice system. I find that the overriding concerns of the Prosecution were, and have continued to be, the

> protection of individual members of the R.C.M.P. and the reputation of the Organization as a whole. This was no doubt because of the May 3, 1996 incident at the Halifax International Airport and the subsequent handling of that incident in the reporting procedure. I find that this led to the intentional withholding of relevant evidence and information from the defence, and, on at least two occasions, misleading the Court. The evidence supports the inference that this will likely continue.

[23] With respect to the first issue, Boudreau, J. found that the prosecution intentionally withheld relevant evidence and misled the court on the issue of the altered C237 report but made no finding as to the effect thereof on the defence.

[24] As to the fourth issue, Boudreau, J. was satisfied that the Crown misled the defence and court on the issues surrounding the interviews given by Sgt. Price. They withheld the facts of the meeting or meetings prior to the interviews. Again, there is no finding respecting what prejudice, if any, was suffered by the defence as a consequence.

[25] As to the fifth issue, Boudreau, J. was satisfied that the original wire tap tapes were relevant to the defence and without making any finding as to materiality, found that the destruction of these tapes was due to unacceptable negligence on the part of both the police and the Crown. He commented adversely on the testimony of Sgt. Redmond and found that he could give it no weight. He found that the prosecutors attempted to keep the fact of the destruction of the original tapes from the defence as long as they could.

[26] As to the sixth issue, while not finding that it gave rise to a stay, Boudreau, J. found that the conduct of the Crown prosecutor in meeting with RCMP officers who had been subpoenaed by the defence and in seating herself beside one of them while the defence was interviewing him indicated a protective attitude towards the RCMP. He said that it was evident that the attitude of Crown counsel toward their role in the justice system had not changed during the prosecution and continued right through to the present hearing.

[27] Boudreau, J. expressed his conclusions on the six issues:

> CONCLUSIONS
>
> 127 I will deal with the fifth issue first. This pertains to the destruction of the original wiretap tapes of operation "Cascade" and the alleged theft of the copies. If I were just facing this issue, it would be difficult to reach the conclusion that a stay of proceedings would be the appropriate remedy. While I have found that a

breach of the accused's rights under the tests outlined in R. v. F.C.B., supra, has been established, I would not be able to find that the prejudice caused by that abuse would be manifested, perpetuated or aggravated through the conduct of the trial or by its outcome if other appropriate remedies were considered. Such prejudice would only be manifested or perpetuated if no other remedy to remove the prejudice were considered.

128 I find that prejudice caused by the lost tapes is reasonably capable of being removed if the voice identification evidence of Sergeant Redmond is excluded from the evidence in any retrial. I find that would be the just and appropriate remedy in the circumstances of the destruction, through unacceptable negligence, of the original wiretap tapes of operation "Cascade" and the alleged theft of audio cassette copies in the possession of Sergeant Redmond. The ability of the defence to now meaningfully challenge that evidence has been irreparably damaged. While the defence could obviously still question the credibility of Sergeant Redmond in general, this would still leave the defence with no way to attack the basis of his opinion evidence. In the circumstances, I find the only just remedy is the exclusion of Sergeant Redmond's voice identification evidence and I would so order.

130 With regard to the other five issues, I have found that the Crown was guilty of serious misconduct on three of those issues; namely, the first, the fourth and the fifth. I have found that the Crown, on the third issue, attempted to get approval to not place relevant evidence before the jury for an oblique motive. I have found that the evidence on the second issue was inconclusive. I have found that the sixth issue did not establish misconduct, but was evidence that the alleged misplaced role of the prosecution has continued through these proceedings and will likely continue into the future.

[28] Concluding as he did that there could be no assurance that any retrial would be fair “or any fairer than the first trial” - an implication that the first trial before Cacchione, J. was less than fair (para 131) - Boudreau, J. was prepared to stay the charges. He went further (para 132 et seq) and concluded that this was a case that fell within the residual category of cases referred to in **Regan, supra** and **Tobiass**, **supra** in which the continuation of the prosecution would be abusive, even if the charges could be tried fairly - the misconduct at issue being such, in his view, that the continuation of the prosecution would be damaging to the integrity of the judicial process.

[29] The Crown raises a number of issues in this appeal. In particular there was a serious issue respecting the admissibility of much of the evidence upon which Boudreau, J. relied in reaching his decision. In our opinion it is not necessary for the purposes of disposing of this appeal to do more than review Boudreau, J.’s findings on the three issues which he resolved adversely to the Crown.

First Issue, the 237 Continuation Report

[30] This deals with the allegation that the Crown was knowingly involved in intentionally withholding what it knew to be relevant disclosable information - the fact that the C237 Continuation Report was altered on instructions of Staff Sgt. Delorey. Shortly after their arrest in 1996, the respondents received full disclosure respecting the events at the airport relating to the bag of money. They received the C237 Continuation Report signed by Staff Sgt. Delorey and Sgt. Doiron in April of 1998. The respondents became aware of the alteration of the C237 Continuation Report on January 21, 1999, on a *voir dire* during the first trial - over a year before the motion before Boudreau, J. for the stay.

[31] We cannot accept that the respondents' **Charter** rights to a fair trial one year later were prejudiced by their delayed awareness of these circumstances. The respondents knew from the outset about the missing money. The respondents did not apply to Cacchione, J. for relief respecting late disclosure of the edited or altered report when they found out about it on the *voir dire* on January 21, 1999.

[32] Boudreau, J. made no inquiry into the materiality of the alteration of the C237 report or whether there was any prejudice to the respondents, particularly in light of the fact that they had known about it for over a year.

[33] The respondents have not established that this non-disclosure by the Crown was material to their ability to make full answer and defence. See **R. v. O'Connor** (1994), 89 C.C.C. (3rd) 119 at pp. 148-9 (BCCA). See also **O'Connor v. The Queen** (1995) 103 C.C.C. (3d) 1 (SCC) at p. 40. There is no support for Boudreau, J.'s finding that the first issue discloses a **Charter** violation that justified a stay of proceedings.

Issue 4 - Article in Chronicle-Herald February 18, 1999

[34] An application by the respondents to Cacchione, J. on February 18, 1999, for a stay based on this article was dismissed by him. Some idea of the potential prejudice of the article can be gained by simply reading it:

Money-bag review nixed

By Randy Jones
Crime Reporter

> The RCMP won't do an internal investigation into how a bag containing $100,000 went missing during an undercover drug operation - along with a notebook on how the incident was handled.
>
> "Our senior management, at this point in time, believes that there were sufficient members on-site and that the bag was placed back in the (baggage handling) system," RCMP spokesman Sgt. Bill Price said Wednesday.
>
> It's my understanding that there were several officers in that particular area when we were checking that bag. I've heard figures of up to five officers."

The bag went missing at Halifax International Airport on May 3, 1996, while undercover RCMP drug officers were tracking the movements of Michael Ogura, who was taking a flight to Montreal.

Testimony at the drug-trafficking trial of Danny Innocente and Gilles Poirier revealed this week that RCMP went behind the airport security counter to retrieve Mr. Ogura's bag.

One of the undercover officers, Const. Marc Gorbet, cut the bag and determined there was "upwards of $100,000" inside.

Const. Gorbet and Cpl. Ray McCormick, his partner, have told the court someone in their group then put the bag back on the baggage cart.

By the time Mr. Ogura was supposed to pick up the bag in Montreal, it had disappeared.

Investigators aren't sure if the money bag made it onto the Halifax-to-Montreal flight or if it was removed from the baggage processing section in Montreal, Sgt. Price said.

"Obviously, someone has it. It didn't walk off by itself. Between here and there, it went missing."

The RCMP haven't received a complaint asking them to look for the missing money, he said. But Mr. Ogura did file a missing-bag complaint with Canadian Airlines. Spokespeople with the airline didn't return several calls Wednesday.

The court has heard that Cpl. McCormack made notes about the airport incident in his personal RCMP notebook.

But he couldn't refer to the notebook because it went missing sometime after June 25 - the only time, he claims, he has ever lost a notebook.

"It concerns us," Sgt. Price said of the lost notebook, "but it has been addressed in the courts. I think we have to wait to see what the (court) decision is before we make a comment on that."

The jury has also heard that Cpl. McCormack removed details of the incident from a biweekly RCMP report after receiving a "verbal" order from a staff sergeant. The RCMP report leaves out key details, mentioning only that Mr. Ogura bought a ticket, checked his bag and arrived in Montreal.

He suggested new policies might be developed to prevent such orders from being given.

[35] Boudreau, J.'s only basis for taking this ground into consideration in granting a stay was his finding that the Crown prosecutor stood before Cacchione, J. and stated that there was no evidence before him that the Crown had been consulted "on the issue", the issue presumably being the article and the press interview given by Sgt. Price.

[36] Boudreau, J. characterized the Crown's conduct in this respect as "disingenuous to the court in the extreme and . . . misleading".

[37] Crown counsel did not bring to Cacchione, J.'s attention the fact that there was a meeting of members of the RCMP on January 25, 1999, at which Crown counsel was present. However, a thorough review of the evidence fails to reveal that Crown counsel, either as a result of the meeting or otherwise, were aware of Sgt. Price's press interview until after the article was published, let alone that Crown counsel in any manner sanctioned it. The evidence relating to the meeting on January 25, 1999, leads to the conclusion that the consensus of the meeting was that nothing was to be released to the press during the trial. Nothing that took place at that meeting can be said to have led to Sgt. Price's press interview. Counsel for the Crown stated nothing before Cacchione, J. that was untrue or misleading. Nothing in counsel's submission supports Boudreau, J.'s statement in his summation on this issue that "the primary consideration was the reputation of the RCMP, without regard to the effects of the trial then in progress".

[38] Boudreau, J.'s criticism of the Crown prosecutors in this respect is simply not supported by the record. In particular, we reject his reference in the decision on costs to the Crown's conduct at this part of the proceedings as an attempt "to bolster the credibility of Crown witnesses by improper releases to the media".

Issue 5, the Tapes

[39] Boudreau, J. undertook no inquiry to determine the relevance or materiality of either the original tapes which were destroyed or the cassette copies which were stolen on the right of the respondents to a fair trial. The respondents' submission that a **Charter** breach arose out of these unfortunate episodes loses much of its impact when it becomes apparent that the uncontradicted evidence respecting this issue was that copies of the original tapes were delivered to the respondent Poirier's defence team in Montreal in 1992. Poirier subsequently pleaded guilty to the charge of drug conspiracy of which they were evidence. There was no evidence led by the respondent Poirier on the motion that the tapes were not received by him or that they were no longer available to him. It seems unlikely that Poirier would plead guilty had he not reviewed these tapes.

[40] The tapes at issue did not relate to the present prosecution against the respondents. The most that could be made of them was to challenge Sgt. Redmond's testimony that he identified Poirier's voice on tapes to be used in the present case from having heard copies of the tapes from the 1992 investigation. However, it is also clear from Sgt. Redmond's evidence at the preliminary hearing against the respondents that he also had knowledge of Poirier's voice from having spoken to him personally, first on February 28, 1992, for a period of 35 minutes face-to-face, and then briefly in the Montreal courthouse subsequent

to that. Such evidence could of itself form the basis for testimony relating to voice identification.

[41] The foregoing circumstances cast a shadow on the *bona fides* of the disclosure request by Poirier. There was no evidence before Boudreau, J. that Redmond's voice identification evidence at the first trial was in issue.

[42] The evidence respecting the theft of copies of the tapes from Sgt. Redmond's vehicle does not support, in our view, the contention that the blame for this occurrence should be placed on the police or the Crown. The destruction of the original tapes appears to have arisen from oversight, in that Ms. Legault failed to put a note on them as requested that they were not to be destroyed.

[43] We are satisfied that it was not established by the respondents that their **Charter** rights were infringed by the loss of the tapes or their copies. In our opinion, Boudreau, J. erred in excluding the voice identification of Sgt. Redmond. In reaching this conclusion we point out that it will be open to the respondents on a subsequent trial to seek relief, either by way of an order to exclude reference in the testimony of any witness to the missing tapes or by way of an appropriate caution to the jury.

[44] In our opinion, the delay on the part of the Crown prosecutors in advising counsel for the respondents of destruction of the tapes (September 7, 1999 - December, 1999) does not justify Boudreau, J.'s comment that it was "evidence of further disingenuous and misleading behaviour on the part of the Crown . . . " (para 99 183 NSR p. 331).

Overall

[45] In the notice of application for a stay before Boudreau, J. the respondents did not set out in what manner the alleged misconduct of the Crown and the R.C.M.P. prejudiced their ability to make full answer and defence. At no time during the argument of the appeal before us did counsel for the respondents identify any such prejudice notwithstanding that the court raised the issue repeatedly.

[46] On the facts as they appear from Boudreau, J.'s decision and on the record, we are satisfied that he misunderstood the evidence and erred in the conclusions that he drew and in so doing an injustice resulted. It follows from our review of the findings that we are of the opinion that it was not shown that the respondents' **Charter** rights were infringed. This has not been shown to be one of those very clear cases where a stay is warranted. We are neither satisfied that another trial would be unfair nor that the integrity of the judicial process would be harmed by such a trial.

[47] There was no conduct of the police or the prosecution that was so egregious as to give rise to consideration of a stay. In particular, we do not agree with Boudreau, J.'s conclusion on the sixth issue that because Crown counsel interviewed RCMP officers called by the defence, and would not leave the presence of an officer while being interviewed by defence counsel outside the courtroom, that this was evidence of an attitude that gave rise to concern respecting the fairness of a future trial.

[48] Overall, we are satisfied that the evidence does not support Boudreau, J.'s conclusion that "the overriding concerns of the prosecution were, and have continued to be, the protection of individual members of the RCMP and the reputation of the Organization as a whole". In saying this, we do not condone the instances of delayed disclosure and non-disclosure

by the Crown which we have recited in the narrative hereof. However, we point out that there was very substantial disclosure. As Cacchione, J. observed in his decision of February 3, 1999, dismissing a **Charter** application, that the other materials disclosed were estimated to be enough to fill ten or eleven bankers' boxes. He also pointed out that the daily reports alone amounted to over 1,000 pages.

[49] It follows that the appeal from the stay of proceedings and the exclusion of the voice identification of Sgt. Redmond must be allowed and the consequent order for costs in favour of the respondents be quashed and a new trial ordered on the indictments before a judge other than Boudreau, J.

Chipman, J.A.

Concurred in:

Roscoe, J.A.

Flinn, J.A.