


Victoria Registry

In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE MROZINSKI)

Victoria, B.C.
July 13, 2023

REX

v.

 and


PROCEEDINGS
(Re Election and Arraignment)

COPY

Victoria Registry

In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE MROZINSKI)

Victoria, B.C.
July 13, 2023

REX

v.

[REDACTED]
[REDACTED]

PROCEEDINGS
(Re Election and Arraignment)

Crown Counsel:

M. Adams

Counsel for Accused

N. Brooks

Counsel for Accused

R.L. Neary

INDEX

SUBMISSIONS FOR ACCUSED [REDACTED] BY CNSL R. NEARY:	5
SUBMISSIONS FOR CROWN BY CNSL M. ADAMS:	25

EXHIBITS

EXHIBIT 1: Timeline up to July 13, 2023 for R. v. [REDACTED] and [REDACTED] - one page.....	37
EXHIBIT 2: Disclosure request re R. v. [REDACTED]	37

RULINGS

Direction that at present it is premature for defendants to arraign.....	35
--	----

Proceedings

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Victoria, B.C.
July 13, 2023

(PROCEEDINGS COMMENCE AT 9:31 AM)

THE CLERK: Thank you, Your Honour. We're on the record.

THE COURT: Okay.

THE CLERK: Calling the matters of [REDACTED] [REDACTED] and [REDACTED] [REDACTED]

CNSL M. ADAMS: And Your Honour, it's Mr. Adams, first initial M., he/him --

THE COURT: Okay.

CNSL M. ADAMS: -- for the Federal Crown.

THE COURT: Right.

CNSL N. BROOKS: And Your Honour, Brooks, initial N. for Ms. [REDACTED] She and her for her, and I stand before you on the strength of a CDN.

CNSL R. NEARY: Morning, Your Honour. For the record, It's Richard Neary, N-e-a-r-y. I'm here today on behalf of Mr. [REDACTED] --

THE COURT: For [REDACTED]

CNSL R. NEARY: There's a CDN filed for Mr. [REDACTED] by Mr. Massey.

THE COURT: Okay.

CNSL R. NEARY: I've recently been brought in as co-counsel on this matter.

THE COURT: Okay.

CNSL R. NEARY: And there's been correspondence with Crown and -- and scheduling that brought us here today.

THE COURT: Right.

CNSL R. NEARY: Essentially, as I understand it, and I think this is not controversial, the -- the Crown comes before you today seeking a direction to the defence that they must make an election and arraign. The defence opposes that position and wants to put material and case law before you in support of its position that it's entitled to further disclosure before it ought to be forced to elect and arraign. So, that's where we're at.

THE COURT: Hmm.

CNSL R. NEARY: So if I could hand up a timeline that I sent Mr. Adams this morning, that he's confirmed he takes no issue with the accuracy of, as well as a recent disclosure request and three decisions. I'll do that now.

Proceedings

1 CNSL M. ADAMS: Yes, I've look at that timeline and --
2 THE COURT: Okay.
3 CNSL M. ADAMS: -- I think it's quite accurate.
4 CNSL R. NEARY: So --
5 THE COURT: So whose application is it?
6 CNSL R. NEARY: Well, I mean, I guess --
7 THE COURT: Are you going to go first, Mr. Neary? I
8 guess that's my question. You just going to take
9 over and sort of run the show? I don't even have
10 an application in front of me so I mean I know
11 there's an -- is it your application?
12 CNSL R. NEARY: I think really it's an appearance for a
13 direction by a judge so . . .
14 THE COURT: Well, who asked for it?
15 CNSL R. NEARY: I think ultimately the Crown asked for
16 it.
17 THE COURT: Right.
18 CNSL R. NEARY: I'm content to --
19 THE COURT: Am I going to be --
20 CNSL R. NEARY: Sorry, I didn't mean to --
21 THE COURT: I just want to know why --
22 CNSL R. NEARY: Yeah.
23 THE COURT: -- the Crown wants it right now and so I
24 can . . .
25 CNSL M. ADAMS: Yes.
26 THE COURT: Yes.
27 CNSL M. ADAMS: So this is the Crown's position, is
28 that the Crown has been ready to arraign this file
29 since the middle of May. We've had some
30 communication with Mr. Massey for Mr. [REDACTED] who
31 has requested -- he made a disclosure request.
32 THE COURT: Mm-hmm.
33 CNSL M. ADAMS: The Crown provided the initial
34 disclosure on March 10th.
35 THE COURT: Okay.
36 CNSL M. ADAMS: And Mr. Massey then sent a follow-up
37 request, requesting some supplemental material.
38 May 10th the Crown responded that much of that
39 material had already been provided in the initial
40 disclosure save --
41 THE COURT: Okay.
42 CNSL M. ADAMS: -- two documents related to the -- one
43 of the informations to obtain. Those documents
44 have been requested from the police but the Crown
45 doesn't have them yet.
46 THE COURT: Okay.
47 CNSL M. ADAMS: And . . .

Proceedings

1 THE COURT: So that's two documents?
2 CNSL M. ADAMS: Two documents, yes. Notes from
3 February 11th, 2022 -- '22 meeting that the
4 affiant had with AIS.
5 THE COURT: Mm-hmm.
6 CNSL M. ADAMS: And notes from a meeting February 15th,
7 2022 that the affiant had with a handler.
8 THE COURT: Mm-hmm.
9 CNSL M. ADAMS: And the Crown then had subsequent
10 communication with Mr. Massey, saying that we were
11 ready to arraign in the -- by the middle of May.
12 THE COURT: Right.
13 CNSL M. ADAMS: And then after that, it appears that
14 Mr. Neary came on as -- as co-counsel, and we
15 received a letter from Mr. Neary June 26th
16 outlining additional material that is being
17 requested, and I'm sure that's -- I'm guessing
18 that the request that Mr. Neary has just handed
19 up.
20 THE COURT: Looks like it, yes.
21 CNSL M. ADAMS: It includes some material that the
22 Crown says is -- doesn't form part of the fruits
23 of the investigation. It may be ultimately
24 disclosable to Mr. [REDACTED] but at this point the
25 Crown says that there's been sufficient disclosure
26 made for Mr. [REDACTED] to enter an election.
27 THE COURT: Mm-hmm.
28 CNSL M. ADAMS: And the Crown can determine whether
29 some of this material -- whether it exists or not
30 and whether it is disclosable. We can make those
31 inquiries, certainly, but --
32 THE COURT: Right.
33 CNSL M. ADAMS: -- an election should be --
34 THE COURT: In terms of the off duty -- to ongoing duty
35 to disclose.
36 CNSL M. ADAMS: Yes.
37 THE COURT: But that's -- I mean, these are documents
38 that presumably already exist.
39 CNSL M. ADAMS: Well --
40 THE COURT: I don't know. I . . .
41 CNSL M. ADAMS: -- we can go through. Some -- some of
42 them I think almost certainly do. There's a -- we
43 actually go to the . . .
44 THE COURT: The disclosure of the 30 -- of 10 of the 32
45 officers.
46 CNSL M. ADAMS: That's --
47 THE COURT: Anyway, I'm just looking.

Proceedings

1 CNSL M. ADAMS: Yes.
2 THE COURT: Yes, okay.
3 CNSL M. ADAMS: Yeah, those inquiries can certainly be
4 made.
5 THE COURT: Yes.
6 CNSL M. ADAMS: There's a point 8 in Mr. Neary's list.
7 These are documents that the -- the police have
8 listed as available for inspection.
9 THE COURT: Mm-hmm.
10 CNSL M. ADAMS: And -- and he is now requesting to
11 inspect them. So the Crown can make those
12 inquiries, but again, these are requests that were
13 made June 26th after a -- after Mr. Massey had
14 already made a request for -- for materials.
15 THE COURT: Mm-hmm.
16 CNSL M. ADAMS: So in the Crown's submission there's --
17 there's been sufficient disclosure made for Mr.
18 [REDACTED] to elect, and any follow-up requests for
19 disclosure made by Mr. Neary are -- should have
20 been made earlier, essentially.
21 THE COURT: Well, should they have been made earlier or
22 should the documents have been provided earlier?
23 CNSL M. ADAMS: They should have been -- in -- in the
24 Crown's submission they should have been made
25 earlier but not all of these items are things that
26 are part of the Crown's -- not all of these are
27 really parts -- are really fruits of the
28 investigation, such as the -- the I.D. of legal
29 opinions or --
30 THE COURT: Okay.
31 CNSL M. ADAMS: -- policies on -- on notetaking.
32 THE COURT: Right. Right, okay.
33 CNSL M. ADAMS: And the overall -- if I can
34 characterize it this way, the overall thrust of
35 this June 26th letter is what I assume is going to
36 be defence position about the practice of police
37 officers creating a master surveillance report
38 without generating their own notes.
39 THE COURT: Okay. Right.
40 CNSL M. ADAMS: So it seems, as far as Crown knows,
41 there are no notes generated by the officers --
42 THE COURT: Right.
43 CNSL M. ADAMS: -- in surveillance. Defence apparently
44 wants to challenge that.
45 THE COURT: In which case, nothing to disclose, right?
46 CNSL M. ADAMS: Pardon me?
47 THE COURT: In which case, nothing to disclose?

Proceedings

1 CNSL M. ADAMS: That's right.
2 THE COURT: Yes, okay. Mm-hmm.
3 CNSL M. ADAMS: So that's -- that's the thrust of it.
4 THE COURT: Okay.
5 CNSL M. ADAMS: The Crown is ready to arraign and it
6 says that defence should --
7 THE COURT: Right.
8 CNSL M. ADAMS: -- be prepared to enter an election.
9 If they're not and they want to wait until this
10 material, if it exists, arrives --
11 THE COURT: You'll say they have to waive to elect.
12 CNSL M. ADAMS: That's right.
13 THE COURT: Yes, okay.
14 CNSL R. NEARY: There will absolutely not be a waiver
15 of delay, I can say that.
16 THE COURT: Well, there may or may not be, I don't
17 know, but okay.
18 CNSL R. NEARY: Yeah, all right.
19 THE COURT: But okay, you may or may not succeed,
20 maybe. That's the other thing.
21 CNSL R. NEARY: Pardon me?
22 THE COURT: Okay, go ahead.
23 CNSL R. NEARY: Oh, of course I may or may not --
24 THE COURT: Yes, yes.
25 CNSL R. NEARY: -- succeed but what I won't do --
26 THE COURT: Yes.
27 CNSL R. NEARY: -- is waive delay.
28 THE COURT: Fair enough.
29
30 **SUBMISSIONS FOR ACCUSED [REDACTED] BY CNSL R. NEARY:**
31
32 CNSL R. NEARY: Yeah, so just to give a bit of a
33 context to this, too, this is a matter where the
34 ISP is for 10 years. You know, this is a fellow
35 with no record and the Crown's got an ISP for 10
36 years. It's a surveillance-driven investigation.
37 THE COURT: Mm-hmm.
38 CNSL R. NEARY: There are a number of searches
39 executed. The primary grounds for all of the
40 authorizations obtained are surveillance-related.
41 THE COURT: Mm-hmm.
42 CNSL R. NEARY: The hard drive containing the
43 disclosure in this matter has no index whatsoever.
44 It is a collection of, you know, hundreds of Adobe
45 documents identified only by number.
46 THE COURT: Mm-hmm.
47 CNSL R. NEARY: They are -- so you -- there is no way

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 of knowing what you're about to open until you
2 open them.

3 The -- that disclosure was only made -- the
4 first disclosure was only made a year after the
5 offence date. So we've got an offence date of
6 March 15, 16, 2022. There is then a delay of
7 some, you know, six or more months --

8 THE COURT: The information is sworn November 21st.

9 CNSL R. NEARY: November 21st. Right.

10 THE COURT: Yes. Okay.

11 CNSL R. NEARY: Four months before initial disclosure
12 after the information is sworn.

13 THE COURT: Mm-hmm.

14 CNSL R. NEARY: Right. So there's this four-month
15 delay before even the initial disclosure package
16 is provided. Defence takes some time to review
17 it, alerts the -- the Crown to problems with the
18 -- technical problems with the disclosure hard
19 drive. End of May there's an initial 90 pages of
20 disclosure sent and then there's a brief period of
21 time where Mr. Massey was in touch with Mr. [REDACTED]
22 and delay is waived for an adjournment to -- to
23 bring me in and have me have a look at things and
24 then see if I can add to -- to where things stand.

25 When I do that and I go to wade through this
26 hard drive knowing that, I discover, much to my
27 shock, frankly, that there's virtually nothing in
28 the form of officers' notes in the disclosure.

29 THE COURT: Mm-hmm.

30 CNSL R. NEARY: As set out in the letter, there's 32
31 officers identified in disclosure as having
32 participated in the investigation.

33 THE COURT: Mm-hmm.

34 CNSL R. NEARY: Only --

35 THE COURT: Okay.

36 CNSL R. NEARY: For 22 of those there's not a single
37 notebook entry.

38 THE COURT: Right.

39 CNSL R. NEARY: Now, if my friend says, well,
40 presumably they didn't take any, but that's very
41 presumably. As I understand it, this request has
42 not been forwarded to the police whatsoever yet.
43 So over two weeks ago we asked about this, and as
44 I understand it, the Crown hasn't, at this point,
45 made any inquiries of the police in response to
46 this letter.

47 THE COURT: So can I just clarify, of the 32 officers

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 you've identified in disclosure, 22 -- you don't
2 have notes for 22, and of the 22, 13 say they
3 don't have any notes.
4 CNSL R. NEARY: Correct. So there's --
5 THE COURT: Okay. So you've --
6 CNSL R. NEARY: -- nine that we wonder --
7 THE COURT: -- got to nine. Nine you're looking for
8 notes.
9 CNSL R. NEARY: Nine we're looking for do you have
10 notes or not.
11 THE COURT: Yes.
12 CNSL R. NEARY: And for the 13 who don't, we're looking
13 for an explanation and we're looking for will-
14 says. So if you're involved, if you play a
15 crucial role in an investigation, our position is,
16 and take no notes as a police officer, you're
17 obligated to produce a will-say later. And having
18 some sense or some record or indication of what
19 you're going to testify beyond what's contained in
20 the surveillance report is essential.
21 Another point that arises here is that there
22 is, on the surveillance reports, indications of a
23 review of the surveillance reports by various
24 officers who have observations attributed to them.
25 THE COURT: Mm-hmm.
26 CNSL R. NEARY: But that review does not occur as often
27 as often, as traditionally the case, day of the
28 surveillance taking place; rather, in many
29 instances, the review doesn't occur until a week
30 or so later and -- and they're not even reviewing
31 them at the same time. Like these -- these police
32 officers don't get together at the end --
33 THE COURT: So, can we just --
34 CNSL R. NEARY: -- and look --
35 THE COURT: Yes, can -- sorry. Can we just -- if
36 you're -- are you off the notes? I'm not -- I'm
37 just --
38 CNSL R. NEARY: I'm --
39 THE COURT: Yes.
40 CNSL R. NEARY: -- explaining why the lack of notes is
41 particularly concerning.
42 THE COURT: Mm-hmm.
43 CNSL R. NEARY: So --
44 THE COURT: But -- but you don't have the notes and you
45 say that if -- either, if they -- if there were
46 notes they should have notes, and if there were no
47 notes, there should be a will-say statement as to

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 why they don't have notes. And you say that's
2 just the law?
3 CNSL R. NEARY: Yes.
4 THE COURT: Right. So do I need to know the rest of
5 it, if you're right?
6 CNSL R. NEARY: Well, not if you're with me and I'm
7 right --
8 THE COURT: Right. I mean if you're --
9 CNSL R. NEARY: -- if you're concerned that --
10 THE COURT: -- if the notes exist and the Crown says
11 they're relevant, you should get them, right?
12 CNSL R. NEARY: Certainly.
13 THE COURT: Right. And you say --
14 CNSL R. NEARY: If they don't, we get a will-say.
15 THE COURT: -- if they haven't made any notes, the law
16 requires that they provide a will-say statement,
17 and you don't have that.
18 CNSL R. NEARY: Correct.
19 THE COURT: Right. Okay. So that's your position.
20 CNSL R. NEARY: That is my position.
21 THE COURT: Right.
22 CNSL R. NEARY: That's the very boiled down to --
23 THE COURT: Right.
24 CNSL R. NEARY: -- you know, the simplest, that's my
25 position.
26 THE COURT: Yes.
27 CNSL R. NEARY: And if -- further, in addition to a
28 will-say of what do you remember about what
29 happened, I'm requesting a will-say of why in the
30 world didn't you take any notes, because it's my
31 submission that the law is -- well, the -- fairly
32 clear that police officers are required to, unless
33 there's extreme extenuating circumstances, to do
34 their best to record their duties in a notebook,
35 what -- what they do in the course of their
36 duties.
37 THE COURT: So give -- and I'm -- you're going to take
38 me to some case law on that?
39 CNSL R. NEARY: Certainly.
40 THE COURT: Okay.
41 CNSL R. NEARY: Yeah.
42 THE COURT: Yes, all right.
43 CNSL R. NEARY: Some case law on the duty to record in
44 a notebook?
45 THE COURT: The -- the -- oh, I don't need that.
46 CNSL R. NEARY: Okay.
47 THE COURT: I need -- if you're saying that if they

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 don't make notes they've got to provide before you
2 arraign or your client arraigns, will-say
3 statements explaining why they didn't take any
4 notes and -- I -- I think that's what you wanted.
5 Why they didn't take any notes.
6 CNSL R. NEARY: I do want an explanation.
7 THE COURT: What else would you want in a will-say?
8 CNSL R. NEARY: I want a will-say of what do you
9 remember of what you did in the investigation,
10 because we don't have any notes that help us in
11 that regard.
12 THE COURT: Right. So, yes. Yes, okay.
13 CNSL R. NEARY: So -- so there's kind of a two part
14 will-say. Two components --
15 THE COURT: So is there some case law that says that
16 they've got to provide you that with in
17 disclosure, evidence in disclosure? You're going
18 to show me that, right?
19 CNSL R. NEARY: I mean --
20 THE COURT: Case law that they have to generate
21 evidence for you?
22 CNSL R. NEARY: A -- a will-say if they don't --
23 THE COURT: Yes, yes.
24 CNSL R. NEARY: -- have notes?
25 THE COURT: Yes.
26 CNSL R. NEARY: Yeah, I do.
27 THE COURT: Yes, okay. Okay.
28 CNSL R. NEARY: So -- so Your Honour, I just want to
29 make sure that we're on the same page.
30 THE COURT: Mm-hmm. I think we were, yes. You're
31 telling me -- you're telling me, Mr. Neary, that
32 (a) we all agree if they have some notes they've
33 got to disclose them.
34 CNSL R. NEARY: Mm-hmm.
35 THE COURT: But you say they don't have notes, or at
36 least nine of them don't.
37 CNSL R. NEARY: Mm-hmm.
38 THE COURT: But then you're saying that there's a legal
39 obligation on the police, at your request, your
40 client's request, to then generate these will-say
41 statements to explain, as part of a disclosure
42 process, why they didn't take notes. So is that
43 right? Am I right about that? Is that what
44 you're telling me?
45 CNSL R. NEARY: I am requesting a will-say from the
46 officers who don't have notes addressing two
47 separate components.

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 THE COURT: Yes.
2 CNSL R. NEARY: (a) what can you tell us about what
3 your evidence will be and what you did in this
4 investigation to the best of your recollection.
5 THE COURT: Okay.
6 CNSL R. NEARY: Now, Your Honour, if that point is
7 controversial, I did not bring case law on it.
8 THE COURT: Okay.
9 CNSL R. NEARY: But I could stand down and retrieve it
10 for you very quickly.
11 THE COURT: Right. If there is such a thing, well you
12 can give me the citation, but I just --
13 CNSL R. NEARY: I would have to stand down to look for
14 it.
15 THE COURT: Okay. Okay.
16 CNSL R. NEARY: I didn't think that that was -- would
17 be a point of controversy.
18 THE COURT: That -- that they would have to provide a
19 will-say statement as to --
20 CNSL R. NEARY: If they don't have notes, as to what
21 they did.
22 THE COURT: Maybe the Crown agrees. I'm just am not
23 aware that that's the case. But if the Crown
24 agrees, we don't have to do that. And if the
25 Crown agrees, I'm just wondering why it hasn't
26 been provided.
27 CNSL M. ADAMS: Yes. I don't -- I certainly don't
28 think that the -- the police are required to
29 proactively create something after the fact. I --
30 I do have a case here saying that -- it's a case
31 called *Stackman* [phonetic] saying that an accused
32 is not entitled to a, you know, a particular type
33 of disclosure on a particular form or for the --
34 the police to [indiscernible] not really entitled
35 to an investigation that's, you know, conducted in
36 the manner that the -- that the defence wishes it
37 had been conducted.
38 THE COURT: Mm-hmm.
39 CNSL M. ADAMS: I am aware of a case, and I don't
40 recall the citation, where the Crown was intending
41 to call a witness at the trial who did not have
42 notes, and the court held that -- that the Crown
43 was required to disclose a will-say of what that
44 officer's evidence at trial was going to be, but I
45 don't take that to mean that, in the absence of
46 notes, every police officer who's even
47 tangentially involved in the investigation must

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 provide a will-say and -- and must provide a will-
2 say with the type of detail that Mr. Neary is
3 asking for here, including -- I'm just kind of
4 looking at -- at point 7 there, the basis for them
5 not taking notes, contents of the briefings.
6 THE COURT: Mm-hmm.
7 CNSL M. ADAMS: And relevant observations that they
8 presently recall. I think there's a pretty
9 significant risk of creating some type of
10 inaccurate information the officer is generating,
11 as my friend mentions, you know, a year plus after
12 the fact.
13 THE COURT: Okay. So you don't agree.
14 CNSL M. ADAMS: Don't agree.
15 THE COURT: All right. So Mr. Neary, I would need that
16 case law. All right, so I'm -- I'm with you on
17 the (a). I mean --
18 CNSL R. NEARY: You're with me on the (a).
19 THE COURT: Yes. What -- I'm not saying I'm with you,
20 I'm just saying I understand --
21 CNSL R. NEARY: You understand.
22 THE COURT: -- your case.
23 CNSL R. NEARY: Yeah, all right.
24 THE COURT: Yes. So what can you tell us about your
25 evidence about what they were doing in the
26 investigation?
27 CNSL R. NEARY: Mm-hmm.
28 THE COURT: Okay. And then secondly, why they don't
29 have notes.
30 CNSL R. NEARY: Correct.
31 THE COURT: So in some ways you'd say that the -- that
32 a defendant, before -- I'm just trying to get my
33 head around this -- that a defendant, before
34 electing and/or arraigning, can put questions to
35 police officers and require those police officers
36 to answer those questions by way of will-say
37 statements as part of the disclosure requirement?
38 CNSL R. NEARY: In the circumstances where the
39 disclosure provided demonstrates an extreme
40 deviation to standard police practice.
41 THE COURT: Okay. So that's a -- that's something
42 different, then. Okay.
43 So in order to find for you in the
44 application, does the court have to find that --
45 that the investigation itself, or the disclosure,
46 pardon me, provided constitutes a standard, did
47 you say, deviation from normal police practices?

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 Do I have to find that?
2 CNSL R. NEARY: Well, I think in order to -- to -- for
3 the Crown to prevail today --
4 THE COURT: Mm-hmm.
5 CNSL R. NEARY: -- you would have to find that none of
6 the disclosure that's outstanding would meet the
7 test of important disclosure that the accused
8 requires in order to make an informed decision
9 about election.
10 THE COURT: Mm-hmm.
11 CNSL R. NEARY: Now, I don't know that you need to come
12 to a conclusion on each and every element of the
13 disclosure request.
14 THE COURT: Mm-hmm.
15 CNSL R. NEARY: In order to determine what happens
16 today.
17 THE COURT: Hmm.
18 CNSL R. NEARY: Because unless nothing that's sought in
19 that June 26th letter could be considered
20 essential or important disclosure that the accused
21 requires to make an informed decision about what
22 to do in a case, he's entitled to an adjournment
23 and not to have to arraign. I can take you to
24 case law on that. Maybe that'd be a good start.
25 THE COURT: Yes. I -- I -- anyway, go -- so -- so you
26 want those. And what else do you want?
27 CNSL R. NEARY: Right now I'd like --
28 THE COURT: What else are you --
29 CNSL R. NEARY: Right now I'd like to just set the --
30 the framework --
31 THE COURT: Sure.
32 CNSL R. NEARY: -- for the basic parameters of --
33 THE COURT: Mm-hmm.
34 CNSL R. NEARY: -- what we're -- what we're doing.
35 THE COURT: Yes.
36 CNSL R. NEARY: So I don't know if you've had a chance
37 to review the letter but -- but what I'll -- if we
38 could just kind of talk about --
39 THE COURT: I have, I -- yes.
40 CNSL R. NEARY: -- you know, what's the law on this
41 sort of issue. Like, should the accused be forced
42 to arraign or not? What's the -- what's the law
43 on that? Maybe we could touch on that first.
44 THE COURT: Mm-hmm. Sure.
45 CNSL R. NEARY: All right. So *Perreault* is a -- sorry,
46 actually I'll start with *Reagan*. *Reagan* is an
47 Alberta Court of Appeal decision from 2018.

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 THE COURT: Mm-hmm.
2 CNSL R. NEARY: And paragraph 64 and 65 -- often these
3 discussions arise in the context of a delay
4 application, you're looking back. The Crown is
5 saying the accused should have arranged sooner:
6 The accused should have arraigned sooner. The
7 accused should have insisted on waiting for more
8 disclosure before arraigning. They should have
9 got the show on the road sooner, so you should
10 attribute some of the delay in the early stages to
11 the accused.
12 THE COURT: Mm-hmm.
13 CNSL R. NEARY: That's how these conversations often
14 arise.
15 THE COURT: Mm-hmm.
16 CNSL R. NEARY: There are less reported decisions of
17 applications of this kind.
18 THE COURT: Mm-hmm.
19 CNSL R. NEARY: There are far more -- there's far
20 more jurisprudence that touches on or bears on
21 this topic arising out of delay applications,
22 looking back: well, what should have happened,
23 right?
24 THE COURT: Mm-hmm.
25 CNSL R. NEARY: So this is one of those. So --
26 THE COURT: Yes. But you're at 64 -- well, 63
27 starting, and this is the court talking or
28 discussing disclosure.
29 CNSL R. NEARY: Yeah. So the Crown is saying, in
30 *Reagan*, defence should have arraigned earlier.
31 And the court is addressing that argument.
32 THE COURT: Yes. Yes. Okay.
33 CNSL R. NEARY:
34
35 Defence counsel may not review the disclosure
36 with the same rigour at an early stage of
37 proceedings as they would when the trial is
38 imminent. But this was a serious
39 charge, . . .
40
41 Mr. [REDACTED] is facing a serious charge. The
42 Crown's seeking --
43 THE COURT: Mm-hmm.
44 CNSL R. NEARY: -- 10 years in the penitentiary.
45 THE COURT: Mm-hmm.
46
47 CNSL R. NEARY:

Submissions for Accused [REDACTED] by Cnsl R. Neary

1
2 . . . prudence demanded careful review of the
3 Crown's case shortly after disclosure was
4 provided. Reviewing disclosure at an early
5 stage helps counsel identify arguable
6 defences or potential avenues of independent
7 investigation, and helps uncover legal,
8 procedural, and evidentiary issues that must
9 be addressed early in the proceedings.
10 Indeed, as the untimely *O'Connor* application
11 in this case demonstrates, counsel's early
12 consideration of the nuances of a case often
13 helps prevent unnecessary delay down the
14 road.

15
16 While the accused did not have an election as
17 to the mode of trial, he was entitled to his
18 lawyer's considered professional opinion
19 about the strength of the Crown's case before
20 making other important decisions, such as
21 considering a guilty plea or pursuing
22 resolution discussions.

23
24 THE COURT: Mm-hmm.

25 CNSL R. NEARY: I pause to say, Your Honour, should the
26 disclosure in this case reveal that there was a
27 top-down direction not to make notebook entries,
28 that would, in my respectful submission, provide a
29 very strong foundation for a stay application.
30 There is not, in my submission, latitude to the
31 police in terms of how they record things so broad
32 that --

33 THE COURT: Mm-hmm.

34 CNSL R. NEARY: -- it can be directed from above, don't
35 make notes.

36 THE COURT: Oh, you know, I don't disagree with you.
37 But -- but the question is whether you have to
38 have that, that that would form grounds for a stay
39 application. But question for me is whether you
40 need to have that information before you elect or
41 not, right?

42 CNSL R. NEARY: Mm-hmm.

43 THE COURT: So I'm just looking at paragraph 65, the
44 bottom, right.

45 CNSL R. NEARY: Yes.

46 THE COURT: So it says:

47 In some cases it is reasonable to expect

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 defence counsel to book a trial or
2 preliminary inquiry before they have had an
3 opportunity to review all of the Crown's
4 disclosure. But defence counsel should not be
5 expected to set a hearing date before they
6 have a reasonable opportunity to review the
7 essential aspects of the Crown's case.
8
9 Right?
10 CNSL R. NEARY: So -- so Your Honour, what I'm saying
11 is --
12 THE COURT: So that's --
13 CNSL R. NEARY: -- what happened --
14 THE COURT: -- what this case says.
15 CNSL R. NEARY: Right.
16 THE COURT: Yes.
17 CNSL R. NEARY: And then I'm saying --
18 THE COURT: Okay.
19 CNSL R. NEARY: -- what -- what happened with
20 surveillance in this case is --
21 THE COURT: Mm-hmm.
22 CNSL R. NEARY: -- in a very essential aspect of the
23 Crown's case.
24 THE COURT: Okay.
25 CNSL R. NEARY: How did they get to obtaining
26 authorizations to search Mr. [REDACTED] property,
27 seize the items that they say he should be locked
28 away for a decade in connection with? How did
29 they get there? But surveilling him and applying
30 for authorizations.
31 THE COURT: Mm-hmm.
32 CNSL R. NEARY: There is no doubt that the accuracy of
33 the surveillance observations will be a key issue
34 in these proceedings.
35 THE COURT: Mm-hmm.
36 CNSL R. NEARY: We have a situation where there is
37 virtually no independent notes of the surveillance
38 observations.
39 Your Honour, I don't know if I'd go so far as
40 asking judicial notice, but close to it, that is
41 unusual. That -- that is unusual.
42 THE COURT: Sorry, the -- it's unusual --
43 CNSL R. NEARY: For there to be no notebook entries.
44 THE COURT: Okay, don't yell. Sorry, sorry, I just --
45 CNSL R. NEARY: I didn't mean to yell at all, Your
46 Honour.
47 THE COURT: Yes, all right. There are no notes -- I

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 just want you to say what you said again, because
2 I'm trying to take a note here.
3 CNSL R. NEARY: Okay, got it. For there to be no bn
4 entries --
5 THE COURT: Okay.
6 CNSL R. NEARY: -- whatsoever.
7 THE COURT: Mm-hmm.
8 CNSL R. NEARY: -- with respect to the observation --
9 individual observations of the officers on the
10 surveillance team.
11 THE COURT: Mm-hmm.
12 CNSL R. NEARY: And for those same officers often not
13 to have reviewed the surveillance report to
14 confirm the accuracy of their observations for a
15 week or more later.
16 THE COURT: Okay.
17 CNSL R. NEARY: Is, I submit, highly unusual and
18 extraordinary.
19 THE COURT: Okay.
20 CNSL R. NEARY: We also have a situation where, for
21 nine officers, you know, 13 have said, we don't
22 have notes, I say that's highly unusual and
23 requires some sort of explanation, as well as a
24 will-say as to what they do remember.
25 THE COURT: Mm-hmm.
26 CNSL R. NEARY: For the nine officers who we don't have
27 an explanation for, clearly if there are notes
28 we're entitled to them. We're entitled to know if
29 they have notes before the accused has to arraign.
30 Those are officers who were involved in
31 surveillance.
32 THE COURT: Mm-hmm.
33 CNSL R. NEARY: Not peripheral roles, at least some of
34 them.
35 THE COURT: Mm-hmm. So can --
36 CNSL R. NEARY: So --
37 THE COURT: Can we just go back? You say there's no
38 notebook entries. Of anybody?
39 CNSL R. NEARY: No, I didn't say for anybody. But
40 there's none in relation to surveillance for
41 anybody.
42 THE COURT: For anybody.
43 CNSL R. NEARY: For anybody [indiscernible]
44 surveillance.
45 THE COURT: And -- and --
46 CNSL R. NEARY: There -- what there are, like after the
47 fact, this is what we found in the house, you

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 know, this is how we processed this: this is what
2 we did with the exhibits. Those are the only kind
3 of notebook entries we have.

4 THE COURT: Okay. So -- so how long was the
5 surveillance?

6 CNSL R. NEARY: The surveillance was over the course of
7 a couple of months.

8 THE COURT: Couple of months.

9 CNSL R. NEARY: Yeah.

10 THE COURT: And how -- and 22 -- 32 officers involved?

11 CNSL R. NEARY: I'm not sure that all 32 were involved
12 in surveillance, Your Honour, but a dozen or more.

13 THE COURT: Okay, so say a dozen --

14 CNSL R. NEARY: Certainly maybe upwards of even 20.

15 THE COURT: All right. So those officers did the
16 surveillance, they didn't make -- you say you
17 never got any individual notes of those people
18 sitting somewhere --

19 CNSL R. NEARY: Right.

20 THE COURT: -- looking at something. You didn't get --

21 CNSL R. NEARY: I don't know what time --

22 THE COURT: -- that. Nothing?

23 CNSL R. NEARY: -- the shift started --

24 THE COURT: Nothing?

25 CNSL R. NEARY: -- not -- nothing.

26 THE COURT: Nothing like that. But what they did so
27 was presumably communicate that to somebody who
28 wrote it down. Like, a notetaker?

29 CNSL R. NEARY: Presumably, yeah.

30 THE COURT: Okay.

31 CNSL R. NEARY: There's -- there's an author of a
32 surveillance report on each occasion.

33 THE COURT: Right. But I mean, I --

34 CNSL R. NEARY: There's a master report, which is
35 common.

36 THE COURT: Right. And we've heard of that, right? I
37 mean, I have heard of that in other cases, right,
38 where there's a notetaker --

39 CNSL R. NEARY: That's extremely common. Yeah.

40 THE COURT: Yes, right. Yes.

41 CNSL R. NEARY: So -- so usually happens, in my
42 submission, what usually happens --

43 THE COURT: Okay.

44 CNSL R. NEARY: -- is that the surveillance officers
45 that are often paired together, somebody's
46 driving, somebody's making notes.

47 THE COURT: Yes.

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 CNSL R. NEARY: You know, and they split up, they watch
2 the guy.
3 THE COURT: Mm-hmm.
4 CNSL R. NEARY: They call him, what -- guy or girl,
5 they call driver one -- they call in what they --
6 they see.
7 THE COURT: Yes.
8 CNSL R. NEARY: The master notetaker's doing --
9 THE COURT: Yes, doing the notes.
10 CNSL R. NEARY: -- they're really focused on all that.
11 THE COURT: Yes.
12 CNSL R. NEARY: But as they're calling them in, they're
13 also jotting down what they see through the day,
14 and what time. And so they compare to each other,
15 if they're from different angles, et cetera, and
16 at the end of the day they get together and they
17 look at the master report.
18 THE COURT: Okay.
19 CNSL R. NEARY: And you know, officer A says, hey, C,
20 I've got you down at 3:15 saying this. Do I got
21 that right? And then C says, you do, or you
22 don't. And there's a -- you know, the report is
23 adjusted accordingly or confirmed accordingly.
24 That didn't occur in this case: Well, let me go
25 back and look at my notes and see what I got for
26 3:15. None of that occurred in this case.
27 So none of the -- aside from the master
28 notetaker --
29 THE COURT: Mm-hmm.
30 CNSL R. NEARY: -- no one recorded any observations.
31 And the members of the team aside from the master
32 notetaker do not appear to have reviewed the
33 observations attributed to them on the day of
34 surveillance.
35 THE COURT: No, they did it, when? You say,
36 afterwards? A month or so or . . .
37 CNSL R. NEARY: There's an occasion -- no, more like a
38 week.
39 THE COURT: Okay.
40 CNSL R. NEARY: There's an occasion or two where it was
41 done day of by some but not others.
42 THE COURT: Okay.
43 CNSL R. NEARY: They don't seem to have gotten together
44 at the same time.
45 THE COURT: Mm-hmm.
46 CNSL R. NEARY: There's no explanation for how the
47 report would have been modified if they did review

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 it. Like what if -- what if someone was wrong,
2 you're looking at it a week later? There's no
3 explanation for any of that.
4 For nine officers we have no explanation, as
5 I said, whether they even produced notes at all.
6 And I say that that's an extraordinary set of
7 affairs.
8 We also have a situation, Your Honour, I
9 think what kind of got me started looking --
10 really trying to delve into the notes was this:
11 You know, the first author -- authorization they
12 applied for is a tracking warrant.
13 THE COURT: Mm-hmm.
14 CNSSL R. NEARY: And the only surveillance described is
15 a week before the date of the application.
16 THE COURT: Mm-hmm.
17 CNSSL R. NEARY: So they set up on this fellow, they
18 surveil him for a day, and then there's an
19 application a week later.
20 THE COURT: Mm-hmm.
21 CNSSL R. NEARY: The surveillance as described on that
22 day has, in my submission, some omissions in terms
23 of, you know, innocent behaviour.
24 THE COURT: Mm-hmm.
25 CNSSL R. NEARY: Just went to the pet food store, just
26 went to the -- to the mall.
27 THE COURT: Yes.
28 CNSSL R. NEARY: If there were days in between, you
29 know, day one in the application for the warrant
30 where they set up on Mr. [REDACTED] and nothing was
31 observed, so no report was created and nothing was
32 included in the ITO, in my submission that would
33 be problematic. The authorizing justice would be
34 entitled to know if one day they set up on Mr.
35 [REDACTED] hoping to obtain evidence that he was
36 engaging in drug trafficking and instead just saw
37 him engage in entirely innocuous activities. We
38 don't know because there's no notes. We don't --
39 we don't have an answer as to whether there's
40 surveillance on dates that we don't have reports
41 for. We're asked that. Was there surveillance on
42 days we don't have reports for? We know we don't
43 have notes. We can't go back and look at the
44 officers' notes and say, what did you do that day,
45 you know, were there any other day -- what was he
46 -- did they -- did they see Mr. [REDACTED] doing
47 anything on these days that aren't --

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 THE COURT: Mm-hmm.
2 CNSL R. NEARY: -- covered by reports because we don't
3 have notes. So we've asked [indiscernible] are
4 there surveillance reports for days that haven't
5 been disclosed, that weren't disclosed to the
6 justice, that we haven't seen. Was there
7 surveillance on days that we're not aware of?
8 THE COURT: Right. But -- but I just -- in terms of
9 disclosure, if you make -- if you say, are there --
10 -- were there surveillance -- was there
11 surveillance done on days for which we haven't --
12 you know, that -- that -- for which we don't have
13 any reports? And -- and if there was surveillance
14 done and there were -- you know, there was some
15 note-take -- some record of surveillance, you'd
16 have to -- you'd get that record. That would be
17 relevant. But if no -- wouldn't the -- wouldn't
18 the answer be, no surveillance was done, there's
19 no record? And then you say --
20 CNSL R. NEARY: If -- that --
21 THE COURT: -- well, then you've --
22 CNSL R. NEARY: -- would be relevant also.
23 THE COURT: -- got to explain that?
24 CNSL R. NEARY: That would be --
25 THE COURT: So that's my question, right.
26 CNSL R. NEARY: I'm entitled to know whether there was
27 surveillance or not they were unaware of.
28 THE COURT: Right. So I mean, if there's no -- so they
29 say there's no record, we don't have any records
30 of surveillance, but you're saying that they
31 should be -- I mean, I'm just -- the -- I just
32 wonder, maybe I'm wrong, but this is the sort of
33 thing you often hear being asked -- I guess it
34 wouldn't be a preliminary inquiry but I guess your
35 point is you won't get to know until trial if you
36 don't ask. Yes. Yes.
37 CNSL R. NEARY: And then you're -- then you're standing
38 down in the middle of a trial going oh, whoa,
39 what? I mean, we never heard about that before.
40 THE COURT: Mm-hmm.
41 CNSL R. NEARY: Well, I guess we're -- this week is
42 lost, let's go get all that material and come back
43 another day when we can find another week. That's
44 what happens.
45 THE COURT: Yes. Okay.
46 CNSL R. NEARY: And so an occasion -- a very recent
47 decision that has some parallels, Your Honour, and

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 it's looking back again, but is found in Judge
2 Munro's reasons from May 8th, 2023 --
3 THE COURT: Yes.
4 CNSL R. NEARY: On a delay application for Trevor
5 McNeil.
6 THE COURT: Mm-hmm.
7 CNSL R. NEARY: So that was a file that involved myself
8 as counsel and -- and Mr. Adams' office.
9 THE COURT: Mm-hmm.
10 CNSL R. NEARY: And in that case, there was an argument
11 like the one that's appearing before you today.
12 On three occasions before Judge Gouge.
13 THE COURT: Mm-hmm.
14 CNSL R. NEARY: But the material that was being argued
15 about was the source documents referencing the
16 ITO. So of course, you get an ITO and it says, I
17 looked at this, this and this, and here's what it
18 said.
19 THE COURT: Mm-hmm.
20 CNSL R. NEARY: So judge, you should let me kick this
21 guy's door in because these are -- these are --
22 these are parts of pieces of the puzzle that --
23 that get us to reasonable and probable grounds and
24 let us kick this door.
25 THE COURT: Yes.
26 CNSL R. NEARY: And the -- we, as defence counsel, said
27 well, we need to see these documents you say you
28 reviewed and forwarded to the judge. And the
29 Crown said, no, no, no, you don't need those.
30 Those are peripheral, you can get them later. You
31 don't need those before you're arraigned. They're
32 not -- they're not important enough to hold up
33 arraignment. And we had --
34 THE COURT: I find that hard to believe, but yes, okay.
35 CNSL R. NEARY: Find what hard to believe?
36 THE COURT: I mean, they are relevant.
37 CNSL R. NEARY: They -- in our respectful submission,
38 of course they are, but so are the --
39 THE COURT: Yes.
40 CNSL R. NEARY: -- whether or not there's police notes.
41 THE COURT: Right.
42 CNSL R. NEARY: So what are the police officers going
43 to say in court about what they saw on
44 surveillance?
45 THE COURT: Right.
46 CNSL R. NEARY: Yeah.
47 THE COURT: Yes.

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 CNSL R. NEARY: So -- so we prevailed in that case.
2 THE COURT: Mm-hmm.
3 CNSL R. NEARY: And it's summarized at paragraphs 5 to
4 7 and 19.
5 THE COURT: Mm-hmm.
6 CNSL R. NEARY: The Crown, on three occasions, came to
7 court and said, no, no, no, they don't need those
8 things, they should just arraign anyway. And
9 Judge Gouge disagreed and said, no, you go get the
10 disclosure, we'll come back. We'll come when
11 you've got the disclosure and then we'll talk
12 about arraignment on three -- three occasions.
13 THE COURT: Mm-hmm. Mm-hmm.
14 CNSL R. NEARY: And the Crown, on the delay
15 application, showed up morning of and intended to
16 argue that Judge Gouge had it wrong and that --
17 that was all defence delay, and then conceded
18 morning or, oh, you know, what, I guess, you know,
19 he was right. And the point is, it's the same
20 situation. I say there's a very strong parallel,
21 if not -- very strong parallel between what
22 occurred in McNeill and What's occurring here.
23 We have the Crown saying, no, you don't need
24 that stuff to arraign, it's not important enough.
25 THE COURT: But surely --
26 CNSL R. NEARY: To hold up arraignment.
27 THE COURT: -- it turns on what is being sought, right?
28 CNSL R. NEARY: Of course it does.
29 THE COURT: The facts are different here, right? So --
30 right. So if the -- if the Crown didn't disclose
31 materials that it ought to have disclosed, then --
32 then you'd -- then the defendant doesn't wear the
33 delay.
34 CNSL R. NEARY: Right.
35 THE COURT: Fair enough.
36 CNSL R. NEARY: Right.
37 THE COURT: I get that. Right.
38 CNSL R. NEARY: Okay.
39 THE COURT: So we're back to this one.
40 CNSL R. NEARY: We're back to -- then we're back to do
41 these nine police officers have notes or not?
42 What do the 13 police officers who say they don't
43 have notes, what can we expect them to say about
44 their own independent recollections --
45 THE COURT: Mm-hmm.
46 CNSL R. NEARY: -- of what occurred. That basic point.
47 I mean, if Your Honour -- if Your Honour's with me

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 on that, we don't have to arraign today. We don't
2 have to sort out, well, what about policies and
3 what about other things. And that may be an
4 argument for another day. If we come back on the
5 next occasion and the Crown says, we've given them
6 the notes that exist, we've given them will-says
7 for the people who don't have notes, we say the
8 other stuff is -- is an essential, well then
9 that's a different day and a different argument.
10 Right now, we know we don't have an explanation
11 for why there's no notes for nine police officers
12 involved in this investigation. We know there's
13 13 police officers took no notes, and we are left
14 to wonder what they will say about their role in
15 the observe -- in the investigation outside of
16 what we can glean from the surveillance reports.
17 We have no idea what they did other than what's
18 attributed to them by someone else in a
19 surveillance report. That is -- in a -- in a case
20 that's going to rise and fall on reasonable
21 probable grounds, where reasonable probable
22 grounds are going to rise and fall on the quality
23 and accuracy of the surveillance observations, as
24 reported to the authorizing justices, that is
25 essential disclosure, that the accused is entitled
26 to his lawyer's considered opinion on before he is
27 -- should be forced to arraign.

28 THE COURT: Right. So you -- you want not the notes of
29 the nine, you want the 13 that didn't take notes
30 and you want to know why -- what each was doing,
31 and then the nine that didn't take notes, you also
32 want to know why they didn't take notes; is
33 that --

34 CNSL R. NEARY: There's nine --

35 THE COURT: -- what I understand?

36 CNSL R. NEARY: -- we don't know. There's nine we
37 don't know, Your Honour. There's 13 who say they
38 didn't.

39 THE COURT: Oh, sorry, 13 say they have no notes.

40 CNSL R. NEARY: Correct.

41 THE COURT: Right?

42 CNSL R. NEARY: Want will-says from them.

43 THE COURT: Right.

44 CNSL R. NEARY: The nine who we don't know, we want
45 either the notes or a will-say, one or the other.
46 We want to know whether they have notes.

47 THE COURT: Right. But if they don't have notes, you

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 want to know why they don't have notes?
2 CNSL R. NEARY: That's true. Yeah.
3 THE COURT: Right. So -- so we're talking about 22
4 people here. And you say 13 of those already say
5 they don't have notes, so the question is why they
6 don't have notes.
7 CNSL R. NEARY: Correct.
8 THE COURT: And the other 22, do they have notes? If
9 they have notes, can we have those notes, and why
10 don't we have those notes? And if they don't have
11 notes, why don't they have the notes, and then
12 what were they doing? Right?
13 CNSL R. NEARY: Yes, Your Honour. I think that's -- I
14 think you summed it up.
15 THE COURT: I think you put it as what can we tell --
16 what can you tell us about your evidence. I don't
17 -- I mean --
18 CNSL R. NEARY: What your evidence would be.
19 THE COURT: -- seems a bit broad.
20 CNSL R. NEARY: What your evidence would be.
21 THE COURT: Mm-hmm.
22 CNSL R. NEARY: Well, I mean, it's a bit broad, but --
23 THE COURT: Yes.
24 CNSL R. NEARY: -- we've got nothing right now. We've
25 got nothing outside what we can glean from the
26 surveillance report prepared by somebody else.
27 Not a shred of material authored by the officers
28 in question.
29 THE COURT: Mm-hmm.
30 CNSL R. NEARY: Nothing that they've written down
31 themselves about what they did or what they would
32 say in court.
33 THE COURT: Right.
34 CNSL R. NEARY: So Your Honour, again, in a case where
35 the Crown is seeking to put a man in prison for a
36 decade and whether or not they're going to succeed
37 in doing that will be largely dependent upon
38 whether the authorizations that allowed the search
39 of these residences are upheld.
40 THE COURT: Mm-hmm.
41 CNSL R. NEARY: Whether those authorizations are upheld
42 will depend largely on the strength of the
43 surveillance evidence, and we have a glaring lack
44 of independent information from the police
45 officers about the surveillance evidence, in my
46 respectful submission it's clear and, in fact, the
47 defence is in a far stronger and far more obvious

Submissions for Accused [REDACTED] by Cnsl R. Neary

1 position to say, this is essential disclosure than
2 they were in McNeill when they're talking about,
3 you know, CPIC reports from prior occasions
4 online.

5 THE COURT: Mm-hmm. But you've resiled from this
6 letter. I mean, you're not -- in this
7 application, you're not looking for something
8 about how the decision was made about not taking
9 surveillance notes --

10 CNSL R. NEARY: That's not --

11 THE COURT: -- you're just looking for the --

12 CNSL R. NEARY: -- correct, Your Honour. I'm just
13 trying to say that you don't need to figure that
14 out today --

15 THE COURT: Right, yes.

16 CNSL R. NEARY: -- to decide.

17 THE COURT: Yes.

18 CNSL R. NEARY: You don't need to figure that out today
19 to decide we shouldn't have to arraign. I'm --
20 since you don't need to figure that out today to
21 decide whether or not we should have to arraign, I
22 don't know that it makes sense to stand down and
23 me to go off to the library and print off cases
24 and -- and ask my assistant to bring some stuff
25 down, et cetera. On the very, very obvious points
26 that I've already identified, clearly, in my
27 submission, we're missing essential disclosure.
28 Whether every single item in here is essential
29 disclosure or not, I say Your Honour doesn't have
30 to decide. That doesn't mean I'm resiling from
31 that.

32 THE COURT: Mm-hmm.

33 CNSL R. NEARY: Doesn't mean I'm saying, I don't need
34 those items anymore. I'm not doing that. I'm not
35 doing that at all. It doesn't mean I don't need
36 those items to arraign -- or that I'm taking a
37 position I don't need those items to arraign. I'm
38 saying Your Honour doesn't need to decide that
39 today.

40 I'd be prepared to address you further on
41 that point.

42 THE COURT: Well, let's -- let's hear from Crown.

43

44 **SUBMISSIONS FOR CROWN BY CNSL M. ADAMS:**

45

46 CNSL M. ADAMS: Well, Your Honour . . .

47 THE COURT: So just dealing -- I mean, is there

Submissions for Crown by Cnsl M. Adams

1 anything in here or do you say -- I guess the
2 question is, do you say there's nothing in this
3 request that's essential? Because if there is
4 anything that's essential --
5 CNSSL M. ADAMS: Yes. What I -- what I would say just
6 on the last point about -- Mr. Neary made about
7 that there may be other items in this letter other
8 than the --
9 THE COURT: Mm-hmm.
10 CNSSL M. ADAMS: -- the notes that may be essential to
11 arraign --
12 THE COURT: Mm-hmm.
13 CNSSL M. ADAMS: -- but you don't need to make that
14 decision now.
15 THE COURT: Yes.
16 CNSSL M. ADAMS: My concern is that --
17 THE COURT: Well, obviously delay, yes.
18 CNSSL M. ADAMS: Well --
19 THE COURT: Yes.
20 CNSSL M. ADAMS: -- is that -- is that in a couple weeks
21 we're going to come back and --
22 THE COURT: Mm-hmm.
23 CNSSL M. ADAMS: -- Mr. Neary is going to say, well,
24 there's more in this letter that I haven't
25 received yet, but --
26 THE COURT: I think that -- I think that's the plan. I
27 think that's the plan. Yes.
28 CNSSL M. ADAMS: Right, so --
29 THE COURT: Well, not the plan, but I think that's a
30 possibility. I think you'll agree with that,
31 because you've said, I might.
32 CNSSL R. NEARY: It's certainly a possibility.
33 THE COURT: Yes. Yes.
34 CNSSL R. NEARY: The plan, it almost sounded --
35 THE COURT: Yes, no, plan is -- yes, I -- I didn't mean
36 that. I mean, yes, and you're worried about the
37 delay.
38 CNSSL M. ADAMS: Yes. And I -- I just don't want to be
39 in a --
40 THE COURT: Yes.
41 CNSSL M. ADAMS: -- situation a couple weeks down the
42 road where we're having the same -- the same
43 appearance.
44 THE COURT: So you want -- you say Mr. Neary should
45 argue that other point today?
46 CNSSL M. ADAMS: I --
47 THE COURT: Can I make -- I mean, I don't know that I

Submissions for Crown by Cnsl M. Adams

1 can make him.
2 CNSL M. ADAMS: No, I --
3 THE COURT: You can raise it at another day and say he
4 could have --
5 CNSL M. ADAMS: Yes, yeah. And perhaps --
6 THE COURT: I mean . . .
7 CNSL M. ADAMS: -- the Crown's position would be that
8 it should have been raised at this appearance.
9 THE COURT: It might be. It might be.
10 CNSL M. ADAMS: All I would say is that it strikes me
11 that in here, and perhaps the oral submissions, I
12 -- I just see a slight difference between the
13 request for 13 officers who don't have notes with
14 the will-says as to, you know, their independent
15 recollection. I think that's slightly different
16 from point 7, which is all the officers involved
17 in surveillance. I don't think those are
18 necessarily the same officers. But without an
19 actual breakdown from who was on surveillance it
20 would be --
21 THE COURT: Mm-hmm. No, but the question is still with
22 respect to the 13 or, frankly, the 22. Mean,
23 there's nothing there, right? There -- there
24 is --
25 CNSL M. ADAMS: Pardon me?
26 THE COURT: With respect to the 13 or the 22, you know,
27 regardless of point 7, I mean, it -- Mr. Neary
28 makes a good point, you know, he -- he should --
29 he should get that -- those documents or
30 something.
31 CNSL M. ADAMS: I -- I would say that Crown agrees that
32 make inquiries with the nine officers who --
33 that --
34 THE COURT: Yes.
35 CNSL M. ADAMS: -- he's listed in number 6, and they
36 can tell whether they have notes or not.
37 THE COURT: Yes.
38 CNSL M. ADAMS: But I don't think that the Crown's
39 disclosure obligation requires the Crown to ask
40 the police to produce, after-the-fact,
41 documentation about why they didn't take notes
42 or --
43 THE COURT: Well, what about -- well, what --
44 CNSL M. ADAMS: And --
45 THE COURT: -- what's the problem with a will-say?
46 CNSL M. ADAMS: Well . . .
47 THE COURT: I'm not suggesting -- I'm not -- I mean, is

Submissions for Crown by Cnsl M. Adams

1 there any -- why wouldn't -- why wouldn't there be
2 -- why couldn't Mr. Neary get the will-says so at
3 least he can advise his client. I mean, the
4 problem is that there's really no other -- I mean,
5 one way or the other this is going to result in --
6 Mr. Neary -- Mr. Neary's going to get them. You
7 know, he's going to get the evidence. He might
8 get it at trial. I mean, that's really the only
9 other way --
10 CNSL M. ADAMS: That's --
11 THE COURT: -- he can do it. That's the only other
12 way, right?
13 CNSL M. ADAMS: Right.
14 THE COURT: And he's right. That --
15 CNSL M. ADAMS: Then --
16 THE COURT: -- if he gets that at trial then it's a
17 stand down and then he's -- everybody's running
18 round.
19 CNSL M. ADAMS: Or -- I -- I don't want to interrupt,
20 but or -- or [indiscernible] the matter is
21 arraigned and we had a trial judge assigned Mr.
22 Neary can make an application prior to the trial
23 then.
24 THE COURT: Oh, he's going to get them. Why don't we
25 just -- yes. I mean, I don't disagree with Mr.
26 Neary that -- that -- that at least on the face of
27 it, some of the things that -- that are being
28 sought today should be provided. He should know
29 why those officers didn't -- (a) whether they made
30 notes. I mean, he needs that information. And
31 you might as well let him know if they didn't make
32 any notes they might as well say why they didn't
33 make notes. And while they're at it, they might
34 as well put in a little will-say statement. I --
35 you know, it just makes sense.
36 CNSL M. ADAMS: But --
37 THE COURT: Is there a disclosure obligation? I -- I
38 don't know, but I can tell you that he's entitled
39 to, at the -- at the minimum, some information
40 from -- from -- he's entitled to clarification
41 from the 22 officers with respect to whether they
42 had notes or not. And if they didn't have notes,
43 why they didn't make notes. That makes sense.
44 CNSL M. ADAMS: And --
45 THE COURT: And we know 13 of them say they didn't make
46 notes, so they can tell him why they didn't make
47 notes, at a minimum.

Submissions for Crown by Cnsl M. Adams

1 CNSL M. ADAMS: I'm sorry, I'm just thinking about
2 the --
3 THE COURT: Yes, okay.
4 CNSL M. ADAMS: -- the issue that's been raised about
5 the creating a surveillance report through --
6 THE COURT: The master --
7 CNSL M. ADAMS: Yeah, through a master --
8 THE COURT: -- notetaker.
9 CNSL M. ADAMS: -- notetaker.
10 THE COURT: Yes.
11 CNSL M. ADAMS: I mean, I think that's being
12 characterized as something highly unusual and I
13 don't think it is but . . .
14 THE COURT: Well, it isn't, but I -- I guess what's
15 unusual is that I think, if I understood Mr.
16 Neary's submissions, and I -- you know, it sounds
17 about right, I guess I can go that far, there's
18 all -- I -- I agree, there's a master notetaker.
19 There's -- that's -- that's very typical --
20 CNSL M. ADAMS: Yes.
21 THE COURT: -- and -- and I think --
22 CNSL R. NEARY: And I agree.
23 THE COURT: -- in certain circumstances people can't
24 take notes if they're -- depending on what they're
25 doing in the surveillance, they can't take notes,
26 and that makes good sense. But -- but there would
27 -- I mean, there's a lot of officers here and
28 surely someone was in a position to be able to
29 take some notes and/or if they didn't take notes,
30 let us know why they didn't take notes. Because
31 -- because Mr. Neary is right, the only thing he's
32 got is -- the only -- the only avenue of attack is
33 the surveillance, right? So -- so it's crucial to
34 -- to the defence, absolutely crucial; it's the --
35 it's the only thing they have, right?
36 CNSL M. ADAMS: I don't -- I don't know that it's
37 necessarily the only avenue of attack, but -- but
38 it's certainly an avenue and he's -- and -- and --
39 THE COURT: Well, it's the basis for the -- it's the
40 basis for the warrant.
41 CNSL M. ADAMS: Yes.
42 THE COURT: Yes. So I mean, there's not much else. So
43 I mean --
44 CNSL M. ADAMS: But . . .
45 THE COURT: So is it -- it is a little bit unusual on
46 the face of it, that nobody took a note, or at
47 least this large number of people didn't take

Submissions for Crown by Cnsl M. Adams

1 notes, and I would think somebody would be
2 entitled to know why is that, why did you not take
3 notes? Or, did you take notes? Did you maybe --
4 you know, can you look and make sure you didn't
5 take any notes? I mean, note in terms of when did
6 you start the shift, you know, where -- maybe
7 where -- where were you? I don't know, that kind
8 of thing. And -- and -- and yes, explore on the -
9 - were there days when there was surveillance
10 that, you know, you didn't take any notes but you
11 were still out there looking? Mean, that -- that
12 makes good sense, too. That's relevant. It's
13 relevant, I'll say that much, I'll go that far.

14 CNSL M. ADAMS: So --

15 THE COURT: In any event, I just -- I just feel that it
16 is.

17 CNSL M. ADAMS: And -- and in so doing, imposing
18 essentially a positive obligation on the police to
19 -- to create --

20 THE COURT: Well, I'm not saying it's a positive --

21 CNSL M. ADAMS: -- new information.

22 THE COURT: -- obligation, but it is an obligation to
23 -- to provide some more information about (a) do
24 they have any notes, and if they don't have any
25 notes I don't see the -- I don't see why they
26 can't say why they didn't have notes. We didn't
27 take notes because of (a), (b) or (c). Or, we did
28 take notes and I --I've found them.

29 CNSL M. ADAMS: Or that they don't recall
30 independently.

31 THE COURT: Yes. Yes, yes.

32 CNSL M. ADAMS: I mean that seems to be quite -- could
33 be --

34 THE COURT: Yes, yes.

35 CNSL M. ADAMS: -- a very likely --

36 THE COURT: And it's exacerbated by the fact that
37 according to the information that's been provided
38 to Mr. .Neary, and I don't see you saying he's
39 wrong, that -- that -- that the -- the individuals
40 were engaged in the surveillance didn't meet up
41 that night with the notetaker, they seem to have
42 met about a week later. So you'd want to explore
43 that --

44 CNSL M. ADAMS: Right.

45 THE COURT: -- as defence counsel, clearly.

46 CNSL M. ADAMS: He would, yes.

47 THE COURT: Yes.

Submissions for Crown by Cnsl M. Adams

1 CNSL M. ADAMS: Yes.
2 THE COURT: Yes, that makes good sense.
3 CNSL M. ADAMS: And -- and so essentially, until Mr.
4 Neary has this -- this new information --
5 THE COURT: If I thought -- I don't feel -- I don't
6 know that it's necessary -- I don't know, it
7 doesn't seem like it would be that hard to get.
8 Maybe I'm wrong about that.
9 CNSL M. ADAMS: I mean, we won't know until -- until
10 we --
11 THE COURT: Yes, until you try.
12 CNSL M. ADAMS: -- try and track down 22 officers.
13 THE COURT: Yes. Well, I mean, if it's problematic you
14 can always come back. But if they're here, it's a
15 simple question.
16 CNSL M. ADAMS: So on -- on that point, then at least I
17 really would like to --
18 THE COURT: Nail down what it is.
19 CNSL M. ADAMS: -- turn our minds to --
20 THE COURT: Yes.
21 CNSL M. ADAMS: -- to the other items.
22 THE COURT: Okay.
23 CNSL M. SMITH: Just because, again, I don't want to be
24 in -- in the same position.
25 THE COURT: What do you mean "items"?
26 CNSL M. ADAMS: The other items that are requested in
27 the June 21st --
28 THE COURT: Right, but --
29 CNSL M. ADAMS: -- letter.
30 THE COURT: Right. So let -- we -- for example, how
31 the decision to not take notes during surveillance
32 activity was made, is that --
33 CNSL M. ADAMS: Right.
34 THE COURT: -- sort of on a --
35 CNSL M. ADAMS: That -- that seems --
36 THE COURT: -- executive level decision you -- and I
37 have to say, on the face of it, I agree. I don't
38 know why that would be something the Crown has to
39 disclose at this point in time.
40 CNSL M. ADAMS: Yes.
41 THE COURT: But Mr. Neary hasn't argued it --
42 CNSL M. ADAMS: Right.
43 THE COURT: -- I think is the point.
44 CNSL R. NEARY: No, Your Honour. I -- it's been
45 helpful to go through the process we have, and
46 hear what you've just had to say. In my
47 submission, at this stage of the game, the other

Proceedings

1 issues are best left revisited once the items that
2 Your Honour has identified as essential have been
3 provided. It may well be that -- that those are
4 -- it's explained in the will-says, that we --
5 there's no longer a need to pursue those, some of
6 these areas, or it becomes apparent what's
7 occurred. Mean, if the will-say is we were told
8 not to make notes, well that's kind of that.
9 We've got our answer there.

10 In my respectful submission, I mean, we're at
11 a stage now, even though the letter's sent over
12 two weeks ago, as far as I understand, the Crown
13 is saying they haven't even asked the police for
14 any of this. So asking the police for the -- the
15 basics that Your Honour has identified would be a
16 good starting point rather than trying to get to
17 the very finish like on every item in this letter
18 today, in my respectful submission.

19 THE COURT: Well, yes, but I think Crown is saying that
20 if you try to raise this again, they're going to
21 argue that it should have been raised here. So I
22 mean, that's -- and the court may or may not
23 agree. So that's a decision I guess, Mr. Neary,
24 you -- you have to make now.

25 CNSL R. NEARY: I'm prepared to -- well, let me
26 contemplate that for a moment, please, Your
27 Honour.

28 THE COURT: Sure. I mean, if it helps, I'm just
29 looking at page 2 of that letter, how the decision
30 to not take notes during surveillance, you're
31 right, that may or may not be -- that may or may
32 not be -- you may get some information on that
33 with -- with respect to what you're already going
34 to get: all Victoria Police Department policies
35 and journals, daily logs, notebook or notetaking,
36 I don't know how that's part of a disclosure.

37 CNSL R. NEARY: I've gotten -- I mean, that's -- the
38 thing is it is a broad letter.

39 THE COURT: I mean, it's interesting but --

40 CNSL R. NEARY: So there's case law -- well, there's
41 case law in -- I'm not -- I've gotten --

42 THE COURT: Mm-hmm.

43 CNSL R. NEARY: -- I've argued successfully --

44 THE COURT: Mm-hmm.

45 CNSL R. NEARY: -- the policy point a number of times.
46 I don't have all those authorities today, so this
47 is the thing. I didn't come equipped with a 30

Proceedings

1 casebook of authorities for today's purposes.
2 THE COURT: Mm-hmm.
3 CNSL R. NEARY: It frankly seemed to me abundantly
4 apparent that defence was not going to be forced
5 to arraign today, given the current state of
6 disclosure. I did not come prepared to argue
7 every single point in the letter. I'm not going
8 to do that today. And if my friend -- I don't
9 even have a response yet from the Crown saying,
10 no, you can't have the policy. The Crown has not
11 replied to this letter or sent any request to the
12 police. So I didn't come prepared to say I am
13 entitled to the policies because I didn't know if
14 the Crown's going to oppose or not. Mr. Adams'
15 office has disclosed to me Victoria Police
16 policies 10 or more times. I've sent them the law
17 before.
18 THE COURT: Right.
19 CNSL R. NEARY: We've argued the point before.
20 THE COURT: Have you got legal opinions as well before?
21 CNSL R. NEARY: I have gotten legal opinions on one
22 case.
23 THE COURT: Okay.
24 CNSL R. NEARY: Legal opinions only arise, Your Honour,
25 in the context of an application for a stay. Our
26 Court of Appeal in *Castro* and a related companion
27 decision that also starts with C that I can't
28 recall at the moment --
29 THE COURT: Right.
30 CNSL R. NEARY: -- has determined that in the context
31 of an application for a stay --
32 THE COURT: Yes.
33 CNSL R. NEARY: -- given that it can bring the
34 proceedings to a termination, innocence at stake,
35 it's equivalent to innocence at stake and --
36 THE COURT: Right. But --
37 CNSL R. NEARY: -- privilege can be pierced.
38 THE COURT: -- that's not what we're dealing with here
39 today, is an application for a stay. It's --
40 CNSL R. NEARY: Not -- I don't --
41 THE COURT: Right, yes.
42 CNSL R. NEARY: -- I don't know yet because I don't
43 have the disclosure, whether there's a
44 foundation --
45 THE COURT: So they say if you're making -- if you're
46 contemplating making an application for a stay you
47 can legal opinions? Because then you can get

Proceedings

1 legal opinions.
2 CNSL R. NEARY: No, Your Honour, I'm not saying that.
3 THE COURT: Yes. I mean, it would presumably be in the
4 context of an application. I mean, somebody's
5 actually making an application for a stay.
6 CNSL R. NEARY: I'm certainly not saying, Your Honour,
7 that I can't -- that I can't --
8 THE COURT: Yes.
9 CNSL R. NEARY: -- arraign until I have a legal
10 opinion.
11 THE COURT: Right.
12 CNSL R. NEARY: I have -- I've raised --
13 THE COURT: Yes, yes.
14 CNSL R. NEARY: -- the issue.
15 THE COURT: Yes.
16 CNSL R. NEARY: I'm not standing before Your Honour
17 saying -- I don't know what the explanation for
18 the lack of notes is going to be yet. If the
19 explanation for the lack of notes turns out to be,
20 we told all the officers on the ground not to make
21 any entries in their notebooks, I -- I anticipate
22 I would likely start putting together or building
23 an --
24 THE COURT: Mm-hmm.
25 CNSL R. NEARY: -- application for a stay and then
26 would apply for legal opinions. I'm not there
27 now.
28 THE COURT: Right. So Mr. Adams, I mean, you -- your
29 position is on the record.
30 CNSL M. ADAMS: Yes. All right. So then perhaps what
31 we could do is I could make notes, but
32 specifically the --
33 THE COURT: Yes, well let's work --
34 CNSL M. ADAMS: -- the areas that you're --
35 THE COURT: -- with Mr. Neary on that and see what we
36 can come up with in terms of a list.
37 CNSL R. NEARY: Thank you, Your Honour.
38 THE COURT: What are you suggesting, Mr. Neary? I
39 think we're talking about 22 people?
40 CNSL R. NEARY: Yes. And I'm requesting notes for the
41 nine officers for whom we have no notes or no
42 confirmation of whether they do or do not have
43 notes. So notes, if they exist.
44 THE COURT: Mm-hmm.
45 CNSL R. NEARY: The simplest way to put it is, for
46 all --
47 THE COURT: Mm-hmm.

Proceedings

1 CNSL R. NEARY: -- 22 officers --
2 THE COURT: Yes.
3 CNSL R. NEARY: -- notes if they exist.
4 THE COURT: And if they don't exist --
5 CNSL R. NEARY: And if they do not exist, a will-say as
6 to their --
7 THE COURT: Right.
8 CNSL R. NEARY: -- their role in the investigation.
9 THE COURT: Well, you want an explanation as to why
10 they didn't take notes.
11 CNSL R. NEARY: I do.
12 THE COURT: Right.
13 CNSL R. NEARY: And I also want to know from them what
14 they would say about --
15 THE COURT: And what their evidence would be at trial.
16 CNSL R. NEARY: Yeah. What days they were involved in
17 the investigation and what they did. The things
18 we would typically see in a notebook. What days
19 they were involved in the investigation, and to
20 the best of their recollection their activities on
21 those dates.
22 THE COURT: In respect of this investigation?
23 CNSL R. NEARY: Of course, Your Honour. Just this
24 investigation. I don't need to know what they had
25 for breakfast or what they did on other cases.
26 THE COURT: Mm-hmm.
27 CNSL M. ADAMS: Sorry, that's what days they were
28 involved in the investigation and?
29 THE COURT: And their activities, if they were involved
30 in this investigation, their activities on those
31 days in relation to this investigation.
32 CNSL R. NEARY: Correct, Your Honour. Thank you very
33 much.
34 THE COURT: So I think we have it. Twenty-two
35 officers, do they have notes; if they don't have
36 notes, why don't they have notes? What would
37 their evidence be at trial with respect to this
38 investigation? What days were they working on the
39 investigation, and what were they doing during
40 those days, on this investigation. That should do
41 it.
42 CNSL R. NEARY: Yes, Your Honour, thank you very much.
43 That captures --
44 THE COURT: So I'm going to -- yes, the order today is
45 that, in terms of directions, I'm going to direct
46 that, at present, it's premature for the
47 defendants to arraign.

Proceedings

1 CNSL R. NEARY: Thank you, Your Honour.
2 In terms of a return date, I'm better off in
3 my friend's hands in terms of how long he thinks
4 it might take to provide the materials.
5 THE COURT: I guess I should have asked if Mr. Brooks
6 wanted to add anything.
7 CNSL N. BROOKS: No, I'll just echo exactly what my
8 friend is saying.
9 THE COURT: Okay. Sorry, Mr. Neary. Yes.
10 CNSL R. NEARY: Terms of return date, Your Honour, I
11 would ask for two weeks past whatever date Mr.
12 Adams says it might be realistic for us to have
13 this stuff. So when we have it we've got a little
14 bit of time to look at it.
15 CNSL M. ADAMS: Perhaps in that case we should go to
16 August 10th.
17 THE COURT: August 10th.
18 CNSL M. ADAMS: Nine a.m., 103, please.
19 THE COURT: Nine a.m., one-o -- one-o --
20 CNSL M. ADAMS: 103.
21 CNSL R. NEARY: No. Well, I don't know, maybe it
22 should come back before a judge, Your Honour,
23 because we -- if there's a decent probability
24 we're going to be -- need further assistance in
25 light of the way this is going so far.
26 THE COURT: Well, let's put it to 103 for now, and then
27 if you need to go back before a judge, you can do
28 that. Okay?
29 CNSL R. NEARY: Sounds good, Your Honour.
30 THE COURT: Yes.
31 CNSL R. NEARY: Now, the other thought I had is whether
32 -- well, I'm just going to ask: [indiscernible]
33 the timeline in the letter I handed up, unless
34 Your Honour has made notes of them already, I
35 think I might have clean copies.
36 THE COURT: You can have it back. Is that what you're
37 wanting?
38 CNSL R. NEARY: I was thinking an exhibit. I was
39 thinking an exhibit in case --
40 THE COURT: Okay, that's fine.
41 CNSL R. NEARY: -- we get in front of another judge on
42 a later day.
43 THE COURT: Yes, that's fine. Do you want your letter
44 as an exhibit as well?
45 CNSL R. NEARY: Please, Your Honour.
46 THE COURT: Okay. Exhibit Number 2; 1 is the timeline,
47 letter is number 2.

Proceedings

1 CNSL R. NEARY: Thanks very much, Your Honour.

2 THE CLERK: Exhibits 1 and 2, Your Honour.

3 THE COURT: Thank you.

4
5 **EXHIBIT 1: Timeline up to July 13, 2023 for**
6 **R. v. [REDACTED] and [REDACTED] - one page**
7

8 **EXHIBIT 2: Disclosure request re R. v.**
9 **[REDACTED]**
10

11 THE COURT: Thank you.

12 CNSL R. NEARY: And I do apologize if I -- if I raised
13 my voice earlier, I didn't mean to.

14 THE COURT: No, I was -- I was -- that's fine. It's
15 just that it was getting raised, but that's okay.

16 CNSL R. NEARY: I apologize.

17 THE COURT: Yes, that's fine.

18 CNSL R. NEARY: Thank you.

19 THE COURT: Okay, thank you.

20 CNSL R. NEARY: That's very much, Your Honour.

21 CNSL N.BROOKS: Thank you, Your Honour. Thank you my
22 friend.

23
24 (PROCEEDINGS ADJOURNED AT 10:25 AM TO AUGUST
25 10, 2023, AT 9:30 AM)
26
27
28
29
30
31

32 Transcriber: C. King
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

I hereby certify the foregoing to
be a true and accurate transcript
of the evidence recorded on a sound
recording apparatus, transcribed to
the best of my skill and ability.

A handwritten signature in blue ink, appearing to be 'C. King', written in a cursive style.

C. King
Court Transcriber