



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **Reconsideration Order R-980036**

**Appeal P-9700232**

**Order P-1561**

**Ministry of the Attorney General**



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This order sets out my decision on the reconsideration of Order P-1561 (issued May 11, 1998).

## **BACKGROUND:**

In 1993, Mr. A and Mr. B confronted Mr. C with a gun. This resulted in a series of events which led to Mr. A's death. Mr. C was originally charged with criminal negligence causing death and manslaughter in relation to Mr. A's death, but those charges were withdrawn. Mr. B was charged and convicted of a number of weapons offences in connection with this incident.

Mr. A's family is suing the appellant, an insurance company, to recover the death benefit under Mr. A's life insurance policy. The appellant has denied liability on the basis that the death of the insured occurred as a result of his involvement in criminal activity. The appellant is seeking information regarding the circumstances of Mr. A's death in order to defend itself in the civil action.

## **NATURE OF THE APPEAL:**

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Attorney General (the Ministry). The request was for access to records relating to the circumstances surrounding Mr. A's death.

The Ministry identified 1951 pages of responsive records consisting of general correspondence, internal memos, documentary evidence, pre trial brief, Crown brief, court documents, preliminary inquiry transcript, photographs and a video. The Ministry denied access to all responsive records pursuant to the following exemptions:

- solicitor-client privilege - section 19
- invasion of privacy - section 21

The appellant appealed the decision of the Ministry to deny access to the records.

This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties.

On May 11, 1998 I issued Order P-1561 upholding the decision of the Ministry of the Attorney General not to disclose to the appellant the records or parts of records which contain personal information, not to disclose certain specified records containing information which I found was subject to the exemption at section 19 of the Act, and ordering the Ministry to disclose the remaining records or parts of records to the appellant. At page 7 of Order P-1561, I said:

Because the Ministry has not indexed the records or numbered the pages, I am unable to specify which of the records do not contain personal information in this order. I will remain seized of the issue of identification of personal information should the Ministry experience some difficulty.

I disposed of the issue of the identification of personal information in this fashion because I had not been provided with copies of the records at issue in the appeal in accordance with the normal practice of this office and of government institutions dealing with this office, but was required to

inspect the originals of these documents on the Ministry's premises, without the benefit of a comprehensive index, or even numbered pages.

On May 29, 1998, the Ministry brought an application for judicial review of Order P-1561 alleging that I erred in law and exceeded my jurisdiction in my interpretation and application of sections 2, 19 and 21 of the Act. The Ministry maintains, as it did in the appeal, that all of the records at issue contain "personal information" and are subject to the exemption at section 21(1) of the Act.

In view of these developments and the position taken by the Ministry in the application for judicial review, as clarified in the Ministry's factum, it was apparent that no determination has been made in the appeal as to what records do or do not contain personal information. Accordingly, I concluded that I failed to conduct the inquiry required of me under section 54(1) of the Act to "decide the issues raised by the appeal" and rescinded Order P-1561. I also concluded that a defect of this nature rendered Order P-1561 a nullity and obliged me to engage in a full reconsideration, involving a fresh review of the issues before me at first instance. I invited the parties to rely on their original submissions, if they so chose, and allowed them to supplement the evidence and make further representations pertinent to the disposition of this matter in accordance with the Act. Additional representations were received from both the Ministry and the appellant.

## **RECORDS:**

The Ministry identified the responsive records by category in Appendix "A" to this order. Category H refers to duplicate copies of records found originally in Categories C and D.

Subsequent to Order P-1561, the Ministry numbered the pages of the records and provided this office with a copy of the records, with the exception of the videotape which I have already viewed on the premises of the Ministry. However, in order to proceed with the reconsideration a more comprehensive index was necessary. Attached as Appendix "B" to this order is the index created by this office.

In his representations, the appellant removed a number of records from the scope of the appeal, including all of the records in Categories E and H. I have designated the records removed by the appellant as "not at issue" in Appendix "B".

## **PRELIMINARY MATTERS:**

The record in Category A is identified as the transcript of the preliminary hearing of the prosecution of the weapons offences. The transcript indicates that this proceeding was subject to a publication ban. The Ministry has confirmed that the publication ban expired on conclusion of the trial, and is no longer in effect.

In its representations, the appellant has indicated that it would appreciate the opportunity to review the submissions of the Ministry, in particular the Ministry's list of the documents containing "personal information", and to make further submissions with respect to these documents. The Ministry submits that the entire record contains personal information. In view of the fact that the appellant was permitted to examine the records at issue subject to an

undertaking to maintain in strict confidence the content of these records, it is not necessary, in my view, to also permit him to review the Ministry's representations in this case.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

The appellant submits that personal information means information where the content of the information can be directly related to an identifiable individual and falls within the specified aspects of the individual, such as criminal history. The appellant has given examples of the records which he believes do not contain personal information, such as a photograph of the

accident scene. The appellant argues that if the photograph does not contain the body of the deceased, it does not contain personal information of any kind - that it is a photograph of a place. It submits that even if the photograph contains the body of the deceased, it remains what it was: a photograph of a place, albeit with the body of the deceased.

The Ministry, on the other hand, submits that the records relate to the criminal prosecution of Mr. B and Mr. C. The Ministry argues that the information is about these two men because it was "on the subject of" or "in connection with" or "relating to" their prosecution, and that these two men are "identifiable individuals".

Having reviewed the records, I find that they do not contain the personal information of the appellant.

I agree that the records relate to the criminal prosecutions of Mr. B and Mr. C. However, I do not accept the Ministry's argument that because the records are related to the prosecutions of Mr. B and Mr. C, and that Mr. B and Mr. C are "identifiable individuals", that each and every piece of information within the file necessarily qualifies as their personal information. At the same time, I do not accept the appellant's submission that a record which depicts Mr. A's body at the scene of the crime should be considered information about a place or an event as opposed to information about an individual.

In Order M-352, former Inquiry Officer John Higgins reviewed the different procedures for processing requests within the legislative scheme established by the Municipal Freedom of Information and Protection of Privacy Act. In the context of a request for records which contain the requester's own personal information, Inquiry Officer Higgins stated:

In order to give effect to the legislature's intention to distinguish between requests for an individual's own personal information and other types of requests, the Commissioner's office has developed an approach for determining whether Part I or Part II of the Act applies. In that approach, the unit of analysis is the **record**, rather than individual paragraphs, sentences or words contained in a record.

This approach has been applied in many past orders, and it is set out in detail in the October 1993 edition of *IPC Practices* entitled "Responding to Requests for Personal Information". That publication states, in part, as follows:

Generally, an individual seeking access to a record that contains his or her personal information has a greater right of access than if the record does not contain any such information. ... Part II of the municipal Act oblige[s] institutions to **consider** whether records should be released to an individual, regardless of the fact that they may otherwise qualify for exemption under the legislation.

In my view, the record-by-record analysis best reflects the special character of requests for records containing one's own personal information, and it provides a practical, uniform procedure which all institutions can apply in a consistent manner.

It requires institutions to analyze records which are identified as responsive to a request in order to determine whether any of them contain personal information pertaining to the requester. For records which are found to contain the requester's own personal information, the institution's access decision is to be made under Part II of the Act. For records which do not contain the requester's own personal information, the decision would be under Part I.

This approach has been adopted by the Commissioner's office and applied in many past orders. In my view, it is consistent to use the same unit of analysis when considering a request for records which do not contain the requester's own personal information, but do contain the personal information of others. Accordingly, I have reviewed each record individually and considered whether it contains personal information, and to whom that personal information relates.

### **Category A**

The record in Category A is the preliminary inquiry evidence of Mr. C, given during the prosecution of Mr. B. This record documents the examination in-chief and cross-examination of Mr. C who was, in this case, a witness for the prosecution. This record contains information about Mr. A, Mr. B, Mr. C and various other individuals mentioned during the testimony. This information falls within paragraphs (b), (e), (g) and (h) of the definition of personal information found in section 2(1) of the Act.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 21(1)(f) of the Act reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [See John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767].

A section 21(3) presumption can be overcome if there is a finding under section 23 of the Act that a compelling public interest exists in the disclosure of the record which clearly outweighs the purpose of the section 21 exemption.

The Ministry submits that section 21(3)(b) applies in the circumstances of this appeal. The appellant argues that section 21(2)(d) is relevant. In my view, sections 21(2)(f) and 21(3)(a) are also relevant in the circumstances of this appeal. These sections read:

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
  - (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
  - (f) the personal information is highly sensitive;
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
  - (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
  - (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The appellant also submits that the records should be disclosed because they have been adduced as evidence in a public court and there is a public interest relating to the adducing of evidence in court, particularly information that has previously been adduced in a criminal proceeding.

The records do not contain the personal information of the appellant. Therefore the exemption under consideration is section 21(1), which applies **unless** it is established that disclosure would not be an unjustified invasion of personal privacy.

This record does not contain the type of information described in section 21(3)(a), and this section does not apply. This record also was not compiled and is not identifiable as part of an investigation into a possible violation of law, and I find that the presumption in section 21(3)(b) does not apply either.

As stated above, Mr. A's family is suing the appellant, an insurance company, to recover the death benefit under Mr. A's life insurance policy. The appellant has denied liability on the basis that Mr. A's death occurred as a result of his involvement in criminal activity. The transcript in Category A contains details of the events which took place prior to Mr. A's death, and relates Mr. C's observations of the Mr. A's activities on that particular day. In my view, this information is relevant to the determination of whether the death of the insured occurred as a result of his involvement in criminal activity. Accordingly, I find that section 21(2)(d) is relevant.

As far as the appellant's arguments that this information is a matter of public record are concerned, former Commissioner Tom Wright considered a similar issue in Order 180, and I feel that some of his comments are relevant and applicable in the current appeal. In that order, Commissioner Wright quoted from the decision in United States Department of Justice, et al., v. Reporters' Committee for Freedom of the Press et al. 109 S. Ct. 1468 (1989), where the United States Supreme Court considered the question of access to criminal identification records or "rap sheets" which contain descriptive information as well as history of arrest, charges, convictions and incarcerations. Much of the rap sheet information is a matter of public record. In that decision, Justice Stevens, speaking for the majority, made the following statements at page 1477:

... [T]he issue here is whether the compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information. Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives and local police stations throughout the country and a computerized summary located in a single clearing house of information.

At page 1480, Justice Stevens referred to an earlier decision of the Supreme Court in Whalen v. Roe 97 S. Ct 869 at page 872 where the Court stated:

In sum, the fact that 'an event is not wholly private' does not mean that an individual has no interest in limiting disclosure or dissemination of the information.

I agree with the comments made by Justice Stevens and adopted by Commissioner Wright. However, in my view, it does not necessarily follow that an easily retrievable copy of this testimony should be disclosed under the Act, particularly where the transcript itself indicates that this proceeding was subject to a publication ban.

It is clear to me that disclosure of Mr. C's personal account of his involvement in the incident which led to Mr. A's death and criminal charges being laid against Mr. B and Mr. C would likely cause feelings of excessive personal distress to the individuals named in the record, as well as to Mr. A's family. Accordingly, given the subject matter and the intimate detail contained in the record, I find that the personal information is properly considered "highly sensitive", and section 21(2)(f) is also relevant in the circumstances of this appeal.

Having considered the circumstances, I find that the considerations under section 21(2)(d) are not sufficient to outweigh the privacy interests of Mr. A, Mr. B, Mr. C and the various other individuals mentioned during the testimony. I am not convinced that the appellant requires the personal information in order to prepare for the proceeding or to ensure an impartial hearing, and it appears that other mechanisms for disclosure are available to the appellant. Accordingly, my conclusion is that the record in Category A is properly exempt under section 21 of the Act.

## **Category B**

The records in Category B comprise the Pre-Trial Brief prepared in connection with the charges laid against Mr. B and Mr. C. It consists of a synopsis of the offences, a witness list, witness



statements and photographs. The synopsis, witness list and statements contain information about Mr. A, Mr. B, Mr. C, and/or various other witnesses mentioned therein. This information qualifies as personal information of these individuals under paragraphs (a), (b), (d), (e), (g) and (h) of the section 2(1) definition.

The photographs are found on pages 53-56. The photographs on pages 55 and 56 contain images of Mr. A's body at the accident scene. In my view, these photographs contain information about Mr. A alone, and qualify as his personal information.

The photographs on pages 53 and 54, however, contain images of the accident scene only. In my view, these photographs neither contain nor reveal any information about Mr. A, Mr. B, Mr. C or any other identifiable individual. There is nothing inherently personal about these photographs. Essentially, the visual information is not "about" an identifiable individual. The fact that they are located within the pre-trial brief prepared in relation to charges laid against Mr. B and Mr. C is not, in my view, sufficient to render the information contained in these records personal as defined in the Act. Accordingly, I find that because the photographs on pages 53 and 54 do not contain personal information, they cannot qualify for exemption under section 21 of the Act.

The witness statements and the photographs on pages 55 and 56 were taken by the police during their investigation, and I find that these records were compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, the presumption in section 21(3)(b) applies. This presumption does not apply to the synopsis or the witness list, which would have been prepared by the police subsequent to their actual investigation, for the Crown's prosecution.

Again, for the same reasons as in Category A, I find that sections 21(2)(d) (fair determination of rights) and 21(2)(f) (highly sensitive) are relevant considerations. However, I find that section 21(2)(d) carries significantly less weight in respect of the witness list and the photographs of Mr. A's body at the accident scene (pages 55 and 56), as this information does not relate as directly to the question of whether Mr. A was involved in criminal activity at the time of his death.

With respect to the witness statements and the photographs on pages 55 and 56, as noted previously a factor in section 21(2) cannot rebut a presumption. As this is not information to which section 21(4) applies, I find that disclosure of the witness statements and the photographs on pages 55 and 56 would be an unjustified invasion of personal privacy and they are exempt under section 21(1).

With respect to the synopsis and the witness list, which do not fall within the presumption, having considered the circumstances, I find that the considerations under section 21(2)(d) are not sufficient to outweigh the privacy interests of Mr. A, Mr. B, Mr. C, and/or various other witnesses mentioned therein. Accordingly, my conclusion is that the records in Category B, with the exception of the photographs on pages 53 and 54, are properly exempt under section 21 of the Act.

### **Category C**

The records in Category C are described as the Crown brief for prosecution of Mr. B. Contained in a separate envelope are 589 pages of documentary evidence, including telephone records, which were compiled for the prosecution.

The brief contains a synopsis of offences, witness statements and interview reports, technical accident investigation reports, police informations, information relating to the vehicles involved in the incident, will says, police officers' notes, an indictment and a witness list. With the exception of the technical accident investigation reports, each of these records contains information about Mr. A, Mr. B, Mr. C and/or various other individuals mentioned therein. In my view, this information qualifies as personal information under paragraphs (b), (c), (d), (e), (g) and (h) of the section 2(1) definition.

Although there is no identifying information in the technical accident investigation reports, in my view they do reveal information about Mr. A and Mr. C, as they document the movement of the vehicles under the control of each of these men. Accordingly, I find that these records also contain personal information of Mr. A and Mr. C.

The documentary evidence in Category C consists of copies of records seized as a result of the execution of search warrants, and copies of the actual search warrant documentation. Most of these records contain identifying information and, in my view, these records qualify as personal information about Mr. A, Mr. B, Mr. C and/or others under paragraphs (a), (b), (c), (d) and (h) of the section 2(1) definition. There is also a warrant for a post mortem examination of Mr. A and the final Autopsy Report, which I find to be information about Mr. A. This information qualifies as personal information of Mr. A under paragraphs (a), (b), (d) and (h) of the section 2(1) definition.

Although some of the evidence in the envelope does not contain identifying information (for example, copies of pages of notes), it is my view that personal papers which were seized by the police during a search of an individual's private residence or from the property of a deceased individual are inherently personal. Accordingly, I find that these records also qualify as personal information under the section 2(1) definition.

Of the information in Category C, I find that the final autopsy report contains information which relates to a medical diagnosis, condition or evaluation. The requirements of the section 21(3)(a) presumption, accordingly, have been met.

I am also satisfied that the witness statements and interview reports, technical accident investigation reports, information relating to the vehicles involved in the incident and the police officers' notes were compiled and are identifiable as part of the police investigation into a possible violation of law. Accordingly, I find that the requirements of the section 21(3)(b) presumption have been met.

The synopsis (pages 3-4), informations, the indictment and the witness list were not compiled as an identifiable part of the law enforcement investigations conducted by the Police. Accordingly, these records do not fall within the section 21(3)(b) presumption. Again, however, both section 21(2)(d) (fair determination of rights) and section 21(2)(f) (highly sensitive) are relevant considerations.

With respect to the autopsy report, witness statements and interview reports, technical accident investigation reports, information relating to the vehicles involved in the incident and the police officers' notes, as noted previously a factor in section 21(2) cannot rebut a presumption. As this is not information to which section 21(4) applies, I find that disclosure of these records would be an unjustified invasion of personal privacy and they are exempt under section 21(1).

With respect to the synopsis, informations, indictment and the witness list, which do not fall within the presumption, having considered the circumstances, I find that the considerations under section 21(2)(d) are not sufficient to outweigh the privacy interests of Mr. A, Mr. B, Mr. C, and/or various other individuals mentioned therein. Accordingly, my conclusion is that the records in Category C are properly exempt under section 21 of the Act.

### **Category D**

The records in Category D are described as the Crown brief for the prosecution of Mr. C. The brief is set out in 5 volumes (a total of 539 pages). The brief contains will says, witness statements, accident reports, statements by police officers and police officer's notes. Contained in a separate envelope are 163 photographs of the accident scene, as well as a video of the accident scene.

Pages 1-79 are copies of photographs of the area around the accident scene. There are two photographs per page on pages 1-74, four photographs per page on pages 75-78, and one photograph on page 79. They range in detail from aerial photographs which, in my view, are clearly not personal, to photographs taken during the autopsy of the victim, which I consider to be clearly personal. In between these two extremes are photographs of the vehicles (interior and exterior), the victim's clothing and possessions, and ground level photographs taken of the area around the accident scene. Having reviewed each photograph and carefully considered the nature of each, I find that the photographs on pages 1, 2 (top), 3, 4, 5 (top), 6 (top), 20 (bottom), 21 - 23, 27 (bottom), 28, 29, 30 (top), 34 - 48, 49 (top), 50 - 63 (top), 65 (bottom), 66 (bottom), 67 (top), 68 (bottom), 70 (top) and 71 - 73 are photographs of the area around the accident scene (aerial, ground level, inside and outside of buildings) with no identifiable individuals visible and the exterior of each vehicle. These photographs, in my view, do not contain information which qualifies as personal information, nor would they reveal any personal information of any identifiable individual. These records, accordingly, do not qualify for exemption under section 21 of the Act.

Similarly, the videotape contains views of the accident scene with no identifiable individuals visible. This videotape, in my view, does not contain information which qualifies as personal information, nor would it reveal any personal information of any identifiable individual. This record, accordingly, does not qualify for exemption under section 21 of the Act.

The remaining photographs depict the accident scene with individuals visible, the victim at the accident scene, the victim's autopsy, the victims possessions and clothing, the interiors of the vehicles, fingerprints at the accident scene and the firearm. These photographs contain images and information which, in my view, are about identifiable individuals and do qualify as personal information under paragraphs (a), (c), (d), and (h) of the definition.

Volume 1 of the brief contains cover pages (80-83), a synopsis (84-86), an outline of the investigation (87-96), statements of the accused (97-110), Ministry of Transportation information about the two vehicles (111-112, 121), criminal history information respecting the two accused and the victim (113-120), undertakings by the two accused (122-123), and the Coroner's Investigation Statement and final autopsy report (124-132).

Volume 2 contains cover pages (133-134), table of contents (135), list of police officers and medical personnel and details of their involvement (136-138), Will Say statements (184-248), a Vehicle Investigation Report (249-250) and police officers' notes (251-326).

Volume 2B contains a cover page (327), police officers' notes (328-383, 390-485) and toxicology information (384-389).

Volume 3 contains cover pages (486-487), a list of witnesses and their involvement (488-494), witness interview reports (495-497, 503-556) and police officers' notes (498-502).

Volume 4 contains cover pages (557-558), search warrant information (559-640) and property reports (641-662).

Having carefully reviewed pages 80-662, I am satisfied that each contains information about either Mr. A, Mr. B, Mr. C, and/or another identifiable individual. This information qualifies as personal information under paragraphs (a), (b), (d), (e), (g) and (h) of the definition.

Of the information in Category D, I find that the Coroner's Investigation statement, the final autopsy report and the toxicology information contain information which relates to a medical diagnosis, condition or evaluation. The requirements of the section 21(3)(a) presumption have, accordingly, been met.

I am also satisfied that the pictures which I have found contain personal information, the statements of the two accused, the Ministry of Transportation information about the two vehicles, criminal history information respecting the two accused and the victim, the witness statements and interview reports, police officers' notes, search warrant information, property reports, and the vehicle investigation report were compiled and are identifiable as part of the police investigation into a possible violation of law. Accordingly, I find that the requirements of the section 21(3)(b) presumption have been met.

The cover pages, a synopsis, outline of the investigation, table of contents, list of police officers and medical personnel and details of their involvement, Will Say statements and list of witnesses and their involvement were not compiled and are not identifiable as part of the law enforcement investigations conducted by the Police. Accordingly, these records do not fall within the section 21(3)(b) presumption. Again, however, both section 21(2)(d) (fair determination of rights) and section 21(2)(f) (highly sensitive) are relevant considerations.

With respect to the information which I have found satisfies the requirements of the presumptions found in sections 21(3)(a) and (b), as noted previously a factor in section 21(2) cannot rebut a presumption. As this is not information to which section 21(4) applies, I find that

disclosure of these records would be an unjustified invasion of personal privacy and they are exempt under section 21(1).

With respect to the remaining records, which do not fall within the presumption, having considered the circumstances, I find that the considerations under section 21(2)(d) are not sufficient to outweigh the privacy interests of Mr. A, Mr. B, Mr. C, and/or various other individuals mentioned therein. Accordingly, my conclusion is that the records in Category D, with the exception of those pictures which do not contain personal information, are properly exempt under section 21 of the Act.

### **Category F**

The information in Category F consists largely of correspondence between the Crown, Defence Counsel and the trial coordinator for both prosecutions. Within this category there are also notes of a telephone conversation and a telephone message. As well, pages 15-29 consist of correspondence between the Crown and the appellant.

A number of previous orders (eg. Orders M-384, M-444, M-1093, M-1109 and P-1457) have held that the withholding of personal information relating to an individual other than the requester, in circumstances where the person requesting the information originally supplied the information, would lead to an absurd result, and disclosure of this information would not result in an unjustified invasion of personal privacy. I find that the rationale for this conclusion is applicable to the withheld information on pages 15-29, and this information is not exempt under section 21.

The remaining records relate to details of the prosecutions of Mr. B and Mr. C. The letters range from details of scheduling hearing dates to issues of representation and disclosure. Each letter contains identifying information of the accused and the charges laid against him. In my view, these records contain personal information of Mr. B and Mr. C under paragraphs (b) and (h) of the section 2(1) definition.

I am not satisfied that there is a sufficient link between the appellant's civil suit and the personal information in this correspondence to establish the application of section 21(2)(d). As stated above, the deceased man's family is suing the appellant, an insurance company, to recover the death benefit under the deceased man's life insurance policy. The appellant has denied liability on the basis that the death of the insured occurred as a result of his involvement in criminal activity. In my view, this personal information is not relevant to the determination of whether the death of the insured occurred as a result of his involvement in criminal activity; in most cases it does not even relate to the insured and has no bearing on the appellant's civil suit. Accordingly, I find that it is therefore not "relevant to a fair determination of rights" for the appellant and section 21(2)(d) does not apply.

As no factors favouring disclosure have been established, I find that the records in Category F, with the exception of pages 15-29, are exempt under section 21(1).

### **Category G**

The records remaining at issue in Category G are two pages of police officers' notes (pages 2 and 4), a forensic laboratory report from the Firearms Section of the RCMP (page 27), three copies of a second forensic laboratory report from the same section of the RCMP (pages 22, 24 and 61), and a letter from the police to the Crown regarding the disclosure package for the prosecution of the charges laid against Mr. C.

The first half of the first page of police officers' notes contains information about an individual unrelated to the incident which led to Mr. A's death. I find that this information qualifies as the personal information of this other individual under paragraphs (d) and (h) of the section 2(1) definition. The second half of this page contains information about Mr. B, and qualifies as Mr. B's personal information under paragraph (h) of the definition. The second page contains information about Mr. C, and qualifies as Mr. C's personal information under paragraphs (b) and (h) of the definition. All of this information was compiled by the police during their investigation of possible violations of law, and I find that the presumption found in section 21(3)(b) applies. Accordingly, pages 2 and 4 are properly exempt from disclosure under section 21 of the Act.

The first forensic laboratory report relates to the examination of Mr. A's clothing, and I find that it reveals information about Mr. A. This information is inherently personal, and I find that it qualifies as Mr. A's personal information under paragraph (h) of the definition. The second forensic laboratory report relates to the mechanical examination of a firearm, and gives Mr. A's name as the reference for the report. Although certainly less inherently personal than the report of the examination of Mr. A's clothing, I find that the information in this record, while more about the firearm than about Mr. A, would reveal information about Mr. A, and this is sufficient to render the information contained in this record personal as it is defined in the Act. All of this information was compiled by the police during their investigation of possible violations of law, and I find that the presumption found in section 21(3)(b) applies. Accordingly, pages 22, 24, 27 and 61 are also properly exempt from disclosure under section 21 of the Act.

The letter contains information about Mr. B and Mr. C, and the names of the witnesses whose interview reports were included in the disclosure package. This, in my view, is information about Mr. B, Mr. C and the witnesses, and it qualifies as their personal information under paragraphs (b) and (h) of the definition. The section 21(3)(b) presumption does not apply to the letter, which would have been prepared by the police subsequent to their actual investigation, for the Crown's prosecution. However, given the context within which these individuals' names appear, I find that section 21(2)(f) (highly sensitive) is a relevant consideration.

The information contained in the letter would provide the appellant with names of witnesses who provided information to the police, whom it could pursue contact with to unearth more information relative to its case. Accordingly, I find this letter is relevant to a fair determination of its rights. However, in view of the circumstances, I find that the considerations under section 21(2)(d) are not sufficient to outweigh the considerations under section 21(2)(f). Accordingly, my conclusion is that the records in Category G are properly exempt under section 21 of the Act.

### **SOLICITOR-CLIENT PRIVILEGE**

The records which I have found not to qualify for exemption under section 21 are:

- photographs of accident scene on pages 53 and 54 in Category B;
- photographs on pages 1, 2 (top), 3, 4, 5 (top), 6 (top), 20 (bottom), 21 - 23, 27 (bottom), 28, 29, 30 (top), 34 - 48, 49 (top), 50 - 63 (top), 65 (bottom), 66 (bottom), 67 (top), 68 (bottom), 70 (top) and 71 - 73, and the videotape in Category D;
- Correspondence between the Crown and the appellant on pages 15-29 of Category F.

Section 19 of the Act consists of two branches, which provide the Ministry with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege; (Branch 1) and
2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the Ministry must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication, **and**  
(b) the communication must be of a confidential nature, **and**  
(c) the communication must be between a client (or his agent) and a legal advisor, **and**  
(d) the communication must be directly related to seeking, formulating or giving legal advice;

**OR**

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

[Order 49]

Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

1. the record must have been prepared by or for Crown counsel; **and**
2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

[Order 210]

The Ministry specifies that all of the records qualify for exemption under Branch 2 of section 19, as they were prepared by Crown counsel for use in litigation.

The correspondence between the Crown and the appellant (pages 15-29 in Category F) was not prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation. It was prepared by the appellant to initiate a request for access to information. Accordingly, I find that pages 15-29 in Category F do not qualify for exemption under section 19 of the Act and should be disclosed to the appellant.

Having reviewed the records, I am prepared to consider the photographs, which were taken by the police during their investigation, as records which were prepared for Crown counsel in contemplation of litigation or for use in litigation because of the context within which they appear. However, in Order P-1342 I considered whether Branch 2 of the section 19 exemption would be available in cases where a record would not qualify for solicitor-client privilege at common law under Branch 1. After reviewing the legislative history of section 19, I concluded (at page 8):

In essence, then, the second branch of section 19 was intended to avoid any problems that might otherwise arise in determining, for purposes of solicitor-client privilege, who the "client" is. It provides an exemption for all materials prepared for the purpose of obtaining legal advice whether in contemplation of litigation or not, as well as for all documents prepared in contemplation of or for use in litigation. In my view, Branch 2 of section 19 is not intended to enable government lawyers to assert a privilege which is more expansive or durable than that which is available at common law to other solicitor-client relationships.

In that case, four records were at issue. The Ministry claimed that the Branch 1 litigation privilege applied to two of the four, and that the Branch 2 litigation privilege applied to all four. I found that none of the records qualified for litigation privilege under either branch, since the relevant litigation had terminated and, alternatively, since the Ministry had waived any privilege which might have attached through disclosure to a third party. This order was sustained by the Ontario Court (General Division) Divisional Court on judicial review [Ontario (Attorney General) v. Big Canoe, [1997] O.J. No. 4495 (Div. Ct.)].

Despite this court decision, the Ministry submits that common law principles enunciated in cases such as Meaney v. Busby (1977), 15 O.R. (2d) 71 (H.C.), have no application to the disclosure of information by Crown counsel in the context of a criminal prosecution. The Ministry submits that when I superimposed the common law rules for solicitor-client privilege onto Branch 2 of the section 19 exemption, I failed to take into account the unique nature of a prosecution conducted by Crown counsel.

The principles regarding the disclosure of information in the possession of the Crown were developed by the Supreme Court of Canada in R. v. Stinchcombe (1991), 68 C.C.C. (3d) 1, [1991] 3 S.C.R. 326. These principles were summarized in R. v. O'Connor (1995), 103 C.C.C. (3d) 1 at 45 (S.C.C.) as follows:

In that case, it was determined that the Crown has an ethical and constitutional obligation to the defence to disclose all information in its possession or control, unless the information in question is clearly irrelevant or protected by a recognized form of privilege.



The Crown's duty to disclose information in its possession is triggered when a request for disclosure is made by the accused. When such a request is made, the Crown has a discretion to refuse to make disclosure on the grounds that the information sought is clearly irrelevant or privileged. Where the Crown chooses to exercise this discretion, the Crown bears the burden of satisfying the trial judge that withholding the information is justified on the grounds of privilege or irrelevance.

Whether the Crown would be obligated to disclose this information in the context of a criminal proceeding does not assist in the determination of whether the information would be subject to the laws of privilege.

The Ministry argues that the disclosure of the records in question could discourage prospective witnesses from co-operating with the Crown and the police. The Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions (the Martin Report) considered the sensitive nature of the records in the possession of Crown counsel and the harm that can result to the administration of justice if "disclosure materials" are improperly disseminated during a prosecution. The Ministry includes the following quote from page 180 of the Martin Report in its representations:

The Committee has heard of appalling instances where disclosure briefs containing highly sensitive material have been made publicly available: for example, the statement of a child complainant in an allegation of sexual assault subsequently circulated at the complainant's school. Or, in penitentiary investigations, statements of potential Crown witnesses have been posted on bulletin boards to be perused by the general inmate population. Occurrences of this type are, in the Committee's view, flagrant abuses of the right to disclosure. The devastating effect, which such conduct can have on the privacy or safety of the victims or witnesses concerned is obvious.

Of equal concern is the chilling effect which even isolated incidents of this type can have on potential witnesses. The administration of justice is highly dependent upon witnesses coming forward to provide information that will lead to the proper conviction and punishment of those who have committed crimes. For a witness, courtroom proceedings may be inconvenient, or even traumatic, in the best of circumstances. Therefore, even occasional misuse of disclosure materials could potentially persuade large numbers of already reluctant witnesses to refrain from co-operating for fear that they will suffer the consequences of similar misuse.

Solicitor-client privilege is not the only ground of privilege considered in the context of criminal disclosure, but it is the only one recognized under the section 19 exemption. In my view, the interests guarded by the other types of privilege are adequately protected by other exemptions within the Act (specifically sections 14, 20 and 21). So, while the Ministry argues under section 19 that the records deal with very sensitive matters, and that their disclosure would inhibit future witnesses from coming forward and co-operating with the police and the Crown Attorney's office, it is my view that the sensitivity issue is (and was in this case) adequately considered and addressed in sections 21(2)(f), 21(3)(a) and (b) of the Act.

The Ministry also argues that because the judicial review was dismissed on the basis that the Ministry had waived the privilege, not because litigation had terminated, that it is implicit in the Court's decision that the section 19 privilege did not end when the litigation ended because if it had there would be no need for the Court to consider the waiver issue.

In Ontario (Attorney General) v. Big Canoe, [1997] O.J. No. 4495 (Div. Ct.), the court found that the common law principle of waiver applies to Branch 1 and Branch 2 of section 19 of the Act. In my view, consistent with this Court decision, other common law principles which define the scope of solicitor-client and litigation privilege should apply equally to both branches. This preserves for government institutions the full scope of the privilege extended to private litigants.

Accordingly, I must consider whether the common law principles which define the scope of Branch 1 of the privilege, and apply equally to Branch 2, are present in the circumstances of this appeal in order to determine whether the photographs remaining at issue qualify for exemption under Branch 2 of section 19.

Aside from arguing that I erred in importing the common law principles governing privilege into Branch 2 of the exemption in Order P-1342, the Ministry has not argued that any of the records at issue in this appeal would survive the common law limitations to solicitor-client privilege.

- **Solicitor-Client Communication Privilege**

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.

Having reviewed the records for which section 19 has been claimed, I am satisfied that they are not direct communications between a solicitor and client, or their agents or employees. Accordingly, this part of the exemption does not apply.

- **Litigation Privilege**

Litigation privilege, often referred to as the "work product" or "lawyer's brief" rule, protects documents which are not direct solicitor-client communications, but which are "derivative" of that relationship. This includes communications between the solicitor or the client and third parties, documents generated internally by the solicitor or the client, or documents compiled for a lawyer's brief, where the dominant purpose for which they were created or obtained is existing or reasonably contemplated litigation. Litigation privilege applies only if the document was made or obtained with an intention that it be confidential in the course of the litigation.

The rationale for litigation privilege is to protect the adversary system of justice by ensuring a zone of privacy for counsel preparing a case for litigation [Hickman v. Taylor 329 U.S. 495 at 508-511 (1947); Strass v. Goldsack (1975), 58 D.L.R. (3d) 397 at 424-425 (Alta. C.A.); General Accident Assurance Co. v. Chrusz (1997), 34 O.R. (3d) 354 at 370 (Gen. Div.), leave to appeal granted (1997), 35 O.R. (3d) 727 (Gen. Div.)]. As the Ontario Court (General Division) Divisional Court explained in Ottawa-Carleton (Regional Municipality) v. Consumers' Gas Co. (1990), 74 D.L.R. (4th) 742 at 748:

The adversarial system is based on the assumption that if each side presents its case in the strongest light the court will be best able to determine the truth. Counsel must be free to make the fullest investigation and research without risking disclosure of his opinions, strategies and conclusions to opposing counsel. The invasion of privacy of counsel's trial preparation might well lead to counsel postponing research and other preparation until the eve of or during the trial, so as to avoid early disclosure of harmful information. This result would be counter-productive to the present goal that early and thorough investigation by counsel will encourage an early settlement of the case. Indeed, if counsel knows he must turn over to the other side the fruits of his work, he may be tempted to forego conscientiously investigating his own case in the hope he will obtain disclosure of the research investigations and thought processes in the trial brief of opposing counsel.

Under the litigation privilege or work product rule, a distinction has been drawn between "ordinary" work product (documents gathered from third parties, the document itself or factual information) and "opinion" work product (counsel's mental impressions, conclusions, opinions or legal theories), with the latter enjoying a heightened protection [R.J. Sharpe, "Claiming Privilege in the Discovery Process", Law Society of Upper Canada Special Lectures, 1984 (Richard DeBoo Publishers, 1984), pp. 175-177; In re Sealed Case, 676 F.2d 793 at 809-810 (U.S.C.A., Dist. Col., 1982); C.A.); Mancao v. Casino (1977), 17 O.R. (2d) 458 (H.C.)].

Having reviewed all of the records for which the section 19 exemption is claimed, I am satisfied that each was prepared or obtained for the dominant purpose of existing or reasonably contemplated litigation. I am also satisfied that each record was prepared or obtained with an intention that it be confidential in the course of the litigation.

The appellant recognizes the existence of a litigation privilege applicable to the Crown brief compiled for use by a Crown Attorney prosecuting criminal proceedings. It submits, however, that the privilege is limited by the principles of third party documents, waiver, termination and the public interest exception.

- **Loss of Privilege Through Termination of Litigation**

Litigation privilege ends with termination of the litigation for which the documents were prepared or obtained [Boulianne v. Flynn, [1970] 3 O.R. 84 at 90 (Co. Ct.); Meaney v. Busby (1977), 15 O.R. (2d) 71 (H.C.)]. The exception to this rule is where the policy reasons underlying the privilege remain, despite the end of the litigation. For example, privilege may be sustained in related litigation involving the same subject matter in which the party asserting the privilege has an interest [Carleton Condominium Corp. v. Shenkman Corp. (1977), 3 C.P.C. 211 (Ont. H.C.)]. In other words, the law will only give effect to the privilege while the purpose for its recognition continues to be served. Unlike solicitor-client communication privilege, the purpose of which is to protect against disclosures which could have a chilling effect on the solicitor-client relationship, the purpose of litigation privilege is to protect against disclosures which could have a chilling effect on the lawyer's preparation for the particular litigation, or any related litigation arising out of the same subject matter.

As indicated above, “opinion” work product, which consists of counsel’s mental impressions, conclusions, opinions or legal theories, enjoys a heightened protection over ordinary work product. In Order P-1561, I found that six pages of undated handwritten notes on lined paper, headed “matters to consider” in Category C (now numbered C-388-393) and two copies of a five-page letter dated March 15, 1994 from the Assistant Crown Attorney in Category G (now numbered G-73-77 and G-79-83) consisted of “opinion” work product and were exempt under section 19 of the Act. These records are no longer at issue, as the appellant has indicated it is not pursuing access to them. Having reviewed the photographs remaining at issue, I find that none consists of “opinion” work product.

The appellant refers to Manes & Silver, Solicitor-Client Privilege in Canadian Law (Toronto: Butterworths, 1993), where the authors explain that any communications made in contemplation of litigation cease to be privileged “upon completion of the original litigation.” [at p.210]. It also refers to Sopinka, Lederman and Bryant, The Law of Evidence in Canada (Toronto: Butterworths, 1992), where the authors make the following comments on the limited duration of litigation privilege:

Unlike solicitor-client communications, the privilege for third party communications in preparation for litigation does not last indefinitely. It ends with the litigation for which the reports or other communications were prepared subject to any undertaking of confidentiality. [at pp. 659-660]

All litigation involving the Crown is now at an end regarding these matters and, on the basis of the representations and the contents of the records, I am not satisfied that disclosure of these photographs will harm the adversarial process by hindering the investigation and preparation of future cases of this nature. Therefore, the rationale for litigation privilege is no longer present and, accordingly, I find that these records do not qualify for exemption under Branch 1 of section 19.

- **Waiver**

The appellant argues that litigation privilege is not applicable to information and records adduced in evidence in a court. It states:

The court’s process is at the pinnacle of publicity. It is statutorily required to be conducted in public, except where restrictive conditions warrant displacement of the presumption of publicity with respect to legal proceedings in court. There can be no litigation privilege concerning information and records adduced in evidence in court.

The appellant also cites a number of authorities, including:

- Courts of Justice Act, R.S.O. 1990, c. C.43, s. 135, which provides that, as a general principle, all court hearings shall be open to the public, unless the possibility of serious harm or injustice to any person justifies an exclusionary order.
  - Criminal Code, R.S.C. 1985, Chap. C-46, s. 486, which provides that any proceedings against an accused shall be held in open court, unless the interest of public morals, the
- [IPC Order R-980036/March 22, 1999]

maintenance of order or the proper administration of justice justifies the making of an exclusionary order.

- Canadian Encyclopaedic Digest, Release 3 (Carswell, August 1998) para. 1058, which provides that,

A privileged communication becomes a matter of public right, destroying the client's right of confidentiality concerning it, when it becomes a part of the public record in a proceeding.

- Manes & Silver, *supra*, which discusses the lack of privilege associated with communications made in open court at pp. 174-177. The authors state that:

Basically, communications which somehow enter the public domain lose the element of required confidentiality and are therefore not privileged.

It is well-settled that if a privileged communication occurs in open court or is contained in the transcript of the proceedings in open court, it becomes *publici juris*, and is not privileged. [at p.174]

- Worswick, Robson v. Worswick, [1888] 38 Ch. D. 370. In this case, the defendants had taken a transcript of shorthand notes of a proceeding in open court. The court held that "there can be nothing privileged or confidential in what passes in open Court" (at 372, North J.). As a result, no privilege attached to these notes.
- Rawstone v. Preston Corporation [1885], 30 Ch. D. 116. In this case, the plaintiff employed a shorthand writer to take notes of an arbitration, and later had the notes transcribed. The plaintiff objected to the production of the transcript of these notes at a subsequent proceeding on the ground of privilege. The court held that the transcript of the notes was not privileged, relying largely upon the fact that the events of the prior arbitration were exposed for anyone to see or record:

... the evidence was given and the speeches were made in the presence of the corporation and their advisers, who, if they had happened to have a shorthand writer in the room, could have had shorthand notes taken for themselves, which they would have a perfect right to use ... When the facts are stated it must be seen at once that the transcript does not come within any of the cases of privilege the principles of which are recognized ... [at 118, Kay J.]

- Frind v. Sheppard, [1940] O.W.N. 135 (H.C.J.). In this case, the plaintiff brought an application for the production of certain correspondence. The defendant objected to production on the ground of privilege. At a previous civil trial, however, the correspondence in question was read into the record and was a part of the reporter's notes. The Master therefore held that any privilege which may have attached to this correspondence was released when it became a part of the public record in the action.

- v. Bernardo [Evidence - Video Tapes - Restricted Public Access], [1995] O.J. No. 1472, May 29, 1995 (Gen. Div.). In this case, the Crown brought an application for an order preventing the public from viewing portions of videotape evidence which depicted in explicit detail the sexual assaults and rapes of four young girls. The accused and other interveners argued that limiting access to these tapes infringed certain rights under the Charter. The court allowed the application. LeSage A.C.J.O.C. accepted the submission that the “open justice” concept is the “foundation of our legal system and our democracy”, but recognized that the “open justice” concept is not absolute. The open court rule can be limited in certain circumstances. To determine whether access to the court or to court records should be limited, the court must balance the competing rights of the public and the media on one side, and those who wish to restrict access, on the other. In this case, LeSage A.C.J.O.C. found that the harm that flowed from the public display of the videotaped evidence far exceeded any benefit that would flow from public exposure of the sexual assaults.

The appellant also submits that disclosure of the Crown brief to defence counsel constitutes a waiver of solicitor-client privilege, including litigation privilege. In order for privilege to be maintained, the appellant argues that the Crown Attorney must use the Crown brief exclusively for the purposes of the criminal prosecution, and must not disclose its contents to adversarial parties such as the accused’s counsel. The fact that Crown practice and law mandates disclosure to the defence counsel does not perpetuate privilege, which resolutely requires maintenance of confidentiality with respect to material alleged to be litigation privilege.

The only records within the Crown material which remain at issue are the photographs taken by the police. It is not clear to me which of these was entered as evidence in the criminal trial. In any event, I have found that the effect of the end of litigation is that litigation privilege no longer extends to these records, and they do not qualify for exemption under section 19 of the Act.

## **PUBLIC INTEREST OVERRIDE**

As noted earlier, the appellant claims that the “public interest override” in section 23 of the Act applies in this case. This section states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

With respect to those records I found to be exempt under section 21 of the Act, in order for section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure; and second, this interest must clearly outweigh the purpose of the relevant exemption.

Section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

The appellant submits that the commencement of a criminal prosecution vitiates personal information rights, especially where the prosecution proceeds in open court. The appellant also submits that section 21(3)(b), while not specifying the time of inception or cessation of the

prosecution exemption referable to personal information, the provision reflects the public interest principle that rights of personal privacy must give way to the needs of the state and the administration of justice in regard to the adducing of evidence, even evidence of the most personal nature. The appellant states that the combined effect of the public interest and criminal prosecution exemption means that any information adduced in evidence by the Crown Attorney should be available to access requesters without regard to its character as personal information.

The Ministry simply submits, “s.23 of the Act is not applicable to the records in this case, as neither of the stated requirements have been met.”

In Order P-241, former Commissioner Tom Wright commented on the burden of establishing the application of section 23. He stated as follows:

The Act is silent as to who bears the burden of proof in respect of section 23. However, Commissioner Linden has stated in a number of Orders that it is a general principle that a party asserting a right or duty has the onus of proving its case. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by the appellant. Accordingly, I have reviewed those records which I have found to be subject to exemption, with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.

I agree with these comments and I have conducted an independent review of the records as counselled by former Commissioner Wright.

Having reviewed the records and the representations, I am not convinced that disclosure of the information which I have found to qualify for exemption under section 21 of the Act is necessary in order to advance the public interest in the administration of justice. In my view, the connection between the particular litigation and these issues is too remote to attract the application of section 23.

Section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. I am not satisfied that the appellant's interest in these records, which is essentially a private interest related to private litigation, outweighs the purpose of this exemption.

The appellant has failed to satisfy me that there is a compelling **public** interest in the disclosure of the particular personal information which is at issue in this appeal. Moreover, even if the public interest in disclosure were compelling, in my view, the appellant has not established that this interest is sufficient to outweigh the purpose of the section 21 mandatory exemption claim.

Accordingly, I find that section 23 does not apply in the circumstances of this appeal.

**ORDER:**

1. I uphold the Ministry's decision not to disclose to the appellant the records or parts of records which contain personal information.

2. I order the Ministry to disclose:

- photographs of accident scene on pages 53 and 54 in Category B;
- photographs on pages 1, 2 (top), 3, 4, 5 (top), 6 (top), 20 (bottom), 21 - 23, 27 (bottom), 28, 29, 30 (top), 34 - 48, 49 (top), 50 - 63 (top), 65 (bottom), 66 (bottom), 67 (top), 68 (bottom), 70 (top) and 71 - 73, and the videotape in Category D;
- Correspondence between the Crown and the appellant on pages 15-29 of Category F.

to the appellant by sending it a copy by **April 14, 1999**.

3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_ March 22, 1999



## APPENDIX "A"

### INDEX OF RECORDS AT ISSUE

| RECORD CATEGORY | DESCRIPTION   |
|-----------------|---|
| A               | Preliminary inquiry transcript of the prosecution of the weapons offences. The transcripts are 129 pages in length.   |
| B               | Pre-trial brief for both criminal cases assembled for the Crown to use during pre-trial negotiations. The negotiations were conducted in order to determine whether the respective prosecutions could be resolved without the need of a trial. The pre-trial brief is 56 pages long.  |
| C               | Crown brief for prosecution of the weapons offences. The brief contains will says, witness statements, accident reports, etc. and is 151 pages long. Contained in a separate envelope is 589 pages of documentary evidence, including telephone records, that was compiled for the prosecution.   |
| D               | Crown brief for the prosecution of the third man. The brief is set out in 5 volumes (a total of 539 pages). The brief contains will says, witness statements, accident reports, statements by police officers, police officer's notes, etc. Contained in a separate envelope are 163 photographs of the accident scene, as well as a video of the accident scene. |
| E               | Copies of documents filed in court for the prosecution of the weapons offences. These documents include a pre-sentence report and a copy of an application record.  |
| F               | Correspondence between the Crown, Defence Counsel and the trial coordinator for both prosecutions. The correspondence includes requests for disclosure, the scheduling of pre-trials and other court appearances as well as discussions regarding issues that arose in the course of the prosecution. These documents total 93 pages.                             |
| G               | Correspondence between the Crown and the police, between Crown Attorneys and memos to file. This group also contains the Crown's legal opinion concerning the decision not to proceed with the prosecution of the third man. These documents number 84 pages.   |
| H               | Duplicate copies of reports and statements that were part of the two Crown briefs.  |

## APPENDIX "B"

### DESCRIPTION OF RECORDS

|    | Category | Page #                              | Description  |
|----|----------|-------------------------------------|--|
| 1. | A        | Aa -Ac                              | Preliminary Inquiry Evidence of Mr. C - list of exhibits   |
|    |          | A1 - 126                            | Transcript   |
| 2. | B        | B1- 56                              | Pre-Trial Brief  |
|    |          | 3-5                                 | Synopsis   |
|    |          | 6-11                                | Witness list (name, address, telephone #, relationship to individuals involved, involvement and dated interviewed) |
|    |          | <b>Interview Statements - typed</b> |  |
|    |          | 12-15                               | Statement of Mr. C   |
|    |          | 16-22                               | Statement of Mr. B   |
|    |          | 23-25                               | Statement of Mr. B   |
|    |          | 26-27                               | Statement of Witness   |
|    |          | 28-29                               | Statement of Witness   |
|    |          | 30-33                               | Statement of Witness   |
|    |          | 34-35                               | Statement of Witness   |
|    |          | 36-37                               | Statement of Witness   |
|    |          | 38-39                               | Statement of Witness   |
|    |          | 40                                  | Statement of Witness   |
|    |          | 41                                  | Statement of Witness   |
|    |          | 42-43                               | Statement of Witness   |
|    |          | 44-45                               | Statement of Witness   |
|    |          | 46-49                               | Statement of Witness   |
|    |          | 50-52                               | Statement of Witness   |
|    |          | <b>Photocopies of Pictures</b>      |  |
|    |          | 53                                  | Pictures of outside of the house and kitchen   |
|    |          | 54                                  | Pictures of the outside of the house and surrounding area  |
|    |          | 55                                  | Pictures of truck and car after accident   |

|       | Category         | Page #   | Description  |  |
|-------|------------------|--|--|--|
|       |                  | 56   | Pictures of victim under truck   |  |
| 3.    | C                | 1-2  | Not requested  |  |
|       |                  | 3-4  | Synopsis   |  |
|       |                  | 5-6  | Not requested  |  |
|       |                  | 7-11   | Handwritten Statement from Mr. C   |  |
|       |                  | 12   | Technical Accident Investigation On-Scene Report (description of what happened with the vehicles involved in the accident) only names mentioned on the form are those of the offices involved in investigating the scene |  |
|       |                  | 13   | Technical Accident Investigation Data Summary Report (location of accident, number of persons involved/killed, charges) only names mentioned on the form are those of the officers                                       |  |
|       |                  | 14   | Technical Accident Investigation Scene Examination Record (weather, road conditions, settings) only officers names on the form   |  |
|       |                  | 15   | Technical Accident Investigation On-Scene Measurement Record (location, vehicle makes and plate numbers) only officers names   |  |
|       |                  | 16-21  | Technical Accident Investigation On-Scene Measurement Record Supplementary   |  |
|       |                  | 22   | Hand drawn map of accident scene - names of officers involved in the investigation   |  |
|       |                  | 23-29  | Handwritten Statement Form - Mr. B   |  |
|       |                  | 30-32  | Handwritten Statement Form - Mr. B   |  |
|       |                  | 33   | Partial handwritten statement  |  |
|       |                  | 34   | Information of police officer re: Mr. B  |  |
|       |                  | 35   | Information of police officer re: Mr. C  |  |
|       |                  | 36-37  | Selective print request - information relating to vehicles involved in the accident  |  |
|       |                  | <b>Statements or Interview Reports - handwritten</b> |  |  |
|       |                  | 38-40  | Interview Report - Witness   |  |
|       |                  | 41-43  | Statement of Witness   |  |
|       |                  | 44-45  | Interview Report   |  |
|       |                  | 46-50  | Interview Report   |  |
|       |                  | 51-52  | Interview Report   |  |
|       |                  | 53-57  | Interview Report   |  |
| 58-61 | Interview Report |  |  |  |
| 62-64 | Statement        |  |  |  |
| 65-66 | Interview Report |  |  |  |

|  | Category | Page #           | Description  |
|--|----------|------------------|--|
|  |          | 67-70            | Interview Report   |
|  |          | 71-72            | Statement  |
|  |          | 73-75            | Interview Report   |
|  |          | 76               | Note by police officer   |
|  |          | 77-78            | Interview Report   |
|  |          | 79-80            | Interview Report   |
|  |          | 81-82            | Interview Report   |
|  |          | 83-84            | Interview Report   |
|  |          | 85-86            | Interview Report   |
|  |          | 87               | Not requested  |
|  |          | <b>Will Says</b> |  |
|  |          | 88-94            | Will Say of S/Cst. Lebel   |
|  |          | 95-102           | Will Say of P.C. Norm Leblanc  |
|  |          | 103-107          | Will Say of P.C. Cayen   |
|  |          | 108-113          | Will Say of P.C. Godard  |
|  |          | 114-120          | Notes of G.H. Pasha  |
|  |          | 121-135          | Police officers' notes   |
|  |          | 136-146          | Interview Report   |
|  |          | 147-148          | Not requested  |
|  |          | 149              | Not requested  |
|  |          | 150-151          | Indictment   |
|  |          | 152-153          | List of witnesses  |
|  |          | 154              | Not requested  |
| <b>Volume 2 – Documentary evidence</b> |          |                  |  |
| 4.                                     | C        | 1                | List of 10 phone numbers along with names  |
|  |          | 2-5              | Not requested  |
|  |          | 6                | Information to obtain search warrant - Bell Mobility Cellular                    |
|  |          | 7                | Appendix "A" - items searched for (telephone number - for specified time period) |
|  |          | 8                | Appendix "B" - what the individual was charged with                              |
|  |          | 9-12             | Appendix "C" - reasons for search warrant  |

| Category | Page #  | Description  |
|----------|---------|--|
|          | 13-96   | Bell Mobility Cellular - Billed Usage  |
|          | 97-102  | Phone record   |
|          | 103-105 | Account Summaries  |
|          | 106-116 | Chargeable Messages and Account Summaries  |
|          | 116     | Not requested  |
|          | 117     | Information to obtain search warrant - Canadian Imperial Bank of Commerce            |
|          | 118     | Appendix "A" - items to be searched for  |
|          | 119     | Appendix "B" - what the individual is charged with                                   |
|          | 120-122 | Appendix "C" - reasons for search warrant  |
|          | 123     | Not requested  |
|          | 124-126 | copies of deposit and withdrawal slips   |
|          | 127     | On-line System Inquiry - account balance   |
|          | 128-129 | signature cards -  |
|          | 130-133 | Bank Statements - personal checking account  |
|          | 134-149 | copies of cancelled cheques  |
|          | 150     | Not requested  |
|          | 151-236 | Phone - Account summaries, chargeable messages, other charges or credits             |
|          | 237-259 | Phone - Account Summaries, chargeable messages                                       |
|          | 260-282 | Phone - Account summaries, chargeable messages                                       |
|          | 283-300 | Phone - account summaries, other charges or credits, chargeable messages,            |
|          | 301-323 | Phone - account summaries, chargeable messages, business office billing information, |
|          | 324-350 | Phone - account summaries, chargeable messages, business office billing information, |
|          | 351-358 | Phone - account summaries, chargeable messages,                                      |
|          | 359     | Warrant for Post Mortem Examination  |
|          | 360-367 | Riverside Hospital Final Report - Autopsy Final Report                               |
|          | 368-395 | Not requested  |
|          | 396     | photocopy of T.D. Bank withdrawal slip, and transaction receipt                      |
|          | 397     | copy of newspaper article  |
|          | 398-399 | Not requested  |

|  | Category | Page #  | Description   |
|--|----------|---------|---|
|  |          | 400-401 | photocopies of cheques Laurentian Bank of Canada and T.D. Bank  |
|  |          | 402     | Bail Deposit Slip   |
|  |          | 403-405 | photocopies of notes and business cards   |
|  |          | 406     | photocopy of Licensed Taxicab Driver with picture   |
|  |          | 407-408 | business card   |
|  |          | 409-410 | envelope letter   |
|  |          | 411     | card - in case of emergency   |
|  |          | 412     | Licence   |
|  |          | 414-415 | Vehicle plate permit  |
|  |          | 416-417 | Recognizance of Bail  |
|  |          | 418-420 | Bank Deposit slips, picture identification - receipts, On-line System Inquiry (Bank balance), business card |
|  |          | 421-425 | notes - phone numbers, addresses  |
|  |          | 426-427 | Revenue Canada - Notice of Assessment   |
|  |          | 428     | envelope with phone number on it  |
|  |          | 429-430 | Bell Mobility Cellular - account summary  |
|  |          | 431-433 | Revenue Canada - GST return   |
|  |          | 434     | Bell Canada envelope with phone number on it, and note  |
|  |          | 435     | Bell receipt  |
|  |          | 436-437 | Bell phone bill   |
|  |          | 438     | chargeable messages   |
|  |          | 439     | Fax cover sheet from Bell Collections   |
|  |          | 440-441 | Bell phone bill   |
|  |          | 442-443 | Bell Mobility Cellular - statement  |
|  |          | 444-445 | Statement of Assistance   |
|  |          | 446-447 | Chargeable messages   |
|  |          | 448-452 | Copies of notes - names, phone numbers, business card   |
|  |          | 452     | letter re: legal aid services   |
|  |          | 453     | Not requested   |
|  |          | 454     | Visa statement  |
|  |          | 455-458 | Not requested   |

|                        | Category | Page #  | Description  |
|------------------------|----------|---------|--|
|                        |          | 459-466 | Copies of notes from note book - names and phone numbers   |
|                        |          | 467-468 | Bell phone bill  |
|                        |          | 469     | Not requested  |
|                        |          | 470     | Statement  |
|                        |          | 471-472 | letter: reduction in financial aid   |
|                        |          | 473     | note - phone number  |
|                        |          | 474     | copy of cheque   |
|                        |          | 475     | note - names and phone number  |
|                        |          | 476     | Visa Statement   |
|                        |          | 477-490 | notes - names , addresses and phone numbers  |
|                        |          | 491     | Late payment notice  |
|                        |          | 492     | Visa Statement   |
|                        |          | 493     | copy of Health Card and note with club name and phone number   |
|                        |          | 494-495 | Statement of Account   |
|                        |          | 496     | copy of newspaper article  |
|                        |          | 497-498 | Receipt for phone and accessories plus copy of visa slip   |
|                        |          | 499-500 | letter   |
|                        |          | 501     | copy of envelope   |
|                        |          | 502     | Canadian Tire statement  |
|                        |          | 503     | Visa Statement   |
|                        |          | 504     | letter from Ministry of Transportation - Notice of Interview and Re-examination  |
|                        |          | 505     | copy of envelope   |
|                        |          | 506-528 | notes - names, phone numbers etc.  |
| <b>Volume 3</b>        |          |         |  |
| 5.                     | D        | 1-79    | Copies of Photographs - area around the accident scene, victim, items on the victim, vehicles involved, and other evidence |
| Homicide Investigation |          |         |  |
| 6.                     | D        | 80-83   | cover pages and index to Homicide investigation (volume 1)   |
|                        |          | 84-86   | Synopsis   |
|                        |          | 87-96   | Investigation outline  |
|                        |          | 97-100  | Statement of Mr. C   |

|    | Category           | Page #  | Description   |
|----|--------------------|---------|---|
|    |                    | 101-106 | Statement of Mr. B  |
|    |                    | 107-110 | Statement of Mr. B  |
|    |                    | 111-113 | Information on the vehicles involved from Ministry of Transportation                        |
|    |                    | 114-119 | Criminal record check   |
|    |                    | 120-121 | Information check on vehicles from Ministry of Transportation                               |
|    |                    | 122-123 | Recognizance of Bail  |
|    |                    | 124-132 | Coroner's Investigation Statement   |
| 7. | D                  | 133-134 | cover page to Homicide Investigation (volume 2A)  |
|    |                    | 135     | index to list Will Says and Notes of police officers  |
|    |                    | 136-138 | Police officer list and Medical personnel (name, rank and involvement in the investigation) |
|    | page numbering off | 184-193 | Will say of D/C Collard   |
|    |                    | 194     | Will say Cst. Laliberte   |
|    |                    | 195     | Will say D/Sgt Lackey   |
|    |                    | 196     | Will say Cst. Springer  |
|    |                    | 197-202 | Will say P.C. Godard  |
|    |                    | 203-216 | Will say P.C. Pasha   |
|    |                    | 217-224 | Will say P.C. Leblanc   |
|    |                    | 225-229 | Will say P.C. Brochu  |
|    |                    | 230-233 | Will say Sr. Cst. Matton  |
|    |                    | 234-237 | Will say P.C. Cayen   |
|    |                    | 238-241 | Will say S/Cst. Lebel   |
|    |                    | 242-243 | Will say D/C Lindsey  |
|    |                    | 244     | Will say P.C. Gilbert   |
|    |                    | 245-246 | Will say P.C. Greenwood   |
|    |                    | 247     | Will say P.C. Burroughs   |
|    |                    | 248     | Will say D/C Charbonneau  |
|    |                    | 249-250 | Vehicle Investigation Report  |
|    |                    | 251     | Police officer's notes of meeting   |
|    |                    | 252-326 | Copies of police officer's notebooks.   |



|                 | Category            | Page #  | Description   |
|-----------------|---------------------|---------|---|
| 8.              | D                   | 327     | cover page to Homicide Investigation (Volume 2B)  |
|                 |                     | 328-485 | Copies of officer notebooks and notes   |
| <b>Volume 4</b> |                     |         |   |
| 9.              | D                   | 486-487 | cover page to Homicide Investigation report   |
|                 |                     | 488     | index of witness interviews   |
|                 |                     | 489-494 | Witness list (contains witness name, address, relationship, involvement and who interviewed them) |
|                 |                     | 495-497 | Interview statement   |
|                 |                     | 498-502 | Interview statement (police officer's notebook)   |
|                 |                     | 503-504 | Interview statement   |
|                 |                     | 505-506 | Interview statement   |
|                 |                     | 507-508 | Interview statement   |
|                 |                     | 509-511 | Interview statement   |
|                 |                     | 512     | Interview statement   |
|                 |                     | 513-515 | Interview statement   |
|                 |                     | 516-517 | Interview statement   |
|                 |                     | 518-519 | Interview statement   |
|                 |                     | 520-522 | Interview statement   |
|                 |                     | 523-526 | Interview statement   |
|                 |                     | 527-530 | Interview statement   |
|                 |                     | 531-532 | Interview statement   |
|                 |                     | 533-534 | Interview statement   |
|                 |                     | 535-537 | Interview statement   |
|                 |                     | 538-539 | Interview statement   |
| 540-548         | Interview statement |         |   |
| 549-552         | Interview statement |         |   |
| 553-554         | Interview statement |         |   |
| 555             | Interview statement |         |   |
| 556             | Interview statement |         |   |
| 10.             | D                   | 557-558 | cover page to Homicide Investigation report   |
|                 |                     | 559-560 | index of search warrants  |

|     | Category | Page #    | Description   |
|-----|----------|-----------|---|
|     |          | 561-581   | Information to Obtain Search Warrant, Report to a Justice regarding search  |
|     |          | 582-590   | Warrant to Search, Information to Obtain Search Warrant and Report to a Justice regarding search  |
|     |          | 591-594   | Warrant to Search the offices of the Canadian Imperial Bank of Commerce   |
|     |          | 595-611   | Warrant to Search, Information to Obtain Search Warrant, and Report to a Justice regarding search   |
|     |          | 612-621   | Warrant to Search, Information to Obtain Search Warrant and Report to a Justice regarding search  |
|     |          | 622-631   | Warrant to Search, Information to Obtain Search Warrant and Report to a Justice regarding search at the offices of Bell Mobility Cellular           |
|     |          | 632-640   | Warrant to Search, Information to Obtain Search Warrant and Report to a Justice regarding search at the offices of Bell Telephone Company of Canada |
|     |          | 641-662   | Police Property Reports   |
|     |          | Videotape | Videotape of the accident scene   |
| 11. | E        | E1-23     | Not requested   |
| 12. | F        | F1-93     | Correspondence  |
|     |          | 1         | Letter dated Oct. 24, 1996, from Crown Attorney to opposing counsel re: Mr. B   |
|     |          | 2         | Facsimile confirmation of Oct. 24, 1996 letter  |
|     |          | 3         | Telephone message dated Oct.24, 1996 re: Mr. B  |
|     |          | 4         | Telephone message dated Oct.25, 1996  |
|     |          | 5         | Fax cover sheet dated Oct. 25, 1996 re: Mr. B   |
|     |          | 6-7       | Letter dated October 24, 1996 from J. O'Halloran to Crown Attorney re: Mr. B  |
|     |          | 8         | Fax cover sheet dated Oct. 24, 1996 re: Mr. B   |
|     |          | 9         | Letter dated Oct. 24, 1996 from J. O'Halloran to Crown Attorney (first page only) re: Mr. B   |
|     |          | 10-11     | Letter dated Oct. 24, 1996 from J. O'Halloran to Crown Attorney re: Mr. B   |
|     |          | 12        | Letter dated Oct. 30, 1996 from Trial Coordinator to Mr. B  |
|     |          | 13        | Letter dated Feb. 17, 1994 from Assistant Crown Attorney to opposing counsel re: Mr. B  |
|     |          | 14        | Letter dated Feb. 17, 1994 from Assistant Crown Attorney to opposing counsel re: Mr. C  |
|     |          | 15        | Letter dated May 17, 1996 from Assistant Crown Attorney to appellant  |
|     |          | 16        | Fax confirmation sheet of May 17, 1996 letter to appellant  |
|     |          | 17        | Letter dated May 16, 1996 from appellant to Senior Crown Attorney   |

| Category | Page # | Description  |
|----------|--------|--|
|          | 18     | Fax cover sheet dated May 13, 1996 from appellant  |
|          | 19-29  | Letter from appellant to Senior Crown Attorney with attachments                                      |
|          | 30-31  | Letter dated Dec. 22, 1993 from Crown Attorney to opposing counsel re: Mr. B                         |
|          | 32-33  | Letter dated Dec. 22, 1993 from Crown Attorney to opposing counsel re: Mr. C                         |
|          | 34-35  | Letter dated Dec. 22, 1993 from Crown Attorney to opposing counsel re: Mr. C                         |
|          | 36-37  | Letter dated Dec. 22, 1993 from Crown Attorney to opposing counsel re: Mr. B                         |
|          | 38     | Letter dated May 5, 1994 from opposing counsel to Crown Attorney re: Mr. C                           |
|          | 39     | Letter dated May 10, 1994 to opposing counsel from Assistant Crown Attorney re: Mr. C                |
|          | 40     | Memo dated May 10, 1994 from Assistant Crown Attorney to Detective Constable A. Collard re: Mr. C    |
|          | 41     | Letter Dated Dec. 29, 1993 from opposing counsel to Crown Attorney re: Mr. C                         |
|          | 42     | Letter dated Jan. 7, 1994 from Regional Senior Judge to Crown Attorney re: Mr. B and Mr. C           |
|          | 43     | Fax confirmation sheet dated Aug. 3, 1995 re: Mr. B  |
|          | 44     | Letter dated Aug. 3, 1995 from Assistant Crown Attorney to opposing counsel re: Mr. B                |
|          | 45-46  | Letter dated Dec. 14, 1993 from Assistant Crown Attorney to opposing counsel re: Mr. C               |
|          | 47-48  | Letter dated Dec. 14, 1993 from Crown Attorney to Senior Regional Judge re: Mr. B and Mr. C          |
|          | 49     | Letter dated Dec. 14, 1993 from Crown Attorney to opposing counsel re: Mr. B                         |
|          | 50-51  | Fax cover sheets dated Dec. 15, 1993 re: Mr. B and Mr. C   |
|          | 52     | Letter dated Jan 18, 1994 from Assistant Crown Attorney to Senior Regional Judge re: Mr. B and Mr. C |
|          | 53     | Letter dated May 4, 1995 from Assistant Crown Attorney to opposing counsel re: Mr. B                 |
|          | 54     | Fax confirmation sheet dated May 4, 1995 re: Mr. B   |
|          | 55-56  | Letter dated Nov. 22, 1994 from opposing counsel to Assistant Crown Attorney re: Mr. B               |
|          | 57-68  | Notice of Application and Affidavit dated May 26, 1994 re: Mr. B                                     |
|          | 69     | Letter dated Dec. 5, 1994 from Assistant Crown Attorney to opposing counsel re: Mr. B                |
|          | 70     | Letter dated May 30, 1994 from Assistant Crown Attorney to opposing counsel re: Mr. B                |

|     | Category | Page # | Description   |
|-----|----------|--------|---|
|     |          | 71     | Fax cover sheet dated May 30, 1994  |
|     |          | 72     | Letter dated May 26, 1994 from opposing counsel to Crown Attorney re: Mr. B   |
|     |          | 73-74  | Letter dated May 23, 1995 from Assistant Crown Attorney to opposing counsel re: Mr. B   |
|     |          | 75     | Fax confirmation sheet dated May 23, 1995   |
|     |          | 76-77  | Letter dated May 17, 1995 from Crown Attorney to Crown Attorney re: Mr. B   |
|     |          | 78-81  | Letter dated May 12, 1995 from opposing counsel to Assistant Crown Attorney (2 copies) re: Mr. B and Mr. C                              |
|     |          | 82-85  | Letter dated May 26, 1995 from opposing counsel to Assistant Crown Attorney with attachment (excerpt of transcript) re: Mr. B and Mr. C |
|     |          | 86-87  | Letter dated Oct. 4, 1993 from opposing counsel to Crown Attorney with attachment (formal request for disclosure) re: Mr. C             |
|     |          | 88     | Letter dated Oct. 1, 1993 from Crown Attorney to opposing counsel re: Mr. C   |
|     |          | 89     | Letter dated Sept. 29, 1993 from opposing counsel to Crown Attorney re: Mr. C   |
|     |          | 90     | Letter dated Nov. 24, 1993 from Crown Attorney to opposing counsel re: Mr. C  |
|     |          | 91     | Letter dated Nov. 18, 1993 from opposing counsel to Crown Attorney re: Mr. C  |
|     |          | 92     | Fax dated Nov. 26, 1993 from Case Management Office to opposing counsel re: Mr. C   |
| 13. | G        | 1      | Not requested   |
|     |          | 2      | Police Officer's notebook page  |
|     |          | 3      | Not requested   |
|     |          | 4      | Police Officer's notebook page  |
|     |          | 5-21   | Not requested   |
|     |          | 22     | Forensic Laboratory Report dated May 13, 1994, from Firearms section of the RCMP  |
|     |          | 23     | Not requested   |
|     |          | 24     | Forensic Laboratory Report dated May 13, 1994, from Firearms section of the RCMP  |
|     |          | 25-26  | Not requested   |
|     |          | 27     | Forensic Laboratory Report dated October 4, 1993, from Firearms section of the RCMP   |
|     |          | 28-33  | Not requested   |
|     |          | 34-35  | Letter to Crown Attorney from police dated December 9, 1993 regarding disclosure package  |
|     |          | 36-60  | Not requested   |
|     |          | 61     | Forensic Laboratory Report dated May 13, 1994, from Firearms section of the RCMP  |

|     | <b>Category</b> | <b>Page #</b> | <b>Description</b> |
|-----|-----------------|---------------|--------------------|
|     |                 | 62-87         | Not requested      |
| 14. | H               | H1-207        | Not requested      |