IN THE PROVINCIAL COURT OF NOVA SCOTIA
Citation: R. v. Henneberry, 2004NSPC23

Date: 20040428
Docket: 1145525
1145521
1145495
1145509
1145543
Registry: Bridgewater

Between:

R.

Respondent

v.

Andrew William Henneberry, Clark Andrew Henneberry,
Marcel Steven Henneberry, Wesley L. Henneberry,
Paul Raymond Parnell, Ernest Vernon Rudolph,
James Phillip Ryan, Gregory Burton Smith
and Ivy Fisheries Limited

Applicants

Judge: The Honourable Judge Anne E. Crawford

Heard: December 2, 4, 11, 18, 2003;
January 5, 6, 8, 12, 13, 2004
February 16, 17, 2004
March 4, 9, 10, 2004

Written Decision: April 28, 2004

Counsel: Gerald A. Grant, Federal Prosecution Service,
Counsel for the Respondent
Thomas E. Hart and David J. Demirkan,
Counsel for the Applicants

By the Court:

[1] I wish to thank counsel for their extensive briefs on this issue, which have made oral argument unnecessary.

[2] Throughout the whole of this lengthy case much time and many words have been expended on the issue of disclosure. This latest application by the Defence for a stay of proceedings because of late disclosure is based principally on the testimony of four Crown witnesses that they relied on personal notes in creating documents entered as exhibits before the court.

[3] Specifically, Fisheries Observers Anthony Pavlounis and David Murphy kept notes which they used to later complete their reports of various trips aboard the vessel “Ivy Rose”; forensic accountant, Brian Crockatt, used e-mail as a form of communication between himself and DFO investigators and Crown, as well as keeping personal notes in the course of his investigation, some of which were used in the preparation of his expert’s report; and Terry Pipes, questioned document examiner, also used personal notes to prepare his handwriting expert’s report.

[4] In each case defence asked for and was given access to the notes and files in question. Defence was also given time to review the newly disclosed documents and an opportunity to further cross-examine the witnesses after having had time to review. In no case were any of these witnesses cross-examined on the contents of the notes or files so disclosed.

[5] I see no basis in law for allowing the Defence motion for the following reasons:

1. The burden on this application is on the Defence to establish that there has been a breach of the defendants’ right under Charter s. 7 to make full answer and defence. In the present case the Defence has not shown in any way – even the most general – that this right has been interfered with. As stated above, the Defence was given access to everything they asked to see and was given sufficient time to review it prior to an opportunity to cross-examine on it, and chose not to use that opportunity. The only conclusion to be reached is that there was nothing in those documents which affected the defendants’ Charter right to a fair trial.

2. In the overall context of this document-heavy case, the Crown’s failure to inquire about and obtain these documents from outside

witnesses comes nowhere close to an abuse of process. It was, at most, an oversight.

3. If there had been a breach of the defendants' right, this is not one of those "clearest of cases" where a stay would be warranted. The appropriate remedy, a short adjournment to allow review and a subsequent opportunity to cross-examine, was granted at the time, apparently to the agreement of counsel.

[6] The defendants' application is denied.