SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Sandeson*, 2022 NSSC 111

Date: 20220421
Docket: CRH No. 498639
Registry: Halifax

Between:

Her Majesty the Queen

Respondent

v.

William Michael Sandeson

Applicant

APPLICATION FOR STAY OF PROCEEDINGS
***Pre-trial – Voir Dire* I**

DECISION

Judge:	The Honourable Justice James L. Chipman
Heard:	March 28, 29, 30 and April 1, 2022, in Halifax, Nova Scotia
Decision:	April 21, 2022
Counsel:	Carla Ball and Kimberley McOnie, for the Respondent Alison Craig, for the Applicant

By the Court:

INTRODUCTION

[1] The Applicant, William Michael Sandeson, seeks an order declaring an abuse of process by virtue of his rights to a fair trial, and/or prejudice to the integrity of the justice system, and an Order granting a stay of proceedings. The Applicant seeks an Order on these grounds:

> 1. The breach of litigation privilege and late disclosure of same strike at the heart of the applicant's s. 7 *Charter* rights in such a manner that the right to a fair trial is irreparably compromised.
> 2. The state conduct arises to an abuse of process that prejudices the integrity of the justice system and continues to do so if the trial is to continue.
> 3. The appropriate remedy for the breach of s. 7 rights and/or prejudice to the integrity of the justice system is a stay of proceedings.

[2] The Crown opposes the application arguing that the Applicant has failed to discharge his burden to show that his s. 7 *Charter* rights have been infringed.

[3] The parties provided the Court with an Agreed Statement of Facts (see Appendix at the end of this decision) along with the following exhibits, which were admitted by consent:

- August 15, 2015 CD of video surveillance captured from the hallway outside of Mr. Sandeson's apartment
- August 19, 2015 police statement transcript of Pookiel McCabe
- August 26, 2015 police statement transcript of Justin Blades
- August 27, 2015 police statement transcript of Mr. McCabe
- October 20, 2016 KGB statement of Mr. Blades and accompanying transcript
- October 27, 2016 KGB statement of Mr. McCabe and accompanying transcript

- Transcript of Mr. McCabe's evidence from the May, 2017 mistrial *voir dire*
- March 20, 2022 sworn affidavit of Crown Prosecutor Susan MacKay
- March 30, 2022 sworn affidavit of (former) Sandeson defence lawyer Brad Sarson
- March 31, 2022 sworn affidavit of Crown Prosecutor Kim McOnie

[4] The Applicant called Eugene Tan and Justin Blades as witnesses and the Crown called Bruce Webb, Superintendent Richard "Richie" Lane, Corporal Joseph "Jody" Allison, Superintendent Derrick Boyd, Sergeant Roger Sayer and Thomas Martin.

[5] In considering the credibility of the witnesses I am mindful of our Court of Appeal's direction as recently set out by Justice Bourgeois in *R. v. N.F.D.W.*, 2021 NSCA 91 at paras. 22 – 29. At the beginning of her analysis,. Bourgeois, JA drew upon Justice Derrick's summary of the leading principles in relation to the assessment of credibility:

> [22] Before looking at the trial judge's credibility assessment and his reasons relating thereto, it is useful to set out the relevant legal principles. In *R. v. Stanton*, 2021 NSCA 57, Justice Derrick summarized the leading principles relating to the assessment of credibility at para. 67, notably:
>
> - The focus in appellate review "must always be on whether there is reversible error in the trial judge's credibility findings". Error can be framed as "insufficiency of reasons, misapprehension of evidence, reversing the burden of proof, palpable and overriding error, or unreasonable verdict" (*R. v. G.F.*, 2021 SCC 20 at para. 100).
> - Where the Crown's case is wholly dependent on the testimony of the complainant, it is essential that the credibility and reliability of the complainant's evidence be tested in the context of all the rest of the evidence (*R. v. R.W.B.*, [1993] B.C.J. No. 758 at para. 28 (C.A.)).
> - "Credibility findings are the province of the trial judge and attract significant deference on appeal" (G.F. at para. 99). Appellate intervention will be rare (*R. v. Dinardo*, 2008 SCC 24 at para. 26).
> - Credibility is a factual determination. A trial judge's findings on credibility are entitled to deference unless palpable and overriding error can be shown (*R. v. Gagnon*, 2006 SCC 17 at paras. 10-11).

- "Assessing credibility is not a science. It is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events..." (*Gagnon* at para. 20).
- The exercise of articulating the reasons "for believing a witness and disbelieving another in general or on a particular point ... may not be purely intellectual and may involve factors that are difficult to verbalize ... In short, assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization" (*R. v. R.E.M.*, 2008 SCC 51 at para. 49).
- A trial judge does not need to describe every consideration leading to a finding of credibility, or to the conclusion of guilt or innocence (*R.E.M.* at para. 56).
- "A trial judge is not required to comment specifically on every inconsistency during his or her analysis". It is enough for the trial judge to consider the inconsistencies and determine if they "affected reliability in any substantial way" (*R. v. Kishayinew*, 2019 SKCA 127 at para. 76, Tholl J.A. in dissent; upheld 2020 SCC 34 at para. 1).
- A trial judge should address and explain how they have resolved major inconsistencies in the evidence of material witnesses (*R. v. A.M.*, 2014 ONCA 769 at para. 14).

[6] In assessing the credibility and reliability of the witnesses who provided oral evidence, I recognize that it has been in the realm of six years since the matters in issue. There were discrepancies along the way; for example, Mr. Webb recalled meeting at the same time with Messrs. Tan and Martin post receiving KGB statements, whereas they each recollected separate meetings. As for the police, they were inconsistent in their recall of what was said, where and by whom with respect to how Mr. Webb's name would be kept out of police notes. While aware of these and other inconsistencies, I nevertheless formed the opinion that for the most part the witnesses provided truthful evidence.

[7] My only hesitation about the evidence of the police comes from Supt. Boyd's evidence. I question the accuracy of his recall of many of the events, especially since he did not keep any notes of what took place. As for Messrs. Tan and Martin, I found them to be credible in most areas; however, as I will explain, I am troubled by what I perceive as an attempt by both men to elevate Mr. Webb's status and knowledge. Furthermore, I have concerns about the veracity of their evidence about confronting Mr. Webb in late 2016.

THE EVIDENCE

Tom Martin Investigations Inc. Retained

[8] At the time of the trial Eugene Tan was a 20 year member of the Bar. He was lead counsel for Mr. Sandeson, retained the day after he was arraigned. Within days he and his firm (Walker Dunlop) retained Tom Martin Investigations Inc. (MI). Mr. Martin is a retired Halifax Regional Police (HRP) officer. MI was hired for "many reasons …Tom Martin had a great deal of experience in this exact field, it would be helpful regarding police strategies and tactics". The Sandeson retainer was paid for by Sandeson family members and MI was to report solely to Mr. Tan.

[9] Among other things, Mr. Tan noted "a number of witnesses said very little"; he wanted independent statements taken by MI. He added that there were two witnesses who "did not appear on anyone's list" and he wanted MI to identify these individuals. On cross-examination he agreed that these two individuals' names were not in the Crown's disclosure. He agreed that he had these two individuals investigated "early on". Mr. Tan agreed that the defence worked hard to identify various names and that MI was hired to do many things.

[10] Mr. Tan and Mr. Martin met regularly in person at the Walker Dunlop or MI offices. A number of the meetings included the attendance of other MI "Sandeson team" members. As with Mr. Martin, most were retired police officers and Mr. Tan thought that there were three or four who were part of the team, including Bruce Webb. Mr. Tan had hired MI before and was acquainted with Mr. Webb, whom he described as "one of Tom Martin's trusted lieutenants".

[11] Mr. Tan described the team meetings as "broad discussions … almost like a scrum". He would tell the group what was on his mind and Mr. Martin would run the meeting, which would discuss strategy. He gave the example of the Sandeson apartment search as "having problems", so the team including a "forensic expert", provided input.

[12] Mr. Tan met regularly with Mr. Sandeson at the jail and occasionally Mr. Martin came along. Mr. Sandeson explained his role in the drug trade to Mr. Martin and him; Mr. Webb was later privy to this information. During team meetings Mr. Sandeson's "version of events, views of things" would be shared with the team, which included Mr. Webb. By the fall of 2015 Mr. Tan stated, "we had a working theory".

[13] With respect to confidentiality, "you hire your own investigator and you expect it to be fully confidential". Mr. Tan noted confidentiality was part of the MI website and that he had discussed this with Mr. Martin "early on" referencing prior retainers. He felt all of the team would maintain privacy, "… as much understood as spoken".

[14] Mr. Tan provided MI with the complete Crown disclosure. Mr. Webb "was an active participant in the development of the defence strategy". He was provided with Mr. Webb's *curriculum vitae* and knew that he was a retired Staff Sergeant. Mr. Tan noted that Mr. Webb, "had the last word in scrums before Tom summarized".

[15] Tom Martin started MI in 2011. At the time he was a retired 30-year veteran of the HRP. For the last 15 years of his police career he was a D/Cst. in the homicide division. MI has a number of retired officers working as contract employees as it did in 2015 – 16. MI requires all who work there to sign a Confidentiality Agreement (CA). Mr. Martin characterized the CA as requiring that a person, "simply not discuss the inner workings for any client we work for". MI is usually retained, as it was in the Sandeson case, by a law firm and all at MI understand that they are bound by the CA.

[16] Between 2013 and 2017 Mr. Webb worked for MI. Mr. Martin did not know Mr. Webb prior to hiring him. Mr. Webb signed the CA when he joined MI.

[17] In August, 2015 MI was retained by Walker Dunlop to work on the Sandeson case. Mr. Tan provided MI with a "mandate to review the police investigation". Mr. Martin said that MI would "continue with any investigation effectively not carried out". MI was asked to obtain various statements and "obtain the body of Mr. Samson". There was a core group of six or seven investigators who worked on the Sandeson case. Mr. Webb was designated as the file coordinator. This involved maintaining paperwork. Mr. Martin assigned individual tasks and reviewed the Crown disclosure.

[18] By the time of the Sandeson retainer Mr. Webb had worked on many MI cases. On the Sandeson case Mr. Webb attended meetings of the core group. During meetings the progress of the investigation and any new information received from Mr. Tan was reviewed. Mr. Martin said, "we received a wish list from our client, what the client wanted from us …we maybe slightly touched on strategy".

[19] Mr. Tan was present at some of the "several" team meetings. Mr. Sandeson (who was in custody) did not attend. On cross-examination Mr. Martin agreed that Mr. Webb was involved in meetings where all tasks were discussed and that Mr. Webb was privy to all of the goals provided by Mr. Tan.

[20] On cross-examination he said that he would have attended three or four meetings at the jail with Mr. Tan and Mr. Sandeson. Mr. Webb did not attend these meetings; however, the information Mr. Sandeson provided was discussed at Sandeson team meetings. Further, Mr. Webb had access to the MI Sandeson file.

[21] Mr. Martin gave Mr. Webb a task sheet to obtain statements from Sonya Gashus, Pookiel McCabe, Justin Blades and perhaps another person. Witness contact information was received through the disclosure or Mr. Tan. Once the statements were obtained they were provided to Mr. Tan. Mr. Martin did not "personally see" any of the statements. During the meetings the contents of the statements were discussed.

[22] After 35 years with the RCMP, Bruce Webb retired as a Staff Sergeant in June, 2012. He became employed with MI in 2014 and his job terminated at the time of the trial. While he was with MI his role involved receiving tasks and investigating on behalf of MI clients. Tasks typically included taking statements.

[23] Mr. Webb became involved in the Sandeson file while working for MI in August of 2015. He recalled being involved in a team of about five. He took part in several meetings and "learned the strategy of the defence team". In October, 2016, he was tasked by Eugene Tan to interview Justin Blades and Pookiel McCabe; "he wanted me to get the truth out of them… he didn't want any surprises". He had read Mr. Blades's prior police statement. Mr. Tan or somebody on the investigation team gave him Mr. Blades's phone number, which came from Adam Sandeson.

[24] Mr. Webb stated that during the meetings evidence – what could and could not be made of it – was discussed. He recalled some defence strategy discussion, "but I don't recall a lot". On cross-examination he said the only information he received was from the police investigation, although he acknowledged having confidential information such as legal arguments for attacking searches, Mr. Sandeson's statements, and the credibility of certain witnesses. He did not attend any meetings where Mr. Sandeson was in attendance.

Police Obtain Initial Statements from Justin Blades and Pookiel McCabe

[25] Justin Blades gave his initial statement to police on August 26, 2015. He admitted when he testified at this *voir dire* that during his first statement he did not disclose what he saw. Thereafter, he did not update the police about his whereabouts or contact information. He had a "minutes phone"; he felt that he would be hard to reach.

[26] Sgt Jody Allison was a long-time Corporal in 2015. During the time in question he was working on the integrated (HRP and RCMP) Samson homicide investigation. While not one of the three officers comprising the investigative Triangle, he received Triangle tasks.

[27] Corp. Allison reviewed the circumstances of taking Mr. Blades's initial police statement in Yarmouth on August 26, 2015. He felt by his mannerisms that Mr. Blades "was more than just nervous …he appeared to be under a lot of stress". Corp. Allison told Mr. Blades that he had viewed the surveillance video showing him in the hallway between the Sandeson and McCabe apartments. In his police statement Mr. Blades did not disclose what he saw; hence Corp. Allison stated, "I felt that he knew more than what he's telling us".

[28] On August 27, 2015 Corp. Allison met with Mr. McCabe at HRP headquarters. Mr. McCabe had given a previous statement to Det. Cst. John Jeffries. Corp. Allison also felt that Mr. McCabe was also "not telling me the full story" in his police statements.

[29] At the time of the matters in issue Supt. Derrick Boyd was an HPD Sergeant. Sgt. Boyd was assigned as team leader of the Triangle investigating Mr. Samson's homicide. Sgt. Kim Robinson was the lead investigator and D/Cst. Sayer completed the Triangle in his role as file coordinator. When Sgt. Robinson was promoted, D/Cst. Sayer assumed her role in addition to his initial role.

[30] Sgt. Boyd described his role as team leader as obtaining resources for the investigation. He assigned "taskers" to carry out roles such as obtaining statements. Sgt. Boyd reported to S/Sgt. Lane, who was in charge of the homicide division.

[31] Sgt. Boyd recalled that Mr. McCabe provided police with an initial statement on August 19, 2015. Owing to a discrepancy between his statement and what was revealed on the surveillance video, police shortly thereafter took a second statement. After obtaining these two statements Sgt. Boyd did not anticipate that police would meet with Mr. McCabe again until close to the trial; "generally, you meet with the Crown before and interview everyone involved in the case and I knew we would be

…". He was unaware if further steps were taken to obtain updated contact information from Messrs. Blades and McCabe. As with Mr. Blades, Sgt. Boyd saw from the video surveillance that Mr. McCabe had also seen something when he looked toward the open door of Mr. Sandeson's apartment.

[32] In August, 2015 Sgt. Boyd tasked Corp. Allison to interview Mr. Blades. Sometime later Sgt. Boyd had concerns about his truthfulness given the video surveillance depicting Mr. Blades with "a surprised look on his face". Sgt. Boyd believed that Mr. Blades had seen something but he had not told police anything.

[33] On cross-examination, he admitted that until the developments of October, 2016, he had no reason to believe that Messrs. Blades and McCabe were going to change their evidence.

[34] In 2015 Sgt. Roger Sayer was an HRP Detective Constable with 15 years experience. Assigned to the major crime unit, he was initially the Triangle's file coordinator on the Samson homicide. When Sgt. Kim Robinson was promoted in late 2015, D/Cst. Sayer also assumed her role as lead investigator. Sgt. Boyd was the team lead and they worked "cooperatively making decisions".

[35] D/Cst. Sayer became aware of Mr. Blades upon viewing Mr. Sandeson's video surveillance footage taken from outside of his apartment. This brief video was shown in Court revealing, among other things, Mr. Blades in the hallway between the Sandeson and McCabe apartments at approximately 10:30 on August 15, 2015. He exhibits a surprised look on his face while looking into the Sandeson apartment.

[36] D/Cst. Sayer tasked Corp. Allison and D/Cst. Scott MacLeod to obtain Mr. Blades's statement. They contacted him and arranged for his interview which took place in the back seat of an unmarked police car on August 26, 2015 in Yarmouth. Mr. Blades's statement was recorded and D/Cst. Sayer listened to it and read the officers' notes shortly after receipt. All of this information was passed on to the Crown.

[37] D/Cst. Sayer had concerns about the truthfulness of Mr. Blades's statement. Having viewed the video surveillance, he believed that Mr. Blades "saw more than he said in his audio statement". He added that Mr. Blades had stated that he smelled cleaner, that Mr. Sandeson had a firearms permit and that Mr. Sandeson's shower curtain was missing.

[38] With respect to re-interviewing Mr. Blades, D/Cst. Sayer responded, "I know we'd interview him again at some point, at the very least before the trial". He said this was especially the case because Mr. Blades had not been forthcoming.

[39] On cross-examination he admitted that up until October, 2016, he had no indication that Messrs. Blades and McCabe would say anything different.

[40] D/Cst. Sayer noted statements were obtained from Mr. McCabe on August 19 and 27, 2015 as well as October 27, 2016. He thought "not anything useful" came from his first statement. The second statement was taken, "because of the video and at first he said he hadn't seen him, but he had". From the second McCabe statement D/Cst. Sayer said that it revealed that Mr. Sandeson had been seen in his apartment and that Mr. McCabe knew he had a firearm. Although he did not assign a task for a further interview of Mr. McCabe, "I know we'd see him again". D/Cst. Sayer noted Mr. McCabe was on the witness list and that he would be subpoenaed.

[41] On cross-examination Mr. Tan agreed that in Mr. Blades'ss August 26. 2015 statement to police that he said he smelled cleaner in Mr. Sandeson's apartment and saw Mr. Sandeson the day after the alleged murder. He agreed that Mr. McCabe also gave some helpful (for the Crown) information to the police in his August 19 and 27, 2015 statements.

[42] Mr. Tan agreed that from the video of the hallway outside of Mr. Sandeson's apartment on August 15, 2015 that it is obvious that Mr. Blades is looking into the Sandeson apartment at around 10:30 p.m.

[43] Mr. Tan acknowledged that both men appeared on the Crown witness list and that he expected the Crown would subpoena them at trial as well as meet with them before the trial. He recalled that all of the (then obtained) statements of Messrs. McCabe and Blades were entered as exhibits at the Preliminary Inquiry which commenced February 8, 2016.

Eugene Tan asks Bruce Webb to "Lean On" Justin Blades and Pookiel McCabe and the Aftermath

[44] The task to interview Justin Blades and Pookiel McCabe came from Mr. Tan; "I don't know what they'll say… see how they react under pressure". Mr. Webb took new statements from the two. On cross-examination Mr. Tan said that in late September or early October he asked Mr. Webb to "lean on" Messrs. Blades and McCabe. He did not ask Mr. Webb to emphasize who he was when he met with

these witnesses; albeit he acknowledged his view that Mr. Blades was an easily confused person. In late October Mr. Webb reported back to Mr. Tan that Mr. Blades was very nervous.

[45] Mr. Tan received further police statements from Mr. Blades and Mr. McCabe through Crown disclosure received on November 8, 2016. The (later received by Mr. Tan) transcript of Mr. Blades's KGB statement reads as follows at pp. 91 – 95:

> Q. Right. Now does... has any of his family members tried to get a hold of you?
>
> A. No, just Adam. Adam messaged me on Facebook. He's, like, Bruce... like, a fellow named Bruce is... wants to talk to you to help the family out, and I was thinking, like, help Will's family out? And there's, like... I was thinking, like, there's no help for him.
>
> Q. Right, okay.
>
> A. So, like... and then I was thinking, like, maybe this is an opportunity for me to fucking figure out what's going on, like, can I tell people what happened, like...
>
> Q. Right.
>
> A. ... without getting in trouble?
>
> Q. Yeah.
>
> A. Like...
>
> Q. Yeah.
>
> A. ... killed, obviously...
>
> Q. Exactly, yeah.
>
> A. ... or whatever.
>
> ...
>
> A. I just don't want my name... I just don't...
>
> Q. Yeah.
>
> A. ... want... I... my life's been fucked up enough, like...
>
> Q. Right, you...
>
> A. ...internally, like, I...
>
> Q. Obviously, if you could... if you didn't... if everything worked out and you didn't have to go to court, that would be the best thing...
>
> A. Option.
>
> Q. Best option ever.

A. They need... obviously, I don't know what kind of other evidence you guys have, but...

Q. Uh-huh.

A. ... by the sounds of it, like, he's pretty guilty.

Q. Yeah.

A. And, like, he deserves to take responsibility for his actions, like, obviously, and that's... a hundred percent agree with you there, that's fucked, but, like, if it comes down to it, like, if I have to, like...

...

Q. So... so Pookiel, he saw everything that you pretty well saw, did he?

A. Yeah, he was with me there.

Q. He was right beside you.

A. Yeah.

Q. He saw everything, and when you guys were... obviously, you talked about it later on. Did... did he recall anything more that... you know, do you remember if he's... had more detail or anything like that, or did he see the same type...

A. Yeah.

Q. ... (inaudible) like, just...

A. He was just, like, more suppressed. I think he just wanted to, like... like, obviously, like, he's got... like, didn't really want to talk about it, like, he was just, like...

Q. Okay.

A. Like, he was with all of us all night, like, he...

Q. Oh yes, yeah, yeah, no.

A. Yeah, like, he's...

Q. We know... we're...

A. Yeah, okay.

Q. We're confident in that.

A. Yeah.

Q. We're... I guess what we're just trying to figure out, like, you know, we'll... we'll ha... we still have to go and speak with him again.

A. Yeah, for sure.

Q. And does he... does he know that any... does he know that you... he obviously doesn't know that you were coming here.

A. No, no one knows I'm here...

Q. Okay, and I mean...

A. ... today.

Q. ... the... he... he probably won't know that... unless you tell him, I guess, that you know...

A. I almost wanted to go... and I don't know how, like, any of the justice system works here, but I almost wanted to go into the jail and be, like, I'm tired, man, like, what's going on, like, you need to come clean, like, tell me if I'm... am I being pursued, like.

Q. Yeah.

A. And then, obviously, like, I feel like that was a recording place, like, they'd probably be, like...

Q. Yeah.

A. And then, obviously, because I didn't tell you guys in a place I could get in trouble, so I, like...

Q. Right.

A. ... assisted.

Q. Yeah, yeah, that was something you were thinking of doing, you mean?

A. Yeah, like...

Q. Okay.

A. ... stuff like that played in my mind all the time and I was just, like...

Q. Okay.

A. As time went on, I felt better and better about not being, like... come after, so I was...

Q. Right.

A. ...like ...

Q. Yeah.

A. I was, like, man, like, I need to, like, get this... I need to tell someone, like, fuck.

Q. Yeah, no, you... Justin, you did the right thing.

A. And then when Bruce, like, came to me, and then I was, like, finally, someone came to me, like.

Q. Yeah.

A. Had a hard time reaching out because I didn't trust anyone.

Q. Right.

A. And then I... I Googled Bruce online and I knew... I seen what he was about for years and years and what he did.

Q. Okay.

A. And I knew he wasn't, like... yeah, I felt comfortable talking to him.

Q. Okay.

A.I let him in my house and I felt comfortable in my own house.

Q. Okay.

A. Yeah.

Q. All right, well, listen, I'm just going to go out and make sure that I didn't forget anything else.

A. Yeah.

Q. And then we're going to end it and... Do you have any questions for me or...

A. Just, like, should I call Kamal? I don't have his number, but...

Q. You can... like, I mean, you... you... you can if you want.

A. Yeah, like, I should probably, like, let him know, like, I've come clean, like.

Q. But, I mean, that's up to yourself. You don't have to do any of that stuff. I mean...

A. I just... I don't know, like, I don't want him... I don't know, I guess it doesn't really matter, but I don't know.

Q. I mean, we'll... we'll... we obviously will have to follow up with him.

A. Obviously, yeah.

Q. Wherever he is, we'll... we can track him down, obviously, and we'll just...

A. Yeah.

Q. . .. you know, say, you know, we know that you know-type thing.

A. Yeah.

Q. So, I mean, it's up to you.

A. I just don't want him... you guys to scare the fuck out of him.

Q. No.

A. That's all I wanted to tell him, that...

Q. Yeah.

A.... I came clean and totally don't worry.

Q. Yeah.

A. Like, it's okay, man, like.

Q. Yeah.

A. I don't want him to feel any way more than I know that we felt in the past year or whatever. It's...

Q. I mean, it's got to have been tough on you guys, so...

A. Oh my God, like, oh...

Q. All right, I'm just going to make sure everything is good, okay, and I think we'll be done.

A. Yeah.

(Officer leaves room -- 13:58:23 hrs)

(Officer returns -- 13:58:27 hrs)

Q. All right, Justin, I think we're good here. I'll just get the time. It is... of course, I shut the phone off, shut them both off. Anyway...

A. Good for you.

Q. You got yours, have you?

A. Yeah, it's not even a phone, it's a wi-fi phone.

Q. Oh, perfect.

A. Yeah, I don't have a phone. 1:58.

Q. 1:58, we're all done.

A. That's it.

Q. Okay? All right, Justin, we can get you...

A. But I do have an... an app. I think you guys have that number, maybe. I gave it to Bruce.

Q. Yeah.

A.... (inaudible)

Q. No, you know what, I... I might...

A. Yeah, yeah.

Q. Do you mind if I get it from you.

A. No, it's a... it's... it comes up as a British Columbia number.

Q. Okay.

A. Obviously, because I... I want it to look like I'm not around here.

Q. Yeah, no, that's fine, maybe I'll just...

[emphasis added]

[46] Mr. Tan watched the unredacted KGB statements a few days later; "I can remember well … shock is not enough to describe how I felt about it". He met with his co-counsel, Brad Sarson and had a phone conversation with Mr. Martin, whom he had provided copies of the KGB statements.

[47] Mr. Tan also called Bruce Webb and they had a conversation around November 10, 2016. He said, "Bruce, what the hell happened, you didn't tell me anything about this". According to Mr. Tan, Mr. Webb replied by saying, "I guess I leaned on them too hard". Mr. Tan felt this explanation was "plausible" adding that he thought Mr. Martin also had a conversation with Mr. Webb about this.

[48] He added that he had "tremendous respect" for police generally and that it did not cross his mind that Mr. Webb could have betrayed him. Mr. Tan stated that he was lied to by "two or three levels … the Crown had to lie to me, a lie of omission".

[49] On cross-examination he said that Mr. Martin reported to him that he "directly confronted Bruce and had the same conversation as me …a confrontational meeting". Tom had asked him something about, 'did you have anything to do with this'". He did not ask Mr. Martin to ask about the name Bruce being referred to by Mr. Blades. At no time did he ask anyone to find out the identity of this person. He added that Mr. Martin had a conversation with Mr. Webb at the time of the trial and "Bruce admitted what he did".

[50] On the basis of the disclosure Mr. Tan became aware that the police had spoken with Messrs. Blades and McCabe in late October, 2016. On cross-examination he said that he asked Mr. Webb about the close proximity of the statements he obtained from the men and the disclosed KGB statements. He did not raise the fact that the name "Bruce" appears in Mr. Blades's statement. He added that he was not "accusatory" when he spoke with him, "because my mind didn't go there, it was really more that he did something inadvertent, maybe he leaned on them a little too hard". In hindsight he said that he agreed that the p. 91, line 19 passage in Mr. Blades's KGB statement raise suspicions that "Bruce" is Bruce Webb. As for the reference at p. 92, this was not a concern to him at the time. He explained this was because of his relationship with Mr. Webb and the stories about Mr. Blades being "gullible and easily confused". Alerted to the passage at p. 95, he said that it did not occur to him that it was Mr. Webb.

[51] Mr. Tan remembered "reading" (he later clarified that he did not have the transcript until 2017) the passage at p. 95 and wondering if "he was Charles Bruce, I knew to be a Halifax Police Officer in Major Crimes at the time". Pressed on this

he agreed that at the time he listened to the statements that Mr. Bruce's name was not in the disclosure and that the name – Charles Bruce – did not then occur to him. He clarified that it would have been a lot closer to the trial when he thought about Mr. Bruce and that it was "merely idle speculation, I'm not hanging my hat on it, not suggesting it's related to this inquiry". Indeed, he acknowledged that there is no person named Bruce in the Crown disclosure.

[52] On re-direct examination he said he had not received anything suggesting "Bruce" was involved generally in the Samson homicide. He said Bruce is not an uncommon name.

[53] During his testimony D/Cst. Sayer said that Charles Bruce is an HPD officer who was not involved in the Samson investigation.

[54] Mr. Tan elaborated that he became concerned about the state's lack of transparency and wondered what else was hidden from the defence. He was also concerned about Mr. Webb being privy to various discussions; "he's had my entire theory of the case, I've never been able to determine what's been passed on… I have little confidence I got the whole story".

[55] One of the things that bothered Mr. Tan was "the line of questions" about why he did not ask who "Bruce" was (in the statement of Mr. Blades) and that "the trial court weighed in, respectfully as I can, I have to disagree". Mr. Tan elaborated, "a betrayal of that magnitude, I can't think would happen … it's ridiculous that your mind would go there". He added that he could not agree that he should have known, "I had what I thought to be very valid assurances". He stated that Mr. Webb was as close to him as anyone except his co-counsel and Mr. Martin.

[56] As a result of a conversation with Mr. Tan, Mr. Martin asked Mr. Webb to come into the MI office. Mr. Tan was concerned because Mr. Blades and Mr. McCabe provided (just disclosed) police statements within days of Mr. Webb having obtained statements from the men. Mr. Martin and Mr. Webb had a brief conversation in the presence of Matt Morash, MI's administrator. Mr. Martin did not review the KGB statements before he spoke with Mr. Webb. Mr. Martin arranged the meeting, because of "two concerns, the concern expressed by Mr. Tan and I simply don't believe in coincidences …I wanted to ask him if he knew why so soon after he interviewed those two witnesses they gave completely different statements to police". Mr. Webb's explanation was, "I guess I leaned on them too hard". According to Mr. Martin, "I didn't give anymore thought, business went on

as usual". Mr. Webb continued on the Sandeson file; however, Mr. Martin could not recall any more specific tasks that he carried out.

[57] On cross-examination Mr. Martin said he accepted Mr. Webb's explanation, adding, "I did, I had full faith in him, it was kind of inconceivable".

[58] On cross-examination he said that confidentiality was discussed at a December 7, 2015 Sandeson team meeting at the request of Mr. Tan. He allowed that he constantly reminded MI employees of their confidentiality responsibility.

[59] Mr. Webb reached Mr. Blades on October 17, 2016. Mr. Webb explained who he was, who he worked for and that he would like to meet with him to discuss what, if anything that he may have seen. Mr. Blades agreed to meet at his house in Halifax. Mr. Webb attended at around noontime on October 18th describing Mr. Blades as, "very, very nervous". He recalled that there was a knife on the edge of a table in Mr. Blades's bedroom suite. Mr. Blades explained that that he kept the knife at all times because he was afraid of the Hells Angels. Mr. Webb recalled that Mr. Blades said that he had looked him up online. He was "pretty sure" that he gave him his business card.

[60] On cross-examination he agreed that Mr. Blades did not have a landline or cell phone because he did not want to be tracked down. Mr. Webb obtained a full statement – recorded on his cellphone – of what Mr. Blades observed. Mr. Blades re-enacted the scene including Mr. Samson being slumped over in a chair with blood pouring out of him.

[61] Mr. Blades stated that William Sandeson told him that he was involved with organized crime and told him not to say anything. Consequently, Mr. Blades kept a low profile; for example, he used an "internet" phone. Mr. Webb thought he first reassured him about Mr. Sandeson not being involved with the Hells Angels and then Mr. Blades "broke and told me what happened". He added that there were not many questions asked before Mr. Blades told his story. Mr. Webb formed the impression that Mr. Blades "was scared to death he'd be killed".

[62] Initially Mr. Blades was "a little evasive" but after Mr. Webb pointed out that he could be observed on the video looking into the apartment with a "shocked look", "he started to cry, he broke down and sobbed uncontrollably, I felt so bad for him and then he explained what he'd seen in the apartment". Next, Mr. Webb told him that his belief about Mr. Sandeson being involved with the Hells Angels was "far fetched".

[63] Mr. Webb gave no threats, promises or pressure. In the end he thought Mr. Blades seemed very relieved, "it was really heart felt". Mr. Webb asked Mr. Blades if he wanted to discuss this with police and he replied, "yes". Mr. Webb said that he knew someone and he would contact him and arrange for a statement to be taken.

[64] On October 19th Mr. Webb located Pookiel McCabe via a Facebook message. Mr. Webb left his number and Mr. McCabe called back. He explained who he was and that he wanted to take Mr. McCabe's statement (over the phone as Mr. McCabe was living in Toronto). The "really nervous…paranoid" Mr. McCabe agreed for this to take place on October 22nd. When they had the call, Mr. Webb thought that he first told Mr. McCabe what Mr. Blades had said about seeing Taylor Samson to "get him to open up". In any case, "Pookiel opened up and told me what he saw, basically, he saw what Justin saw". He said he exerted no pressure on Mr. McCabe to speak, adding that he also encouraged him to speak with police. This was his last contact with Mr. McCabe.

[65] On cross-examination he acknowledged that Mr. McCabe did not commit to speaking to the police but despite this, he gave his contact information to Corp. Allison without the permission of Mr. McCabe or MI.

[66] As for any Hells Angels threats, Mr. McCabe said he left Halifax because he was afraid for his life. Mr. Webb informed him that any alleged Hells Angels threats were not realistic. Mr. Webb stated that his knowledge of the Hells Angels came from 35 years with the RCMP and not what he learned from working on this case. He denied knowing anything about Mr. Sandeson's involvement in the drug world. He denied that anything of what he said about Mr. Sandeson's lack of Hells Angels involvement came from defence team meetings.

[67] Mr. Webb provided the MI team with a summary report of what Messrs. Blades and McCabe told him that they had observed. He recalled a November 2016 meeting with the two defence lawyers, himself and Mr. Martin in attendance. The KGB statements had been disclosed and, "they were surprised …I believe Eugene might have said something and I said the police must have picked them up … I did not tell them what I told police". Asked if there was any confrontation regarding how the statements came about, he responded, "I don't remember". He added that during the trial that Mr. Martin called and accused him of being a police informant; his response, "I just wanted it off my chest so I facilitated meetings".

[68] Mr. Blades withdrew from university and track after the events of August, 2015 because he could not concentrate. He found it hard to face people. In October, 2016 he lived and worked in Halifax.

[69] Prior to the Samson homicide Mr. Blades was aware that William Sandeson was selling drugs. Although Mr. Sandeson did not tell him "a whole lot, he bragged". According to Mr. Blades, "random people said he was into marijuana and the dark web … he was into cryptocurrency … buy and it wouldn't be traceable". He thought of the Hells Angels because of "what he told us… he would run money or drugs to Montreal".

[70] Mr. Blades's best friend and track mate, Pookiel McCabe lived across the hall from Mr. Sandeson on Henry Street. Mr. Blades was aware that Mr. Sandeson had video surveillance cameras covering his place and the hallway between the apartments.

[71] Mr. Blades's first statement was given to the police in the back of their car in a parking lot in Yarmouth. He had left Halifax for his hometown because, "I couldn't be in my house anymore, I felt scared of everything, for the unknown, so surreal, I couldn't make sense of any of it, I was scared of retaliation from the Hells Angels". Soon thereafter, Mr. Blades returned to Halifax to live with his girlfriend and later to his Larry Uteck area apartment. As time went on Mr. Blades continued to keep what he witnessed to himself; however it began to wear on him. He explained, "I felt like shit because I knew what I saw, I was sorry about elongating things". He described the time between mid-August 2015 and the time in October 2016 when he agreed to tell the truth as, "a struggle, fake lying to people … no motivation, emotionally unavailable, I lost my girlfriend. His "really good" relationship with Mr. McCabe became "non-existent".

[72] His next contact about this case came over a year later from Adam Sandeson through Facebook Messenger. He was told that the Sandeson family had someone working for them who wanted to see him. Mr. Blades googled the name of the man Adam had provided, "I just assumed he was police, I didn't really remember … RCMP, extensive contacts". Mr. Blades agreed to meet with Mr. Webb inviting him over the next day; "I already knew what I wanted to tell him, … the Samson homicide … I just wanted to lay it on him". He described his feelings at the time; "I was at the point where I had to confide".

[73] On cross-examination he said that he thought Mr. Webb was a police officer, "a high ranking guy". When they first spoke on the phone he could not recall if Mr. Webb said that he worked for the family.

[74] Mr. Blades gave his statement and he was "emotionally distraught for sure". He provided Mr. Webb with more details than what he told the police the year before. He told him what he saw; "after I told him, he was kind of in shock" adding that Mr. Webb said he knew of people who could help him. He wasn't sure who these people were. He added that Mr. Webb gave him the option to speak with police.

Bruce Webb Approaches Staff Sergeant Lane

[75] After meeting with Mr. Blades Mr. Webb drove to his home in Fall River. One of his neighbours was Richie Lane. The two had been neighbours for almost 20 years. They would see one another outside (they lived four doors apart) perhaps once a month. Mr. Webb knew at the time he was in charge of Major Crimes with HPD. They had some past professional involvement but did not socialize.

[76] Richie Lane was an HRP Staff Sergeant in 2015. He was in charge of special investigations including homicide and the Sandeson case.

[77] S/Sgt. Lane knew Bruce Webb as he was a former RCMP officer living in his subdivision. They had never worked together nor did they have a personal relationship. They occasionally "exchanged pleasantries".

[78] On the October 18th drive, between 4 p.m. and 5 p.m., Mr. Webb happened to see S/Sgt. Lane out walking his puppy. He stopped his truck and S/Sgt. Lane came over. For "two reasons", Mr. Webb wanted to tell S/Sgt. Lane what he had just learned; "I was very upset and emotional about what Justin Blades told me", and "I was really worried for myself being involved with obstruction of justice – if I held back information related to a crime, I could be charged". Mr. Webb told S/Sgt. Lane that he had a "young fella Justin Blades, who wants to give a statement". S/Sgt. Lane said he would have an investigator contact him.

[79] On cross-examination Mr. Webb was challenged and agreed that if a person is aware that a crime is committed that they are not under a legal obligation to report. Mr. Webb maintained "I would be obstructing justice", albeit he acknowledged no recall of ever arresting anyone for this. He agreed it was wrong to provide the information. He added that he wanted his name kept out so the defence team would not find out.

[80] On cross-examination he agreed that he first spoke to S/Sgt. Lane months before their October, 2016 encounter. He went to S/Sgt. Lane's house and told him that he did not think police were doing a very good job on the Sandeson investigation. He acknowledged that he was with MI at the time and his information came from his work and discussions there. He described this as "bantering" and although he was not asked, added, "I was also digging for information". He denied discussing any evidence with S/Sgt. Lane. He agreed that he told S/Sgt. Lane that he felt Mr. Sandeson was guilty, but that he provided no details as to why.

[81] When he met with S/Sgt. Lane he denied discussing the "hot topic for the defence team", the search of Mr. Sandeson's apartment

[82] On re-direct Mr. Webb said he initiated the doorstep conversation. He did not tell S/Sgt. Lane that he was employed by the Sandeson team and did not provide him with anything.

[83] On cross-examination he agreed that at no time did S/Sgt Lane ask him to stop talking, say that their discussions were inappropriate, or that he should seek legal advice. At no time did Mr. Webb speak to a lawyer or Mr. Martin about this.

[84] S/Sgt. Lane testified that he initially spoke with Mr. Webb about the case in the summer of 2015. Mr. Webb came to his house and they had a "few minutes" conversation on his front porch. Mr. Webb asked S/Sgt. Lane if "we were doing everything we could". S/Sgt. Lane replied that they had a "good case and the Court would decide". He added, "I more or less brushed him off, he was one of a lot of people with things to say on the case". S/Sgt. Lane did not report their conversation because he did not feel that it was relevant. On cross-examination he did not agree that the two were "bantering".

[85] S/Sgt. Lane recalled a subsequent brief conversation he had with Mr. Webb. He was walking his three-month old puppy when Mr. Webb stopped his vehicle, got out and approached him. S/Sgt. Lane described Mr. Webb's demeanor as having "some urgency". Mr. Webb explained that he had just interviewed Mr. Blades. He told him "that a couple of witnesses had seen the deceased at the kitchen table of the accused". Mr. Webb also mentioned Mr. McCabe's name.

[86] On cross-examination he agreed that he was told by Mr. Webb that he tracked down Mr. Blades and that Mr. Webb gave him some details about what he was told by Mr. Blades.

[87] S/Sgt. Lane told Mr. Webb that Corp. Allison would be in touch and, "…at some point he said he didn't want his name being used. I left our short meeting believing Mr. Webb did not want to testify in Court. I would get the investigator to speak with him and they would work through that". He added that he did not promise anything to Mr. Webb.

[88] On cross-examination it was put to S/Sgt. Lane that Mr. Webb wanted to be anonymous; however, S/Sgt. Lane denied agreeing to such an arrangement. He acknowledged that he did not inform Mr. Martin, Mr. Tan or the Crown of their discussion.

[89] On cross-examination S/Sgt. Lane said (referring to Messrs. Blades and McCabe), "we knew from looking at the video those two had seen what happened, we felt they weren't telling the truth".

[90] S/Sgt. Lane kept no notes of his discussion with Mr. Webb. The next day at an in person meeting at HPD Brunswick Street offices he passed the information on to Corp. Allison and Sgt. Boyd. He told them to as soon as possible interview Mr. Blades and to speak with Mr. Webb. He is "sure it came up" that Mr. Webb worked for the Sandeson team. S/Sgt. Lane knew that Mr. Webb worked for MI. He testified that he knew that once he passed on his name, "…the Crown would become aware and it would be worked out through that process".

[91] On cross-examination he agreed that he told Corp. Allison and Sgt. Boyd that Mr. Webb did not want his name mentioned. He denied saying that they should not keep any notes. S/Sgt. Lane acknowledged that he "didn't realize the gravity of it". He assumed that the Crown would become aware of Mr. Webb's involvement. He was not prepared to say that he should have raised the issue with the Crown. Pressed further, S/Sgt. Lane said he did not think he should put a stop to this as "I felt the truth was coming out …I got the feeling from Mr. Webb that Mr. Sandeson was guilty".

[92] S/Sgt. Lane agreed that it "makes sense" that Mr. Webb would have been part of confidential meetings but that he had not thought of this at the time. He said that Mr. Webb did not ask to be a confidential informant.

[93] Asked if the police made any promises to him, Mr. Webb replied, "I wanted them to keep my name out of this". He said that he told Corp. Allison and Sgt. Boyd this and that they agreed "by nod of head and yes type of type of thing".

[94] On cross-examination Mr. Webb added that he told S/Sgt. Lane that he wanted his name kept out of it and he agreed. He agreed that Corp. Allison assured him that his name would be kept out of it.

Police Officers Liaise with Bruce Webb

[95] On October 19th, Corp. Allison called Mr. Webb and asked him if he could set up a meeting with the police and Justin Blades. Mr. Webb obliged and Mr. Blades agreed, asking for Mr. Webb to be in attendance. They agreed to meet the next day at noon.

[96] Between 2006 – 2012, then S/Sgt. Webb was a Watch Commander and became acquainted with (then) RCMP Corp. Jody Allison who occasionally worked under his command. They did not have a personal relationship.

[97] Corp. Allison testified that he was acquainted with Bruce Webb as he was an RCMP Sgt. in Lower Sackville when Corp. Allison worked there between 2007 – 2010. They were on different watches but had periodic interactions over the years. On the instruction of S/Sgt. Lane, Corp. Allison spoke with Mr. Webb on October 19, 2016.

[98] Corp. Allison said that he either met in person or had spoken on the phone with S/Sgt. Lane who provided him with Mr. Webb's phone number. S/Sgt. Lane told him that Mr. Webb had information from Messrs. Blades and McCabe. He said that he was instructed not to make any notes about Mr. Webb and not to put his name in any reports or mention him in the office. On cross-examination Corp. Allison confirmed that he kept no notes of his discussions with Messrs. Webb, Blades or McCabe.

[99] On cross-examination he could not recall verbatim what S/Sgt. Lane said to him. The gist of it was that Mr. Webb had information about Messrs. McCabe and Blades; that they had seen more than they told Corp. Allison. He was given Mr. Webb's number and told that Mr. Webb wanted his name kept out. S/Sgt. Lane did not say that Mr. Webb was a confidential informant. He assumed that Mr. Webb did not want the defence team to find out about his involvement.

[100] Corp. Allison said he did not want to be involved in keeping Mr. Webb's name out of notes and reports; however, he did not raise any concerns with S/Sgt Lane. Following his initial discussion with Mr. Webb, Corp. Allison asked Sgt. Boyd "how will we keep this secret, anonymous"; he could not recall how Sgt. Boyd responded.

[101] During their first discussion Mr. Webb talked mostly about Mr. Blades although he did speak of "those guys", whom he took to include Mr. McCabe. He was unsure if Mr. Webb had spoken to Mr. McCabe and assumed that at some point Mr. Webb would encourage Mr. McCabe to speak with police.

[102] During their brief call Mr. Webb told him that "they saw more than what they told you". He did not provide details but told him that he needed to (re)interview Mr. Blades.

[103] Corp. Allison knew Mr. Webb was a private investigator working for the Sandeson team. He thought it would be "common sense" that Mr. Webb was privy to defence strategy, theory and the like. He agreed that his concern was focussed on protecting Mr. Webb's privacy rather than Mr. Sandeson's rights. Corp. Allison was emphatic that Mr. Webb "did not give me any information about what the defence was doing". He re-iterated that Mr. Webb told him that he had to re-interview Messrs. Blades and McCabe and that he would facilitate this.

[104] Corp. Allison said that he either met in person or had spoken on the phone with S/Sgt. Lane who provided him with Mr. Webb's phone number. S/Sgt. Lane told him that Mr. Webb had information from Messrs. Blades and McCabe. He said that he was instructed not to make any notes about Mr. Webb and not to put his name in any reports or mention him in the office. On cross-examination Corp. Allison confirmed that he kept no notes of his discussions with Messrs. Webb, Blades or McCabe.

[105] On cross-examination he could not recall verbatim what S/Sgt. Lane said to him. The gist of it was that Mr. Webb had information about Messrs. McCabe and Blades; that they had seen more than they told Corp. Allison. He was given Mr. Webb's number and told that Mr. Webb wanted his name kept out. S/Sgt. Lane did not say that Mr. Webb was a confidential informant. He assumed that Mr. Webb did not want the defence team to find out about his involvement.

[106] Corp. Allison agreed that he had a number of conversations with Mr. Webb and he had no way of knowing what Mr. Webb told him was coming from the knowledge he gained from his work for the defence. Mr. Webb told him that he did not want Mr. Sandeson to be found not guilty. The matter was on his conscience, if all of the evidence did not come out Mr. Webb could not live with himself.

[107] Corp. Allison did not seek legal advice. He did not inform defence counsel of the situation. He was of the view that D/Cst. Sayer or Sgt. Boyd would discuss the situation with the Crown.

[108] On cross-examination he said he called Mr. Webb after Mr. Blades's KGB statement "to say thank you …I appreciate you coming forward because a lot of people wouldn't". On re-direct examination he could not say who initiated the call.

[109] In October, 2016, Sgt. Boyd was asked by S/Sgt. Lane to come to the Criminal Investigation Division (CID) office, then located on Brunswick Street. During their brief meeting he was told that he wanted another statement obtained from Mr. Blades. S/Sgt. Lane provided Sgt. Boyd with the name and number of Bruce Webb, advising that he had information on the Samson homicide. Sgt. Boyd did not know who Mr. Webb was and S/Sgt Lane did not say who he worked for. Sgt. Boyd said that he was simply asked to reach out to Mr. Webb. Sgt. Boyd then contacted Corp. Allison to take care of this task. Corp. Allison followed through and then advised that Mr. Webb told him that he had spoken with Mr. Blades and that he gave a "different version" from his earlier statement so that he should be re-interviewed.

[110] On cross-examination he said that after meeting with S/Sgt. Lane he tasked someone to call Mr. Webb. He did not recall if S/Sgt. Lane told him what Mr. Webb was going to say. He said that he was going to call him [have him called] and "see what information he has, that's it".

[111] Sgt. Boyd instructed Corp. Allison to interview Mr. Blades. He did not ask how Mr. Blades's contact information was obtained. Asked if he would be concerned if this information was obtained from Mr. Webb, he said that he thought they already had the information. Even now, Sgt. Boyd is not sure that it causes him concern that the contact information for Messrs. Blades and McCabe came from Mr. Webb.

[112] Sgt. Boyd spoke with S/Sgt. Lane after obtaining Mr. McCabe's statement. He raised some concerns about Mr. Webb being a private investigator and providing information. During their brief conversation the two concluded that the evidence would be coming from Messrs. McCabe and Blades – not Mr. Webb – such that it was not a concern. At no time did Sgt. Boyd consider Mr. Webb to be a confidential informant. He did not give Mr. Webb any promise to protect his identity; nor did he ask anyone to do this.

[113] On cross-examination Sgt. Boyd acknowledged that he had no notes that could help to refresh his memory. It was put to Sgt. Boyd that the Crown disclosure does not reference Bruce Webb's name and that there was "purposeful hiding" to which he disagreed. He pointed out that Mr. Blades refers to 'Bruce" in his KGB statement.

[114] On cross-examination he acknowledged with the Triangle that information provided to one member is shared. He therefore agreed that the decision to keep Mr. Webb's name out would be known by the Triangle.

[115] Sgt. Boyd discussed the situation with Mr. Webb with S/Sgt. Lane so he had a "slight" concern about things.

[116] On cross-examination Sgt. Boyd said that it was not until the trial that he first became aware that Mr. Webb's situation was an issue. He did not recall the conversations around the matter. He acknowledged that deliberately omitting information from police notes to hide from the defence was contrary to police training.

[117] In the lead up to the October 2016 statements of Messrs. Blades and McCabe, D/Cst. Sayer knew that a person had come forward to say that they should be re-interviewed. He learned on October 19th or 20th from Corp. Allison that this individual was Bruce Webb. He had heard of Mr. Webb whom he knew had been with the RCMP. He did not have any direct contact with Mr. Webb other than "small talk" when they met outside of Court in the spring of 2017.

[118] On cross-examination he said that before Mr. Blades's statement was obtained Corp. Allison informed him that Mr. Webb was a private investigator. D/Cst. Sayer does not know if a private investigator would sit in on confidential defence meetings; he assumed they carried out tasks. He figured that Mr. Martin tasked Mr. Webb to talk to Messrs. Blades and McCabe. He was "a little bit" concerned about Mr. Webb talking to the police. He did not obtain legal advice, or alert the Crown or defence to the situation. He did not try to put a stop to it. Given hypotheticals involving a defence lawyer disclosing information to the police, he conceded, "I'd have to get legal advice".

[119] On cross-examination he said that the only information he received related to "just go talk to these guys again". He received nothing about defence strategy and the like. It did not occur to him that he should alert defence counsel. With respect to the statement's references to "Bruce", "they would put that together possibly".

[120] On cross-examination it was pointed out that other names appear in the tasks; however, D/Cst. Sayer denied purposely keeping Mr. Webb's name out. He did not recall a conversation where S/Sgt. Lane said to keep Mr. Webb's name out. He said that he did not know what was discussed by other police officers and Mr. Webb. He added that within days of opening the investigation that the police knew the extent of Mr. Sandeson's involvement in the drug trade. He said this was the police's view and did not come from Mr. Sandeson.

[121] On cross-examination D/Cst. Sayer said he has not read the Court of Appeal's decision in this matter.

[122] He admitted that Mr. Webb's name, MI and/or "private investigator were not vetted out of notes because they do not appear in any notes.

Justin Blades Provides A KGB Statement

[123] On October 20th, Messrs. Blades and Webb met outside of Mr. Blades's residence. Corp. Allison and Sgt. Derrick Boyd arrived shortly thereafter. According to Mr. Webb, Mr. Blades was "really nervous, on the verge of tears, very emotional". Mr. Webb reassured Mr. Blades, encouraging him to "just tell them what you saw". After brief introductions the three drove away. Mr. Webb had no further contact with Mr. Blades until the time of the trial. Mr. Webb denied pressuring Mr. Blades to meet with police. It was put to Mr. Webb on cross-examination that he discussed evidence with Mr. Blades, which he denied. He then acknowledged challenging Mr. Blades on the video.

[124] Soon after meeting with Mr. Webb Mr. Blades met with police officers; "I asked for them to come get me." He added "I agreed for them to pick me up, I think he (Bruce Webb) was there first to make me feel comfortable, I asked him". When the officers arrived, Mr. Webb left. Mr. Blades drove with two police officers from his apartment in Larry Uteck to the police station. He could not recall what they discussed during the roughly ten-minute drive. Once at the police station, Mr. Blades provided a video statement. On cross-examination he elaborated that he met Mr. Webb at his door; "I was geared up and ready to go". They did not go inside and that within minutes the police arrived.

[125] On cross-examination, he agreed that he had to get this "off … his chest". He said that he "pretty much immediately" told Mr. Webb what happened …it was a big hurt …I was pent up to tell".

[126] Mr. Blades was unaware at the time of Mr. Webb's involvement with the defence; "I didn't realize there were two sides". He later learned that he worked for the Sandeson family "and got in trouble". He asked Mr. Webb if it was okay for him to reach out to Mr. McCabe, noting "I brought it up". He thought that he contacted Mr. McCabe on Facebook or Instagram after Mr. Webb left. He told him what had happened; "I couldn't hold it any longer and I'm sorry I took this long … I couldn't live with myself any longer".

[127] Mr. Blades asked Mr. Webb about the Hells Angels and was told that given the amount of drugs, "they wouldn't back him (William Sandeson) as much as I thought". Mr. Webb did not say where he got the information about Mr. Sandeson's involvement in the drug world.

[128] Mr. Webb explained that Mr. Blades was very nervous so "it was his idea" to set up a meeting with Mr. Blades and the officers. In the result, Mr. Webb set up the meeting for the next day at Mr. Blades's residence.

[129] Corp. Allison recalled attending with Sgt. Derek Boyd in plain clothes in an unmarked car at Mr. Blades's apartment at 11:00 a.m. on October 20, 2016. He said when they arrived that Mr. Blades was waiting outside and that Mr. Webb was there with his German Shepherd. The four men were together for a brief time for introductions and small talk. Mr. Webb soon departed and Mr. Blades agreed to go with the officers to provide a statement at HPD headquarters.

[130] Corp. Allison stated that there was more small talk during the 15-minute drive. Mr. Blades gave a KGB statement at HPD headquarters and Corp. Allison provided the statement to the Triangle; "I did mention at that time that Mr. Blades had mentioned Bruce's name several times during the statement". Mr. Blades's KGB statement was played in Court and the transcript was provided.

[131] Given that Mr. Webb's name was mentioned several times, Corp. Allison thought, "anyone who knows anything about the case will be able to figure out who Bruce is". As per normal protocol, Corp. Allison provided D/Cst. Sayer with the recorded statement. At the time he "expressed my concern and that it should be brought up with the Crown". He thought that D/Cst. Sayer would advise the Crown then or that it would happen later on.

[132] On cross-examination Corp. Allison went over the drive to the police station. Although he could not recall the exact conversation with Mr. Blades, he said that because Mr. Blades was upset, he kept the conversation light and away from Mr.

Sandeson. After the statement was taken he called Mr. Webb to thank him and discuss "ethical considerations". Mr. Webb told him that his conscience was bothering him and that he thought he could be criminally charged for not disclosing what he knew.

[133] On cross-examination it was strongly suggested to Corp. Allison that given the nature of his questions to Mr. Blades during his KGB statement that he must have known in advance what Mr. Blades was going to say that inculpated Mr. Sandeson. Corp. Allison denied this, noting that because of the video taken from outside the apartment he knew from the expression on Mr. Blades's face that he had seen something significant.

[134] On cross-examination it was put to Corp. Allison that he must have had particular information about Mr. Sandeson's drug involvement in order to allay Mr. Blades's fears. Corp. Allison denied this saying that he merely imparted his understanding that Mr. Sandeson was "just a regular guy going around selling weed …I had worked in Guns and Gangs – his name never came up".

[135] Sgt. Boyd and Corp. Allison shortly thereafter attended at Mr. Blades's residence to pick him up. Mr. Webb was there and Sgt. Boyd met him for the first time. By this point Corp. Allison had informed Sgt. Boyd who Mr. Webb was and who he worked for. This was not an "initial concern" for Sgt. Boyd. Later in the day he spoke with S/Sgt. Lane and they both concluded that Mr. Webb's status was not a concern.

[136] Sgt. Boyd recalled that the four met outside Mr. Blades's Larry Uteck area residence. After shaking hands with Mr. Webb they talked and Mr. Webb said "I'd appreciate it if you keep my name out as much as you can, but if it has to, o.k., I'd rather that than a murderer not go to jail".

[137] Sgt. Boyd described Mr. Blades's demeanor as "not nervous, outgoing personality, upbeat …he wanted to provide us with a new statement". While together in the unmarked police car for the drive to the station Sgt. Boyd said they discussed nothing about the statement because, "that would be against training".

[138] Once at the station, as Sgt. Boyd gave Mr. Blades the KGB warning and thereafter monitored while Corp. Allison did the questioning.

[139] Sgt. Boyd did not take any notes from his interactions with Messrs. Webb and Blades. As Triangle team leader he expected others to take notes. He did not speak

with Mr. Webb again and did not provide any tasks in relation to him. He had no further interaction with Mr. Blades until the trial.

Pookiel McCabe Provides A KGB Statement

[140] Sgt. Boyd said the decision to take a further statement from Mr. McCabe came after hearing what Mr. Blades said he saw in his KGB statement. He tasked Mr. McCabe to be located and he assumed that either Corp. Allison or Sgt. Sayer found him to be living in Toronto. All three officers travelled to Toronto the night before meeting up with Mr. McCabe.

[141] Sgt. Boyd described meeting with Mr. McCabe at his apartment and the drive to the station in a manner consistent with Corp. Allison. He recalled that after he provided his KGB statement that they drove Mr. McCabe to his workplace.

[142] Sgt. Boyd denied advising Mr. McCabe that Mr. Blades had provided a new statement to this police. He thought that Mr. McCabe may have known this from speaking with Mr. Blades.

[143] Corp. Allison called him, or *vice versa*, and Mr. Webb provided police with Mr. McCabe's contact information. He told Corp. Allison "basically what Mr. McCabe had seen". At no time did Mr. Webb provide police with notes, videos or anything regarding defence strategy.

[144] Mr. Webb agreed on cross-examination that he received Mr. McCabe's phone number and contact information on account of his employment with MI. He agreed that this information was supposed to be confidential. Further he knew that he was breaking the confidentiality rules when he spoke with S/Sgt. Lane.

[145] On October 27, 2016 Corp. Allison, Sgt. Boyd and Det. Roger Sayer obtained a KGB statement from Mr. McCabe, who was now living in Toronto. They attended at his residence in plain clothes early in the morning. Corp. Allison thought that Mr. McCabe had forewarning of their visit; "he didn't look overly surprised we were there …he wanted to come along". Mr. McCabe drove with the officers in an unmarked car to nearby Toronto police precinct thirteen.

[146] On cross-examination he did not think that they provided Mr. McCabe with a "heads up" of their visit. Corp. Allison recalled that all three officers were in Mr. McCabe's house while he was getting ready and that Sgt. Boyd and D/Cst. Sayer "did most of the talking … explained that we're here to get a statement at thirteenth

division". He agreed that Mr. McCabe had just awoken and was "not overly surprised" by their visit. Although he could not remember their conversation in the car he surmised that it would have been small talk and that it could have been said that they had a statement from Mr. Blades.

[147] During Corp. Allison's testimony Mr. McCabe's KGB statement was played and the transcript was provided to the Court. Corp. Allison noted that Mr. McCabe was cooperative throughout when providing his approximate half hour statement.

[148] D/Cst. Sayer went to Toronto with Sgt. Boyd and Corp. Allison and attended at Mr. McCabe's residence; "he spoke willingly and gave another statement". They obtained Mr. McCabe's address from Mr. Blades. He described Mr. McCabe as "a little surprised, he had just woken up". On the drive to the station they engaged in "small talk". As Corp. Allison interviewed him, D/Cst. Sayer monitored and eventually added "notes to the system". This statement (as with all of the others) and his IR were provided to the Crown. He did not record Mr. Webb's involvement, "my information was third hand …the person wished to remain anonymous" adding that if his name was revealed, Mr. Webb wanted to know. On cross-examination D/Cst. Sayer acknowledged that Mr. Webb could have provided Mr. McCabe's contact information.

[149] On cross-examination D/Cst. Sayer agreed that the Triangle shares information amongst themselves. The Investigative Report (IR) is an "ongoing document …we keep adding to it". When D/Cst. Sayer became file coordinator he did not keep his own IR. Documentation of the Toronto trip would be kept in a general occurrence report which contained all tasks. D/Cst. Sayer acknowledged that all of the tasks referrable to re-interviewing Messrs. Blades and Mr. McCabe were not created until December, 2016. He characterized this as "kind of a clerical thing".

The Lead Up To The *Voir Dire*

[150] On cross-examination Mr. Webb recalled that when his name was leaked at the trial that several officers apologized to him. He was offered a challenge coin outside of court by Sgt. Sayer but did not accept.

[151] Corp. Allison recalled trying to contact Mr. Webb in advance of Corp. Allison's scheduled trial testimony. He was not sure if they spoke prior to his testimony. During a May 5, 2017, conversation with D/Cst. Sayer he was told that the matter would be raised with the Crown on May 7th as that was the day they were

reviewing the statements. In any case, Corp. Allison thought that when the transcripts were produced in March, 2017, that there had been a discussion with the Crown about Mr. Webb's involvement.

[152] He had no concerns about Mr. Webb being employed by the defence team. As the case information came from Messrs. Blades and McCabe, he did not regard Mr. Webb as a confidential informant or privileged source. On cross-examination he added, "I always had concerns that an issue could be made at trial by the defence". He agreed that he was part of an October or November 2016 conversation about the possibility of Mr. Webb's identity being revealed in Court.

[153] D/Cst. Sayer testified that he had conversation with Crown attorneys Susan MacKay and Kim McOnie on December 11, 12, or 13, 2016, where he informed them of Mr. Webb's "involvement in the statements …he'd like to be anonymous". He could not recall if he explained who Mr. Webb was. He did not redact "Bruce" which appears in Mr. Blades's statement; "nobody was frightened that it was in there".

[154] On cross-examination he said that he advised the Crown because Mr. Webb's name was mentioned and he had said that he "wanted a heads up".

[155] D/Cst. Sayer spoke with Mr. Webb outside of Court during the initial *voir dire*; "he looked kinda shook". D/Cst. Sayer thanked him for his involvement in coming forward adding, "I may have offered him a challenge coin as a show of respect".

[156] On cross-examination he said that he thought of the coin for Mr. Webb because "he was a former member, he was very worked up". He did not think there was anything wrong with Mr. Webb's involvement because what was shared, "was going to happen regardless …I was going to talk to them again anyway, this kind of hurried the process along".

[157] D/Cst. Sayer contacted Mr. Blades in advance of the trial and prior to this *voir dire*. He used the Versadex system and the HPD media department to assist in locating both Messrs. Blades and McCabe. Mr. McCabe was served in Toronto for the trial and his address was determined in advance of this *voir dire*. The media department recently carried out social media searches for both men, successfully determining their current whereabouts.

[158] In May 2017, Mr. Martin had MI's lawyer advise Mr. Webb "his services were not longer required because I had learned he violated the CA". He said Mr. Tan told him this, "it was brought to my attention in early May. Mr. Tan sent me a very short email, 'we gotta talk', we spoke that evening, I listened to him …the Crown had a confidential informant that disclosed to police information". The night he received Mr. Tan's email Mr. Martin called Mr. Webb around 9:30 p.m. and "asked him directly, I heard you're an informant, he denied, I explained the situation as explained to me that he gave information to the police about McCabe and Blades, he advised he had done nothing …they wanted to talk and all he did was set up the meeting …".

[159] Corp. Allison told Mr. Webb that he would try his best to keep his name out of his notes and reports but that he had no control over what witnesses might say. He testified that Mr. Webb was "not my informant and never was". He noted that there were no signed documents and that Mr. Webb did not receive payment.

[160] Corp. Allison did not speak to the Crown attorneys about Mr. Webb until around the time of a May 5, 2017, email exchange. The gist of the conversation was that Mr. Webb did not want Corp. Allison to bring his name up in Court. At the time Corp. Allison was of the view that Mr. Webb "thinks he has some sort of protection". Corp. Allison believed that Mr. Webb had "some sort of privilege". Although he was unsure of the original conversation between Mr. Webb and S/Sgt. Lane, "I, by extension, afforded him privilege when I said I'd keep his name out of my notes and reports".

[161] Corp. Allison had never before run across this kind of a predicament. He thought about the situation to the point that he did a CanLII search of whether former police officers turned private investigators have privilege but this did not turn up any results. Corp. Allison brought the unique circumstances up with the Triangle; "right from the start …I was under the belief it would be mentioned to the Crown".

Crown and Defence Counsel Affidavits

[162] As their affidavits disclose, the three affiants – Crown Prosecutors Susan MacKay and Kim McOnie and (former) defence lawyer, Brad Sarson – provided email responses to Crown Attorney Carla Ball's recent emailed questions to them. Accordingly, the below quoted excerpts come from the emails, which all counsel swore to be true. The affidavits went in by consent without cross examination.

[163] In her affidavit Ms. MacKay confirms that the apartment hall surveillance video and three August, 2015 statements (one from Mr. Blades and two from Mr. McCabe) were entered as exhibits at the twelve-day Preliminary Inquiry held in the winter of 2016.

[164] She deposes that it was "highly likely" that the Crown would call one or both at trial:

> …For one, I had a fair degree of confidence that when they met with Ms. McOnie and myself with police to discuss their evidence one or the other of them would change his story and tell the truth. For another, even if they continued not to be entirely honest, there quite likely would be some details of their evidence that we would be confident was both truthful and of evidentiary value, so we would call them and limit our questioning to those areas.
>
> …
>
> Ms. McOnie and I had every expectation of meeting with Mr. Blades and Mr. McCabe before trial. This is standard practice whether or not such important witnesses as they are seem to have been truthful in their original statement. We would have done this likely in early 2017, and we would have given priority to meeting with these two witnesses over other witnesses in this case because of the anticipated significance of their likely evidence.

[165] Ms. MacKay goes on to say that the Crown would have "absolutely" shown Messrs. Blades and McCabe the hallway video as part of their preparation.

[166] Based on my review of the unchallenged affidavit evidence of Ms. MacKay it is clear that she knew about a "tipster" in mid-to-late October 2016. Soon thereafter Ms. MacKay learned (likely from D/Cst. Sayer) that the tipster was a private investigator employed by defence counsel. She was also of the view that because of the disclosed KGB statement of Mr. Blades where he "repeatedly refers to Bruce", that his identity would have been known by defence counsel.

[167] It is also clear from Ms. MacKay's affidavit that she was under the mistaken belief that because of what he had done that the person was no longer employed as a private investigator. She did not think that the (former) private investigator would be required by the Crown to testify. From speaking with D/Cst. Sayer Ms. MacKay thought that the private investigator was "requesting discretion, not confidentiality, as I believed their identity had been made apparent to defence in Mr. Blades's statement which was why he had been fired".

[168] In a follow-up email to Ms. Ball, Ms. MacKay said that she does not believe that she listened to the KGB statements "at any point around the time we received them …I had been told about these two new statements". She thinks that she read the transcript of Mr. Blades's statement in early January, 2017. Afterwards she asked Ms. McOnie, "who's Bruce?". Ms. McOnie told Ms. MacKay that "Bruce" was Bruce Webb, the defence private investigator; "I remember thinking right away that it would have been very obvious, and painfully so, to defence counsel who this person was".

[169] In Mr. Sarson's affidavit he makes it clear that he recently spoke with defence counsel Ms. Craig, who confirmed that Mr. Sandeson "is prepared to waive solicitor/client privilege in order to permit me to answer these questions". With respect to the mention of "Bruce" in Mr. Blades's KGB statement, he says:

> I did nothing by way of follow up – Mr. Tan had had a discussion with Mr. Webb following the receipt of the KGB statements – I believe this was a conversation between Mr. Webb and Mr. Tan that I was not present for (I certainly have no recollection of being present for such conversation), but Mr. Tan advised/informed me that Mr. Webb's response when confronted about the timing of the new police KGB statements was that he (being Mr. Webb) must have "leaned too hard on them (Blades and McCabe)".
>
> I didn't consider for a second that the "Bruce" referred to in the statement was Bruce Webb. Mr. Webb was a former RCMP officer (I think, maybe former police officer) working as a private investigator, retained by the defence in relation to the William Sandeson file. As I indicated above, Mr. Tan had confronted Mr. Webb and we had Mr. Webb's response.

[170] In Ms. McOnie's affidavit she recalls as follows regarding Mr. Webb's involvement:

> Bruce Webb's involvement in this matter was first made known to the Crown in late October/early November, 2016. Sgt. Derrick Boyd and D/Cst. Sayer attended the Crown office and met with Susan MacKay and myself. They provided us with the KGB statements of Justin Blades and Pookiel McCabe. I recall them telling us that Webb had told the police to reinterview these two witnesses. That is the extent of what was told to us at that time. I do recall them telling us that Webb wanted to keep his name out of it, or wanted a heads up if his name was to come out. I can't recall whether this was said to us on that date or subsequently.

[171] The trial began in mid-April, 2017 and approximately five weeks in this issue arose. In Ms. MacKay's affidavit she deposes:

> On or about May 8, 2017 defence counsel Mr. Tan indicated to the Court he had been unaware of Bruce Webb's involvement in tipping police regarding Mr. Blades. Shortly afterward I approached his co-counsel Mr. Sarson about this inside the courtroom during a recess.
>
> I believe it likely was just the two of us within earshot of each other. I told him how surprised Ms. McOnie and I were to hear Bruce Webb was still working for them and I asked him who had he thought the "Bruce" was that Mr. Blades repeatedly referred to in his October 20, 2016 statement.
>
> Mr. Sarson replied to the effect that he had "wondered about" whether Bruce Webb had tipped off the police to take another statement but that he hadn't considered he needed to raise this with us at any point pretrial.
>
> I did not advise the Court about this directly, but I did mention it to my co-counsel Ms. McOnie shortly afterward. I believe she may have referenced it in her subsequent May 9, 2017 early morning email to the Court Clerk in response to Mr. Tan's. Ms. McOnie said in part: "…I further understand from defence counsel that they knew, or strongly suspected, that the 'Bruce' referred to was the private investigator that they hired…".

[172] As for Ms. McOnie, she provides this explanation in her affidavit:

> In May, 2017, Cpl. Jody Allison advised Ms. MacKay and myself that Webb was a confidential informer. I believe this arose because Cpl. Allison was about to testify and he was nervous that Webb's name would come up. This information came as a surprise to us. No one ever communicated to us that Webb thought he was a confidential informer. The name "Bruce" was mentioned a number of times in Justin Blades's KGB statement and it would have been vetted out had we known he was claiming privilege.
>
> Once this came to our attention we spoke to defence counsel about it. This occurred after court on May 8th, 2017. I met with Brad Sarson on the ground floor of the Supreme Court, near the vending machines. I told him about this claim for confidential informer status from "Bruce". Mr. Sarson asked me if the "Bruce" referred to in Blades KGB statement was Bruce Webb. I said to him "we thought you knew that", he said that they knew or "strongly suspected" that it was. There was no one else present for this conversation.
>
> The next morning Mr. Tan wrote an email to the Court advising them of this development. I responded to his email. This email was referenced in Justice Arnold's decision on *voir dire* 7. In that email I said that I understood after speaking with defence counsel that they knew or strongly suspected that the "Bruce" referred to in Blades KGB statement was in fact Bruce We bb. This representation reflected my conference with Mr. Sarson the day prior.

[173] For Mr. Sarson's part, in his affidavit he attaches emails which read:

> I remember being advised that (Det/Cst., I think) Jody Allison had some concerns about his testimony, as he was concerned about making reference to a confidential informant or possible confidential informant. The name "Bruce Webb" was not mentioned at that time, as I recall being in the Barristers' Room with Mr. Tan, and him saying "it must be Bruce (Webb)" and me saying "no fucking way" or something to that effect. We confirmed or were advised shortly thereafter (I believe it was by telephone) that the person in question was Bruce Webb. I do not recall a conversation by the vending machines in the basement of the Law Courts about Bruce and his appearance in the statement, at least not occurring prior to the above – it may have occurred afterwards.

[174] Mr. Sarson's response was followed up by Ms. Ball:

> With respect to Kim's conversation by vending machine – you said you don't' disagree there was a conversation by the vending machine and that she said you must have known it was Bruce. But, your memory is that you did *not* suspect that it was Bruce (so you disagree with Kim's memory that you had said 'you strongly suspected it'). This conversation was *after* you had found out about Bruce being the informant.

[175] Mr. Sarson confirmed the above to be accurate.

[176] Given the lawyers' evidence as set out above, I am not prepared to make factual findings about what was known about Mr. Webb by whom and when. During the pre *voir dire* conferences I strongly indicated my preference to have *viva voce* evidence from the key witnesses. In the end, the parties agreed to submit unchallenged affidavits from three of the four lawyers involved. In any event, I do not believe that findings in this area are critical to my determination on this stay application.

EVIDENCE ON THIS *VOIR DIRE*

[177] In the Court of Appeal decision (*R. v. Sandeson*, 2020 NSCA 47), to set aside Mr. Sandeson's conviction and order a new trial Justice Farrar (Justices Saunders and Scanlan concurring) summarized the evidence from original mistrial *voir dire* at paras. 28 – 49.

[178] Having regard to the more extensive evidence on this stay application, there are numerous differences from the evidence that the Court of Appeal reviewed, including the below factual findings of mine:

- Mr. Webb's involvement in the Sandeson defence began in the summer of 2015.
- Mr. Webb participated in MI Sandeson team meetings.
- Mr. Webb first met with S/Sgt Lane in the summer of 2015.
- Mr. Blades was living in Halifax when Mr. Webb tracked him down.
- Mr. Blades had been fearful and hesitant to speak but by the fall of 2016 he was anxious to tell the truth.
- Within a few minutes of meeting Mr. Webb, Mr. Blades provide him with detailed story inculpating Mr. Sandeson in the murder of Taylor Samson.
- Mr. Blades did not tell Mr. Webb that without his help he would not meet with police.
- Mr. Blades was confused about whom Mr. Webb worked for to the point that he was under the impression that he was a police officer.
- Mr. Webb did not have to convince Mr. Blades to make a statement because Mr. Blades wanted to tell the police (and thought Mr. Webb was a police officer).
- Mr. Webb wanted his involvement to remain confidential; however, if his name did come out he wanted to know and he would then testify at trial.
- Mr. Webb introduced Mr. Blades to S/Sgt. Boyd and Corp. Allison. Their conversation did not involve assurances about the police.
- Mr. McCabe made his statement to Mr. Webb shortly after Mr. Webb reached out to him.
- There were several mechanisms which police would have used to attempt to locate Mr. Blades and Mr. McCabe in the lead up to the trial, as testified to by Corp. Allison and D/Cst. Sayer.

STAY OF PROCEEDINGS

Background as Canvassed in R. v. Sandeson, 2020 NSCA 47

[179] Having reviewed the transcript of evidence from the jury trial and *voir dires* and in particular, the mistrial *voir dire,* Justice Farrar stated as follows at para. 106:

> [106] In my view, Sandeson had crossed that threshold and a mistrial should have been ordered. It would be entirely possible for a judge to find the police conduct revealed by the undisclosed information could amount to an abuse of process. I will explain why. However, the determination of whether it amounts to an abuse of process is for the judge hearing the new trial. My comments here are only to illustrate a viable argument can be made. Whether it will be successful is not for me to decide. [emphasis added]

[180] The Court of Appeal continued at paras. 107 – 124 to review the two types of abuse of process. Within his review Farrar, JA stated at para. 117:

> [117] However, it is possible a court may find, even without resort to litigation privilege or confidentiality considerations, it offends society's sense of fair play and fundamental notions of justice for the state to accept assistance of a professional in the investigation and prosecution of an accused when that professional is currently retained by that accused for the purpose of helping him defend himself against the state. Once again I wish to make clear I am not deciding the issue but only illustrating such an argument is neither fanciful nor doomed to fail. [emphasis added]

[181] The Court of Appeal concluded by stating at para. 124 that "there is potential that a court may find the undisclosed information constituted a residual abuse of process". Justice Farrar then continued with this summary at paras. 125 – 128:

> [125] The trial judge erred in focusing on the materiality of the undisclosed information and the extent to which it related to the merits of what did or did not happen on August 15, 2015. He should have asked himself whether the late disclosure of this information foreclosed realistic opportunities to investigate and advance a process-oriented defence. The trial judge also erroneously asked whether the appellant would be successful in an abuse of process claim when that was not an issue before him.
>
> [126] In my view, the undisclosed information revealed the state knowingly encouraged and then accepted the assistance of a professional in the investigation and prosecution of an accused when that professional was, at the time, retained by that accused for the purpose of assisting him in defending himself against the state. This conduct could be said to have undermined the essence of procedural protections given to the accused The significance of Webb's involvement with the police was not "relatively low" contrary to the trial judge's finding (*VD*7 Decision, para68).

> [127] The late disclosure of the collaboration between Webb and the police precluded the "realistic opportunit[y] to explore possible uses of the undisclosed information [namely, as it related to the state conduct] for purposes of investigation and gathering evidence" (*R. v. Dixon*, para36) related to an abuse of process claim. Contrary to the judge's finding (*VD7* Decision, (para68) that the infringement of Sandeson's right to a fair trial was insignificant, the late disclosure of this information significantly infringed Sandeson's right to make full answer and defence and to a fair trial.
>
> [128] Before discussing the remedy, I will briefly mention defence diligence. I agree that defence counsel should have asked the Crown who Blades was referring to when he mentioned "Bruce" in his KGB statement. However, because the materiality of the undisclosed information concerning Webb's secret relationship with the police only revealed itself to a select few in 2016, the impact of defence counsel's failure to press the point by further questioning a year later, is negligible (*Dixon*, para39).

[182] Farrar, JA then discussed at para. 129 – 157 why the remedy of a new trial was warranted. Prominent in his reasoning was the fact that this was a unique situation and that there were significant time pressures. The Court of Appeal said that the "record is replete with examples of how the legal issues raised by the undisclosed evidence were evolving …" (para. 141). Justice Farrar went on to describe the situation at para. 151:

> [151] The numerous issues and manner of proceedings left little time for counsel to investigate and research the issues raised by the undisclosed evidence. The detrimental effect of trying to deal with all of these demands at once was summarized by defence counsel in the *Voir Dire* 7 closing submissions. In response to a question asked by the judge, defence counsel submitted that "part of the problem" with respect to why they have not been able to find relevant cases was that "[b]ecause of the way disclosure has unfolded, Defence mid-trial is scrambling to address a number of issues. The entire order of the trial has been thrown out-of-whack". Defence counsel tried to do some research over lunch in response to the judge's question but needed more time. Even on the final day of submissions in *Voir Dire* 7 on May 31, the defence was still unsure as to what remedy they would seek in a Charter application at a new trial.

[183] Justice Farrar concluded that the defence required time to investigate and research the circumstances that may amount to an abuse of process (para.155). The Court of Appeal then concluded their decision with this summary:

> [159] The defence was simply not able to investigate this novel issue mid-trial. They were juggling the trial proper and multiple *voir dires*. They were coming up with submissions on the fly. They were reading cases over the lunch break. They

> needed time; time that was unavailable in the middle of a jury trial where lengthy adjournments are not appropriate. The novelty and complexity of the situation which amounted to a potential abuse of process arising as it did in the middle of a jury trial, is exactly the type of an "extreme" situation contemplated by Supreme Court of Canada jurisprudence such as *R. v. O'Connor*, para77 and *R. v. Bjelland*, para23-27 which demands a remedy more drastic than an adjournment. Put otherwise, to be "responsive to the circumstances of the breach of the accused's disclosure rights" (*R. v. Korski*, para93), a mistrial was required.

Governing Jurisprudence

[184] In *R. v. Regan* (1999), 179 N.S.R. (2d) 45 at para. 100, Cromwell, J.A.(as he then was) for the majority described a stay as "a drastic remedy because its effect is that the state is permanently prevented from prosecuting the alleged criminal act." The Supreme Court of Canada affirmed this characterization in *Regan* (S.C.C.) at para. 2 (2002 S.C.C. 12).

[185] That a stay of proceedings is an exceptional remedy reserved for exceptional circumstances is clear from *R. v. Taillefer*, [2003] 3 S.C.R. 307, where the Supreme Court of Canada stated:

> 117 This Court has frequently underlined the draconian nature of a stay of proceedings, which should be ordered only in exceptional circumstances. A stay of proceedings is appropriate only "in the clearest of cases", that is, "where the prejudice to the accused's right to make full answer and defence cannot be remedied or where irreparable prejudice would be caused to the integrity of the judicial system if the prosecution were continued" (*O'Connor, supra*, at para. 82). It is a "last resort" remedy, "to be taken when all other acceptable avenues of protecting the accused's right to full answer and defence are exhausted" (*O'Connor, supra*, at para. 77; see also *Tobiass, supra*, at paras. 89-90; *Carosella, supra*, at paras. 52-53; *Regan, supra*, at paras. 53 et seq.).

[186] In *R. v. Dixon*, [1998] 1 S.C.R. 244, the Supreme Court of Canada stated:

> 37 In considering the overall fairness of the trial process, defence counsel's diligence in pursuing disclosure from the Crown must be taken into account. A lack of due diligence is a significant factor in determining whether the Crown's non-disclosure affected the fairness of the trial process. In *Stinchcombe, supra*, at p. 341, defence counsel's duty to be duly diligent was described in this way:
>
> > Counsel for the accused must bring to the attention of the trial judge at the earliest opportunity any failure of the Crown to comply with its duty to disclose of which counsel becomes aware. Observance of this rule will enable the trial judge to remedy any prejudice to the accused if possible and

> thus avoid a new trial. See *Caccamo v. The Queen*, [1976] 1 S.C.R. 786. Failure to do so by counsel for the defence will be an important factor in determining on appeal whether a new trial should be ordered.
>
> The fair and efficient functioning of the criminal justice system requires that defence counsel exercise due diligence in actively seeking and pursuing Crown disclosure. The very nature of the disclosure process makes it prone to human error and vulnerable to attack. As officers of the court, defence counsel have an obligation to pursue disclosure diligently. When counsel becomes or ought to become aware, from other relevant material produced by the Crown, of a failure to disclose further material, counsel must not remain passive. Rather, they must diligently pursue disclosure. ...
>
> 38 Whether a new trial should be ordered on the basis that the Crown's non-disclosure rendered the trial process unfair involves a process of weighing and balancing. If defence counsel knew or ought to have known on the basis of other disclosures that the Crown through inadvertence had failed to disclose information yet remained passive as a result of a tactical decision or lack of due diligence it would be difficult to accept a submission that the failure to disclose affected the fairness of the trial. See *R. v. McAnespie*, [1993] 4 S.C.R. 501, at pp. 502-3.
>
> ...
>
> 55 It must be remembered that defence counsel is not entitled to assume at any point that all relevant information has been disclosed to the defence. Just as the Crown's disclosure obligations are ongoing, and persist throughout the trial process, so too does defence counsel's obligation to be duly diligent in pursuing disclosure. To do nothing in the face of knowledge that relevant information has not been disclosed will, at a minimum, often justify a finding of lack of due diligence, and may, in certain circumstances, support an inference that counsel made a strategic decision not to pursue disclosure. In this case, the summary in the occurrence report indicates that Daye's statement would very likely meet the test for relevance set out in *Stinchcombe*. When defence counsel reviewed the occurrence report, he knew or should have known that the Crown had failed in its disclosure obligations. When this became apparent, defence counsel should have brought this matter to the attention of the trial judge at the earliest opportunity. In the circumstances of this case, the Court of Appeal was right to conclude that at this point, defence counsel was faced with a choice: "call for the statements or live without them". [Emphasis added]

[187] In summary, I must consider defence counsel's obligation of due diligence in pursuing disclosure as part of my analysis.

[188] Furthermore, I must consider a further requirement in the first *Tobiass* criterion (*Canada (Minister of Citizenship and Immigration v. Tobiass*, [1997] 3

S.C.R. 391): before a stay will be appropriate, the abuse will be "manifested, perpetrated or aggravated through the conduct of the trial, or by its outcome." In that case, the Supreme Court of Canada described this aspect as follows:

> 91 The first criterion is critically important. It reflects the fact that a stay of proceedings is a prospective remedy. A stay of proceedings does not redress a wrong that has already been done. It aims to prevent the perpetuation of a wrong that, if left alone, will continue to trouble the parties and the community as a whole in the future. See *O'Connor*, at para. 82. For this reason, the first criterion must be satisfied even in cases involving conduct that falls into the residual category. See *O'Connor*, at para. 75. The mere fact that the state has treated an individual shabbily in the past is not enough to warrant a stay of proceedings. For a stay of proceedings to be appropriate in a case falling into the residual category, it must appear that the state misconduct is likely to continue in the future or that the carrying forward of the prosecution will offend society's sense of justice. Ordinarily, the latter condition will not be met unless the former is as well -- society will not take umbrage at the carrying forward of a prosecution unless it is likely that some form of misconduct will continue. There may be exceptional cases in which the past misconduct is so egregious that the mere fact of going forward in the light of it will be offensive. But such cases should be relatively very rare. [Emphasis added]

[189] Accordingly, on the stay application I have to analyze whether and how the past delay in disclosure and unauthorized sharing of the Applicant's privileged information would manifest, perpetuate, or aggravate damage by any future proceeding. In this regard, I must consider the prejudice and whether it will impair the Applicant's ability to make full answer and defence to the extent required for a stay.

[190] Showing some prejudice is not enough to support a determination that s. 7 of the *Charter* has been breached. In addition, the granting of a stay before trial is generally premature. The Ontario Court of Appeal explained in *R. v. François* (1995), 15 O.R. (3d) 627, 65 O.A.C. 306:

> 10 Where, as here, the respondent contended that the delay so adversely impacted upon the fairness of the trial as to constitute a breach of his s. 7 **Charter** rights, it is not apparent to me how this complaint can be evaluated without a trial. In my view, the appropriate course for the trial judge in this case would have been to reserve on the motion for a stay until after the trial, or at least until the Crown had closed its case. The trial judge would then have been in a position to assess the cogency of the witnesses and assess the damage to the defence said to be caused by the delay. He would also have had the opportunity of assessing the explanations for the delay in the light of the conduct of the trial. As was said by this court in **R. v. Blake**, unreported, dated July 15, 1993:

> In our view, the showing of some prejudice is not a sufficient basis for a decision that an accused person's **Charter** rights under s. 7 and s. 11(d) would be infringed if the accused were required to stand trial. What must be demonstrated on a balance of probabilities is that the missing evidence creates a prejudice of such magnitude and importance that it can be fairly said to amount to a deprivation of the opportunity to make full answer and defence. The measurement of the extent of the prejudice in the circumstances of this case could not be done without hearing all the relevant evidence, the nature of which would make it clear whether the prejudice was real or minimal. The Crown's submission was, in our view, right. The motion was premature and the stay should not have been granted when it was. [Emphasis added]

[191] The Supreme Court of Canada, in *R. v. Taillefer*, also stated that a trial judge will be in a stronger position to assess the prejudice claimed and the appropriate remedy:

> 122 In the case of the appellant Taillefer, I believe that it would be premature to order a stay of proceedings, in the case of such a serious crime, where the charge is still first degree murder. The transcripts of all of the testimony given at the preliminary inquiry and the first trial are still available. As well, at this stage in the case, we can only speculate as to the prejudice that the accused would suffer by reason of the impeachment of the witnesses' credibility and the loss of opportunities for investigation. The trial judge will be in a better position to observe and assess the hurdles that the accused will have to surmount and to determine whether his right to make full answer and defence and to a fair trial is jeopardized by holding a new trial. It will be up to that judge to monitor the conduct of the new trial closely, and if necessary to assess the consequences of the passage of time and of the prosecution's conduct on the overall fairness of the proceeding being held before him or her. As this Court held in *R. v. La*, [1997] 2 S.C.R. 680, at para. 27:
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> > The appropriateness of a stay of proceedings depends upon the effect of the conduct amounting to an abuse of process or other prejudice on the fairness of the trial. This is often best assessed in the context of the trial as it unfolds. Accordingly, the trial judge has a discretion as to whether to rule on the application for a stay immediately or after hearing some or all of the evidence. Unless it is clear that no other course of action will cure the prejudice that is occasioned by the conduct giving rise to the abuse, it will usually be preferable to reserve on the application. This will enable the judge to assess the degree of prejudice and as well to determine whether measures to minimize the prejudice have borne fruit. [Emphasis added]

[192] As to what constitutes prejudice sufficient to constitute a breach of the right to a fair trial, the Ontario Court of Appeal stated in *R. v. Bradford*, [2001] O.J. No. 107 (C.A.), a lost evidence case:

> In a similar vein, Justices McLachlin and Iacobucci commented in *R. v. Mills*, [1999] 3 S.C.R. 668 at 718 that fundamental justice embraces more than the rights of the accused and that the assessment concerning a fair trial must not only be made from the point of view of the accused but the community and the complainant. *The fact that an accused is deprived of relevant information does not mean that the accused's right to make full answer and defence is automatically breached. Actual prejudice must be established*: *Mills*, supra, 719-720, citing *R. v. La*, [1997] 2 S.C.R. 680 at 693.
>
> 8 The fact that a piece of evidence is missing that might or might not affect the defence will not be sufficient to establish that irreparable harm has occurred to the right to make full answer and defence. Actual prejudice occurs when the accused is unable to put forward his or her defence due to the lost evidence and not simply that the loss of the evidence makes putting forward the position more difficult. To determine whether actual prejudice has occurred, consideration of the other evidence that does exist and whether that evidence contains essentially the same information as the lost evidence is an essential consideration. For example, in *B. (F.C.)*, [2000] N.S.J. No. 53, supra, the court held that where the complainant's signed statement was lost, but a typed transcription that was probably accurate existed, the trial judge erred in entering a stay of proceedings. In *R. v. J.D.*, a judgment of the Ontario Court of Appeal, delivered May 30, 1996, [1996] O.J. No. 1907, although the complainant's statement was lost, the officer's notes were available and the court held that it was speculative whether there were any inconsistencies between the complainant's statement and the officer's notes. [Emphasis added]

[193] To justify a stay, the abuses must reach the "oppressive and vexatious" level set out in *R. v. Jewitt*, [1985] 2 S.C.R. 128. They must shock the conscience of the community. In *R. v. Power*, [1994] 1 S.C.R. 601, the Supreme Court of Canada stated that:

> 11 I, therefore, conclude that, in criminal cases, courts have a residual discretion to remedy an abuse of the court's process but only in the "clearest of cases", which, in my view, amounts to conduct which shocks the conscience of the community and is so detrimental to the proper administration of justice that it warrants judicial intervention.
>
> 12 To conclude that the situation "is tainted to such a degree" and that it amounts to one of the "clearest of cases", as the abuse of process has been characterized by the jurisprudence, requires overwhelming evidence that the proceedings under scrutiny are unfair to the point that they are contrary to the interest of justice. As will be developed in more detail further in these reasons, the Attorney General is a member of the executive and as such reflects, through his or her prosecutorial function, the interest of the community to see that justice is properly done. The Attorney General's role in this regard is not only to protect the

> public, but also to honour and express the community's sense of justice. Accordingly, courts should be careful before they attempt to "second-guess" the prosecutor's motives when he or she makes a decision. Where there is conspicuous evidence of improper motives or of bad faith or of an act so wrong that it violates the conscience of the community, such that it would genuinely be unfair and indecent to proceed, then, and only then, should courts intervene to prevent an abuse of process which could bring the administration of justice into disrepute. Cases of this nature will be extremely rare. [Emphasis added]

[194] Returning to *Tobiass* at para. 92, the third criterion set out in by the Supreme Court of Canada states:

> 92 After considering these two requirements, the court may still find it necessary to consider a third factor. As L'Heureux-Dubé J. has written, "where the affront to fair play and decency is disproportionate to the societal interest in the effective prosecution of criminal cases, then the administration of justice is best served by staying the proceedings": *R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667. We take this statement to mean that there may be instances in which it will be appropriate to balance the interests that would be served by the granting of a stay of proceedings against the interest that society has in having a final decision on the merits. This is not to say, of course, that something akin to an egregious act of misconduct could ever be overtaken by some passing public concern. Rather, it merely recognizes that in certain cases, where it is unclear whether the abuse is sufficient to warrant a stay, a compelling societal interest in having a full hearing could tip the scales in favour of proceeding.

ANALYSIS AND DISPOSITION

[195] According to the Applicant, the actions of the police and Crown constitute an abuse of process in several ways, including:

(a) by completely disregarding its disclosure obligations to him;

(b) by covering up Mr. Webb's involvement by keeping his name out of communications and failing to create notes when he was involved; and

(c) by receiving privileged information from Mr. Webb so as to impair the Applicant's right to make full answer and defence.

[196] Here, the obligation on the Crown to disclose consisted of an obligation on the part of the police and on the part of the Crown Attorneys to disclose relevant material in their possession. Ideally, as soon as S/Sgt. Lane was approached by Mr. Webb in 2015, this should have been communicated to the Crown and in turn by the

Crown to the Applicant. Undoubtedly, these simple actions would have "nipped in the bud" the problems that later escalated to the point that we are here today.

[197] The Defence asserts that the police approach in this case shows a blatant disregard for the sacrosanct duties of defence counsel and their team, including private investigators. Mr. Sandeson asserts that the evidence led at this *voir dire* is even worse than last time and that the police attitude is from an "alternate universe". He argues that only a stay will help to ensure that this kind of conduct will not be repeated.

[198] Mr. Sandeson points to the evidence demonstrating that Mr. Webb was involved in countless briefings and meetings. When the KGB statements were received in such close proximity to Mr. Webb's having interviewed Messrs. Blades and McCabe, the defence says, they exhibited diligence in that both Messrs. Tan and Martin confronted Mr. Webb. Mr. Webb's answer, that he "leaned too hard" was properly accepted. The defence argues that it is absurd to say they should have known who "Bruce" was when uttered by Mr. Blades. Ultimately when it was found out, the defence notes that Mr. Tan was shocked that it could have ever happened. They emphasise Mr. Tan's evidence about what else the Crown might have hidden.

[199] In *R. v. Sandeson*, 2017 NSSC 196, Justice Arnold opined that the defence should have followed up with the Crown once they had Mr. Blades's KGB statement (para. 60). The Court of Appeal weighed in on this in their decision at paras. 44 – 47, 69, 70 and 128.

[200] I have had the benefit of the analysis of the Justices in the decisions before mine. I have also had the benefit of further *viva voce* evidence and the aforementioned affidavits (limited as they are).

[201] When I examine the evidence it gives me pause to wonder what really went on in late 2016. At para. 45 of this decision I set out a lengthy excerpt of Mr. Blades's KGB statement. Mr. Tan did not receive the transcript until sometime in early 2017. Nevertheless, he received the CD on November 8, 2016, and testified that he soon thereafter watched and listened to the KGB statements of both Mr. Blades and Mr. McCabe. Mr. Tan made it clear in his testimony that he went so far as to identify two people (not Messrs. Blades and McCabe) whose names came up early on and that he arranged for MI to investigate them. Having heard Mr. Blades utter the name "Bruce" five times in the context of helping the Sandeson family and having his name "googled …I read what he was about for years and years and what he did," I have a difficult time understanding how Mr. Tan and Mr. Sarson would not have

suspected Bruce Webb as the person Mr. Blades was talking about. I make this observation fully cognizant of the explanations provided by both defence lawyers.

[202] Mr. Tan was concerned enough about the proximity of the KGB statements to when Mr. Webb had obtained statements that he questioned Mr. Webb about it. At Mr. Tan's urging, Mr. Martin also questioned Mr. Webb. Mr. Martin had not listened to the statements and there is no evidence that Mr. Tan told him that Mr. Blades mentioned "Bruce" repeatedly. Both men – a senior defence lawyer and seasoned detective turned private investigator – were then satisfied with Mr. Webb's bare denials that he had said anything to police. I appreciate that Mr. Martin did not terminate Mr. Webb until the time of the trial. While he said that Mr. Webb would have continued with tasks, he could not recall any assigned tasks after the statements from Mr. Blades and Mr. McCabe were obtained.

[203] The Applicant alleges that Mr. Webb's actions constitute a breach of litigation privilege citing *Canada v. Thompson*, 2016 SCC 21, and *Maranda v. Richer*, 2003 SCC 67, in support. This was raised by defence counsel at the original *voir dire*, and subsequently dismissed by Arnold, J. At the Court of Appeal, no finding was made as to whether there had been a breach of litigation privilege.

[204] Both *Thompson* and *Maranda* involve solicitor-client, not litigation privilege. In *Thompson*, the Court cited and relied on *Maranda*, stating:

> [19] Although *Descôteaux* appears to limit the protection of the privilege to communications between lawyers and their clients, this Court has since rejected a category-based approach to solicitor-client privilege that distinguishes between a fact and a communication for the purpose of establishing what is covered by the privilege (*Maranda*, at para. 30). While it is true that not everything that happens in a solicitor-client relationship will be a privileged communication, facts connected with that relationship (such as the bills of account at issue in *Maranda*) must be presumed to be privileged absent evidence to the contrary (*Maranda*, at paras. 33-34; see also *Foster Wheeler*, at para. 42). This rule applies regardless of the context in which it is invoked (*Foster Wheeler*, at para. 34; *R. v. Gruenke*, [1991] 3 S.C.R. 263, at p. 289). [Emphasis added]

[205] At para. 30 of *Maranda*, Justice LeBel, stated:

> [30] That rule cannot be based on the distinction between facts and communication. The protection conferred by the privilege covers primarily acts of communication engaged in for the purpose of enabling the client to communicate and obtain the necessary information or advice in relation to his or her conduct, decisions or representation in the courts. The distinction is made in an effort to

> avoid facts that have an independent existence being inadmissible in evidence (*Stevens*, *supra*, at para. 25). It recognizes that not everything that happens in the solicitor-client relationship falls within the ambit of privileged communication, as has been held in cases where it was found that counsel was acting not in that capacity but simply as a conduit for transfers of funds (Re *Ontario Securities Commission and Greymac Credit Corp*. (1983), 41 O.R. (2d) 328 (Div. Ct.); *Joubert, supra*). [Emphasis added]

[206] In my view, what Messrs. Blades and McCabe saw on August 15, 2015 has an "independent existence" from any litigation privilege enjoyed by the Applicant. What they observed does not arise out of anything to do with private investigator Mr. Webb or lawyer Mr. Tan. Whereas the notes and the statements taken by Mr. Webb are covered by litigation privilege, the information contained therein is not.

[207] The Applicant (through his former counsels' evidence on this *voir dire*) concedes that Mr. Blades and Mr. McCabe were anticipated Crown witnesses at his trial and would have been interviewed in advance by the Crown. I have found this to be a fact.

[208] Both Mr. McCabe and Mr. Blades provided their own information, existing independently of either the police, or the private investigator. In my view, their evidence must not be excluded from the trial or otherwise protected from disclosure as being somehow subject to the Applicant's litigation privilege (see *R. v. Assessment Direct Inc.*, 2017 ONSC 5686 (appeal dismissed, 2018 ONCA 78, leave to appeal refused, 2018 CarswellOnt 9981, 2018 CarswellOnt 9982).

[209] The Applicant relies on *R. v. Rudolph*, 2017 NSSC 333. That case concerned a breach of solicitor-client privilege and a failure by police to adhere to the *Lavallee* procedure governing law office searches. Justice Boudreau found *Sandeson* to be "entirely distinguishable on the facts" (see paras. 79-81).

[210] The Australian cases noted by the Applicant, *B(A) v. D(C)*, [2017] VSCA 338 (Australia Vic CA), involved multiple breaches of solicitor-client privilege by a member of the Bar over 14 years. Numerous police officers over many years and numerous cases obtained information and assistance from the lawyer who was a coded police informant. These extraordinary facts only serve to highlight how different the Australian cases are from the matter before this Court.

[211] The Applicant has not proven a breach of litigation privilege. Mr. Webb testified at this *voir dire* and previously that he had participated in defence strategy meetings but admitted that he was not sure what the strategy actually was. There is

no evidence that he shared any other information regarding defence strategy, and for the Applicant to claim otherwise is mere speculation.

[212] More than "vague assertions" are required to ground an application for a stay, particularly where the accused is asserting that he cannot receive a fair hearing. The Supreme Court of Canada cautions that "[T]he focus must be on the *effect* of the impugned actions on the fairness of the accused's trial" (*O'Connor* at para. 74).

[213] Under this branch of the abuse of process doctrine, the Court is concerned with the question of whether the conduct of the state has irredeemably impaired the fair trial interest of the Applicant. Arguments under this category are raised when the prejudice flowing from the state act undermines the fairness of the trial. For instance, in situations of late or non-disclosure.

[214] The Applicant says that the state misconduct in this case falls into the residual category of abuse of process as outlined in *R. v. Babos*, 2014 SCC 16. The three-part test outlined in that decision is:

> [34] Commencing with the first stage of the test, when the main category is invoked, the question is whether the accused's right to a fair trial has been prejudiced and whether that prejudice will be carried forward through the conduct of the trial; in other words, the concern is whether there is *ongoing* unfairness to the accused.
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> …
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> [39] At the second stage of the test, the question is whether any other remedy short of a stay is capable of redressing the prejudice. Different remedies may apply depending on whether the prejudice relates to the accused's right to a fair trial (the main category) or whether it relates to the integrity of the justice system (the residual category). Where the concern is trial fairness, the focus is on restoring an accused's right to a fair trial. Here, procedural remedies, such as ordering a new trial, are more likely to address the prejudice of ongoing unfairness. Where the residual category is invoked, however, and the prejudice complained of is prejudice to the integrity of the justice system, remedies must be directed towards that harm. It must be remembered that for those cases which fall solely within the residual category, the goal is *not* to provide redress to an accused for a wrong that has been done to him or her in the past. Instead, the focus is on whether an alternate remedy short of a stay of proceedings will adequately dissociate the justice system from the impugned state conduct going forward.
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> [40] Finally, the balancing of interests that occurs at the third stage of the test takes on added significance when the residual category is invoked. This Court has stated that the balancing need only be undertaken where there is still uncertainty as to whether a stay is appropriate after the first two parts of the test have been

> completed (*Tobiass*, at para. 92). When the main category is invoked, it will often be clear by the time the balancing stage has been reached that trial fairness has not been prejudiced or, if it has, that another remedy short of a stay is available to address the concern. In those cases, no balancing is required. In rare cases, it will be evident that state conduct has permanently prevented a fair trial from taking place. In these "clearest of cases", the third and final balancing step will often add little to the inquiry, as society has no interest in unfair trials.

[215] It is clear on all of the evidence that the residual category was not breached. In *Babos*, Moldaver, J. for the majority, discussed the law of abuse of process as relates to the "residual category" cases for which a stay may be ordered. The Court highlighted the importance of the balancing of interest process when the residual category is invoked:

> [41] However, when the residual category is invoked, the balancing stage takes on added importance. Where prejudice to the integrity of the justice system is alleged, the court is asked to decide which of two options better protects the integrity of the system: staying the proceedings, or having a trial despite the impugned conduct. This inquiry necessarily demands balancing. The court must consider such things as the nature and seriousness of the impugned conduct, whether the conduct is isolated or reflects a systemic and ongoing problem, the circumstances of the accused, the charges he or she faces, and the interests of society in having the charges disposed of on the merits. Clearly, the more egregious the state conduct, the greater the need for the court to dissociate itself from it. When the conduct in question shocks the community's conscience and/or offends its sense of fair play and decency, it becomes less likely that society's interest in a full trial on the merits will prevail in the balancing process. But in residual category cases, balance must always be considered.

[216] The Court of Appeal weighed in on the "any number of things the police could and should have done differently in these circumstances" (para. 122). I agree with, and defer to their comments. Having said this, I must consider whether the police failure to disclose information falls within the residual category abuse of process. Given all of the evidence led on this *voir dire*, I conclude that the defence has not satisfied me on a balance of probabilities that a stay is warranted. That is to say, the circumstances here do not amount to one of the "clearest of cases" which demands the extraordinary remedy of a stay.

[217] In assessing this matter I have put into perspective – based on all of the evidence that I have read and heard – what I find on all of the evidence are the facts in this case.

[218] With respect to Messrs. Blades and McCabe I agree with the Court of Appeal that the evidence discloses that the police had no plans to re-interview them. This, of course, does not mean that their eye-witness accounts would never have come to light. Whereas the police had completed their investigation, the evidence is clear that the Crown would have arranged to have both men tracked down and then would have interviewed these subpoenaed witnesses in the lead up to the trial.

[219] As I consider the impact of Mr. Webb's involvement and what it means in the context of a second trial, I am mindful of the benefit of having observed Mr. Blades's demeanor as he testified in Court. While I am cautious about drawing too much from a person's presentation on the stand, I make the observation that Mr. Blades's emotional testimony was impactful. I say this in the context of the fact that we are now approaching seven years from the time of Mr. Samson's murder. Notwithstanding the lengthy passage of time, Mr. Blades's emotion was palpable as he described what he saw from the hallway. Further and importantly, he was most convincing when he spoke of how difficult he found it to continue to keep the truth about what he witnessed from coming out. He said that by keeping the secret pent up he was losing contact with friends and family. He could not concentrate to the point where he left university. He broke up with his girlfriend and was generally distraught. Indeed, I apprehended a catharsis in Mr. Blades as he testified at the *voir dire.*

[220] I unreservedly accept Mr. Blades's testimony that after about fourteen months of lying and laying low that he was ready to talk. Whereas the Applicant argues up until this point that he had not voluntarily approached the police – and I of course agree – it does not follow that his evidence would not come to light at the trial six months later. I would add that I am of the view that Mr. Blades thought that he was speaking with a police officer when he met Mr. Webb. Recall that he had googled Mr. Webb and thought he was (still) a senior RCMP officer. Although Mr. Webb presumably introduced himself as working for MI and the Sandeson team, from Mr. Blades's evidence, it is clear that this was lost on him.

[221] We do not have *viva voce* evidence from Mr. McCabe who was located by police but evaded service such that he was not present for the *voir dire*. Nevertheless, his KGB statement makes it clear that he saw Taylor Samson's slumped over body at Mr. Sandeson's apartment. He was, and appears now to be, a more reluctant witness than Mr. Blades. Nevertheless, having considered all of the evidence surrounding his KGB statement, I trace his decision to disclose what he observed as more rooted in Mr. Blades's role than Mr. Webb's. By this I mean that

it was Mr. Blades who testified that he contacted Mr. McCabe to disclose that he had spoken with the police and this time told them what he really witnessed. Their secret was effectively out and I believe this was a significant and determining tipping point for Mr. McCabe to make his disclosure when he voluntarily met and spoke with police on October 27, 2016.

[222] Mr. Sandeson points out that Mr. Tan and Mr. Martin met with him in jail and that he provided information about his role in the drug trade that was passed on to Mr. Webb. The defence argues that Mr. Webb used this information to allay the fears both Mr. Blades and Mr. McCabe expressed about the Hells Angels. Further, they ask, what else did Mr. Webb learn from the strategy meetings that he might well have shared with police and ultimately the Crown?

[223] The defence argued that Mr. Webb mollified both Mr. Blades's and Mr. McCabe's Hells Angels concerns and that he was able to do so because of the special knowledge he gleaned from working on the Sandeson team. On the evidence I find the gist of what these men learned from Mr. Webb was that given the amount of money and type of drugs that Mr. Sandeson was involved with, he was not a big player in the drug world. I further find that this information was nothing more than what the Triangle possessed from the outset. Indeed, Corp. Allison testified that his knowledge came from working in Guns and Gangs. Given my consideration of all of the evidence I find that Mr. Webb passed nothing more onto Messrs. Blades and McCabe about the Hells Angels than what the police subsequently did. Further, I find that the police's information about Mr. Sandeson and the drug trade did not come from Mr. Webb.

[224] I do not consider the fact that one of William Sandeson's brothers provided the contact information for Mr. Blades (and Mr. Blades then provided Mr. McCabe's contact information) to be overly significant. In this regard, considerable evidence was led from the police that they had multiple means for locating individuals. Both men had a social media presence. Mr. Blades was living in Halifax and Mr. McCabe in Toronto. I have no hesitation in concluding that they would have been found in any event in the lead up to the trial.

[225] It is most concerning that Mr. Webb chose to share information with police. In so doing he was in violation of the CA, ethical principles, and the *Private Investigators and Private Guards Act*, N.S.R.S., c. 356. He acted as a rogue private investigator and I repeat that the police should never have engaged in a dialog with him.

[226] A fair amount of evidence was led concerning what Mr. Webb learned and could have passed on to police. Much was made of Mr. Webb being privy to defence strategy and the Sandeson theory of the case. Both Mr. Tan and Mr. Martin emphasized Mr. Webb's role in strategy meetings. Mr. Tan referred to Mr. Webb as Mr. Martin's "trusted lieutenant". Despite what I would characterize as an attempt to bolster Mr. Webb's importance, nothing was offered by way of specifics other than that Mr. Webb participated in meetings and was tasked to interview witnesses and take notes. When asked, Ms. Craig could not point to one example from the trial where it is clear (now with the benefit of years of hindsight) that the Crown had the benefit of inside information defence strategy.

[227] *R. v. O'Connor*, [1995] 4 S.C.R. 411, tells us that issues of non-disclosure usually require proof of actual prejudice to the accused's ability to make full answer and defence. The accused must establish this on a balance of probabilities. Given the entirety of the evidence led at this *voir dire*, the Applicant has not satisfied me that the Crown received confidential defence information from Mr. Webb. While numerous cross-examination questions referenced "defence strategy" and "working theory", I cannot find any facts supporting the notion that the Crown became privy to such critical information thereby irreparably harming Ms. Sandeson's ongoing defence.

[228] As reference above at paras. 182 and 183, our Court of Appeal was concerned about the time pressures placed on defence counsel at the trial in dealing with the novel issue of the private investigator disclosing confidential information.

[229] The opportunity to further shed light on this issue has now occurred through this application nearly five years after the original *voir dire*. On the basis of all of the evidence that I have reviewed, I do not believe that a stay is warranted. The trial will proceed as scheduled early next year. The Applicant will have had more than sufficient time to deal with the issues surrounding the late disclosure at the first trial. The passage of time has shed further light on what transpired, beginning with Mr. Webb's self-initiated visit to S/Sgt. Lane and ending with revelations brought out at the first trial, *voir dire* 7.

[230] I am not persuaded that that prejudice is of "such magnitude and importance that it can be fairly said to amount to a deprivation of the opportunity to make full answer and defence".

[231] Once again, the circumstances of this case do not satisfy several elements of the first criterion of the *Tobiass* test for the appropriateness of a stay. The second

criterion requires that no other remedy is reasonably capable of removing that prejudice. I am not at all persuaded that that prejudice is of such magnitude and importance that it can be fairly said to amount to a deprivation of the opportunity to make full answer and defence.

[232] In *R. v. Zarinchang*, 2010 ONCA 286, the Ontario Court of Appeal (O'Connor A.C.J.O., R.P. Armstrong and Epstein, JJA) provided an excellent review of the legal principles articulated by the Supreme Court of Canada that govern the granting of a stay of proceedings at paras. 48 – 57. After referring to *Regan* at para. 57, the Ontario Court of Appeal stated:

> [58] Where the residual category is engaged, a court will generally find it necessary to perform the balancing exercise referred to in the third criterion. When a stay is sought for a case on the basis of the residual category, there will not be a concern about continuing prejudice to the applicant by proceeding with the prosecution. Rather, the concern is for the integrity of the justice system.
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> [59] When the problem giving rise to the stay application is systemic in nature, the reason a stay is ordered is to address the prejudice to the justice system from allowing the prosecution to proceed at the same time as the systemic problem, to which the accused was subjected, continues. In effect, a stay of the charge against an accused in the residual category of cases is the price the system pays to protect its integrity.
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> [60] However, the "residual category" is not an opened-ended means for courts to address ongoing systemic problems. In some sense, an accused who is granted a stay under the residual category realizes a windfall. Thus, it is important to consider if the price of the stay of a charge against a particular accused is worth the gain. Does the advantage of staying the charges against this accused outweigh the interest in having the case decided on the merits? In answering that question, a court will almost inevitably have to engage in the type of balancing exercise that is referred to in the third criterion. It seems to us that a court will be required to look at the particulars of the case, the circumstances of the accused, the nature of the charges he or she faces, the interest of the victim and the broader interest of the community in having the particular charges disposed of on the merits.
>
> [61] Thus, in our view, a strong case can be made that courts should engage in the balancing exercise set out in the third criterion in most cases coming within the residual category. [emphasis added]

[233] The Applicant is charged with first degree murder, the most serious charge. If found guilty, the maximum sentence is life imprisonment. I bear in mind the seriousness of the charge as I weigh the granting a stay against the societal interests of having the matter decided at trial.

[234] In conducting the balancing exercise referenced above, I am mindful of the price of the stay of the charge against Mr. Sandeson and whether it is worth the gain. In my view, the advantage of staying the charge against Mr. Sandeson falls far short of outweighing the interest of having the case decided on the merits. In arriving at my opinion, I am cognizant of the particulars of the case involving the homicide of Mr. Samson (whose remains are to this day yet to be found); the circumstances of Mr. Sandeson (who was at the time on the eve of entering medical school, engaged in the illegal drug trade); the nature of this charge (first degree murder); the interest of the victim; and the broader interest of the community in having the particular charges disposed of on the merits.

[235] In conclusion, the evidence of Mr. Blades and Mr. McCabe, Crown witnesses who were going to be subpoenaed to testify, was otherwise discoverable. They are material witnesses who have provided what they have sworn to be truthful accounts of what occurred. Mr. Webb became involved as a result of defence counsel's instructions to "lean on" these two young men. Mr. Webb subsequently had a crisis of conscience and went to police. To exclude Blades and McCabe's evidence on that basis would shock the community and be an affront to the truth-seeking function of the Court.

[236] Although the police action in this case is regrettable and must be discouraged from ever happening again, I do not believe that a stay is warranted. Indeed, our Court of Appeal in ordering the new trial sent a clear message about what the police could have and should have done. Having regard to all of the evidence I believe that the new trial provides Mr. Sandeson with the right to make full answer and defence.

Given what transpired, he has not lost a realistic opportunity to investigate and advance a process-oriented response. Indeed, the concerns about late disclosure which left both sides scrambling in the midst of the jury trial have subsided over the passage of nearly five years. For the reasons explained, irreparable damage has not been done to the Sandeson defence and the trial must proceed on its merits.

Chipman, J.