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COURT OF APPEAL FOR ONTARIO

RE: HER MAJESTY THE QUEEN (Appellant) -and- RAMESHWARAN
RAJALINGAM (Respondent)

BEFORE: McMURTRY C.J.O., DOHERTY and LANG JJ.A.

COUNSEL: Mary-Ellen Hurman for the appellant

Jonathan Dawe for the respondent

HEARD: September 17, 2004

RELEASED ORALLY: September 17, 2004

On appeal from the order of Justice Arthur C. Whealy of the Superior Court of Justice dated January 21, 2003.

ENDORSEMENT

[1] The trial judge stayed the criminal charges against the respondent on the basis that they would constitute an abuse of process and on the basis that the disclosure failings by the Crown breached s. 7. This was a discretionary decision by the trial judge. We can interfere with the exercise of his discretion only if he materially misapprehended relevant evidence, misdirected himself as to applicable law or was so "clearly wrong" that his decision amounted to an injustice.

[2] The trial judge's finding that the prosecution approach to disclosure in this case was "disorganized", "haphazard" and "indifferent" was fully supported by the evidence.

[3] While some judges might have held that the prosecution conduct in this case, while worthy of ~~condemnation, did not warrant a stay of proceedings, we cannot say that the trial judge's decision to order a~~ stay was "clearly wrong", thereby warranting our intervention.

[4] The appeal must be dismissed.

Signed: "R. Roy McMurtry C.J.O."

"Doherty J.A."

"S.E. Lang J.A"