IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation*: Canadian Broadcasting Corporation v. Canada (Border Services Agency),* 2021 NSPC 15

In the Matter of an Application to Vary a Sealing Order,
Criminal Code s. 487.3

BETWEEN:

Canadian Broadcasting Corporation, Canadian Television Network, Global News, The Canadian Press, Globe and Mail, Post Media, Halifax Examiner and Saltwire

(CBC Law Department, Bell Canada, Global News, Halifax Examiner Inc., SaltWire Network, The Globe and Mail, Toronto Star Newspapers Limited)

- Applicants

- and-

Her Majesty the Queen in the Right of Canada (Canada Border Services Agency)

and

Her Majesty the Queen in the Right of Nova Scotia (Royal Canadian Mounted Police)

- Respondents

MERITS DECISION

Judge:	The Honourable Judge Laurel Halfpenny MacQuarrie
Heard:	July 20, July 21, July 23, August 12, October 16, November 24, December 9, 2020.
Decision	March 16, 2021
Counsel:	Mark Covan and Scott Millar, for the Federal Crown Shauna MacDonald and Mark Heerema, for the Provincial Crown David G. Coles, QC, for the Applicants

By the Court:

I. The Application

[1] On April 28, 2020 the Canadian Broadcasting Corporation (CBC), through its representative Elizabeth McMillan, filed a "Notice of Application" in the Provincial Court, seeking to lift a Sealing Order over Informations to Obtain (ITO's). In particular, the CBC suggested a general warrant had been issued pursuant to Section 487.01 of the *Criminal Code,* permitting the search of property belonging to Gabriel Wortman with an associated Sealing Order.

[2] This application was precipitated by the mass shooting by Gabriel Wortman on April 18 and 19, 2020 in rural Nova Scotia. This resulted in 22 people being killed, one of whom was pregnant, others injured, and the Province was left in a state of shock. The tragedy encompassed 17 crime scenes and covered a large geographical area.

[3] In her correspondence to the Provincial Court at Truro, Nova Scotia, Ms. McMillan referenced the "open court principle" and wrote:

> I am a journalist with the Canadian Broadcasting Corporation. I am applying to lift a sealing order that has been imposed over certain records relating to these proceedings…
>
> We believe this matter is urgent because it is possible that the information outlined in the search warrant/affidavits/ITO's could shed light on **what** police knew and **when**. There has been considerable focus on **why** the RCMP didn't send out a public alert to warn people about an active shooter. We believe the public should know **what** information police had in this case, in the event protocol changes need to be made before the

> next tragedy. If we wait months for this information, an opportunity to take steps to prevent a similar situation could be delayed.
>
> There is tremendous public interest in understanding the facts regarding the attacks that killed 22 people. This was the largest mass shooting in Canadian history, and we believe the public should know **why** police searched properties belonging to the shooter Gabriel Wortman.*[my emphasis added]*

[4] Since the initial application some media interests have been added, and some removed. At the time of this decision, the Applicants include:

- CBC Law Department
- Global News
- Bell Canada
- The Globe and Mail
- Toronto Star Newspapers Limited
- Halifax Examiner Inc.
- SaltWire Network

[5] A Respondent was not identified in the Notice of Application. It was forwarded by Court Services staff in Truro to the local Crown Attorney's Office who in turn sent it to the Special Prosecutions branch of the Public Prosecution Service of Nova Scotia (PPS). The Royal Canadian Mounted Police (RCMP) were identified as Respondents by the PPS as Her Majesty the Queen in the Right of the Province of Nova Scotia.

[6] Subsequently, the Canada Border Services Agency (CBSA) became a Respondent represented by the Public Prosecution Service of Canada (PPSC), as representing Her Majesty the Queen in the Right of Canada. Until very recently, the Serious Incident Response Team (SiRT) had an interest in these proceedings and those interests were represented by PPS.

[7] The original application was for unsealing of a general warrant. At the time, no general warrant was in existence nor does one form part of this Application. This application encompasses five search warrants and two production orders:

1. Search Warrant issued April 20, 2020 pursuant to s. 487.1., JPC#20-0638, with Reports to Justice filed April 30, 2020, and May 8, 2020.

2. Search Warrant issued April 21, 2020 pursuant to s. 487.1., JPC#20-0641, with a Report to Justice filed April 30, 2020.

3. Search Warrant issued April 21, 2020, pursuant to 487.1., JPC#20-0642, with a Report to Justice filed April 30, 2020.

4. Search Warrant issued April 23, 2020 pursuant to s. 487.1., JPC#20-0651, with a Report to Justice filed April 30, 2020.

5. Production Order issued April 24, 2020 pursuant to s. 487.014(3)., JPC#20-0667

6. Production Order issued April 24, 2020 pursuant to s. 487.014(3)., JPC#20-0668

7. Search Warrant issued April 24, 2020 pursuant to s. 487.1., JPC#20-0673, with Reports to Justice filed May 8, 2020.

II. Legislation and History of Proceedings

Criminal Code

[8] The *Criminal Code* provides the authority for a sealing of Judicial authorizations:

> 487.3 (1) On application made at the time an application is made for a warrant under this or any other Act of Parliament, an order under any of sections 487.013 to 487.018 or an authorization under section 529 or 529.4, or at a later time, a justice, a judge of a superior court of criminal jurisdiction or a judge of the Court of Quebec may make an order prohibiting access to, and the disclosure of, any information relating to the warrant, order or authorization on the ground that
>
> *(a)* the ends of justice would be subverted by the disclosure for one of the reasons referred to in subsection (2) or the information might be used for an improper purpose; and
>
> *(b)* the reason referred to in paragraph (a) outweighs in importance the access to the information.

> (2) For the purposes of paragraph (1)*(a),* an order may be made under subsection (1) on the ground that the ends of justice would be subverted by the disclosure
>
> (a*)* if disclosure of the information would
>
> (i) compromise the identity of a confidential informant,
>
> (ii) compromise the nature and extent of an ongoing investigation,
>
> (iii) endanger a person engaged in particular intelligence-gathering techniques and thereby prejudice future investigations in which similar techniques would be used, or
>
> (iv) prejudice the interests of an innocent person; and
>
> (b*)* for any other sufficient reason.
>
> (3) Where an order is made under subsection (1), all documents relating to the application shall, subject to any terms and conditions that the justice or judge considers desirable in the circumstances, including, without limiting the generality of the foregoing, any term or condition concerning the duration of the prohibition, partial disclosure of a document, deletion of any information or the occurrence of a condition, be placed in a packet and sealed by the justice or judge immediately on determination of the application, and that packet shall be kept in the custody of the court in a place to which the public has no access or in any other place that the justice or judge may authorize and shall not be dealt with except in accordance with the terms and conditions specified in the order or as varied under subsection (4).

[9] An application to "unseal" such orders is set out in Section 487.3(4):

> (4) An application to terminate the order or vary any of its terms and conditions may be made to the justice or judge who made the order or a judge of the court before which any proceedings arising out of the investigation in relation to which the warrant or production order was obtained may be held.

[10] After the filing of Briefs, I heard representations from counsel on the substantive procedure that should be employed on this Application. I released a "procedural decision" on July 16th (*see* 2020 NSPC 29). The Application would be heard first *in camera*, being Stages 1 and 2, then an open hearing for Stage 3 on the "Merits", then Stage 4, being notices to third party interests, as required.

[11] It is important that the history of the Application since July 16, 2020 be briefly summarized so as to ensure a complete understanding of the proceedings to date, including what this decision covers.

Re: Authorizations: 20-0638, 20-0641, 20-0642, 20-0651, 20-0667, 20-0668, 20-0673

[12] ***July 20, 2020, July 21, 2020 and July 23, 2020***

- Stage 1 and 2 held, *in camera.*
- The court heard from Sergeant Angela Hawryluk, RCMP and Mr. Keith Stothart (SiRT).
- Mr. Coles, as per the July 16th decision, was able to provide the Court, in advance, and without disclosure to the Crown, any questions he wished the Court to ask either/both affiants during the *in camera* proceeding. He did not avail himself of that opportunity.

[13] ***July 24, 2020***

- The Court approved a written summary of the evidence heard on July 20, 21, and 23, 2020. This was forwarded to Mr. Coles.

[14] ***July 27, 2020***

- The Court released its decision outlining those portions of the ITO's, search warrants and Reports to Justice that were redacted permanently, redacted on a temporary basis or which would then proceed to the Stage 3 hearing.

[15] ***August 12, 2020***

- Stage 3 hearing.
- Sergeant Angela Hawkryluk was subject to cross-examination by Mr. Coles, redirect examination by Mr. Heerema and re-cross examination by Mr. Coles.
- Stage 3 submissions set for August 31, 2020.

[16] ***August 19, 2020***

- Pre-hearing held at Court's request.
- Counsel appeared and dates for filing the next group of 6 ITOs was set to September 4, 2020.
- The next 10 to be filed on November 16, 2020.

- Stage 1, 2 and 3 hearing dates set for the week of November 23, 2020.
- Stage 3 decision set for October 2, 2020.

[17] ***August 20, 2020***

- The Applicants filed a Notice of Judicial Review of the July 16 procedural decision.

[18] ***August 31, 2020***

- Crown seeking to adjourn Application pending the Judicial Review.
- Mr. Coles seeking to continue with Application pending the Judicial Review.
- Court received written submissions as to the status of this Application.
- Oral submissions heard.
- Date for receipt of next 6 ITOs moved to September 21, 2020.
- Stage 3 submissions adjourned to October 16, 2020 given Judicial Review/status of this Application.

[19] ***September 21, 2020***

- A further 6 judicial authorizations were received by the Court:

    1. JPC#20-0706 Search Warrant issued May 2, 2020, Report to Justice filed May 8, 2020
    2. JPC#20-0711 Search Warrant issued May 4, 2020, Report to Justice filed May 8, 2020
    3. JPC#20-0715 Production Order, issued May 5, 2020
    4. JPC#20-0716 Production Order, issued May 5, 2020
    5. JPC#20-0717 Production Order, issued May 5, 2020
    6. JPC #20-0718 Production Order, issued May 5, 2020

- The next 10 authorizations to be filed on November 16, 2020.

[20] ***September 28, 2020***

- The Court sought clarification of the Applicant's pleadings in the Supreme Court, and in particular outlined 5 specific questions to Mr. Coles as to the scope of the Judicial Review application.

- Set to October 2, 2020.

[21] ***October 2, 2020***

- Mr. Coles made further submissions on his pleadings, which did not correspond to his oral argument from August 31, 2020 or written submissions.
- Crown counsel sought time to respond to this change.

[22] ***October 6, 2020***

- Court received written submissions from Crown counsel:

> This is further to the Court appearance on October 2, 2020. During that appearance, Mr. Coles addressed a number of questions posed by the Court. In doing so, he purported to narrow the scope of the Notice for Judicial Review that he has filed with Supreme Court in relation to this matter. The Federal Crown sought an opportunity to discuss this matter with Mr. Coles to better understand the scope of the Notice for Judicial Review before making further submissions to this Court. Our hope was that a narrowing of the scope of the Notice for Judicial Review – which Mr. Coles admitted was broad in scope as it was filed – may address the Court's concerns and cause us to withdraw our application to adjourn this matter. Unfortunately, following an exchange of correspondence with Mr. Coles, our position remains that this matter and further unsealing matters should be adjourned until the Notice for Judicial Review is determined by the Supreme Court….

- The Court then received correspondence from Mr. Coles, indicating:

> If the concern that fosters the Federal Crown's request for the application proceedings to be put on hold until the Judicial Review is decided is that representations as to what we would be arguing on the Judicial Review are not sufficient, I would be happy to amend the Notice for Judicial Review to remove the July 16, 2020 enumeration of decision/particularizations/order to be quashed (at least in part) and identify the July 16, 2020 decision as being part of "record" to simply provide context to subsequent decisions/particularization/orders.

[23] ***October 7 & 8, 2020***

- Mr. Coles filed an "Amended Notice for Judicial Review" with the Supreme Court of Nova Scotia.

- Court received correspondence from Crown counsel, in light of the amended Notice, the Crown was no longer opposing the continuation of the Application.

[24] ***October 16, 2020***

- Stage 3 Submissions.
- Decision set for November 19, 2020.
- At Stage 2, the Court authorized the temporary redactions be re-visited.
- October 27, 2020 set for re-visiting.
- Stage 1 and 2 for next 16 Authorizations set for November 23-November 27, 2020.

[25] ***October 27, 2020***

- *In camera* hearing held on the temporary Stage 2 redactions.
- *In camera* evidence: Sergeant Angela Hawryluk and Keith Stothart.
- Summaries to be approved and sent to Court by October 30, 2020.
- Stage 3 decision adjourned to December 4, 2020.
- As a result of this *in camera* hearing, "another issue" arose regarding the accuracy of information in ITO 20-0638, paragraph 17.28 and the subsequent ITOs containing the same information. This led to the Crown revising its reasons for redacting this material and in particular, gave notice, that they were relying on Section 487.3(2)(b):

  (2) **Reasons** – For the purposes of paragraph (1)(*a*), an order may be made under subsection (1) on the ground that the ends of justice would be subverted by the disclosure…

  (*b*) for any other sufficient reason.

- Upon receipt of the summaries, Mr. Coles to take further instructions as to whether he wished to cross-examine on the Stage 2 temporary redactions.

[26] ***November 2, 2020***

- Summaries sent to Mr. Coles.

[27] ***November 6, 2020***

- Mr. Coles will cross-examine the Affiants on the Stage 2 temporary redactions.
- Cross-examination set for November 24, 2020, along with Arguments.
- The Crown to file its brief by November 12, 2020, Applicants by November 23, 2020.
- Court to hear Arguments on "other sufficient reason" as well on November 24, 2020.

[28] ***November 16, 2020*** *(A.M. hearing)*

- Court signed Order for release of materials for the general warrant identified as 1271-20, its ITO and Report to Justice.

[29] **November 16, 2020** *(P.M. hearing)*

- Provincial Crown identified an error with a released redaction in #1271-20.
- Crown to advise if they are seeking a common law publication ban, and if so, to provide the proper notice requirements and Application.

[30] ***November 23, 2020***

- *In camera* hearing held at Crown request.
- Letter sent to Mr. Coles advising that the Crown sought an adjournment of Stage 1 and Stage 2 of next 16, as significant issues have arisen.

[31] ***November 24, 2020***

- Cross-examination of SiRT Investigator Stothart by Mr. Coles regarding "mistake/other sufficient reasons".
- Re-examination by Mr. Heerema
- Further cross-examination by Mr. Coles
- Publication Ban – Mr. Coles advised he did not yet have instructions from his clients.
- Publication Ban issue adjourned to December 9, 2020.
- Arguments regarding "other sufficient reason" set to December 9, 2020.
- Stage 1 and 2 hearing of next 16 judicial authorizations set to December 9, 2020.
- Arguments regarding temporary redactions adjourned to December 9, 2020.

[32] ***December 2, 2020***

- *In camera* telephone call with Crown counsel at Courts request.
- Court had questions regarding:
    - "Other sufficient mistake/reason" issue
    - Specific names of innocent third parties/victims as outlined in the Crown brief
- Letter was sent to Mr. Coles advising him of same.

[33] ***December 9, 2020***

- Arguments heard regarding common law publication ban.
- Common law publication ban ordered on ITO 20-1271 (1st version).
- Arguments by Crown and Mr. Coles re: "mistake/other sufficient reason" in paragraph 17.28 of ITO 20-0638.
- Court to release written decision December 10, 2020.
- Crown advised they are no longer seeking to continue redactions based on "ongoing investigation" (s.487.3(2)(ii)) but rather those redactions remaining will be argued on the basis of "prejudice to the interests of an innocent person" (s.487.3(2)(iv)).
- Crown advises *Criminal Code* charges have been laid against Lisa Banfield, James Banfield and Brian Brewster.
- Crown suggests these individuals may have "fair trial rights" concerns and asks the Court to provide notice of the Application to all three.
- Notice to Lisa Banfield and the Estate of Gabriel Wortman on the issue of solicitor/client privilege is also sought.
- Mr. Coles seeks time to take instructions from his clients and will advise the Court on December 14, 2020.
- Crown advises a Table of Concordance for all 23 ITOs has been prepared, containing approximately 46,000 entries.
- Cross examination of Keith Stothart is still outstanding.
- Mr. Coles seeking instructions.
- *In camera* conference held at Crown request.
- Summary of same to be forwarded to Mr. Coles on December 10, 2020 regarding "a new and sensitive issue".

[34] ***December 10, 2020***

- Court released, subject to a common law Publication Ban, paragraph 17.28 of ITO's 20-0638.

[35] ***December 14, 2020***

- Mr. Coles seeking further time to get instructions from clients, re: Fair Trial Rights and Solicitor/Client Privledge notice.
- Table of Concordance filed with the Court and Mr. Coles.

[36] ***December 17, 2020***

- Mr. Coles advises his clients are not opposed to Notice regarding both fair trial rights and solicitor/client privilege.
- Crown to prepare Notice for review by the Court.
- Notice date of January 11, 2021 set.
- Mr. Coles indicates his instructions are to oppose further redactions based on fair trial rights and solicitor/client privilege.
- "Mistake/other sufficient reason" decision to be given January 11, 2021.
- Stage 1 and 2 hearings of next 16 authorizations scheduled for January 26, 2021.

[37] ***December 18, 2020***

- *In camera* hearing at Court's request regarding common law publication ban of paragraph 17.28 of ITO 20-0638.
- Open hearing then held.
- Crown consents to lifting of common law Publication Ban of ITO 20-0638 and paragraph 17.28 and subsequent concurrent ITO's and paragraphs.
- Court decision on "mistake/other sufficient reasons" now redundant.
- Court approves draft Notices to L. Banfield, J. Banfield and B. Brewster as well as the Estate of Gabriel Wortman.

[38] ***January 11, 2021***

- Counsel, Michelle James for James Banfield, Jessica Zita for Lisa Banfield and Leora Lawson for Brian Brewster appeared.
- All counsel need further time to seek instructions from their clients.

- Further appearance set for January 25, 2021.
- Adrienne Bowers, Public Trustee, advises the office takes no position and will not be participating on behalf of the Estate of Gabriel Wortman.

[39] ***January 18, 2021***

- Crown continues to correspond with U.S. Agency for appropriate witness for January 26th hearing.
- January 26th hearing adjourned.
- Court advises it may require further submissions on an issue for its "merits" decision.

[40] ***January 25, 2021***

- Jessica Zita, on behalf of Lisa Banfield, will be advancing fair trial rights and solicitor/client privilege as it relates to ongoing redactions.
- Michelle James, for James Banfield, will be advancing fair trial rights.
- Leora Lawson, for Thomas Singleton, on behalf of Brian Brewster, is seeking particulars of credit card, banking information and personal addresses continue to be redacted, as do Ms. Zita and Ms. James.
- Mr. Coles takes no issue with those specific items continuing to be redacted.
- Ms. Zita and Ms. James will provide a letter of the specific paragraphs to which they seek continued redaction.
- Provincial Crown advises charges against L. Banfield, J. Banfield and B. Brewster will proceed by way of summary conviction offence.
- Crown has no further information from the U.S. Agency and is continuing to pursue the same.
- Hearing on fair trial rights and solicitor/client privilege issues set for March 1, 2021.
- Ms. Zita and Ms. James to file briefs by February 5, 2021.
- Mr. Coles to file brief by February 17, 2021.
- Crown reserves right to make submissions.
- February 22, 2021 set for merits decision.

[41] ***January 29, 2021***

- Letter from David Coles seeking an adjournment of February 22, 2021 as he has a conflicting matter in Supreme Court. Request granted.
- Merits decision date set to March 1, 2021.

[42] **February 18, 2021**

- Discussion regarding *Canadian Victims Bill of Rights*.
- Court seeks written submissions on the applicability of the legislation to certain identified individuals.
- Crown to file brief by February 26, 2021, Applicant by March 5, 2021.
- Discussion regarding hearing for next 16 authorizations ongoing.

[43] **February 19, 2021**

- *In camera* hearing with Court and Crown counsel.
- Mr. Covan to send summary of same to Mr. Coles.

[44] **February 25, 2021**

- *In camera* hearing with Court and Crown counsel.
- Mr. Covan to send summary of same to Mr. Coles.

[45] **March 1, 2021**

- Lengthy discussion regarding further “redacted” and “marked for redaction” authorizations to be sent to Mr. Coles and the Court.
- Crown will not be calling any U.S. witnesses on the next authorizations.
- Fair Trial Rights submissions heard from Mr. Coles, Ms. Zita and Ms. James, with comments from Ms. MacDonald and Mr. Heerema.
- Decision: April 23, 2020.
- *Canadian Victims Bill of Rights* and its applicability submissions to be heard on March 10, 2021.
- Discussion regarding publication of briefs submitted to the Court. Mr. Covan to provide correspondence on this topic.

- Mr. Coles to get instructions from his clients regarding the specific redactions he does not require lifted (ie: bank accounts, visa numbers, etc.). He is to send same to Crown and the Court no later than March 5, 2021. Redactions will then be updated accordingly.

[46] **March 5, 2021**

- Letter received from Mr. Coles outlining specific classes of personal redaction materials/information not being sought (SIN numbers, license plate numbers, addresses, card numbers, Twitter "handles", dates of birth, telephone numbers, banking records, email addresses)

[47] **March 10, 2021**

- Oral submissions: application of the *Canadian Victims Bill of Rights* to Application.
- Decision: April 23, 2020

- -- - - - - - - - - - - - - - - - - - -

** During this time (July 2020-March 2021), numerous Variation Orders were granted by the Court releasing previously redacted materials.

III. Position of the Parties

Crown:

[48] The Crown, acknowledging their burden, have identified several individuals/businesses in the ITOs/authorizations as having "innocent third-party interests". The identities, known to the court in an unredacted form, must be protected. Relying upon the *Dagenais/Mentuck* analysis, such is necessary to prevent a serious risk to the proper administration of justice, there being no alternative measures available, and such an order outweighs the deleterious effects on the rights and interests of the parties and the public, including the right to freedom of expression. (See *Dagenais v. C.B.C.*, [1994] 3 S.C.R. 835 and *R. v. Mentuck*, [2001] 3 S.C.R. 442).

[49] The open court principle is vital in Canadian society but is not absolute.

[50] Privacy is a core value requiring proper consideration given the digital world we live in coupled with the unprecedented global media coverage of the tragic events from April 2020. Privacy is a legitimate and necessary consideration by the court.

[51] In applying the *Dagenais/Mentuck* test, a contextual and flexible approach is necessary, (*Sierra Club of Canada v. Canada (Minister of Finance)* 2002 SCC 41). *Sierra Club* was a civil case involving the release of confidential materials. The issue was whether a publication ban was necessary as disclosure of the documents would impose serious risk on important commercial interests of a Crown Corporation. A Confidentiality Order was granted as appropriate and the deleterious effect of such on the open court principle would be minimal. Every case must examine what core values are involved and apply the test without rigid interpretation.

[52] In *Sierra,* Justice Iacobucci stated at para.48:

> 48 *Mentuck* is illustrative of the flexibility of the *Dagenais* approach… In order to adapt the test to the context of this case, it is first necessary to determine the particular rights and interests engaged by this application. *[my emphasis added].*

[53] In *Toronto Star Newspapers Ltd.*[2005] SCC 41 at paras.8-9:

> 8 The Dagenais/Mentuck test, although applicable at every stage of the judicial process, was from the outset meant to be applied in a flexible and contextual manner. A serious risk to administration of justice at the investigative stage, for example, will often involve considerations that have become irrelevant by the time of trial. On the other hand, the

> perceived risk may be more difficult to demonstrate in a concrete manner at an early stage. Where a sealing order is at that stage solicited for a brief period only, this factor alone may well invite caution in opting for full and immediate disclosure.
>
> 9 Even then, however, a party seeking to limit public access to legal proceedings must rely on more than a generalized assertion that publicity could compromise investigative efficacy. If such a generalized assertion were sufficient to support a sealing order, the presumption would favour secrecy rather than openness, a plainly unacceptable result.

Applicant:

[54] To meet such burden, the Crown must provide a convincing evidentiary basis for its position. The Applicants cite as authority, *Her Majesty the Queen v. Justin Christien Bourque,* 2014 NBQB 263. At paragraph 10, the decision of Gower J. in *R. v. Larue,* 2012 YKSC 15 is referenced:

> [32] In Mentuck, Iacobucci J. referred to *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)* [1996] 3 S.C.R. 480, where La Forest J. wrote for a unanimous Supreme Court of Canada and stressed the importance of placing the evidentiary burden on the applicant for a publication ban:
>
> > '[26] La Forest J. also noted that the burden of displacing the presumption of openness rested on the party applying for the exclusion of the media and public. Furthermore, he found that there must be a sufficient evidentiary basis on the record from which a trial judge could properly assess the application (which may be presented in a voir dire), and which would allow a higher court to review the exercise of discretion: *New Brunswick*, at para.69. In considering the various factors, La Forest J. found that the order granted to protect the complainants was improperly granted. The evidence of potential undue hardship to the complainants, which primarily rested on the Crown's submission that the evidence to be brought was of a 'delicate' nature, *did not displace the presumption in favour of an open court*.'(*my emphasis)*
>
> [33] Iacobucci J. continued with this theme at paras. 34 and 39:
>
> > '[34] I would add some general comments that should be kept in mind in applying the test. The first branch of the test contains several important elements that can be collapsed in the concept of 'necessity', but that are worth pausing to enumerate. One required element is that the risk in question be a serious one, or as Lamer C.J. put it at p.878 in Dagenais, a 'real and substantial' risk. That is, it must be a risk the reality of which is well-grounded in the evidence. It must also be a risk that poses a serious threat to the proper administration of justice. In other words, it is a serious danger sought to be avoided that is required, not a substantial benefit or advantage to the administration of justice sought to be obtained….

> [39] It is precisely the presumption that courts should be open and reporting of their proceedings should be uncensored is so strong and so highly valued in our society that the judge must have a convincing evidentiary basis for issuing a ban. Effective investigation and evidence gathering, while important in its own right, should not be regarded as weakening the strong presumptive public interest, which may go unargued by counsel more frequently as the number of applications for publication bans increases, in a transparent court system and in generally unrestricted speech on matters of such public importance as the administration of justice.' (my emphasis)

[55] The burden is also expressed as a 'sufficient evidentiary basis in favour of granting the ban' (*see para*. 9, *R. v. O.N.E*. 2001 SCC 77).

[56] An integral consideration by the Court is that of the "constitutional stakes" involved. *In M.E.H. v. Williams* 2012 ONCA 35 Justice Doherty's comments at paras. 33-34 are instructive:

> 33 In approaching the necessity branch of the inquiry, the high constitutional stakes must be placed at the forefront of the analysis. Freedom of expression, including freedom of the press and other media communications, is a constitutionally protected fundamental freedom. The constitutional right to freedom of expression protects the media's access to and ability to report on court proceedings. The exercise of this fundamental freedom in the context of media coverage of court proceedings is essential to the promotion of the open court principle, a central feature of not only Canadian justice, but Canadian democracy…
>
> 34 Limits on freedom of expression, including limits that restrict media access to and publication of court proceedings, can be justified. However, the centrality of freedom of expression and the open court principle to both Canadian democracy and individual freedoms in Canada demands that a party seeking to limit freedom of expression and the openness of the courts carry a significant legal and evidentiary burden. Evidence said to justify non-publication and sealing orders must be 'convincing' and 'subject to close scrutiny and meet rigorous standards'…. [*my emphasis]*

[57] Relying on *Mentuck,* and the two-part inquiry set out therein, the Applicants argue under the first branch of "necessity" that there is no public interest at stake requiring protection. In *M.E.H. v. Williams* at para. 25:

> 25 …A serious risk to public interests other than those that fall under the broad rubric of the 'proper administration of justice' can also meet the necessity requirement under the first branch of the *Dagenais/Mentuck* test… The interest jeopardized must, however, have a public component. **Purely personal interests cannot justify non-publication or sealing orders. Thus, the personal concerns of a litigant, including concerns about the very real emotional distress and embarrassment that can be occasioned to litigants when justice is done in public, will not, standing alone, satisfy the necessity branch of the test:** *MacIntyre v. Nova Scotia (Attorney General)* [1982] 1 S.C.R. 175, at p.185; *Sierra Club of Canada*, at para.55; *A.B.(Litigation Guardian of) v. Bragg Communications Inc*., 2011 NSCA 26, 301 N.S.R. (2d) 34, (N.S.C.A.), at paras. 73-75 [my emphasis added]

[58] Only when the open court principle is given the utmost deference, and the press is permitted to report and print what the court has received, will section 2(*b)* of the *Charter* receive its full effect. The Crown has not placed before the Court, any evidence upon which the Court can assess privacy interests and have therefore failed to displace its burden.

Legal Analysis and Principles:

[59] The principle of openness in court proceedings and the repudiation of covertness was established in the *Nova Scotia (Attorney General) v. MacIntyre* [1982] 1 S.C.R. 175.

[60] At paragraphs 53-55, Justice Lamer, as he then was, stated:

> 53 By reason of the relatively few judicial decisions it is difficult, and probably unwise, to attempt any comprehensive definition of the right of access to judicial records or delineation of the factors to be taken into account in determining whether access is to be permitted. The question before us is limited to search warrants and informations. The response to that question, it seems to me, should be guided by several broad policy considerations, namely, respect for the privacy of the individual, protection of the administration of justice, implementation of the will of Parliament that such a search warrant be an effective aid in the investigation of crime, and finally, a strong public policy in favour of 'openness' and respect of judicial acts…
>
> 54 The concern for accountability is not diminished by the fact that the search warrants might be issued by a justice in camera. On the contrary, this fact increases a policy

> argument in favour of accessibility. Initial secrecy surrounding the issue of warrants may lead to abuse, and, publicity is a strong deterrent to potential malversation.
>
> 55 In short, what should be sought is maximum accountability and accessibility but not to the extent of harming the innocent or of impairing the efficiency of the search warrant as a weapon in society's never-ending fight against crime…

[61] At paragraphs 59-63 any limitation on the open court principle, given individual privacy concerns, is stated as follows:

> 59 Let me deal first with the 'privacy' argument. This is not the first occasion in which such an argument has been tested in the courts. Many times it has been urged that the 'privacy' of litigants requires that the public be excluded from court proceedings. It is now well-established, however, that covertness is the exception and openness the rule. Public confidence in the integrity of the court system and understanding of the administration of justice are thereby fostered. As a general rule the sensibilities of the individuals involved are no basis for exclusion of the public from judicial proceedings…
>
> 63 In my view, curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance. One of these is the protection of the innocent.

[62] *MacIntyre* continues to be the gold standard in Canada regarding the open court principle generally and specifically, as it relates to this Application. Several interests require consideration in determining access to judicial authorizations, specifically the interplay between privacy and openness in the process in the Application before me.

[63] The Applicants are seeking to have the remaining identified redactions lifted in keeping with the legal principles and spirit of *MacIntyre,* as it relates specifically to individuals/businesses which the Crown labels "innocent third parties".

[64] In *Canadian Broadcasting Corp. v. New Brunswick* (Attorney General) [1996] S.C.J. No. 38, Justice La Forest stated at paras. 22-24:

> 22 The importance of ensuring that justice be done openly has not only survived: it has now become 'one of the hallmarks of a democratic society'…
>
> 23 The principle of open courts is inextricably tied to the rights guaranteed by s.2(*b*). Openness permits public access to information about the courts, which in turn permits the public to discuss and put forward opinions and criticisms of court practices and proceedings…Cory. J. in *Edmonton Journal* described the equally important aspect of freedom of expression that protects listeners as well as speakers and ensures that this right to information about the courts is real and not illusory. At pages 1339-40, he states:
>
> > 'that is to say as listeners and readers, members of the public have a right to information pertaining to public institutions and particularly the courts. Here the press plays a fundamentally important role. It is exceedingly difficult for many, if not most, people to attend a court trial. Neither working couples nor mothers or fathers house-bound with young children, would find it possible to attend court. Those who cannot attend rely in large measure upon the press to inform them about court proceedings – the nature of the evidence that was called, the arguments presented, the comments made by the trial judge – in order to know not only what rights they have, but how their problems might be dealt with in court. …'
>
> That the right of the public to information relating to court proceedings, and the corollary right to put forward opinions pertaining to the courts, depend on the freedom of the press to transmit this information is fundamental to an understanding of the importance of that freedom. The full and fair discussion of public institutions, which is vital to any democracy, is the *raison d'etre* of the s.2(*b*) guarantees. Debate in the public domain is predicated on an informed public, which is in turn reliant upon a free and vigorous press. The public's entitlement to be informed imposes on the media the responsibility to inform fairly and accurately. This responsibility is especially grave given that the freedom of the press is, and must be, largely unfettered…
>
> 24 Essential to the freedom of the press to provide information to the pubic is the ability of the press to have access to this information…

[65] Most recently in this province, *R. v. Verrilli* 2020 NSCA 64 was decided. The test to be applied on an application to vary a sealing order under s. 487.3(4) of the *Criminal Code* was considered. Chief Justice Wood, at paras. 23-24:

> [23] In Canada, the open court principle is essential for public confidence in the courts and the administration of justice. Judicial proceedings are presumed to be open to the public and the media and should only be restricted where the party seeking to do so can provide sufficient justification. This principle was described by the Supreme Court of Canada in *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41 as follows:
>
> > 1 In any constitutional climate, the administration of justice thrives on exposure to light–and withers under a cloud of secrecy.

> 2 That lesson of history is enshrined in the *Canadian Charter of Rights and Freedoms.* Section 2(b) of the *Charter* guarantees, in more comprehensive terms, freedom of communication and freedom of expression. These fundamental and closely related freedoms both depend for their vitality on public access to information of public interest. What goes on in the courts ought therefore to be, and manifestly is, of central concern to Canadians.
>
> 3 The freedoms I have mentioned, though fundamental, are by no means absolute. Under certain conditions, public access to confidential or sensitive information related to court proceedings will endanger and not protect the integrity of our system of justice. A temporary shield will in some cases suffice; in others, permanent protection is warranted.
>
> 4 Competing claims related to court proceedings necessarily involve an exercise in judicial discretion. It is now well established that court proceedings are presumptively "open" in Canada. Public access will be barred only when the appropriate court, in the exercise of its discretion, concludes that disclosure would "subvert the ends of justice" or "unduly impair its proper administration".

[66] Chief Justice Wood then goes on to discuss these principles as they relate to search warrants. At para. 29:

> [29] In *Toronto Star*, the Supreme Court reaffirmed the principles from *MacIntyre* and emphasised the burden on the party seeking to prevent public access to search warrant information:
>
> > '21 After a search warrant has been executed, 'openness was to be presumptively favoured. The party seeking to deny public access thereafter was bound to prove that disclosure would subvert the ends of justice'.
> >
> > 22 These principles, as they apply in the criminal investigative context, were subsequently adopted by Parliament and codified in s. 487.3 of the *Criminal Code*…
> >
> > 23 Section 487.3(2) is of particular relevance to this case. It contemplates a sealing order on the ground that the ends of justice would be subverted, in that disclosure of the information would compromise the nature and extent of an ongoing investigation… the ground must not just be asserted in the abstract; it must be supported by particularized grounds relating to the investigation that is said to be imperilled…'

[67] He concludes:

> [36] For an application under s.487.3(4) of the *Code* following execution of a search warrant, the *Dagenais/Mentuck* principles apply and any party seeking to continue a sealing order limiting access to the supporting ITO bears the burden of justification…

[68] *MacIntyre* was a pre-*Charter* decision, but such does not affect the seminal principle established, that is, “courts” and “court processes”, are open to the public for view and scrutiny. However, this principle has seen modification and evolution because, among other things, of the advancements in technology that have become part of our lives for more than two decades, and which continue to develop almost daily. This has, in turn, led society, and by extension the courts, to examine the principle of “privacy” in general, and this Court as it relates to this Application specifically.

[69] What is privacy? What role, if any, does it have in this Application? There are a myriad of cases in Canada opining what privacy is, what is a reasonable expectation of privacy and how courts should balance the varying interests, often as between the state and an accused, but also in relation to witnesses, victims and complainants. Courts have been clear the principle of openness is the goal, but it is not absolute.

[70] In *Toronto Star,* at para. 4:

> Competing claims related to court proceedings necessarily involve an exercise in judicial discretion. It is now well established that court proceedings are presumptively ‘open’ in Canada. Public access will be barred only when the appropriate court, in the exercise of its discretion, concludes that disclosure would “subvert the ends of justice” or “unduly impair its proper administration”.

[71] The particulars of the Application and the position of the parties, involves a consideration of the privacy rights of individuals who have spoken to the police as part of an investigation into the mass shooting by Gabriel Wortman. The Crown asserts that such privacy should be protected. The Applicants urge the Court to uphold the open court

principle and the public's right to know the basis for the judicial authorizations as being paramount to the s.2(b) *Charter* guarantee.

[72] Once an individual has spoken to the police or provides law enforcement with a formal statement, does that preclude those individuals from asserting a right to privacy or have it asserted through the Crown, as in this Application? How does a Court determine such interests?

[73] In *Sierra*, Justice Iacobucci outlined the history of the *Dagenais/Mentuck* framework and the need for flexibility:

> 37 A discussion of the general approach to be taken in the exercise of judicial discretion to grant a confidentiality order should begin with the principles set out by this Court in *Dagenais v. Canadian Broadcasting Corp*., …there are strong similarities between publication bans and confidentiality orders in the context of judicial proceedings. In both cases a restriction on freedom of expression is sought in order to preserve or promote an interest engaged in those proceedings…
>
> 38 Although in each case freedom of expression will be engaged in a different context, the *Dagenais* framework utilizes overarching *Canadian Charter of Rights and Freedoms* principles in order to balance freedom of expression with other rights and interests, and thus can be adapted to various circumstances….
>
> 40 … At p.878 of *Dagenais*, Lamer C.J. set out his reformulated test:
>
> > A publication ban should only be ordered when:
> >
> > (a) Such a ban is necessary in order to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk; and
> >
> > (b) The salutary effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban.
>
> 41 In *New Brunswick, supra*, this Court modified the *Dagenais* test in the context of the related issue of how the discretionary power under s.486(1) of the *Criminal Code* to exclude the public from a trial should be exercised…
>
> 43 This Court has recently revisited the granting of a publication ban under the court's common law jurisdiction in *R. v. Mentuck*, 2001 SCC 76…The Crown moved for a

publication ban to protect the identity of undercover police officers and operational methods employed by the officers in their investigation of the accused. The accused opposed the motion as an infringement of his right to a fair and public hearing… The order was also opposed by two intervening newspapers as an infringement of their right to freedom of expression…

45 …The Court noted that underlying the approach taken in both *Dagenais* and *New Brunswick*, was the goal of ensuring that the judicial discretion to order publication bans is subject to no lower a standard of compliance with the *Charte*r than legislative enactment. This goal is furthered by incorporating the essence of s.1 of the *Charter* and the *Oakes* test into the publication ban test. … The Court adopted a similar approach to that taken in *Dagenais*, but broadened the *Dagenais* test…such that it could guide the exercise of judicial discretion where a publication ban is requested in order to preserve any important aspect of the proper administration of justice. At para. 32, the Court reformulated the test as follows:

> 'A publication ban should only be ordered when:
>
> (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.'

46 The Court emphasized that under the first branch of the test, three important elements were subsumed under the 'necessity' branch. First, the risk in question must be a serious risk well-grounded in the evidence. Second, the phrase 'proper administration of justice' must be carefully interpreted so as not to allow the concealment of an excessive amount of information. Third, the test requires a judge ordering the ban to consider not only whether reasonable alternatives are available, but also to restrict the ban as far as possible without sacrificing the prevention of the risk…

[74] In the context of publication bans, *Dagenais*, at paragraph 87 states:

> … Rather than simply focusing on the fact that bans always limit freedom of expression and usually aim to protect the right to a fair trial of the accused, it should be recognized that ordering bans may:
>
> – limit freedom of expression (and thus undercut the purposes of s. 2(b) discussed above);
> – prevent the jury from being influenced by information other than that presented in evidence during the trial (for example, information presented in a tabloid television show and evidence discussed in the absence of the jury and held to be inadmissible);
> – maximize the chances that witnesses will testify because they will not be fearful of the consequences of publicity;

- protect vulnerable witnesses (for example, child witnesses, police informants, and victims of sexual offences);
- preserve the privacy of individuals involved in the criminal process (for example, the accused and his or her family as well as the victims and the witnesses and their families);
- maximize the chances of rehabilitation for 'young offenders';
- encourage the reporting of sexual offences;
- save the financial and/or emotional costs to the state, the accused, the victims and witnesses of the alternatives to publication bans (for example, delaying trials, changing venues and challenging jurors for cause); and
- protect national security;

[my emphasis added]

[75] At paragraph 89:

> These are intended to be illustrative rather than comprehensive lists of reasons for and against bans. They are simply intended to illustrate the breadth of issues that deserve a place but are not often found in the analysis of the justification of particular publication bans. These concerns have a place in each step of the analysis required under the common law rule outlined above ─ they are relevant to the initial consideration of whether a ban is necessary to safeguard the fairness of a trial, to the question of whether reasonable alternatives are available, and to the issue of the balance struck between the salutary and deleterious effects of a publication ban.

[76] Similarly in *Canadian Broadcasting Corp. v. New Brunswick (Attorney General),* at paras. 38-42:

> 38 Related to a court's power to control its own process is the power to regulate the publicity associated with its proceedings…
>
> 39 The court's power to regulate the publicity of its proceedings serves, among other things, to protect privacy interests, especially those of witnesses and victims. In *MacIntyre, supra,* Dickson J., as he then was, noted that 'many times it has been urged that the 'privacy' of litigants requires that the public be excluded from court proceedings' (p.185) and in the course of weighing this interest against the interest of the public access to court proceedings held that the protection of the innocent from unnecessary harm 'is a valid and important policy consideration' (p.187). Stating that the 'curtailment of public accessibility can only be justified when there is present the need to protect social values of superordinate importance' (pp.186-87), he identified the protection of the innocent as among these values.
>
> 40 While the social interest in protecting privacy is long standing, its importance has only recently been recognized by Canadian courts. Privacy does not appear to have been a significant factor in the earlier cases which established the strong presumption in favour of open courts. That approach has generally continued to this day, and this appears inherent to the nature of a criminal trial. It must be remembered that a criminal trial often involves the production of highly offensive evidence, whether salacious, violent or

> grotesque. Its aim is to uncover the truth, not to provide a sanitized account of facts that will be palatable to even the most sensitive of human spirits. The criminal court is an innately tough arena.
>
> 41 Bearing this in mind, mere offence or embarrassment will not likely suffice for the exclusion of the public from the court room… 'proceedings cannot be closed only because the subject of the charges relates to purportedly morality-tinged topics such as sex". In the course of the balancing exercise under s.1 the exigencies and realities of criminal proceedings must be weighed in the analysis.
>
> 42 Nonetheless, the right to privacy is beginning to be seen as more significant. Thus, Cory J. in *Edmonton Journal, supra,* considered that the protection accorded the privacy of individuals in a legislative enactment related to a pressing and substantial concern and underlined its importance in Canadian law. In this area of law, however, privacy interests are more likely to be protected where it affects some other social interest or where failure to protect it will cause significant harm to the victim or to witnesses. ….

[77] The balancing has to be directed at what core values are to be protected, such as privacy of innocent persons, in light of what the core values s.2(b) of the *Charter* are intended to enshrine, openness in our democratic institutions, including the courts. At paragraph 64:

> … By restricting public access to the expressive content of court proceedings, s.486(1) inhibits informed public criticism of the court system, thereby directly impeding public participation in our democratic institutions, one of the 'core' values protected by s. 2(b) of the Charter. However, in other cases, s.486(1) may be used to exclude the public from proceedings where the presence of the public would impede a witness's ability to testify, thereby impairing the attainment of truth, another 'core' value… On the other hand exclusion may be ordered from part of the proceedings where the most lurid or violent details of the offence are recounted, such that the restricted expression would lie far from the core of s. 2(b). In the end, the important point is that in deciding whether to order exclusion of the public pursuant to s.486(1), a trial judge should bear in mind whether the type of expression that may be impaired by the order infringes upon the core values sought to be protected. [my emphasis added]

[78] The Court must consider the core values identified in this matter, and the same must be viewed in light of the specific factual circumstances of this Application, thereby providing for the flexibility of approach as described in *Mentuck* and *Sierra.*

[79] In *Edmonton Journal v. Alberta (Attorney General)* [1989] 2 SCR 1326, the right to privacy was examined. At paras. 96-97:

> 96 …Our society has cherished and given protection to privacy. This court has on a number of occasions underlined the importance of the privacy interest in Canadian law: see *A.G.N.S. v. MacIntyre*, supra…it is of such importance that on this view it can be said that s.30(1) has met the first of the two conditions enunciated in *R. v. Oakes,* supra.
>
> 97 … the objectives, that of securing a fair trial and that of protecting the right to privacy with regard to pre-trial documents, constitute pressing and substantial objective sufficient to permit the overriding of the right to freedom of expression.

[80] In *R. v. Spencer* 2014 SCC 43, the Court had before it a section 8 *Charter* search and seizure case that involved serious consideration of what is a reasonable expectation of privacy in the internet era. This case arose out of a computer search containing child pornography but its reasoning on modern privacy expectations is applicable. At paragraph 40:

> Privacy also includes the related but wider notion of control over, access to and use of information, that is, 'the claim of individuals, groups, or institutions to determine for themselves when, how and to what extent information about them is communicated to others'… La Forest J. made this point in *Dyment*. That understanding of informational privacy as control "derives from the assumption that all information about a person is in a fundamental way his own, for him to communicate or retain for himself as he sees fit.' … Even though the information will be communicated and cannot be thought of as secret or confidential, 'situations abound where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which it is divulged, must by protected.

[81] In *R. v. Ahmad* 2020 SCC 11, the Court also dealt with a search and seizure case, involving a dial-a-dope operation and the law of entrapment in Canada. One of the authors cited in the decision was former Chief Justice Beverley McLachlin and her article published in 2003, in Australia, 8 Deakin Law Review 1, "Courts, Transparency and Public Confidence ─ To the Better Administration of Justice".

[82] Chief Justice McLachlin's comments bear repeating as instructive on how such core values can be reconciled, they are not mutually exclusive:

> … The open court principle is thus a fundamental element of the law of many countries including Canada…openness is a principle of constitutional significance…under the open courts principle the public and the press may freely discuss and publish accounts of court proceedings, hearings, examinations and decisions. …
>
> The technological advances of recent decades have put new pressures on the open court principle and have created new dilemmas for the courts, the media and the public…
>
> How, in the face of mass dissemination, can we preserve the right to privacy of litigants and witnesses? How, in the face of immediate dissemination of police information, can we preserve the right to a fair trial by an impartial jury? And how, in the face of the attraction of sensationalisation, can we ensure that the public obtains a balanced and accurate impression of how the justice system functions? …
>
> The first cost of the open court principle is to privacy. …Openness comes therefore, at a cost to privacy.
>
> That cost is not negligible…In Canada, as in other countries, we have come to recognize that the right to privacy has constitutional dimensions…
>
> … In the era of 21st century technology, it can mean an <u>enormous</u> loss of privacy. More and more, parties and witnesses protest that their legitimate expectations of privacy are being trampled on and their lives and reputations damaged by the open court principle. Recognizing the potentially embarrassing and sometimes damaging nature of the publicity that may attend judicial proceedings, they are increasingly seeking to limit the application of the open court principle. Courts are consequently seeing an ever-increasing number of applications for publication bans, *in camera* hearings and orders sealing the court files to protect the privacy and reputations of those who appear as litigants and witnesses.
>
> The values that ultimately underlie the open court principle are of fundamental importance. So are the competing interests of their right of privacy, fair and impartial trials and accurate public information equally significant. The question is how the tension between these values is to be resolved.
>
> One way to resolve the tension is the hierarchical approach. The open court advocate, on this approach, asserts as a fundamental principle that the courts must be open, and that other goods, like privacy, fair trials but jury and accurate reporting, are lesser goods, must always yield to the open court principle.
>
> … in the era of modern communication technology, the gravity of the harms that unlimit openness may permit demand on a more nuanced approach.
>
> <u>The better approach today is to acknowledge that the open court principle may conflict with other values, and seek to resolve the tension by contextual balancing… In reality, the conflicting interests are not so diametrically opposed as we may think. Protecting the privacy of victims is important to a good justice system. … Instead of standing in opposition, these are all components of a good justice system. It is not a matter of all or nothing, one</u>

> or the other. It is rather a matter of finding the right equilibrium, or balance, on a contextual and case-by-case basis. *(my emphasis added)*

[83] In *Phillips v. Vancouver Sun*, 2004 BCCA 14, the Vancouver Sun sought access to redacted copies of a search warrant, an ITO, and related materials pursuant to s.487.3(4). A Vancouver City police officer was the subject of the warrant. No charges were ever laid.

[84] For the Application before this court, the comments at paragraph 68 are helpful:

> 68 It is apparent from the language of this section that it was drafted to accord with Dickson J.'s judgment in *MacIntyre*. In my view, it also reflects the *Charter* principles in issue here; namely, the principles of freedom of expression and freedom of the press encompassed under s. 2(b) of the *Charter*, and the public interest in protecting individual privacy encompassed under ss.7 and 8 of the *Charter.* This section does so by starting from the presumption of openness referred to in *MacIntyre,* taking into account the well-recognized concerns for the proper administration of justice including the protection of informants and the need to preserve the integrity of ongoing investigations, and considering the protection of the privacy interests of innocent persons. The privacy interests are protected by taking into account any prejudice that may be occasioned to innocent persons in the event disclosure is granted, as well as whether the disclosure of the information could be used for an improper purpose.

[85] In *R. v Quesnelle*, 2014 SCC 46, the Court considered whether police occurrence reports were records within the definition of s. 278.1 of the *Code.*

[86] At paras 38-43:

> 38 … Whether a person is entitled to expect that their information will be kept private is a contextual inquiry.
>
> 39 Where an individual voluntarily discloses sensitive information to police, or where police uncover such information in the course of an investigation, it is reasonable to expect that the information will be used for the purpose for which it was obtained: the investigation and prosecution of a particular crime. Similarly, it is reasonable to expect individual police officers to share lawfully gathered information with other law enforcement officials, provided the use is consistent with the purposes for which it was gathered.

> 41 That is not to say that all disclosures of personal information by the police unreasonably intrude upon privacy. Where private information becomes part of a criminal case, the disclosure of that information to the court, the accused, and to the public is reasonable and unavoidable. For example, police occurrence reports made in the course of the investigation of the offence being prosecuted must be disclosed under *Stinchcombe…*
>
> 43 People provide information to police in order to protect themselves and others. They are entitled to do so with confidence that the police will only disclose it for good reason. The fact that the information is in the hands of the police should not nullify their interest in keeping that information private from other individuals.

[87] Relying on *A.B. (Litigation Guardian of) v. Bragg Communications Inc*. 2012 SCC 46, the open court principle is not offended when the information serves no useful purpose. The Crown argues that in the particular facts of this Application, the release of the named innocent persons will not further the open court principle, in any fashion. The information relied upon by the judicial officers in authorizing the warrants and Production Orders, has been disclosed. The additional disclosure of the "innocent persons" who provided the same will in no way further the core values of s.2(b) of the *Charter.* At paras. 11-15:

> 11 The open court principle requires that court proceedings presumptively be open and accessible to the public and to the media. This principle has been described as a 'hallmark of a democratic society' … and is inextricably tied to freedom of expression. A.B. requested two restrictions on the open court principle: the right to proceed anonymously and a publication ban on the content of the Fake Facebook profile. The inquiry is into whether each of these measures is necessary to protect an important legal interest and impairs free expression as little as possible. If alternative measures can just as effectively protect the interests engaged, the restriction is unjustified. If no such alternatives exist, the inquiry turns to whether the proper balance was struck between the open court principle and the privacy rights of the girl: *Dagenais*… *Mentuck*…
>
> 13 …What does need some exploration, however, are the interests said to justify restricting such access in this case: privacy and the protection of children from cyberbullying… there are cases in which the protection of social values must prevail over openness…
>
> 14 The girl's privacy interests in this case are tied both to her age and to the nature of the victimization she seeks protection from…
>
> 15 the *amicus curiae* pointed to the absence of evidence of harm from the girl about her own emotional vulnerability. <u>But, while evidence of a direct, harmful consequence to an</u>

> individual applicant is relevant, courts may also conclude that there is objectively discernable harm. *(my emphasis added)*

[88] At paras. 25-28:

> 25 In the context of sexual assault, this Court has already recognized that protecting a victim's privacy encourages reporting…
>
> 28 the answer to the other side of the balancing inquiry ─ what are the countervailing harms to the open courts principle and freedom of the press ─ has already been decided by this court in *Canadian Newspapers.* In that case, the constitutionality of the provision in the *Criminal Code* prohibiting disclosure of the identity of sexual assault complainants was challenged on the basis that its mandatory nature unduly restricted freedom of the press. In upholding the constitutionality of the provision, Lamer J. observed that:
>
> > While freedom of the press is none the less an important value in our democratic society which should not be hampered lightly, it must be recognized that the limits imposed by [prohibiting identity disclosure] on the media's rights are **minimal**….
>
> In other words, the harm has been found to be "minimal". This perspective of the relative insignificance of knowing a party's identity was confirmed by Binnie J. in *F.N.* where he referred to identify in the context of the Young Offenders legislation as being merely a 'sliver of information'….

[89] The Crown argues that the information disclosed to date has presented a full understanding for the public as to why police sought and obtained warrants to enter various locations and sought various documents. It will in no way be broadened,or further explained by the release of the names of individuals who provided it, names of companies Gabriel Wortman did business with or business associates. There is no legitimate purpose, or furtherance of the section 2(b) *Charter* right, by so doing.

[90] *R. v. Blackmore*, 2018 BCSC 1225 holds that requiring innocent parties to establish the negative impact the disclosure of their identity would have is an abdication of the Court's function. At para. 108:

> To require these identified vulnerable and innocent third parties to provide affidavits or attend court to testify about their fears of reprisal, lack of awareness they could be

> published if they spoke to the probation officer and/or the effects an infringement on their reasonable expectations of privacy if published, in the circumstances of this case would only further aggravate their personal fears and concerns and would only further deepen the chilling effect on those upon whom courts rely to provide valuable information in the future. These concerns and interests go well beyond mere embarrassment. To require their attendance at court or the provision of affidavits in the circumstances of this case would be to abdicate the court's function to protect its process and to prevent avoidable harms to innocent third parties whose interests are negatively affected by that process.

[91] In *Bragg Communications*, at para.18:

> 18 …Privacy is recognized in Canadian constitutional jurisprudence as implicating liberty and security interests. In *Dyment,* the court stated that privacy is worthy of constitutional protection because it is 'grounded in man's physical and moral autonomy', is 'essential for the well-being of the individual' and is 'at the heart of liberty in a modern state'. *These considerations apply equally if not more strongly in the case of young persons….*

[92] In *Phillips v. Vancouver Sun* at paras. 82 and 87:

> 82 … it is not clear that anyone had been charged with an offence in *MacIntyre.* Further, under s. 487.3, prejudice to the innocent is but one of several factors the court must take into consideration in determining whether a sealing order should be granted or varied. The extent of the prejudice an innocent person may suffer if access is granted may vary substantially depending on such things as the nature and extent of the investigation, the nature of the charges laid, if any, the nature and extent of the publicity surrounding the case, the extent to which the search warrant material may reveal personal, confidential or intimate matters only peripherally related to the investigation or charge, and various other factors. Section 487.3 does not, on its face, separate out those who have been charged with a criminal offence from those who have not been charged…
>
> 87 …the balancing of interests under s. 487.3 must depend on the individual circumstances of each case….

[93] In *R. v. British Columbia Civil Liberties Association*, 2012 BCPC 406 at para.34:

> 34 Barring access to the names or other identifying features would not affect the ability of any member of the public to understand the ITO or the investigation that the police are pursuing. Access to information about their names or other information that would identify would significantly prejudice their privacy interests. That prejudice far outweighs the importance of access to it by the public.

[94] *In Toronto Star Newspapers Limited et al v. Her Majesty the Queen in the Right of Ontario*, April 15, 2019, Ont. C.J. (*the Bruce MacArthur Case*), at para.33:

> [33] The public has the right to know why extraordinary orders like search warrants are granted and in the matter before this court, there is a substantial public interest in how the police conducted the investigation. The murders were described as sexual in nature in the Agreed Facts filed on Mr. McArthur's guilty plea. Sexual preference and practices were relevant to the investigation into the missing men and ultimately identifying the perpetrator. The open court principle and freedom of expression are best served by disclosure of the information that goes to the very heart of the offences and the offender. I find, however, that given the privacy interests at stake, there is a real and substantial risk to the administration of justice if this information were disclosed. I also find that the risk can be prevented by the reasonable alternative of redacting only the names not the intimate details of persons involved in these interactions. The salutary effect of sealing the names outweighs the deleterious effect on the rights of the parties and the public, including the right to free expression and the efficacy of the administration of justice.

[95] Courts have protected the names of innocent third parties when balancing the core values at stake. The contextual and present circumstances of the individuals were balanced with the open court principle and the very crucial role the media play in reporting of all court processes, pre-and-post-charge. (See:*R. v. Angel Acres Recreation & Festival Property Ltd*., 2004 BCPC 224, *R. v. Twitchell* 2009 ABQB 644, *Globe & Mail v. R.*, 2011 ABQB 363, *R. v. CTV*, 2013 ONSC 5779)

[96] In cases where the Court has exercised its discretion to publish names of innocent persons the factual underpinnings of such decisions are always informative.

[97] *Canadian Broadcast Corporation and Sun Media (Toronto) Corporation v. Her Majesty the Queen in Right of Canada and Robert Kelly*, [2007] O.J. No.5436, a decision of Justice Nordheimer, involved allegations against members of the Toronto Police Service. An application was made to vary sealed search warrants. There was grave concern regarding allegations of corruption vis-à-vis high-ranking members of the Toronto Police Service and the role of the press was vital in ensuring the public's understanding of the process.

[98] Relying on *R. v. Eurocopter Canada Ltd*. (2003), 67 O.R.(3d) 763 and *Phillips v. Vancouver Sun*, *supra*, wherein the balance required between prejudice to an innocent person and the open court principle, Justice Nordheimer relied upon the reasoning of Justice Duff in *Gazette Printing Co. v. Shallow* (1909), 41 S.C.R. 339 at para. 28 and 32:

> 28 …Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of courts of justice should be universally known. The general advantage to the country in having these proceedings made public more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings.
>
> 32 At the same time, however, the assertion has been made that there may have been a failure at senior levels of one of Canada's largest police services to fully investigate serious allegations involving some of their own officers. The possibility that there has been such inaction is also unquestionably of significant public interest. The applicants have the right to pursue whether that suggestion, is mere conjecture or something more. Indeed, it can be argued that that is one of the most important roles that a free press fulfills in a fully democratic society.

[99] It is clear from reading Justice Nordheimer's reasons in full that the investigation of police officers, in a situation where reports of their wrong doing may have not been properly investigated by superiors, held such public interest that the repute and administration of justice required the same.

[100] In *Ottawa Citizen Group Inc. v. Canada (Attorney General)*, [2005] OJ No. 2209, the Ontario Court of Appeal held that a failure to consider reasonably alternative measures was an error in the lower court and the names of "targets" were unsealed, subject to a publication ban by the media.

[101] In *Saint John Police Force v. Canadian Broadcasting Corp*. 2012 NBPC 17, Chief Judge Jackson, as he then was, received an application by the media to unseal several warrants in relation to the homicide investigation into the death of Richard Oland. The police redacted the names and statements of all third-party witnesses. They were neither suspects nor persons of interest in the investigation and claimed privacy rights. They had been the subject of speculation regarding the alleged crime and release of their names would only increase such and be the source of continued unwanted intrusions into their private lives (*see para. 8*).

[102] After reviewing the legislative provisions under section 487.3 and using the *Degenais/Mentuck* analytical framework, Judge Jackson released the names citing "vague and general assertions of risk" *(see para. 21).* He ordered that the names of all persons, other than those subject of a search warrant be made available to the public.

[103] The Crown respectfully suggests that the Chief Judge provided an inaccurate statement of law at para. 16:

> While I can also sympathize with witnesses who have told the Police certain things in the course of their investigation, not suspecting that their names may be included in applications for search warrants, the law, as I understand it, does not permit the redaction of their names as long as uniquely private information is not disclosed.

[104] I agree with the Crown's assertion in that regard. There appears not to have been any balancing undertaken but rather a conclusionary comment, the basis of which I am unsure. The law is clear that privacy interests must be examined, in context and in a flexible manner.

[105] The open court principle and its guarantee in s.2(b) of the *Charter* has as its principle core value the right of the public to see the mechanisms in use within the courts in this country. It is not absolute, and limitations grounded in privacy are appropriate in particular instances.

[106] Authorizing judicial officers can, when considering the appropriateness of a sealing order under s.487.3(1) of the *Code,* consider any prejudice to the interests of an innocent person if such disclosure would "on the ground that the ends of justice would be subverted", grant such.

[107] It is without dispute that when a court exercises its discretion in this regard, the *Degenais/Mentuck* analysis is applicable.

[108] Is the privacy of those individuals who, because of happenstance or prior association with Gabriel Wortman, a core value, in the specific facts of this matter, such that protection of their privacy minimally impairs the freedom of expression, and core values, in s. 2(b) of the *Charter?*

[109] Privacy rights have attained legitimate policy status in the criminal context in matters involving sexual violence, therapeutic records and police occurrence reports by way of example. In those matters there are generally charges before the court, with people accused and with complainants or witnesses. The *Criminal Code* has seen

significant amendments and change in this regard by establishing mechanisms to shield or protect privacy issues such as publication bans, sealed documents and *in camera* hearings.

[110] In the redacted materials before this Court, there are 17 different names of individuals and/or businesses. All are just that ─ "names".

[111] It is important at this point to refer back to the Application of Ms. McMillan on behalf of the Canadian Broadcasting Corporation in April, 2020. It sought a lifting of the sealed orders, stating:

> We believe this matter is urgent because it is possible that the information outlined in the search warrant/affidavit/ITO's could shed light on **what** police knew and **when**.
>
> … we believe the public should know **why** police searched properties belonging to Gabriel Wortman.

[112] The public absolutely has a right to know the "what", of the judicial authorizations, the "when" of the judicial authorizations and the "why" of the judicial authorizations. It is the basis upon which the judicial authorizations were granted. As those questions relate specifically to 16 of the 17 named individuals/businesses which are the subject of these redactions, all have done that completely. There is no further information to be garnered by releasing the 16 names.

[113] The effect of continued redaction of these 16 has either no impact, or very minimal impact on the freedom of expression and the right of the press to report the details of

what the police knew at the time the sealed materials were written, sealed and/or filed. There is no obvious interest in names alone. The information associated with these names has been fully released by numerous orders in the past several months.

[114] It is not without an evidentiary basis that this Court finds those 16 names demand their privacy be protected. These 16 individuals/businesses shared either a personal connection to Gabriel Wortman, were familiar with him, or had incidental contact with him.

[115] As a general statement, they provided specific details of his life, his illegal activities, business associations, financial transactions, his beliefs, his childhood and/or his wealth, all of which is known to the media and the public at this time in relation to the authorizations which are the subject of this Application.

[116] Privacy for these parties is a core value of such significance that s. 487.3(2)(a)(iv) specifically references “prejudice of the interests of an innocent person” as a consideration when a judicial officer is faced with the initial sealing application. This specific reference establishes interests of innocent persons as a core value. That certainly would be applicable in an “unsealing” application as well.

[117] As noted in *Phillips v. Vancouver Sun*, the nature and extent of publicity and the nature and extent of an investigation surrounding the case can be considerations in determining privacy interests. The Wortman investigation has been extensive, is ongoing,

has received tremendous media coverage, and is the subject of a Public Inquiry *(see para.82)*

[118] The deaths and injuries Gabriel Wortman caused on April 18 and 19, 2020, have brought perhaps unparalleled attention to the "what", "why", and "when". With such, comes many questions, one of which is outlined in Ms. McMillan's letter:

> There has been considerable focus on **why** the RCMP didn't send out a public alert to warn people about an active shooter.

[119] This Application cannot serve to answer all of the questions which the media, the public, the victims and their families may have. To contextualize it further, this Application, it must be remembered, is restricted to the information contained in the seven judicial authorizations and ITOs before it.

[120] ITOs are fact based, sworn documents of the reasonable grounds of a police officer alleging a crime(s) has been committed and that a particular place or article will afford evidence of the same (see *R. v. Knight* 2008 N.J. No. 374).

[121] To release names of people who cooperated with an extensive RCMP, multi-site, investigation simply because they knew, or knew of, Gabriel Wortman can, and most likely will, lead to speculation, public analysis and perhaps marginalization. These 16 people are not charged with any offence. To publish and broadcast names associated with

Gabriel Wortman can have a lasting and negative effect on people who are simply conduits of information to the police and nothing more.

[122] There is a serious risk to innocent third parties/persons should their names be released. This is not an imaginary risk given the local, national and international interest of what is referred to as the worst mass murder in modern Canadian history.

[123] This is, relying on *A.B. v. Bragg*, “objectively discernable harm”. No other evidentiary basis is needed given such, and all the information from these 16 people has been released in its entirety. These people should not be subject to public scrutiny. These names are but a “sliver of information” (Binnie J., *supra*, para. 87). Their information is what is in the public interest, not their names.

[124] I do not believe it is a fanciful thought given the magnitude of Gabriel Wortman’s actions to say that anyone named in these ITOs, as having an association with Gabriel Wortman, will, if released, experience their own personal angst, perhaps trauma, and social stigmatization.

[125] Those individuals who have, out of necessity and not by choice, become part of the RCMP investigation into Gabriel Wortman’s actions, deserve to have their privacy protected. Should they choose to reveal it, such will be a personal decision. Given the contextual circumstances of this case, the Court must protect it.

[126] This is not a situation as referred to in *MacIntyre* where the “sensibilities” or “embarrassment of content”, as referred to in *M.E.H.* is the privacy concern being protected. This is a case of public outrage of a horrific event that the public wants explained, and anyone connected to Gabriel Wortman in any way, will undoubtedly be sought out for an explanation, or to whom a nexus will be made.

[127] Can there be an alternative measure to prevent the serious risk to the administration of justice by releasing these names? No. Their names are all that remain. The details of their “evidence” upon which the authorizations were issued has been disclosed through continuing variation orders from the very early days of this Application to approximately 10 days ago, being an exercise exemplifying the open court principle. The core value guaranteed in section 2(b) of the *Charter,* when contextually considered, with the privacy interests of innocent persons, is barely impaired by continued redaction of the names.

[128] To say each case turns on its facts is not new, however, it is vitally important. As noted in *Sierra Club* at para.76, the core value sought to be upheld in freedom of expression is that of seeking the truth. It is the recognized fundamental purpose in the open court principle.

[129] The role of the press is ensuring that the fundamental institutions of our democracy are peeled back for inspection and discussion cannot be understated.

[130] The public, the people of Nova Scotia, the people of Canada, have the absolute right to know what, when and why, judicial authorizations were granted to the RCMP in this case, and in any case. That information in relation to the first seven judicial authorizations is known. It is public. It is not the names of the individuals that provide the public with the particulars upon which the authorizations were based, but rather the information those individuals provided. Names are but a minute detail. The non-disclosure of such is only a minimal impairment of the right to free expression. The salutary effects of this order far outweigh the deleterious effects on those rights. It is necessary in order to prevent a serious risk to the proper administration of justice, there being no reasonable alternative measure available in this instance.

[131] *MacIntyre* references the curtailment of public accessibility only when there is a need to protect social values of subordinate importance *(see para. 63).* What took place in Nova Scotia in April, 2020 was an “extra-ordinary event”, that is, an event that has affected the very fabric of this Province and an association, no matter how distant, trivial or unrelated to Gabriel Wortman, this Court determines will reasonably have extraordinary or superordinate effect on such persons/businesses.

[132] Justice is not a linear concept. Rather it is a many faceted equation. In this case, to date, the public has been fully informed in relation to these seven authorizations. That is the penultimate designation. To release these names would certainly subvert the ends of justice.

[133] The burden is on the Crown to justify the redactions remaining on a balance of probabilities. This is not a proof beyond a reasonable doubt standard case. The Crown has met its burden in relation to 16 of the 17 named.

[134] The other named individual is the anthropologist. This individual does not fall within the same class of innocent third-persons as the other 16 individuals who all had some association with Gabriel Wortman. The anthropologist was someone who was hired, who voluntarily became involved in this investigation. In accord with the open court principle, this name shall be released. I find no need that such individual be given Notice.

[135] The Court is ordering the release of that individual's name contained in ITO 20-0673 at paragraph 42.

[136] The Court is also ordering the release of the redaction contained in 20-0638 at paragraph 19.6 and its corresponding paragraphs in 20-0641, 20-0642, 20-0651, 20-0667, 20-0668, and 20-0073. This does not fall, in the context of these circumstances, under innocent or prejudiced interests.

[137] The Crown sought permanent redaction.

[138] On October 21, 2020 the Government of Canada (P.C. 2020-822) and the Government of Nova Scotia (2020-293) issued Orders-In-Council establishing a commission to conduct an inquiry under the name the “Joint Public Inquiry into the Nova Scotia April 2020 Tragedy” (JPI). Among its terms of reference are:

- Whereas the mass shooting that took place in Nova Scotia on April 18 and 19, 2020 took the lives of 22 innocent victims and forever changed the lives of countless others;

- Whereas the Government of Canada and the Government of Nova Scotia have committed to launching a comprehensive public inquiry to determine what happened and to make recommendations to avoid such tragic events in the future…
- THEREFORE…

  Direct the Commissioners to inquire into and make findings on matters related to the tragedy in Nova Scotia on April 18 and 19, 2020…(… *“included in such is the authority of the JPI to conduct its proceedings “in camera” as needed).*

[139] So as to not limit in any way the proceedings and work of the JPI, this Court is ”temporarily” redacting these 16 names for that purpose. That is, should the JPI seek these names, an Application to this Court for such can be made.

[140] Appendix “A” attached hereto outlines the current status of the redactions included in this decision and those which remain.

[141] By way of reference, I am following the directions of the courts in *Oland v. Oland and CBC et al*. (2021 NBQB 005), and *Tim Houston (Leader of the Progressive Conservative Caucus of Nova Scotia) v. Minister of Department of Transportation and Infrastructure Renewal and Bay Ferries Limited et al*, (2021 NSSC 23). There shall be a delay in the release of the information over which I have lifted the sealing order. The particulars of the enumerated paragraphs in Appendix “A” can not be released prior to 9 a.m. on March 24, 2021.

[142] This delay is to provide opportunity for the Respondents to file notice seeking further consideration of my decision, should my analysis be in error, prejudice could be occasioned that could not be otherwise remedied.

[143] Should the Respondents not seek such consideration and advise the Court and the Applicants of the same, the delay period can be revised.

[144] There is no publication ban of this decision.

Laurel Halfpenny MacQuarrie
J.P.C.

Appendix A

	Remains Redacted - (* Temporarily - see reasons)
	Released
	Permanently Redacted as per David Coles Letter/March 5, 2020
	T.B.D. (CVBR Decision "Potential Victims")
*	Identity of Innocent person
	Fair Trial Rights

Third Party Interest						
20-0638	**20-0641**	**20-0642**	**20-0651**	**20-0667**	**20-0668**	**20-0673**
17.13.5	Page 1 (h)	13	13	13	13	13
17.14	13	22.2.2	14	20.2.2	20.2.2	20.2.2
17.15	18.2.2	22.3	21.2.2	FN #15	FN #15	20.3
*	18.3	FN #15	21.3	20.3	20.3	FN #15
19	FN #14	23.13.5	FN #15	21.13.5	21.13.5	21.13.5
19.1	19.13.5	23.14	23.13.5	21.14	21.14	21.14
19.2	19.14	23.15	22.14	21.15	21.15	21.15
FN #15	19.15	25.1	22.15	28.1	28.1	28.1
19.3	21.1	*	29.1	*	*	28.19 (Name)
19.4	*	26	*	29	29	28.19 (Phone)
19.6	22	26.2	30	29.2	29.2	FN #26
19.12	22.2	26.3	30.2	29.3	29.3	28.19.1
19.19	22.3	26.6	30.3	29.6	29.6	*
19.20	22.6	FN #23	30.6	FN #26	FN #26	29
19.22	22.7	26.7	30.7	29.7	29.7	29.2
19.23	22.8	26.8	30.8	29.8	29.8	29.3
*	FN #22	*	FN #26	*	*	29.6
20	*	28	*	31	31	29.7
20.2	24	28.1	32	31.1	31.1	29.8
20.3	24.1	28.2	32.1	31.2	31.2	FN #27
20.6	24.2	28.3	32.2	31.3	31.3	*
FN #16	24.3	28.4	32.3	31.4	31.4	31
20.7	24.4	FN #25	32.4	FN #28	FN #28	31.1
20.8	24.8	28.8	32.8	31.8	31.8	31.2
21.1	24.9	28.9	32.9	31.9	31.9	31.3
*	FN #24	28.11	FN #28	31.11	31.11	31.4
23	24.11	*	32.11	*	*	31.8
23.1	*	29	*	32	32	31.9
23.2	25	29.1	33	32.1	32.1	FN #29
23.3	25.1	29.7	33.1	32.7	32.7	31.11
23.4	25.7	29.8	33.7	32.8	32.8	*
FN #19	25.8	FN #26	33.8	FN #29	FN #29	32
23.8	25.9	29.9	33.9	32.9	32.9	32.1
23.9	25.10	29.10	33.10	32.10	32.10	32.7

Third Party Interest Continued						
20-0638	20-0641	20-0642	20-0651	20-0667	20-0668	20-0673
23.11	FN #25	*	FN #29	*	*	32.8
*	*	30	*	33	33	32.9
24	26	30.5	34	33.5	33.5	32.10
24.1	26.5	FN #27	34.5	FN #30	FN #30	FN #30
24.7	*	*	*	*	*	*
24.8	27	31	35	34	34	33
FN #20	27.1	31.1	35.1	34.1	34.1	33.5
24.9	FN #26	31.3	FN #30	34.3	34.3	*
24.10	FN #27	31.5	FN #31	34.5	34.5	34
*	27.3	*	35.3	*	*	34.1
25	27.5	32	35.5	35	35	FN #31
25.5	*	32.1	35.6.1	35.1	35.1	FN #32
FN #21	28	32.2	*	35.2	35.2	34.3
*	28.1	32.3	36	35.3	35.3	34.5
26	28.2	32.4	36.1	35.4	35.4	34.6.1
26.1	28.3	FN #28	36.2	FN #31	FN #31	*
26.3	28.4	FN #29	36.3	FN #32	FN #32	35
26.5	28.6	32.6	36.4	35.6	35.6	35.1
FN #22	FN #28	32.12	FN #33	35.12	35.12	35.2
	28.12	32.19	36.6	35.19	35.19	35.3
	28.19	32.20	36.12	35.20	35.20	35.4
	28.20	32.22	36.19	35.22	35.22	FN #34
	28.22	32.23	36.20	35.23	35.23	35.6
	28.23	*	36.22	*	*	35.12
	*	33	36.23	36	36	35.19
	29	33.1	*	36.1	36.1	35.20
	FN #29	33.2	37	36.2	36.2	35.22
	29.1	33.3	37.1	36.3	36.3	35.23
	29.2	33.5	37.2	36.5	36.5	*
	29.3	33.6	37.3	36.6	36.6	36
	29.5	33.7	37.5	36.7	36.7	36.1
	29.6	33.8	37.6	36.8	36.8	36.2
	29.7	33.9	37.7	36.9	36.9	36.3
	29.8	FN #30	37.8	FN #33	FN #33	36.5
	29.9	*	37.9	*	*	36.6
	*	34	FN #34	37	37	36.7
	30	34.1	*	37.1	37.1	36.8
	30.1	34.2	38	37.2	37.2	36.9
	30.2	34.3	38.1	37.3	37.3	FN #35
	FN #30	34.4	38.2	37.4	37.4	*
	30.3	34.5	38.3	37.5	37.5	37
	30.4	34.6	38.4	37.6	37.6	37.1
	30.5	FN #31	38.5	FN #34	FN #34	37.2
	30.6		38.6	47.1	Phone Number	37.3

Third Party Interest Continued						
20-0638	20-0641	20-0642	20-0651	20-0667	20-0668	20-0673
			FN #35		40	37.4
			43		FN #36	37.5
					40.1	37.6
					47	FN #36
					48.1	42

Search Warrant						
20-0638	20-0641	20-0642	20-0651	20-0667	20-0668	20-0673
	Page 1 (h)					
		Page 2				
		Page 2				

Report to Justice						
20-0638	20-0641	20-0642	20-0651	20-0667	20-0668	20-0673
		Page 2: 1(a)				
		Page 2: 1(b)				

Production Order						
20-0638	20-0641	20-0642	20-0651	20-0667	20-0668	20-0673
				Page 2: 1.1		
					Page 1	
					Page 2	
					Page 2	
					Page 3: 1.1	

Potential Victims						
20-0638	20-0641	20-0642	20-0651	20-0667	20-0668	20-0673
7	7	7	7	7	7	7
8	8	8	8	8	8	8
9	9	9	9	9	9	9
17.4.1	19.4.1	23.4.1	16.6.2	15.6.2	15.6.2	15.6.2
17.5	19.5	23.5	22.4.1	21.4.1	21.4.1	21.4.1
17.6	19.6	23.6	22.5	21.5	21.5	21.5
17.7	19.7	23.7	22.6	21.6	21.6	21.6
17.8	19.8	23.8	22.7	21.7	21.7	21.7
17.9	19.9	23.9	22.8	21.8	21.8	21.8
17.21	19.21	23.21	22.9	21.9	21.9	21.9
17.24	19.24	23.24	22.21	21.21	21.21	21.21
*	*	*	22.24	21.24	21.24	21.24
18	20	24	*	*	*	*
18.1	20.1	24.1	26	25	25	25
FN #14	20.2	24.2	26.1	25.1	25.1	25.1
18.2	20.6	FN #21	26.2	FN #22	FN #22	25.2
18.6	20.10	24.6	26.6	25.2	25.2	FN #22
18.10	FN #20	24.10	FN #22	25.6	25.6	25.6
18.13	20.13	24.13	26.10	25.10	25.10	25.10
18.16	20.16	24.16	26.13	25.13	25.13	25.13
18.17	20.17	24.17	26.16	25.16	25.16	25.16
18.18	20.18	24.18	26.17	25.17	25.17	25.17
18.24	20.24	24.24	26.18	25.18	25.18	25.18
18.25	20.25	24.25	26.24	25.24	25.24	25.24
18.28	20.28	24.28	26.25	25.25	25.25	25.25
18.29	20.29	24.29	26.28	25.28	25.28	25.28
27	33	37	26.29	25.29	25.29	25.29
			*	*	*	*
			27	26	26	26
			27.1	26.1	26.1	26.1
			27.2	26.2	26.2	26.2
			27.3	26.3	26.3	26.3
			27.4	FN #23	FN #23	26.4
			27.5	26.4	26.4	26.5
			27.6	26.5	26.5	26.6
			27.7	26.6	26.6	FN #23
			27.8	26.7	26.7	26.7
			27.9	26.8	26.8	26.8
			27.10	26.9	26.9	26.9
			27.11	26.10	26.10	26.10
			27.12	26.11	26.11	26.11
			FN #23	26.12	26.12	26.12
			27.13	26.13	26.13	26.13
			27.14	26.14	26.14	26.14

Potential Victims Continued						
20-0638	20-0641	20-0642	20-0651	20-0667	20-0668	20-0673
			27.15	26.15	26.15	26.15
			27.16	26.16	26.16	26.16
			27.17	26.17	26.17	26.17
			27.18	26.18	26.18	26.18
			27.19	26.19	26.19	26.19
			27.20	26.20	26.20	26.20
			27.21	26.21	26.21	26.21
			27.22	26.22	26.22	26.22
			27.23	26.23	26.23	26.23
			27.23.1	26.23.1	26.23.1	26.23.1
			FN #24	*	*	*
			*	27	27	27
			28	27.1	27.1	27.1
			28.1	27.2	27.2	27.2
			28.2	27.3	27.3	27.3
			28.3	27.4	27.4	27.4
			28.4	FN #24	FN #24	27.7
			28.7	27.7	27.7	FN #24
			28.9	27.9	27.9	27.9
			28.10	27.10	27.10	27.10
			28.11	27.11	27.11	27.11
			28.12	27.12	27.12	27.12
			28.13	27.13	27.13	27.13
			28.15	27.15	27.15	27.15
			28.20	27.20	27.20	27.20
			41	44	45	43

Fair Trial Rights						
20-0638	**20-0641**	**20-0642**	**20-0651**	**20-0667**	**20-0668**	**20-0673**
20.9	22.9	26.9	29.18	28.18	28.18	28.18
20.10	22.10	26.10	30.9	29.9	29.9	29.9
20.14	22.14	26.14	30.10	29.10	29.10	29.10
*	*	*	30.14	29.14	29.14	29.14
22	23	27	*	*	*	*
22.1	23.1	27.1	31	30	30	30
22.2	23.2	27.2	31.1	30.1	30.1	30.1
22.3	23.3	27.3	31.2	30.2	30.2	30.2
22.4	23.4	27.4	31.3	30.3	30.3	30.3
22.5	23.5	27.5	31.4	30.4	30.4	30.4
FN #18	23.7	FN #24	31.5	30.5	30.5	30.5
22.7	23.8	27.7	31.7	FN #27	FN #27	30.7
22.8	23.9	27.8	31.8	30.7	30.7	30.8
22.9	23.10	27.9	31.9	30.8	30.8	30.9
22.10	FN #23	27.10	31.10	30.9	30.9	30.10
22.12	23.12	27.12	FN #27	30.10	30.10	FN #28
			31.12	30.12	30.12	30.12