SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Goodman*, 2020 NSSC 384

Date: 20201230
Docket: 502300
Registry: Halifax

Between:

Her Majesty the Queen

v.

Steven Ross Goodman

Publication Ban – s. 486.4

Decision – Disclosure Review Application

Judge:	The Honourable Justice Peter P. Rosinski
Heard:	December 15, 2020, in Halifax, Nova Scotia
Counsel:	Carla Ball for the Crown Peter Planetta for the Defendant

By the Court:

Introduction

[1] Mr. Goodman is charged with sexual assault as against a female in her early 20s.

[2] There has been no election by Mr. Goodman regarding this Crown-elected indictable offence, thus counsel has taken the matter to the Superior Court, rather than the Provincial Court where the matter would be, but for this application.[1]

[3] Crown counsel has determined that Mr. Goodman should not have *personal possession* of certain items of Crown disclosure. Mr. Goodman says he should have it all.

[4] Mr. Goodman asks this court to review that exercise of Crown discretion in relation to Crown disclosure.

[5] Effectively, what I have before me is an application by Mr. Goodman based on sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms - R v*

[1] The Provincial Court will only have jurisdiction over this matter if it has been elected or by law is the trial court. In the case where there was no election by the accused to a specific court as the trial court, the proper court to address disclosure issues is the Superior Court – *R v Jonsson*, 2001 SKCA 53/see also *R v Therrien*, 2005 BCSC 592 paras. 5-9.

McNeil, 2009 SCC 3 - seeking a s. 24(1) remedy: that the Crown be ordered to provide to Mr. Goodman and his counsel disclosure of all materials it has (as listed below) without restrictions.[2]

[6] I dismiss Mr. Goodman's application - my reasoning follows.

The information that comprises the "fruits of the investigation"

[7] In summary, the allegation is as follows:

1. the complainant was 23 years old, whereas Mr. Goodman was 47 years old at the time of the alleged offences;

2. Mr. Goodman was the supervisor of the complainant in a cleaning services business;

3. the complainant had nowhere to stay overnight, and Mr. Goodman offered her to stay at his residence;

4. the complainant had ingested many prescription medication pills including clonazepam, and then found her way to Mr. Goodman's home after their back shift, where she stayed for approximately two days;

5. the core allegation is that Mr. Goodman asked to have sexual intercourse with her, which she refused, however he did so without her consent, ejaculating inside of her vagina, and also performed cunnilingus on her.

[8] The Crown disclosure in this case is contained on two CDs

CD #1

[2] The hearing proceeded without testimony, but by way of representations, as was alluded to at para. 23 in *R v Stinchcombe*, [1991] 3 S.C.R. 326. In the absence of evidence to the contrary, I infer that concerns about publication (transmission to the public domain) of any of the disclosed materials by Mr. Goodman, are diminished by virtue of a publication ban imposed in Provincial Court in relation to any information that could identify the complainant.

i) 20 screenshots of text messages between Mr. Goodman and the complainant after the incident, and one photograph of Mr. Goodman's face from the complainant's phone;

ii) the audio/videotaped statement of Mr. Goodman;

iii) an audiotaped statement of a witness H – approximately five minutes in length;

iv) an audiotaped statement of a witness S – approximately seven minutes in length;

v) Sexual Assault Examination Kit photos – 16 close-ups depicting marks/bruising on various parts of the complainant's body - however they are non-identifying photographs, and are not of areas of genitalia or similar areas;

vi) a PDF document called "General Occurrence Report" – a 342-page document that involves the steps in the investigation including summaries of witness statements – but not transcribed video/audio statements.

CD #2

i) a one-hour long videotaped statement by the complainant.

The Crown's position

[9] In summary, it says in relation to the contents of the two compact discs:

CD #1

(i) these after-the-fact messages between the victim and the accused, while not containing highly sensitive information, still are arguably subject to s. 278.1 *CC* as a "record" - "that contains personal information for which there is a reasonable expectation of privacy…", and therefore, after the Crown gives Notice of its position formally in writing to Mr. Goodman, there should be a motion for directions to

start the procedural steps required to resolve the legal status of this potential evidence. Therefore, there can be no disclosure thereof at present.[3]

ii) the Crown agrees Mr. Goodman's statement can be readily disclosed (usually a transcription thereof will be provided as well).

iii) the Crown is concerned that this witness's audiotaped statement contains information that may identify the complainant – and it should only be disclosed to counsel, with an express undertaking that access/possession to it not be provided to Mr. Goodman, except while in the control of counsel [the Crown is prepared to provide a transcription to Mr. Goodman];

iv) the Crown is concerned that this witness's audiotaped statement contains information that may identify the complainant - and it should only be disclosed to counsel, with an express undertaking that access/ possession to it not be provided to Mr. Goodman, except while in the control of counsel [the Crown is prepared to provide a transcription to Mr. Goodman];

v) although these photos do not patently identify the complainant, the Crown argues that the complainant's privacy and dignity require that they only be disclosed to counsel, with an express undertaking that access/ possession to them not be provided to Mr. Goodman, except while in the control of counsel;

vi) the Crown is prepared to provide the General Occurrence Report in written form to Mr. Goodman, however it argues that it should not be required to provide this Report in electronic form because it can be readily transmitted to the public domain, manipulated, and misrepresented when available in that format.

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[3] There is significant uncertainty presently in the jurisprudence regarding the status of such text messages, as well as whether ss. 278.1, 276 and 278.92, 278.93 and 278.94 *CC* are constitutional - a good insight into this conflicting jurisprudence is captured by Justice Quigley in *R v Bickford*, 2020 ONSC 7510 (December 3, 2020). The jurisprudence also suggests that when there is a preliminary dispute about whether the evidence in question is a "record" for the purposes of section 278.1 *CC*, the first step should be a motion for directions: *R v McKnight*, 2019 ABQB 755; *R v MS*, 2019 ONCJ 670; *R v Mai*, 2019 ONSC 6691; *R v BH*, 2020 ONCJ 4533.

CD #2

(i) the Crown says that the spirit of the Crown's disclosure obligations can be met by providing a transcription of the complainant's statement to counsel and Mr. Goodman, and the videotaped statement only to counsel, with counsel's express undertaking that access/ possession to it not be provided to Mr. Goodman, except while in the control of counsel.

[10] Crown counsel argues that the jurisprudence is clear that there is an implied undertaking in relation to disclosure provided by the Crown that binds defence counsel "to use the materials only for the purposes of the [the extant criminal] proceedings and not for any collateral or ulterior purpose, and furthermore that this implied undertaking is an obligation or duty owed by defence counsel to the court" - *R v Little*, 2001 ABPC 13 at para. 38; see also *R v SPW*, 2017 BCPC 320 at paras. 24-5.[4]

[11] However, once an accused gets possession of the disclosure, they are not constrained by that undertaking. Therefore, an express undertaking from counsel is required to ensure that the disclosure is not misused.[5]

[4] I agree with the Crown's position. Notably, this tracks a similar undertaking in the civil law context which binds even self-represented persons - see *Terris v Meisner*, 2019 NSSC 252. Breach thereof may rise to the level of contempt of court.

[5] The Crown has suggested a format [Form 4] for such express undertaking which I attach as Appendix "A" to this decision.

[12] The Crown draws attention to substantial jurisprudential developments and statutory amendments recognizing the rights of victims,[6] including their rights to dignity, privacy, and respectful consideration throughout the criminal process - see for example:

1. the preamble in Bill C - 46 enacted in May 1997:

> "And whereas the Parliament of Canada recognizes that, while production to the court and to the accused of personal information regarding any person may be necessary in order for an accused to make a full answer and defence, that production may breach the person's right to privacy and equality and therefore the determination as to whether to order production should be subject to careful scrutiny";

2. The preamble to the *Canadian Victims Bill of Rights*, SC 2015, c. 13, s. 2:

> "Whereas crime has a harmful impact on victims and on society; whereas victims of crime and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity; whereas, it is important that victims rights be considered throughout the criminal justice system…"

3. sections 9, 10, and 11 of the *Victims Bill of Rights* which read:

> 9-Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system.
>
> 10-Every victim has the right to have reasonable and necessary measures taken by the appropriate authorities in the criminal justice system to protect the victim from intimidation and retaliation;
>
> 11-Every victim has the right to have their privacy considered by the appropriate authorities in the criminal justice system.

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[6] It must be borne in mind that section 2 of the *Criminal Code* defines "victim": "means a person against whom an offence has been committed, or is alleged to have been committed, who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of the offence and includes, for the purposes of section 672.5, 722 and 745.63, a person who is suffered physical or emotional harm, property damage or economic loss as the result of the commission of an offence against any other person;".

4. Parliament has enacted measures in the *Criminal Code* including those in sections 486.4, 486.5, the 278.1 regime, and 276 regimes (278.92 - accused in possession of records relating to the complainant; and 278.93 - application for hearing/278.94 – prior sexual history or accused in possession of records relating to complainant;), which signal the importance of protecting privacy interests of victims and witnesses;

5. recently the provisions of Bill C- 51, enacted as SC 2018, c.29 came into force on December 13, 2018;

6. the jurisprudence has recognized the importance of the interests of victims and balancing those rights with the interests of an accused: *inter alia*, *R v TPL*, [1987] 2 SCR 309 at p. 362; *R v Seaboyer*, [1991] 2 SCR 577 at p. 603; *R v AWE*, [1993] 3 SCR 155 at p.198; *R v Mills*, [1999] 3 SCR 668 at para. 94; *R v Barton*, 2019 SCC 3 at para. 210, *R v Goldfinch*, 2019 SCC 38 at paras. 37-8.

[13] Moreover, as Justice Arnold stated in *R v Garnier*, 2017 NSSC 341 at para. 76, albeit a different context:

> 76 **The justice system wants to encourage people to come forward to assist with investigations of all types. Society has a great interest in the reporting of sexual offences. Society must protect the personal dignity and privacy of justice system participants.** Every individual has the right to personal security and the full protection and benefit of the law. In contrast, every accused person has a constitutional right to make full answer and defence to criminal charges. The Supreme Court of Canada considered the competing interests at stake (in the context of disclosure of therapeutic and counselling records) in *R. v. Mills*, [1999] 3 S.C.R. 668, [1999] S.C.J. No. 68 (S.C.C.):
>
> > 94 ... **The right of the accused to make full answer and defence is a core principle of fundamental justice**, but it does not automatically entitle the accused to gain access to information contained in the private records of complainants and witnesses. Rather, the scope of the right to make full answer and defence must be determined in light of privacy and equality rights of complainants and witnesses. It is clear that the right to full answer and defence is not engaged where the accused seeks information that will only serve to distort the truth-seeking purpose of a trial, and in such a situation, privacy and equality rights are paramount. On the other hand, where the information contained in a record directly bears on the right to make full answer and defence, privacy rights must yield to the need to avoid convicting the innocent.

> **Most cases, however, will not be so clear, and in assessing applications for production, courts must determine the weight to be granted to the interests protected by privacy and full answer and defence in the particular circumstances of each case.** Full answer and defence will be more centrally implicated where the information contained in a record is part of the case to meet or where its potential probative value is high. A complainant's privacy interest is very high where the confidential information contained in a record concerns the complainant's personal identity or where the confidentiality of the record is vital to protect a therapeutic relationship.
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> [My bolding added]

[14] In summary, as I understand its "disclosure" position, the Crown requests an express undertaking from Mr. Goodman's counsel only for:[7]

1. the audiotaped format of the statements of S and H
2. the SANE Kit photos
3. the videotaped format of the complainant's statement
4. the electronic format of the "General Occurrence Report"

Mr. Goodman's position

[15] Mr. Goodman's counsel says courts should not consider the text messages sent back and forth between the complainant and Mr. Goodman to be a "record" as defined in section 278.1 *CC*.

[7] The Crown suggested in oral argument that if Mr. Goodman was self-represented, they would *also* require express undertakings from him (in lieu of relying upon his counsel's implied undertaking obligations to that effect) in relation to transcriptions of items 1(iii) and (iv) and 2(i) before such items would be provided to him. It would provide access to the remaining items by his in-person attendance at Crown offices to only view the items-and presumably make notes for his own use. I need not and do not make specific findings regarding those presently speculative circumstances.

[16] Moreover, there is no good reason to restrict Mr. Goodman's personal access to any of this disclosure. The items to be disclosed here are typical of those in a sexual assault allegation. Any restriction upon disclosure by the Crown in this case would have broad and undesirable implications for many other cases.

[17] His counsel says that the requested express undertaking from counsel, and the preclusion of Mr. Goodman having possession of the disputed items of disclosure are not justified because there is no realistic risk of misuse of the disclosure materials:

1. the conditions are redundant and therefore unnecessary (because counsel already has an implied undertaking to ensure there is no improper handling or dissemination of such disclosure materials); and

2. there are no facts present in this particular case that would justify a departure from treating disclosure in the usual manner (there are no exceptional facts here for imposing the restrictions sought by the Crown – this is particularly so when contrasted with Mr. Goodman's *prima facie* right to personally receive and possess all Crown disclosure required to be provided to him).

[18] In response to the Crown's concern that the complainant's privacy and dignity are unreasonably violated by the provision of the SANE Kit photos, a videotaped format of the complainant's statement, or the electronic format of the PDF "General Occurrence Report", he says that there is *no evidence* that the complainant has or is experiencing any exceptional circumstances that would make her particularly vulnerable, and therefore realistically more traumatized by the

provision of these items directly to Mr. Goodman. The complainant's privacy and dignity would not be unreasonably violated or infringed if these items were provided directly to Mr. Goodman. There is no evidence of any "harmful consequences" to the complainant that could be expected if the disclosure is provided to Mr. Goodman.

[19] Fundamentally, it is *Mr. Goodman's right* to the disclosure. His counsel represents *him*. Mr. Goodman should not be deprived of being personally provided the disclosure, without good reasons.

[20] Similarly, in relation to the Crown's concern that Mr. Goodman would disseminate any of the disclosure to the public domain, he is prohibited from doing so in part by the publication ban - to the extent that the information would identify the complainant. Moreover, he may very well not want to draw attention to himself regarding these charges. There is no evidence upon which an inference could be drawn that Mr. Goodman is inclined or has a motivation to disseminate the disclosure to the public domain or share it with others.

My conclusions regarding what restrictions, if any, should be imposed upon the disclosure to which Mr. Goodman is otherwise entitled

[21] I find it helpful to also examine the obligation that the Crown has assumed for itself by reference to its relevant administrative "disclosure" policies and

directives – though strictly speaking they have no legal status, and I consider them only for contextual reasons.

[22] The following items are taken from the publicly accessible Nova Scotia Public Prosecution Service website.

[23] The first item is taken from the February 11, 2008 Sexual Offences – Practice Note, which appears to be presently applicable:

> 1. Victims should also be informed in regard to the obligations of the Crown relating to **disclosure** of the Crown's case so that there are no unrealistic expectations in regard to privacy of information given to the police or the Crown. The nature and scope of **publication bans** should also be explained.

[24] Similarly, the following is taken from the Attorney General's Directive (most recently updated November 20, 2013):

> **5. WHAT MUST BE DISCLOSED**
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> As soon as practicable upon request, the Crown Attorney will make available to the defence the following material:
>
> (a) a copy of, or an opportunity to copy, the information or indictment;
>
> (b) *a copy of, or an opportunity to copy, a summary of the case, detailing the circumstances of the offence, prepared by the investigating agency;*
>
> (c) a *copy of, or an opportunity to copy, all written statements in the possession of the Crown made by the accused/defendant and in the case of verbal statements, a verbatim account of the statement or copies of notes or an audio or video recording of the statement whether favourable to the accused/defendant or not;*
>
> (d) a copy of, or an opportunity to copy, the criminal record2 of the accused / defendant and the particulars (offence, date and disposition) of any other criminal record relied on by the Crown;
>
> (e) copies of, or an opportunity to copy, all written statements made by persons who have provided relevant information to the investigator (where individuals have

provided more than one statement a copy, or an opportunity to copy, all statements will be provided). In the case of verbal statements, the investigators' notes or, where there are no notes, a summary prepared by the investigating agency of the relevant information and the name, address and occupation of the person;

(f) *where feasible, a copy of any audio or video recording of a witness' statement (if production of a copy of the recording is not feasible, an opportunity to listen to an audio recording or view a video recording, in private, shall be provided);*

Note: *The privacy of vulnerable witnesses, particularly children and Sexual-assault victims, must be protected. Where a recording is made of the statement of a vulnerable witness, the provision of a copy of the recording should be subject to an undertaking by counsel for the defence that:*

(i) no person other than an expert retained by the defence will be given possession of the recording;

(ii) no further copy of the recording will be made;

(iii) the copy will be viewed or heard only by persons involved in the defence of the accused; and

(iv) the copy will be returned to the Crown at the conclusion of the proceedings.

(g) subject to the provisions of the *Youth Criminal Justice Act*, particulars (offence, date and disposition) of the criminal record of an accomplice or an alleged accomplice, whether that person has been charged or not;

(h) subject to the provisions of the *Youth Criminal Justice Act*, particulars of any information known to the Crown which the defence may legally use to impeach the credibility of a Crown witness, including the criminal record of a Crown witness where the defence requests this information and the record is relevant to an issue in the case or has probative value

2 "Criminal record" means the C.P.I.C. CNI Want/Record.

with respect to the credibility of the witness. All benefits or consideration requested, discussed, provided or intended to be provided at any time in relation to a witness or a potential witness must also be disclosed. This direction applies whether or not the request or discussion of benefits was with the witness or potential witness, or with someone on behalf of the witness or potential witness. **[See attached Practice Note re *R. v. McNeil*.]**

(i) subject to the provisions of the *Youth Criminal Justice Act*, the criminal record of a potential defence witness where the defence requests this information;

(j) *copies of, or an opportunity to copy, all medical, labo ratory and other expert reports in the possession of the Crown which relate to the offence, except to the extent they may contain privileged information*;

(k) *access to any potential exhibits or other physical evidence in the possession of the Crown for the purpose of inspection, and, where applicable, copies of such exhibits [see Practice Note, below];*

(l) a copy, or an opportunity to copy, of any search warrant and information to obtain relied on by the Crown;

(m) if intercepted private communications will be tendered, a copy of the judicial authorization under which the private communications were intercepted; access to the log book of interceptions; access to audio recordings made pursuant to the authorization; and a copy of the transcript of the interceptions made pursuant to the authorization when it is available;

(n) a copy of, or an opportunity to copy, any other document, or portion of a document contained in the investigation file and any notes of the investigator which contain the factual observations of investigators pertaining to the investigation of the alleged offence; and

(o) notice of any evidence which has become lost or destroyed and a summary of the circumstances surrounding such loss or destruction prepared by the investigating agency.

6. ADDITIONAL DISCLOSURE

It is not possible to anticipate the disclosure requirements in every potential case and disclosure additional to that outlined in section 5 above will sometimes be appropriate. The Crown Attorney has a discretion to make such additional disclosure consistent with the statement of principle and rationale for disclosure expressed above. For example, if information disclosing a violation of the rights of the accused/defendant under the Charter of Rights and Freedoms comes to the attention of the Crown Attorney, it must be disclosed to the defence. The Crown Attorney is not obliged by this directive to make pretrial disclosure of evidence only relevant in reply unless defence disclosure reveals the relevance of the evidence prior to trial. The obligation upon the Crown is a continuing one and relevant information coming to the attention of the investigator or Crown Attorney following initial disclosure must be disclosed in accordance with this directive. Even after conviction, including after any appeals have been decided or the time for appealing has lapsed, information coming to the attention of the investigator or Crown Attorney which shows an accused/defendant is innocent or which raises a doubt as to the guilt of the accused must be disclosed.

…

8. LIMITING OR DELAYING DISCLOSURE

Disclosure may only be delayed or limited to the extent necessary:

(*a) to comply with the rules of privilege, including informer identity privilege;*

(b) to prevent the endangerment of the life or safety of witnesses, or their intimidation or harassment; or

(c) to prevent other interference with the administration of justice.

Where a Crown Attorney limits disclosure to comply with the rules of privilege, the Crown Attorney shall so advise the defence. A Crown Attorney who proposes not to disclose any of the items listed in section 5 above must obtain the prior written approval of the Chief Crown Attorney or other person designated by the Director of Public Prosecutions. Any decision by the Crown Attorney to delay or limit disclosure is reviewable by the trial Judge.

…

[25] And then there is the following Practice Note which is not directly implicated, however the concerns upon which it is based have some resonance when assessing Crown disclosure regarding visual imaging evidence generally in cases of sexual offences:

PRACTICE NOTE* re photographs, digital recordings, etc.:

The subject matter of many current pornography-related prosecutions is "photography" or other material that is digitally created or reproduced. By its nature, there is a real possibility that such material may be inadvertently disseminated, e.g. if cached copies created automatically during the disclosure process are retained or delivered to unknown persons.

For that reason, disclosure of photographs, video tapes, digital recordings, electronic depictions or reproductions of any sort **which are the subject matter of the offence itself**, is subject to further restrictions:

> (i) an unrepresented accused shall be given a reasonable opportunity to view the subject matter of the offence in private, in circumstances approved by the prosecutor, but the accused shall not be given a copy of such subject-matter; and
>
> (ii) defence counsel shall be given a reasonable opportunity to view the subject matter of the offence in private, in circumstances approved by the prosecutor. Defence counsel should not be given a copy of the material that is the subject matter of the offence unless the prosecutor, in consultation with his/her Chief Crown Attorney or designate, is satisfied that adequate steps have been taken to ensure that no inappropriate dissemination, unintentional or otherwise, of the material will occur.
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> * Practice Note approved by the PPS Executive Committee on February 19, 2010

[26] In cases involving sexual offences, particularly against especially vulnerable victims, there is a tension between the unconditional provision of disclosure to accused persons and the rights of complainants to be accorded reasonable recognition of their privacy, dignity, security, and to respectful treatment throughout the course of the judicial process.

[27] The circumstances of each individual case will drive the conclusion of where the balance should properly be struck as between an accused's right to "full answer and defence" and a complainant's rights.

[28] In this case, the Crown concedes that the material in issue must be disclosed.

[29] The disagreement is in relation to whether the accused personally must have possession of all the available disclosure, even though he has legal counsel.

[30] The Crown says that some of the disclosure will only be provided on expressly agreed - to conditions, whereas Mr. Goodman's counsel says it should all be unconditionally provided.

[31] The Crown has satisfied me that the disclosure items identified below should only be conditionally provided. Such conditional provision of disclosure will not materially infringe Mr. Goodman's right to full answer and defence.

What the Supreme Court of Canada has said about the extent, manner, and timeliness of providing disclosure to accused persons, and when remedies for shortfalls in the provision of disclosure should result

[32] At this juncture, it will be helpful to briefly examine the relevant jurisprudential framework of analysis.

[33] The basic parameters that still determine issues in relation to Crown disclosure were succinctly stated by Justice Charron in her reasons, while speaking for the court in *R v McNeil*, 2009 SCC 3:

> **4. The *Stinchcombe* Duty to Disclose the Fruits of the Investigation**
>
> 17 The Crown's obligation to disclose all relevant information in its possession relating to the investigation against an accused is well established. The duty is triggered upon request and does not require an application to the court. ***Stinchcombe*** **made clear that relevant information in the first party production context includes not only information related to those matters the Crown intends to adduce in evidence against the accused, but also any information in respect of which there is a reasonable possibility that it may assist the accused in the exercise of the right to make full answer and defence (pp. 343-44).** The Crown's obligation survives the trial and, in the appellate context, the scope of relevant information therefore includes any information in respect of which there is a reasonable possibility that it may assist the appellant in prosecuting an appeal.
>
> 18 While the *Stinchcombe* automatic disclosure obligation is not absolute, it admits of few exceptions. Unless the information is clearly irrelevant, privileged, or its disclosure is otherwise governed by law, the Crown must disclose to the accused all material in its possession. **The Crown retains discretion as to the manner and timing of disclosure where the circumstances are such that disclosure in the usual course may result in harm to anyone or prejudice to the public interest. The Crown's exercise of discretion in fulfilling its obligation to disclose is reviewable by a court.**

19 As this Court confirmed in *Mills*, **the Crown's obligation under *Stinchcombe* to disclose the fruits of the investigation does not signify that no residual privacy interest can exist in the contents of the Crown's file.** It should come as no surprise that any number of persons and entities may have a residual privacy interest in material gathered in the course of a criminal investigation. **Criminal investigative files may contain highly sensitive material including: outlines of unproven allegations; statements of complainants or witnesses — at times concerning very personal matters; personal addresses and phone numbers; photographs; medical reports; bank statements; search warrant information; surveillance reports; communications intercepted by wiretap; scientific evidence including DNA information; criminal records, etc. The privacy legislation of all 10 provinces addresses the disclosure of information contained in law enforcement files.** See *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 14; *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, s. 22; *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c. 5, s. 15; *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, c. F-15.01, s. 18; *Right to Information Act*, S.N.B. 1978, c. R-10.3, ss. 6(*a*) and 6(*f*); *An Act respecting Access to Documents Held by Public Bodies and the Protection of Personal Information*, R.S.Q., c. A-2.1, s. 28; *The Freedom of Information and Protection of Privacy Act*, S.M. 1997, c. 50, s. 25; *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, s. 15; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 20; *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, s. 15. See also the federal *Privacy Act*, R.S.C. 1985, c. P-21, s. 22.

20 **Implicit in the Crown's broad duty to disclose the contents of its file under *Stinchcombe* are** not the absence of any residual expectation of privacy, but rather the following **two assumptions. The first is that the material in possession of the prosecuting Crown is relevant to the accused's case.** Otherwise, the Crown would not have obtained possession of it (*O'Connor*, at para. 12). **The second assumption is that this material will likely comprise the case against the accused. As a result, the accused's interest in obtaining disclosure of all relevant material in the Crown's possession for the purpose of making full answer and defence will, as a general rule, outweigh any residual privacy interest held by third parties in the material. These two assumptions explain why the onus is on the Crown to justify the non-disclosure of any material in its possession.**

21 Although the common law regime of disclosure under *Stinchcombe* generally strikes the appropriate balance between the accused's right to make full answer and defence and the residual privacy interests of other persons in the fruits of the investigation, it is not the only regime that meets constitutional standards. As this Court concluded in *Mills*, it was open to Parliament to enact, as it did, a statutory regime for the disclosure of records containing personal information of complainants and witnesses in proceedings for sexual offences under ss. 278.1 to 278.91 of the *Criminal Code*, R.S.C. 1985, c. C-46 (commonly referred to as the "*Mills* regime"). Absent an express waiver from the complainant or witness to whom the record relates, production of all records falling within the *Mills*

regime, whether in the possession or control of a third person or *of the prosecutor in the proceedings,* can only be made on application to the court and in accordance with the balancing test set out in the *Code* provisions. This statutory regime therefore constitutes an exception to the common law regime of Crown disclosure under *Stinchcombe*. As we shall see, the *Mills* regime is also different from the common law regime for production of third party records under *O'Connor*. It is nonetheless constitutional (*Mills*, at para. 59).

22 The *Stinchcombe* regime of disclosure extends only to material in the possession or control of the Crown. The law cannot impose an obligation on the Crown to disclose material which it does not have or cannot obtain: *R. v. Stinchcombe*, [1995] 1 S.C.R. 754 (S.C.C.). A question then arises as to whether "the Crown", for disclosure purposes, encompasses other state authorities. The notion that all state authorities amount to a single "Crown" entity for the purposes of disclosure and production must be quickly rejected. It finds no support in law and, given our multi-tiered system of governance and the realities of Canada's geography, is unworkable in practice. As aptly explained in *R. v. Gingras* (1992), 120 A.R. 300 (Alta. C.A.), at para. 14:

> If that line of reasoning were correct, then in order to meet the tests in *Stinchcombe*, some months before trial every Crown prosecutor would have to inquire of every department of the Provincial Government and every department of the Federal Government. He would have to ask each whether they had in their possession any records touching each prosecution upcoming. It would be impossible to carry out 1% of that task. It would take many years to bring every case to trial if that were required.
>
> Accordingly, **the *Stinchcombe* disclosure regime only extends to material relating to the accused's case in the possession or control of the prosecuting Crown entity. This material is commonly referred to as the "fruits of the investigation".**

23 Under our Canadian system of law enforcement, the general duty to investigate crime falls on the police, not the Crown. The fruits of the investigation against an accused person, therefore, will generally have been gathered, and any resulting criminal charge laid, by the police. While the roles of the Crown and the police are separate and distinct, the police have a duty to participate in prosecutions: see, for example, s. 42(1)(e) of the Ontario *Police Services Act*. Of particular relevance here is the police's duty to participate in the disclosure process**. The means by which the Crown comes to be in possession of the fruits of the investigation lies in the corollary duty of police investigators to disclose to the Crown all relevant material in their possession**. The police's obligation to disclose all material pertaining to the investigation of an accused to the prosecuting Crown was recognized long before *Stinchcombe*. The state of the law was well summed up by the Honourable G. Arthur Martin, Q.C., in his *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions* (1993), ("Martin Report"), at pp. 167-68:

> It is well settled and accepted by all, including the police, that the police, although operating independently of Crown counsel, have a duty to disclose to Crown counsel all relevant information uncovered during the investigation of a crime, including information which assists the accused. ... As one commentator has observed, "the duty of the police to disclose relevant information about a case, to the Crown, is a duty that existed before [*Stinchcombe, supra*]".
>
> 24 The corollary duty of the police to disclose to the Crown the fruits of the investigation is now well recognized in the appellate jurisprudence. See *R. v. Jack* (1992), 70 C.C.C. (3d) 67 (Man. C.A.), at p. 94; *R. v. T. (L.A.)* (1993), 14 O.R. (3d) 378 (Ont. C.A.), at p. 382; *R. c. Gagné* (1998), 131 C.C.C. (3d) 444 (Que. C.A.), at p. 455; and *Driskell v. Dangerfield*, 2008 MBCA 60, [2008] 6 W.W.R. 615 (Man. C.A.), at para. 17. It is also widely acknowledged that the Crown cannot explain a failure to disclose relevant material on the basis that the investigating police force failed to disclose it to the Crown. See *R. v. MacPherson* (1991), 105 N.S.R. (2d) 123 (N.S. T.D.), at paras. 37-38; *R. v. Oliver* (1995), 143 N.S.R. (2d) 134 (N.S. S.C.), at para. 36; *R. v. Campbell*, [1992] N.S.J. No. 702 (N.S. Prov. Ct.), at paras. 16-17.

[34] The jurisprudence from the Supreme Court of Canada has been characterized (accurately in my opinion) by Professor Steve Coughlan, in *Criminal Procedure*, Fourth Edition (Irwin Law Inc., 2020, Toronto, Ontario, Canada) at page 352:

> "The court has not been entirely consistent in its analysis of which Charter right is at issue when the Crown has failed to disclose relevant information. The earlier cases that consider this issue looked at whether disclosure was itself an independent Charter right or whether it was just an aspect of the right to full answer and defence. This seemed at first to matter on the assumption that one could proceed directly to the question of remedy once a breach of some Charter right had been found. **As the Court's jurisprudence has developed**, however, **it has become apparent that, although disclosure is said to be a Charter right in its own right, no remedy will be given for that breach unless it also amounts to a breach of the right to full answer and defence**."
>
> [My bolding added]

[35] In *R v Taillefer*, 2003 SCC 70, the court stated:

> *2)* **The infringement of the right to make full answer and defence**

> 71 **As this Court said in *Dixon*, the right to disclosure is just one of the components of the right to make full answer and defence. Infringement of that right is not always an infringement of the right to make full answer and defence.** There are situations in which the information not disclosed will meet the minimum test set out in *Stinchcombe* while having only marginal value to the issues at trial (*Dixon, supra*, at paras. 23-30). **To determine whether there is an infringement of the right to make full answer and defence, the accused will have to show that there was a reasonable possibility that the failure to disclose affected the outcome at trial or the overall fairness of the trial process** (*Dixon, supra*, at para. 34).
>
> [My bolding added]

[36] I also agree with Professor Coughlan when he says (p. 357-9):

> "In each of these latter two cases [*Dixon* and *Taillefer*] it was only after finding a breach of the right to full answer and defence that the court considered remedy. Thus, the court has changed the approach in *Carosella* to a three-part test:
>
> 1-was the accused's right to disclosure breached?
>
> 2-if so, did that breach violate the accused's right to make full answer and defence?
>
> 3-if so, what remedy should be granted?
>
> …
>
> To decide whether the breach of disclosure affected full answer and defence, the court set out a two-pronged test. The accused must show a reasonable possibility that
>
> 1) the non-disclosure affected the outcome at trial or
>
> 2) it affected the overall fairness of the trial process."

[37] In those cases, the non-disclosure issues arose after the trial was completed – however as Professor Coughlan states: "where the non-disclosure is discovered before the trial was completed, the remedy is very likely only to be an order for disclosure accompanied by an adjournment. The Supreme Court has allowed for

the possibility of something more than disclosure and an adjournment, but they have severely circumscribed that possibility [see *R v Bjelland*, 2009 SCC 38]."

[38] Turning back to the circumstances of the case at Bar, it is clear that the Crown is not *refusing* to disclose any materials. Its counsel are merely placing conditions upon the disclosure, which are intended to restrict Mr. Goodman's access to and possession of specifically identified items of disclosure.

[39] Therefore, in that context I must consider whether:

1. Mr. Goodman's right to disclosure has been breached?

   [It has not been *breached*, because the Crown is prepared to provide his counsel possession of all disclosure – and Mr. Goodman may view any of the restricted disclosure in his counsel's offices, while his counsel is subject to an express undertaking. Moreover, Mr. Goodman may have personal possession of the remainder of the disclosure items];

2. However, let me for the sake of argument, proceed on the presumption that restricting Mr. Goodman's right to access and possession of any of the disclosure constitutes an infringement of his *right to disclosure*. Even if there was a sufficient infringement of his right to disclosure inherent in the Crown's position, and I ask myself: did the infringement violate Mr. Goodman's *right to make full answer and defence* - I must conclude that it does not.

[40] Mr. Goodman may be inconvenienced by having to attend at his counsel's office to access and examine some of the Crown disclosure provided to his counsel, but such inconvenience does not come anywhere near to constituting a

violation of his right to make full answer and defence. As the court stated in *McNeil* at para. 18:

> **The Crown retains discretion as to the manner and timing of disclosure where the circumstances are such that disclosure in the usual course may result in harm to anyone or prejudice to the public interest.** The Crown's exercise of discretion in fulfilling its obligation to disclose is reviewable by a court.
>
> [My bolding added]

[41] I am satisfied that the Crown has demonstrated that these are circumstances where disclosure in the usual course (unconditional provision thereof) "may result in harm to [the complainant] and prejudice the public interest" – *inter alia*, by discouraging complainants to come forward and report such matters to the authorities, and continue to see the process through to the end of trial.

[42] In my opinion, such accused persons will be hard pressed "to show that [there is] a reasonable possibility that the [conditional provision of disclosure will affect] the outcome at trial or the overall fairness of the trial process". Generally speaking, where Crown counsel seek only to restrict (i.e., make conditional), rather than refuse, Crown disclosure in such cases, and the restrictions themselves are reasonable, it will be a rare case where there is a reasonable possibility that conditional disclosure will affect the outcome at trial or the overall fairness of the trial process (i.e. amount to a material infringement of the right to full answer and defence).

[43] I accept that there is an implied undertaking that each defence counsel is subject to when they take Crown disclosure on behalf of a client - but I find that an insufficient response in the circumstances of this case.

[44] That undertaking to the court includes that the materials provided will be used *only* for the purposes of the criminal proceedings at hand, and not for any collateral or ulterior purpose; and that they will be handled by counsel with due attention, proportionate to the potential mischief that could arise if not handled with the requisite degree of care. The undertaking of a lawyer is premised on their position and responsibilities as an officer of the court.

[45] However, accused persons (with or without counsel) are not similarly duty-bound – and once in possession of sensitive disclosure, may engage in the mischief that restricted disclosure is intended to prevent.[8]

[46] Where accused persons have counsel, their counsel should ensure that they are aware that counsel may have to override their personal direction regarding the

[8] In Superior Courts, it may be possible, on Crown application for a s. 521 *CC* "bail" review to request a variation of existing bail conditions to restrict an accused's handling of Crown disclosure materials – for example see the discussion in *R v AH*, 2016 BCPC 323 at paras. 18-20, citing *R v Florian*, 2008 CarswellOnt 6572 (ONSC) where, notably, freestanding undertakings to the court were ordered - appeal refused for lack of jurisdiction - 2009 ONCA 117. The freestanding undertakings approach is to be preferred in my opinion. On the one hand, a s. 521 review seems a somewhat ill-suited and circuitous process to deal with "disclosure issues". On the other hand, in cases such as the one at Bar, the disclosure issue must be heard in Superior Court in any event because the Provincial Court lacks jurisdiction to hear Charter based motions to that effect, until it is a court of competent jurisdiction, ie. a trial court.

conduct of their case, if that direction conflicts with counsel's obligations to the court.

[47] I am well satisfied that Mr. Planetta is a seasoned criminal defence counsel, well aware of his responsibilities regarding his duties to the court and his client, and that he is prepared to undertake them.

[48] I am similarly satisfied that, with the court's decision, Mr. Planetta will be in a position to sign the express undertaking requested by the Crown in relation to those items I identify.

[49] Next, I will address the specifics of each of the items of disclosure in dispute.

Are the proposed conditions reasonable in relation to each of the identified items of disclosure? [Yes, they are]

[50] I find that the reasons of Justice Walker in *R v Smith*, [1994] SJ No. 38 (QB) at para. 7, have stood the test of time, and resonate in their application to the case at Bar:

> "The Crown has an obligation to protect the privacy of alleged victims of sexual assault cases. Victims' statements and videotapes made in the course of a criminal investigation often contain sensitive personal information that the alleged victims would not, in normal circumstances, divulge. The making of the videotape is an investigative tool to assist in the prosecution and it would not be made but for that prosecution. In addition to the privacy interests of the complainant, the public interest is also served by providing complainants with assurances that the statements and videotapes will not be reproduced and distributed. This assurance of privacy encourages victims to come forward with their complaints.";

[51] And in his conclusion (paras. 32-3):

> "I find that evidence does not show how disclosure on the trust condition in question would prevent the applicant from making full answer and defence to the charges he faces. I find that the interest of the public and the complainant's in having the statements and videotapes narrowly disseminated is clearly shown. Providing the statements and videotapes to counsel for the accused on trust condition that counsel retain them in his possession, serves the dual purpose of providing detailed disclosure while ensuring that the materials are not disseminated more widely than is necessary for the fairness of the trial. The right to disclosure and the right to make full answer and defence is not the right to unconditional disclosure… The conditions apply only to the victim statements, videotapes and references to victim statements – obviously matters of some sensitivity."

[52] These same general arguments made by Mr. Goodman have been considered and rejected for some time now - for example, in *R v Papageorgiou*, (2003) 172 OAC 50 (ONCA), where the accused was self represented, the court stated:[9]

> 9 In this case, the Crown did not fail to make disclosure of the videotape prior to trial. It did so prior to the discharge by the respondent of his trial counsel. The evidence established that the respondent reviewed the videotape, together with his counsel. Accordingly, as the Crown properly submits, the issue here is not one of non-disclosure but, rather, the adequacy of the form of further disclosure proposed by the Crown.
>
> 10 The Crown submits that in sensitive cases involving allegations of sexual abuse and a self-represented accused, as in this case, the Crown's disclosure obligations are satisfied, and the public interest is fostered, by providing the self-represented accused with an opportunity to view the videotaped statement of a complainant at the Crown's office. On the facts of this case, we agree with the Crown for the following reasons.
>
> 11 **The Crown relies upon the *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions* (1993), in which the Crown's disclosure obligations to an unrepresented accused are addressed. In that *Report*, the Advisory Committee recommends at p. 217:**
>
> > 9. (a) *Defence counsel should not leave disclosure material in the unsupervised possession of an accused person.*
> >
> > (b) ***An unrepresented accused is entitled to the same disclosure as the represented accused. However, if there are reasonable grounds for concern that leaving disclosure material with the unrepresented accused would jeopardize the safety, security, privacy interests, or result in the harassment of any person, Crown***

[9] Cited with approval in *R v Carter*, 2018 ONSC 1272, although in a different factual context.

> ***counsel may provide disclosure by means of controlled and supervised, yet adequate and private, access to the disclosure materials.*** *Incarcerated, unrepresented accused persons are entitled to adequate and private access to disclosure materials under the control and supervision of custodial authorities. Crown counsel shall inform the unrepresented accused, in writing, of the appropriate uses and limits upon the use of the disclosure materials* [emphasis added].

12 In its commentary to those recommendations, the Advisory Committee states at pp. 218-19:

> It is a basic principle, of course, that the unrepresented accused, like the accused who is represented, is entitled to full disclosure.
>
> There is, however, one obvious difference between the represented and the unrepresented accused that has a direct and practical bearing on disclosure. Where an accused is unrepresented, there is no officer of the Court, acting for the defence, who can ensure that the disclosure material is used only to prepare to answer the charge, and not for some other improper purpose. . . .
>
> Ultimately, defence counsel, as an officer of the Court, is expected to act responsibly. An unrepresented accused, however, is not required to comply with professional standards. Providing full disclosure to an unrepresented accused, when there is a reasonable basis for concern as outlined in paragraph 9(b), may, therefore, in the Committee's view, be accomplished in a somewhat different manner.
> The Committee has recommended that, where there is a reasonable basis for concern that leaving disclosure materials with the unrepresented accused would jeopardize the safety, security, privacy interests, or result in the harassment of any person, Crown counsel should take such reasonable steps as are necessary to prevent these harms, by providing private access to disclosure materials (or copies thereof) in controlled conditions. . . .
>
> **Where there is a reasonable basis for concern, which leads to disclosure being made in a supervised setting as provided for in paragraph 9(b), the accused must none the less be provided with full disclosure. Further, the Committee wishes to emphasize that the supervision required in these circumstances cannot impair the right of the accused to prepare, in a reasonable manner, to meet the charge(s) he or she is facing. . . .** [emphasis added]

13 The Advisory Committee also recommends, at p. 222 of its *Report*, that Crown counsel should provide to the accused: "[A] reasonable opportunity, in private, to view and listen to the original or a copy of any audio or video recordings of any statements made by a potential witness other than the accused."

14 **The disclosure recommendations of the Advisory Committee properly recognize, and underscore, the harmful consequences that can flow from the**

improper use of disclosure materials and the importance of preventing what the Committee described at p. 218 of its *Report* as the risk of "grave interference with the administration of justice". The risk of harm from the improper use of disclosure materials is particularly pronounced, in our view, in cases involving sexual abuse. The *Report* of the Advisory Committee, in the context of such cases, reflects the important public policy concern that sensitive materials, including statements by complainants, not be exposed to misuse by unrepresented litigants during or after pending criminal proceedings. For that reason, the Committee endorsed the provision by the Crown to an unrepresented accused of private access to disclosure materials, including videotaped witness statements, under controlled circumstances.

15 The approach urged by the Advisory Committee was adopted by the Crown in this case. Disclosure of the videotape was first provided to the respondent through his counsel. Thereafter, in accordance with the *Report* of the Advisory Committee, the Crown offered to provide the respondent with another opportunity to view the videotape under controlled conditions, that is, at the Crown's offices during business hours.

16 **The Crown's proposal for the provision of further access to the videotape was unobjectionable unless there was an evidentiary basis on the record before the summary conviction appeal court judge to conclude that there was a reasonable possibility that the respondent's right to make full answer and defence would be impaired thereby. No such evidence was adduced by the respondent in this case,** nor was any challenge of the Crown's conduct brought by him under the *Charter of Rights and Freedoms*. Moreover, although expressly informed by the pre-trial judge of his ability to renew his production request before the trial judge, the respondent failed to do so.

17 In our view, therefore, there was no breach of the Crown's disclosure obligations in this case concerning the complainant's videotaped statement. The statement had already been disclosed and, when the respondent became self represented, the proposed additional access to the videotape was in conformity with the recommendations of the Advisory Committee's *Report*. The position of the Crown was reasonable in the absence of any evidence of prejudice to the respondent. In any event, it was open to the summary conviction appeal court judge to order the production of the videotape if he believed that it was necessary to permit the respondent to properly present his appeal and to make full answer and defence. There was, however, no valid reason to allow the appeal.

[My bolding added]

1. I understand that the audiotaped versions of the statements of H and S relate to the observed arrival, presence (for a weekend it is alleged) and departure of the complainant from the residence of Mr. Goodman, or one or more of those events.

[53] Crown counsel has represented that the content of their statements could provide sufficient bases to allow one to identify the complainant. As officers of the court, I take counsel at their word, and specifically that Crown counsel has a good-faith basis for their representation.[10]

[54] There is a publication ban in place regarding the dissemination of any information that *could* identify the complainant, which thereby should reduce the concern and possibility about her identity becoming publicly known.

[55] Nevertheless, given counsel's representations regarding the contents of those statements, their short length, and the anticipated physical provision of transcripts to Mr. Goodman, with the opportunity to listen to the audio recordings at his counsel's office, I am satisfied that copies of the audio recordings need not be provided to Mr. Goodman.

[56] Therefore, I am satisfied that it is reasonable that counsel should be required to sign the express undertaking sought by the Crown in relation to those audiotaped statements, before disclosure of them must be given to counsel.

2. Although the photos do not patently identify the complainant, and are not of the genitalia or similar areas of the body, to my mind they very well could evoke the likelihood of strong emotional feelings, including of vulnerability on the part of the complainant should they be in the unfettered possession of

[10] The "good faith" standard is accepted as an appropriate standard in the case of lawyers conduct in court, as noted by the court in *Groia v Law Society of Upper Canada*, 2018 SCC 27 in relation to cross-examination by counsel.

Mr. Goodman,[11] whereas he can conveniently view them at his counsel's office (though I do recognize that on his undertaking he lists his address as in Cumberland County).

[57] I am satisfied that it is reasonable that counsel should be required to sign the express undertaking sought by the Crown in relation to these photographs before disclosure of them must be given to counsel.

3. A written copy of the "General Occurrence Report" provides exactly the same information as would a digitized version – however the digitized copy does present the greater opportunity for mischief such as dissemination and manipulation of the information.

[58] I am satisfied that it is reasonable that counsel should be required to sign the express undertaking sought by the Crown in relation to that document before disclosure of it in digitized form must be given to counsel.

4. Regarding the complainant's videotaped statement, I am satisfied that it is appropriate to prefer the privacy, dignity, security, and I infer also the wishes of the complainant. I infer that her knowing or believing that Mr. Goodman has a copy of her videotaped statement in his personal possession would likely generate strong emotional feelings including of vulnerability, insecurity and invasion of privacy on the part of the complainant. A written transcript of the complainant's videotaped statement will be provided directly to Mr. Goodman.

[11] I am satisfied, though the facts presented are scant, that the complainant had pre-existing vulnerabilities including abuse of prescription drugs, and dislocation from an ongoing place of residence. As the Supreme Court of Canada stated in *R v Goldfinch*, 2019 SCC 38 at paras. 37-8: "Sexual assault is *still* among the most highly gendered and under-reported crimes… As time passes, our understanding of the profound impact sexual violence can have on the victims' physical and mental health only deepens."

[59] I am satisfied that it is reasonable that counsel should be required to sign the express undertaking sought by the Crown in relation to the videotaped statement of the complainant, before disclosure of it must be given to counsel.

Conclusion

[60] I dismiss Mr. Goodman's application.

Rosinski, J.

Appendix "A"

2022 NSSC 384

Canada
Province of Nova Scotia

FORM 4
Crown File No.:

IN THE PROVINCIAL COURT OF NOVA SCOTIA

HER MAJESTY THE QUEEN

v.

UNDERTAKING
RECEIPT OF DISCLOSURE

I, _____, counsel for , (the "Accused") acknowledge receipt of the materials listed in Appendix "A" attached to this Undertaking (the "Materials"). I undertake to be bound by the following conditions with respect to the Materials:

1. That the Materials are provided to me solely for the purpose of assisting the Accused with making full answer and defence in these proceedings. The Materials will not be used for any collateral purpose or other proceeding;

2. These are confidential Materials and must be kept secure;

3. That I will retain in my possession and control, at my place of business or residence, the Materials provided and not release them to anyone except in accordance with the conditions in this Undertaking;

4. That the Accused is not to have actual, physical or personal possession or control of the Materials for any purpose;

5. That I will not publish, distribute, circulate, share or post on the internet any of the Materials except as may be permitted by the conditions of this Undertaking;

6. That I will not allow anyone to review the Materials except:

   a) The Accused, when in my presence or while at my office premises;
   b) An expert witness retained by the Defence to assist with these proceedings;
   c) A person assisting the Defence in the preparation of a transcript of any of the Materials;

d) Any person employed by my office or legal practice who is assisting me in these proceedings;

7. That the Materials are not to be copied by anyone for any purpose, except as provided for in conditions 8, 9, and 10 of this Undertaking;

8. That if an expert witness is retained to assist the Accused in these proceedings I am permitted to give a copy of the Materials to that expert provided the expert retains the Materials in his or her possession and control, at his or her place of business or residence, and returns them to me for secure keeping upon completion of his or her examination of the Materials;

9. That if a transcription service is retained to assist the Accused I am permitted to give a copy of the Materials to that transcription service provided the transcription service retains the Materials in their possession and control and returns them to me for secure keeping upon completion of their transcription of the Materials;

10. That I am permitted to give a copy of the Materials to any Co-Counsel or employee of my office or legal practice provided they agree to the conditions of this undertaking and will retain the Materials in their possession and control and return them to me for secure keeping upon completion of their duties;

11. That these Materials, and any copies, are to be returned to the Nova Scotia Public Prosecution Service upon conclusion of my being retained as counsel for the Accused.

For the purposes of this Undertaking counsel, or any expert or transcription service are considered in "possession or control" if the Materials are in the actual possession of an employee or associate of counsel, counsel's firm or an employee or associate of any expert or transcription service retained by counsel to assist with the Accused's defence.

DATED this _____ day of _____, 2020

SIGNED: _____

_____, Counsel for the Accused
(Please Print Name)

Canada
Province of Nova Scotia

FORM 4
Crown File No:

IN THE PROVINCIAL COURT OF NOVA SCOTIA

HER MAJESTY THE QUEEN

v.

UNDERTAKING
RECEIPT OF DISCLOSURE
APPENDIX A

The Materials to which this undertaking applies are: