

Date: 1997 09 29
Docket: CR 03367

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

JACOB (JAKE) KLASSEN

MEMORANDUM OF JUDGMENT

[1] A number of applications were brought by the defence in this matter and scheduled to be heard on August 25, 1997. Some of the applications and grounds were abandoned. One of the applications that was not abandoned and was argued before me on August 25, 1997, was a request for disclosure from the Crown.

[2] The first aspect of the disclosure application was a request for an order that defence counsel be permitted to inspect certain items seized from the accused and which are being held in police custody. During argument before me, Crown and defence counsel decided that they could make suitable arrangements for defence counsel to have the access he seeks and that no order was required of me. Accordingly, I make no order in that regard.

[3] The second aspect of the disclosure application was a request by the defence for disclosure "of all wire taps or telephone taps and any information contained therein respecting the accused Jacob (Jake) Klassen". I have taken the wording from a "Notice for Disclosure" attached to the affidavit of Peter C. Fuglsang sworn August 12, 1997 and filed on the application.

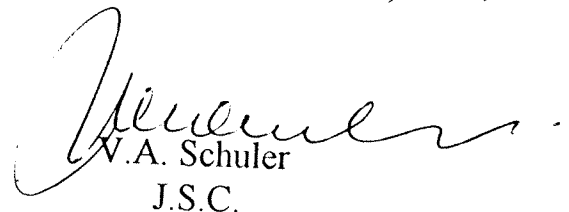
[4] During argument, defence counsel indicated that he was seeking the disclosure with respect to wiretaps on the accused's telephones.

[5] The Crown resisted the application, arguing that the Criminal Code provides a scheme, in sections 183 to 196, for the interception of private communications as well as notification and disclosure of such interception. Crown counsel also expressed the concern that should the Crown disclose any information with respect to wiretaps, it might be in contravention of s.193. I note, however, that s.193 does provide a number of exemptions.

[6] Neither counsel referred to *R v Chaplin* (1995), 96 C.C.C. (3d) 225 (S.C.C.), a case directly on point and relevant to the extent of the duty on the Crown to disclose and the evidentiary requirements for this application.

[7] Having reviewed *Chaplin*, I am not satisfied that all of the issues that should have been addressed were addressed on this application. I therefore decline to rule on the application but give leave to defence counsel to renew it if he wishes to pursue the matter.

[8] Dated at Yellowknife, Northwest Territories this 29th day of September, 1997.


W.A. Schuler
J.S.C.

Crown Counsel: Brad Allison

Counsel for Defence: Hugh Latimer

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MEMORANDUM OF JUDGMENT OF THE
HONOURABLE V. A. SCHULER

