

Regina v. Billingham et al.

Regina v. Saunders et al.

Regina v. Gordon et al.

[Indexed as: R. v. Billingham]

26 O.R. (3d) 226

[1995] O.J. No. 2984

File Nos. 94/05896, 94/05901

Ontario Court (General Division),

McIsaac J.

October 4, 1995

Criminal law -- Crown attorneys -- Crown attorneys entitled to access to material generated during pre-inquiries held pursuant to s. 507 of Criminal Code as result of private complaints -- Disclosure of material not offending in camera nature of procedure mandated by s. 507 and not impinging upon judicial independence -- Criminal Code, R.S.C. 1985, c. C-46, s. 507 -- Crown Attorneys Act, R.S.O. 1990, c. C.49, ss. 11, 12.

Charter of Rights and Freedoms -- Fundamental justice -- Full answer and defence -- Disclosure -- Justices of the peace denying access to Crown Attorneys to material generated during pre-inquiries held pursuant to s. 507 of Criminal Code as result of private complaints -- Mandamus issuing against justices to compel them to forward material to Crown attorneys -- Production of material to Crown attorneys necessary so that Crown could fulfil its disclosure obligations to accused -- Canadian Charter of Rights and Freedoms, s. 7 -- Criminal Code, R.S.C. 1985, c. C-46, s. 507.

As a result of private complaints, charges were laid against six persons under the Criminal Code. The two justices of the peace who issued process in each case pursuant to s. 507 of the Criminal Code refused to provide Crown attorneys with access to the complaints. Unsuccessful applications were made to two provincial court judges for directions to have the justices provide the requested material. The Office of the Crown Attorney applied for certiorari and mandamus directed to the two justices as well as the two provincial court judges requiring access to the demanded documentation on the basis of ss. 11 and 12 of the Crown Attorneys Act. The Crown Attorneys Act requires Crown attorneys to assess the validity of privately laid complaints and, if necessary, to intervene to take over the prosecution. Further, s. 12 of that Act requires that justices of the peace turn over "all papers" relating to an information laid before the justice. The respondents argued that the material sought did not come within the terms of the "papers" referred to in the Crown Attorneys Act and that turning over the documentation sought would offend the requirements of an in camera hearing set out in s. 507 of the Criminal Code. Further, the respondents argued that it would violate judicial independence if they were forced to turn over the materials.

Held, mandamus should issue against the two justices of the peace.

Disclosure of the requested documentation would not offend the in camera nature of the procedure mandated by s. 507 of the Code. The in camera nature of the pre-inquiry does not survive the issuance of process. An accused is entitled to access to the supporting material presented at the pre-inquiry once he or she has appeared to answer the charge. It would be incongruous to permit access by the defence at this stage and deny it to the prosecution. Provision of the demanded material to the agent of the Minister responsible for the administration of justice in the province could not be classified as a breach of confidentiality when the object of the exercise provided for by the pre-inquiry is to place alleged criminal conduct before the criminal courts of that jurisdiction.

Access by prosecutors to the pre-inquiry material did not impinge upon judicial independence or integrity. Once a warrant or summons has issued, the judicial functions connected with the charging process have terminated. The judicial officer has no active investigative role; that responsibility abides with the Attorney General. The Crown Attorneys Act is a proper exercise of that provincial power. The Attorney General's agent cannot fulfil the constitutionally mandated function of overseeing private prosecutions without having access to the requested material.

The obligation of the Crown to provide disclosure of all relevant material to the defence fortifies the considerations dictating Crown access to the documentation sought in this case. The Crown is required to exercise due diligence in seeking out material that is clearly relevant and disclosable to the defence. The statements of the informant/private complainant and any witnesses heard at the pre-inquiry are, by definition, relevant and should be disclosed forthwith. Any private interest in confidentiality as to these statements is far outweighed by the public interest in a full Crown assessment of the allegations and a disclosure process that accords with the principles of fundamental justice dictated by s. 7 of the Canadian Charter of Rights and Freedoms.

The material sought by the Crown in this case, being the statements of the informants/private complainants and any witnesses at the pre-inquiry, were subsumed in the words "all papers connected therewith" in s. 12 of the Crown Attorneys Act. There was no reason to bind the provincial court judges as well as the justices of the peace by an order for mandamus as they were not caught by the duty imposed by s. 12 of the Crown Attorneys Act in these cases.

Cases referred to

Boucher v. R., [1955] S.C.R. 16, 110 C.C.C. 263, 20 C.R. 1; Bradley v. R. (1975), 9 O.R. (2d) 161, 24 C.C.C. (2d) 482, 35 C.R.N.S. 192 (C.A.); Nova Scotia (Attorney General) v. MacIntyre, [1982] 1 S.C.R. 175, 65 C.C.C. (2d) 129, 26 C.R.

(3d) 193, 132 D.L.R. (3d) 385, 49 N.S.R. (2d) 609, 40 N.R. 181, 96 A.P.R. 609 sub nom. MacIntyre v. R.; Quebec (Attorney General) v. Cohen, [1979] 2 S.C.R. 305, 46 C.C.C. (2d) 473, 13 C.R. (3d) 36, 97 D.L.R. (3d) 193, 27 N.R. 344, revg (1976), 32 C.C.C. (2d) 446 (Que. C.A.); R. v. Chaplin, [1995] 1 S.C.R. 727, 26 C.R.R. (2d) 189, 96 C.C.C. (3d) 225, 36 C.R. (4th) 201, 27 Alta. L.R. (3d) 1, 178 N.R. 118; R. v. Stinchcombe, [1991] 3 S.C.R. 326, 18 C.R.R. (2d) 210, 68 C.C.C. (3d) 1, 8 C.R. (4th) 277, 83 Alta. L.R. (2d) 193, 130 N.R. 277, [1992] 1 W.W.R. 97; R. v. V. (W.J.) (1992), 72 C.C.C. (3d) 97 (Nfld. C.A.); Southam Inc. v. Coulter (1990), 75 O.R. (2d) 1, 60 C.C.C. (3d) 267, 40 O.A.C. 341, 6 C.R.R. (2d) D-3 (C.A.)

Statutes referred to

Canadian Charter of Rights and Freedoms, ss. 7, 11(d)
 Constitution Act, 1867, s. 91, para. 27, 92, para. 14
 Constitution Act, 1982, s. 52(1)
 Criminal Code, R.S.C. 1985, c. C-46, ss. 264, 265, 271, 504, 507 [am. R.S.C. 1985, c. 27 (1st Supp.), s. 78; am. 1994, c. 44, s. 43], 810 [am. 1991, c. 40, s. 33; am. 1994, c. 44, s. 81]
 Crown Attorneys Act, R.S.O. 1990, c. C.49, ss. 10, 11, 12
 Interpretation Act, R.S.C. 1985, c. I-21, s. 34(1)(a)
 Upper Canada Crown Attorneys Act (1857), 20 Vict., c. 59

Authorities referred to

Romney, P., Mr. Attorney -- The Attorney General for Ontario in Court, Cabinet and Legislature 1791-1899 (Toronto: University of Toronto Press, 1986), pp. 214-15

APPLICATION for mandamus to compel the production to the Crown of material generated in the course of pre-inquiries held pursuant to s. 507 of the Criminal Code, R.S.C. 1985, c. C-46.

J.A. Neander, for the Crown, applicant.

P. Stern, for respondent justices of the peace and provincial

court judges.

Howard Chisvin, for intervenors/accused, David Billingham and Michael Saunders.

M. Herman, for intervenor/accused, Aldo Gerbasi.

Dennis J. Reeve, for intervenor/accused, Laura Gerbasi.

A.G. Zimmerman, for intervenor/informant, M.B.

MCISAAC J.: --

I. NATURE OF THE APPLICATION

This is an application by the Crown Attorney's office at Newmarket for mandamus against four judicial officers of the Ontario Court of Justice (Provincial Division). It is based upon a refusal on their part to forward certain material generated during the course of a number of pre-inquiries held pursuant to s. 507 of the Criminal Code, R.S.C. 1985, c. C-46, which resulted in several persons being issued a summons to appear in court.

II. BACKGROUND

As a result of private complaints, the accused David Billingham, Aldo Gerbasi, Laura Gerbasi, Kathleen Gordon and Marie Banning face charges under the Criminal Code before the Provincial Division of this court at Newmarket. Scott Braby has already pleaded guilty to his charges. The informations contain allegations of criminal harassment (s. 264), sexual assault (s. 271) and assault (s. 265). As well, applications for peace bonds have been lodged against Aldo Gerbasi, Michael Saunders, Kathleen Gordon and Marie Banning pursuant to s. 810 of the Code. Process was issued in every case by either Justice of the Peace Camelia Mews or Hazel Hodson-Walker pursuant to s. 507 of the Code.

Members of the Crown Attorney's office have written to the

two Justices of the Peace demanding access to the complaints. As well, unsuccessful applications have been made to the Honourable Judge Earle-Renton and the Honourable Judge Zimmerman for directions to have the justices of the peace provide the requested material. It has been suggested in response to these demands that access is being refused because there is a privilege attached to the communications between the informants and the justices of the peace. Additionally, it is submitted that the documentation is the private property of the justices of the peace.

As a result, the Office of the Crown Attorney has initiated an application for certiorari and mandamus directed to the two justices of the peace as well as the two Provincial Court judges requiring access to the demanded documentation, relying on the provisions of the Crown Attorneys Act, R.S.O. 1990, c. C.49, ss. 11 and 12. In response, counsel for the two judges have, among other things, sought a declaration that these sections of that provincial statute are null and void.

Four of the accused/respondents were given permission to intervene in this matter as was one of the informants.

III. RELEVANT LEGISLATION

Crown Attorneys Act

10. Every Crown Attorney and every provincial prosecutor is the agent of the Attorney General for the purposes of the Criminal Code (Canada).

11. The Crown Attorney shall aid in the local administration of justice and perform the duties that are assigned to Crown Attorneys under the laws in force in Ontario, and, without restricting the generality of the foregoing, every Crown Attorney shall,

- (a) examine informations, examinations, depositions, recognizances, inquisitions and papers connected with offences against the laws in force in Ontario that the provincial judges, justices of the peace and coroners

are required to transmit to him or her, and, where necessary, cause such charges to be further investigated, and additional evidence to be collected, and sue out process to compel the attendance of witnesses and the production of papers, so that prosecutions may not be delayed unnecessarily or fail through want of proof;

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- (d) watch over cases conducted by private prosecutors and, without unnecessarily interfering with private individuals who wish in such cases to prosecute, assume wholly the conduct of the case where justice towards the accused seems to demand his or her interposition;

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12. Where a person is committed for trial to answer a criminal charge, the committing provincial judge shall deliver or cause to be delivered without delay to the Crown Attorney the informations, depositions, examinations, recognizances and papers connected with the charge, and the Crown Attorney is the "proper officer of the court by which the accused is to be tried" within the meaning of the committal for trial provisions of the Criminal Code (Canada) and, where an information has been laid before a justice of the peace, whether proceedings have been taken thereon or not, the justice shall deliver to the Crown Attorney all papers connected therewith on being required by the Crown Attorney so to do.

Criminal Code of Canada

504. Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged

- (a) that the person has committed, anywhere, an indictable

offence that may be tried in the province in which the justice resides, and that the person

(i) is or is believed to be,

(ii) resides or is believed to reside,

within the territorial jurisdiction of the justice;

(b) that the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;

(c) that the person has, anywhere, unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or

(d) that the person has in his possession stolen property within the territorial jurisdiction of the justice.

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507(1) Subject to subsection 523(1.1), a justice who receives an information, other than an information laid before the justice under section 505, shall, except where an accused has already been arrested with or without a warrant,

(a) hear and consider, ex parte,

(i) the allegations of the informant, and

(ii) the evidence of witnesses, where he considers it desirable or necessary to do so; and

(b) where he considers that a case for so doing is made out, issue, in accordance with this section, either a summons or a warrant for the arrest of the accused to compel the accused to attend before him or some other justice for the same territorial division to answer to a charge of an offence.

(2) No justice shall refuse to issue a summons or warrant by reason only that the alleged offence is one for which a person may be arrested without warrant.

(3) A justice who hears the evidence of a witness pursuant to subsection (1) shall

(a) take the evidence on oath; and

(b) cause the evidence to be taken in accordance with section 540 in so far as that section is capable of being applied.

(4) Where a justice considers that a case is made out for compelling an accused to attend before him to answer to a charge of an offence, he shall issue a summons to the accused unless the allegations of the informant or the evidence of any witness or witnesses taken in accordance with subsection (3) discloses reasonable grounds to believe that it is necessary in the public interest to issue a warrant for the arrest of the accused.

(5) A justice shall not sign a summons or warrant in blank.

(6) A justice who issues a warrant under this section or section 508 or 512 may, unless the offence is one mentioned in section 522, authorize the release of the accused pursuant to section 499 by making an endorsement on the warrant in Form 29.

(7) Where, pursuant to subsection (6), a justice authorizes the release of an accused pursuant to section 499, a promise to appear given by the accused or a recognizance entered into, by the accused pursuant to that section shall be deemed, for the purposes of subsection 145(5), to have been confirmed by a justice under section 508.

(8) Where, on an appeal from or review of any decision or matter of jurisdiction, a new trial or hearing or a continuance or renewal of a trial or hearing is ordered, a justice may issue either a summons or a warrant for the

arrest of the accused in order to compel the accused to attend at the new or continued or renewed trial or hearing.

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810(1) An information may be laid before a justice by or on behalf of any person who fears on reasonable grounds that another person will cause personal injury to him or her or to his or her spouse or child or will damage his or her property.

(2) A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division.

(3) The justice or the summary conviction court before which the parties appear may, if satisfied by the evidence adduced that the person on whose behalf the information was laid has reasonable grounds for his or her fears,

(a) order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, and comply with such other reasonable conditions prescribed in the recognizance, including the conditions set out in subsections (3.1) and (3.2), as the court considers desirable for securing the good conduct of the defendant; or

(b) commit the defendant to prison for a term not exceeding twelve months if he or she fails or refuses to enter into the recognizance.

(3.1) Before making an order under subsection (3), the justice or the summary conviction court shall consider whether it is desirable, in the interests of the safety of the defendant or of any other person, to include as a condition of the recognizance that the defendant be prohibited from possessing any firearm or any ammunition or explosive substance for any period of time specified in the

recognizance and that the defendant surrender any firearms acquisition certificate that the accused possesses and, where the justice or summary conviction court decides that it is not desirable, in the interests of the safety of the defendant or of any other person, for the defendant to possess any of those things, the justice or summary conviction court may add the appropriate condition to the recognizance.

(3.2) Before making an order under subsection (3), the justice or the summary conviction court shall consider whether it is desirable, in the interests of the safety of the informant, of the person on whose behalf the information was laid or of that person's spouse or child, as the case may be, to add either or both of the following conditions to the recognizance, namely, a condition

- (a) prohibiting the defendant from being at, or within a distance specified in the recognizance from, a place specified in the recognizance where the person on whose behalf the information was laid or that person's spouse or child, as the case may be, is regularly found; and
- (b) prohibiting the defendant from communicating, in whole or in part, directly or indirectly, with the person on whose behalf the information was laid or that person's spouse or child, as the case may be.

(4) A recognizance and committal to prison in default of recognizance under subsection (3) may be in Forms 32 and 23 respectively.

(5) The provisions of this Part apply, with such modifications as the circumstances require, to proceedings under this section.

Constitution Act, 1867

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and Good Government of

Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say, --

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27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

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92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say, --

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14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal jurisdiction, and including Procedure in Civil Matters in those Courts.

Constitution Act, 1982

(i) Part VII

52(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

(ii) Schedule B (Canadian Charter of Rights and Freedoms)

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

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11. Any person charged with an offence has the right

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(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal . . .

IV. POSITIONS OF THE PARTIES

The Crown

Crown counsel submits that the office of the Crown Attorney not only has the right but also the duty pursuant to the provisions of the Crown Attorneys Act, as well as the common law, to assess the validity of the private complaints herein and to intervene in the prosecution, if necessary. This can only be done if access to the record before the justice of the peace is provided. Specifically, he refers to s. 12 of that Act which, he submits, requires that the justice deliver "all papers" relating to the information to the Crown Attorney.

The Accused

Counsel for the four accused persons support the position advanced by the Crown counsel, specifically in the manner that it reflects their constitutional entitlement to disclosure of the statements made by the informants and witnesses, if any, at the inquiry conducted pursuant to s. 507 of the Code: see R. v. Stinchcombe, [1991] 3 S.C.R. 326, 68 C.C.C. (3d) 1.

The Respondent Justices of the Peace and Provincial Court Judges

The respondents maintain that the material sought by the

Crown in these cases is not covered by s. 11 or s. 12 of the Crown Attorneys Act. Alternatively, if it is, the requested access would offend the requirements that mandate an in camera hearing under s. 507 of the Code. Alternatively, the requested access compromises principles of judicial independence. In so far as the argument of the four accused persons is concerned, the respondents submit that any request for disclosure at this time is premature and can only be initiated before the trial judge. Finally, they argue that this court, in the exercise of its discretion, should decline to make the requested order.

The Informant, M.B.

Counsel for M.B. joins the respondents specifically in relation to the argument that the disclosure request is premature.

V. ANALYSIS

I will defer my consideration of the applicability of the Crown Attorneys Act for the time being. Turning to the submission that disclosure of the requested information would offend the in camera nature of the procedure mandated by s. 507 of the Code, I am unable to agree with it. In *Southam Inc. v. Coulter* (1990), 75 O.R. (2d) 1, 60 C.C.C. (3d) 267 (C.A.), the court held that the pre-inquiry undertaken pursuant to that provision was required to be held in camera because public access could very well lead to harmful consequences to the individual named in the information based on outrageous or unfounded allegations of misconduct. Until such time as there was an "accused", that is, once process had issued, the paramount concern was the protection of the "innocent" as defined by the Supreme Court of Canada in *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175, 65 C.C.C. (2d) 129. I cannot see how this argument entitles me to find that the in camera nature of the pre-inquiry survives the issuance of process. The status of the targeted individual has changed dramatically and he or she has become an accused person. It would appear that an accused is entitled to access to the supporting material presented at the pre-inquiry once he or she has appeared to answer the charge: see *Southam Inc. v. Coulter*,

supra, at p. 10 O.R., p. 276 C.C.C., citing with approval the comments of the Quebec Court of Appeal in *Quebec (Attorney General) v. Cohen* (1976), 32 C.C.C. (2d) 446, reversed on other grounds, [1979] 2 S.C.R. 305, 46 C.C.C. (2d) 473. It would be incongruous to permit access by the defence at this stage and deny it to the prosecution. In any event, I fail to see how provision of the demanded material to the agent of the Minister responsible for the administration of justice in the province could be classified as a breach of confidentiality when the object of the exercise provided for by the pre-inquiry is to place alleged criminal conduct before the criminal courts of that jurisdiction. The argument of the respondents on this point becomes oxymoronic. I cannot accept it.

Turning to the submissions based on principles of judicial independence, I am not satisfied that they are sufficient to deny access to the Crown in this case. Such principles are, no doubt, fundamental to a proper balance of the separation of powers in both a classical sense as originally propounded by Montesquieu and in the modern Charter context, as reflected in the constitutional mandate in s. 11(d) of a hearing conducted by "an independent and impartial tribunal". However, without in any way derogating from those very important principles, I fail to see how the prosecutor's access to the pre-inquiry material in any way impinges upon judicial independence or integrity. Once a warrant or summons has issued, the judicial functions connected with the charging process have terminated and, subject to procedures such as the issuance of investigatory mechanisms, for instance as a search warrant, the judicial officer's capacity is that of a passive adjudicator. He or she has no active investigative role like the model that prevails in the European system, for example, the French "juge d'instruction". That responsibility in the common law tradition abides with the Attorney General and is reflected in s. 92, para. 14 of the Constitution Act, 1867. I am persuaded that the Crown Attorneys Act in general and provisions such as s. 11(d) thereof are a proper exercise of that provincial power: see *Bradley v. R.* (1975), 9 O.R. (2d) 161, 24 C.C.C. (2d) 482 (C.A.). I fail to see how the Attorney General's agent can fulfil this constitutionally mandated function of overseeing private prosecutions without having access to the material that

is requested. The position advanced by the respondents herein frustrates that public interest function and accordingly is, in my opinion, without merit. It must never be forgotten that the Crown Attorney's role and responsibilities are ones that are quasi-judicial in nature: see *Boucher v. R.*, [1955] S.C.R. 16 at p. 21, 110 C.C.C. 263. On this note, it would appear that one of the main reasons for the original statute governing their responsibilities, the Upper Canada Crown Attorneys Act (1857), 20 Vict., c. 59, was the prevention of malicious prosecutions by private prosecutors: see Paul Romney, Mr. Attorney -- The Attorney General for Ontario in Court, Cabinet and Legislature 1791-1899 (Toronto: University of Toronto Press for the Osgoode Society, 1986), at pp. 214-15.

The obligation of the Crown to provide disclosure of all relevant material to the defence fortifies my considerations dictating Crown access to the documentation sought in this case. All of the allegations before the provincial court are hybrid offences and, pursuant to the provisions of the Interpretation Act, R.S.C. 1985, c. I-21, s. 34(1)(a), are deemed indictable offences until such time as the Crown elects to proceed by way of summary conviction. The disclosure obligations of the Crown authorities have been summarized by Sopinka J. as follows:

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: *R. v. Stinchcombe*, supra, at p. 339; *R. v. Egger* (1993) 2 S.C.R. 451. 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.

(Emphasis in original)

See R. v. Chaplin, [1995] 1 S.C.R. 727 at pp. 739-40, 26 C.R.R. (2d) 189.

As well, the Crown is required to exercise due diligence in seeking out material that is clearly relevant and disclosable to the defence: see R. v. V.(W.J.) (1992), 72 C.C.C. (3d) 97 (Nfld. C.A.). It is beyond question that the statements of the informant/private complainant and any witnesses heard at the pre-inquiry are, by definition, relevant and should be disclosed forthwith. Any private interest in confidentiality as to these statements is far outweighed by the public interest in a full Crown assessment of the allegations and a disclosure process that accords with the principles of fundamental justice dictated by s. 7 of the Charter. Because the very nature of the disclosed material may impact upon an accused person's election as to the mode of trial, I am not persuaded that access to the requested material by the defence should be limited to a determination by the trial judge. To be meaningful, disclosure must be available to the defence early on in the process. It could very well impact upon the pre-trial status of the accused pending trial, that is, whether he or she is detained in custody or not. Delayed disclosure could result in a denial of justice. I find nothing in R. v. Stinchcombe, [1991] 3 S.C.R. 326, 18 C.R.R. (2d) 210, to be inconsistent with these observations.

Having assessed these principles of policy, I return to the words of the Crown Attorneys Act. I am satisfied that the material sought by the Crown in this case, being the statements of the informants/private complainants and any witnesses at the pre-inquiry, are subsumed in the words of s. 12, "all papers connected therewith". I appreciate that I have a discretion as to whether or not mandamus should issue in this case. Because of the importance of the issues to which I have already referred, I am satisfied that the order requested should issue

against the two justices of the peace herein. As indicated during oral submissions, I see no reason to bind the provincial court judges because they are not caught by the duty imposed by s. 12 of the Crown Attorneys Act in these specific cases.

All counsel were in agreement that, if the Crown was successful in this application, I would hear further submissions relating to the mechanics of carrying out the order. Accordingly, the trial coordinator at Newmarket can be contacted to provide a date convenient to all sides when that can take place.

VI. CONCLUSION

For the aforementioned reasons, mandamus will issue against Justice of the Peace Mews and Justice of the Peace Hodson-Walker in a form to be determined on the date to be fixed by the trial co-ordinator.

Application allowed.