

# SUPREME COURT OF YUKON

Citation: *R v Murphy*, 2015 YKSC 31

Date: 20150708  
S.C. No. 08-01518A  
Registry: Whitehorse

Between:

**HER MAJESTY THE QUEEN**

Respondent

And

**ALICIA MURPHY**

Applicant

**A publication ban pursuant to ss. 645(5) and 648(1) of the *Criminal Code* has lapsed.**

Before: Mr. Justice L.F. Gower

Appearances:

Noel Sinclair and  
Paul Battin  
Jennifer Cunningham and  
Michael Dineen

Counsel for the Crown  
Counsel for Alicia Murphy

## **RULING (Disclosure Application)**

### **INTRODUCTION**

[1] The applicant/accused, Alicia Murphy, is charged with the second-degree murder of Evangeline Billy on or about June 22, 2008. This is an application for judicial review of the Crown's refusal to disclose 78 occurrence reports for Tanya Murphy on the basis that they are clearly irrelevant. Tanya Murphy is one of two Crown witnesses who allege

that the accused confessed to the murder to them; the other witness is Rae Lynn Gartner. There is very little additional evidence connecting the accused to the murder.

[2] The accused was convicted of second degree murder following her first trial in 2009. However, that conviction was overturned by the Court of Appeal in 2014, and a new trial was directed. The accused has new counsel representing her on the retrial.

[3] The grounds for the application are that information about Tanya Murphy may be useful to the defence in the following ways:

- a) Tanya Murphy has provided misleading statements to the RCMP reporting people to be drinking and driving. Accordingly, the defence requests a review of further statements she gave to the RCMP to see if there is a pattern of Tanya Murphy making false reports;
- b) the information may disclose potential witnesses for the trial; and
- c) the information may be relevant to the character, credibility and reliability of Tanya Murphy as a Crown witness.

[4] The position of the defence is that the Crown has not met its onus of establishing that the withheld occurrence reports are clearly irrelevant.

[5] The Crown's position is that: (a) the defence has an obligation to demonstrate how the withheld disclosure meets the test of relevance; and (b) the intention of the defence to review the withheld disclosure for the purpose of a general attack on the credibility of Tanya Murphy is not a sufficient basis to compel disclosure.

## **LAW**

[6] The law in this area begins with *R. v. Stinchcombe*, [1991] 3 S.C.R. 326. That case holds that the Crown is under a general duty to disclose all relevant information in

its possession (para. 23). The purpose of the disclosure is to satisfy an accused's constitutional entitlements, firstly, to know the case she has to meet, and secondly, to make full answer and defence. However, the obligation to disclose is not absolute. The Crown has discretion to withhold disclosure on the basis of clear irrelevance or privilege, as well as discretion extending to the timing and manner of disclosure (para. 20). The discretion of Crown counsel to withhold disclosure is reviewable by the trial judge and, upon such a review, the Crown must justify its refusal to disclose (para. 21). Sopinka J., speaking for the Supreme Court, detailed the nature of this obligation as follows

20 As indicated earlier, however, this obligation to disclose is not absolute. It is subject to the discretion of counsel for the Crown. This discretion extends both to the withholding of information and to the timing of disclosure. For example, counsel for the Crown has a duty to respect the rules of privilege..... A discretion must also be exercised with respect to the relevance of information. While the Crown must err on the side of inclusion, it need not produce what is clearly irrelevant. The experience to be gained from the civil side of the practice is that counsel, as officers of the court and acting responsibly, can be relied upon not to withhold pertinent information. Transgressions with respect to this duty constitute a very serious breach of legal ethics. The initial obligation to separate "the wheat from the chaff" must therefore rest with Crown counsel. There may also be situations in which early disclosure may impede completion of an investigation. ...

21 The discretion of Crown counsel is, however, reviewable by the trial judge. Counsel for the defence can initiate a review when an issue arises with respect to the exercise of the Crown's discretion. On a review the Crown must justify its refusal to disclose. Inasmuch as disclosure of all relevant information is the general rule, the Crown must bring itself within an exception to that rule.

22 The trial judge on a review should be guided by the general principle that information ought not to be withheld if there is a reasonable possibility that the withholding of

information will impair the right of the accused to make full answer and defence... (my emphasis)

[7] In *R. v. Egger*, [1993] 2 S.C.R. 451, Sopinka J., again speaking for the Supreme Court, elaborated on the trial judge's review of the Crown's disclosure decisions based on relevance, at para. 20:

...One measure of the relevance of information in the Crown's hands is its usefulness to the defence: if it is of some use, it is relevant and should be disclosed -- *Stinchcombe, supra*, at p. 345. This requires a determination by the reviewing judge that production of the information can reasonably be used by the accused either in meeting the case for the Crown, advancing a defence or otherwise in making a decision which may affect the conduct of the defence such as, for example, whether to call evidence. (my emphasis)

[8] In *R. v. Chaplin*, [1995] 1 S.C.R. 727, Sopinka J., yet again speaking for the Supreme Court, confirmed the general Crown obligation to disclose information at para. 21:

21 This Court has clearly established that the Crown is under a general duty to disclose all information, whether inculpatory or exculpatory, except evidence that is beyond the control of the prosecution, clearly irrelevant, or privileged: *R. v. Stinchcombe, supra*, at p. 339; *R. v. Egger*, [1993] 2 S.C.R. 451.... (emphasis in original)

[9] In *Chaplin*, the issue was whether an accused facing trial was entitled to know if he or she had been named as a primary or secondary target in any wiretap authorizations unrelated to the investigation of the current criminal charge (para. 1). The accused admitted that they had no proof that there had been any wiretap authorizations or that there was derivative evidence obtained from any such authorizations relevant to the charges (para. 9). Thus, the Court made a distinction between the procedure where the existence of information is established (such as in the case at bar) and that where

its existence is disputed. In the former instance, the *Stinchcombe* standard applies, such that the Crown must justify nondisclosure by demonstrating either that the information sought is beyond its control, or that it is clearly irrelevant or privileged (para. 23). However, where the existence of material is disputed, the accused must establish a basis for the belief that such material exists. Otherwise, the request is purely speculative and amounts to nothing more than a fishing expedition.

[10] At paras. 32 and 35, Sopinka J. expanded upon the defence obligation in the latter situation as follows:

32 ...the requirement that the defence provide a basis for its demand for further production serves to preclude speculative, fanciful, disruptive, unmeritorious, obstructive and time-consuming disclosure requests. In cases involving wiretaps, such as this appeal, this is particularly important. Fishing expeditions and conjecture must be separated from legitimate requests for disclosure....

...

35 ...Reference to the possible existence of other wiretaps and their connection to the issues in this appeal, however, is purely speculative and mere conjecture. In sum, it is at best, a fishing expedition, and worst, an attempt to determine whether the police have investigated the accused persons in relation to other suspected offences. The appellants provided no basis for believing that there were wiretap authorizations even in existence in relation to investigation of other charges, or that the Crown had relied upon such wiretaps or derivative evidence therefrom in preparing its case. In the circumstances, the Crown was not called upon to justify further the position it had taken and there was no need for further evidence. ... (my emphasis)

[11] *R. v. O'Connor*, [1995] 4 S.C.R. 411, is a case involving an application for production of therapeutic records in the hands of third parties, so-called “third party” disclosure. There, the majority established a two-stage process to determine whether

the information possessed by the third party should be disclosed to the defence. At the first stage, the applicant has an onus to establish the likely relevance of the record. At the second stage, the judge examines the record and determines whether, and to what extent, it should be produced for the accused. If the information is relevant, privacy interests yield to the right of the accused to make full answer and defence. It is in this context that the majority wrote:

24 While we agree that "likely relevance" is the appropriate threshold for the first stage of the two-step procedure, we wish to emphasize that, while this is a significant burden, it should not be interpreted as an onerous burden upon the accused. There are several reasons for holding that the onus upon the accused should be a low one. First, at this stage of the inquiry, the only issue is whether the information is "likely" relevant. We agree with L'Heureux-Dubé J. that considerations of privacy should not enter into the analysis at this stage. We should also not be concerned with whether the evidence would be admissible, for example as a matter of policy, as that is a different query (*Morris v. The Queen*, [1983] 2 S.C.R. 190). As the House of Lords recognized in *R. v. Preston*, [1993] 4 All E.R. 638, at p. 664:

... the fact that an item of information cannot be put in evidence by a party does not mean that it is worthless. Often, the train of inquiry which leads to the discovery of evidence which is admissible at a trial may include an item which is not admissible....

A relevance threshold, at this stage, is simply a requirement to prevent the defence from engaging in "speculative, fanciful, disruptive, unmeritorious, obstructive and time-consuming" requests for production. See *Chaplin, supra*, at p. 744. (my emphasis)

[12] In the case at bar, we are not dealing with information in the hands of third parties, but rather information in the possession and control of the Crown. Thus, the Crown is bound by its obligation in *Stinchcombe* to make what is called "first party" disclosure.

[13] In *Dixon v. The Queen*, [1998] 1 S.C.R. 244, the Supreme Court again addressed the *Stinchcombe* disclosure standard, but this time in the context of the disclosure of police occurrence reports. Cory J., speaking for the Supreme Court, began his analysis by stating:

20 In *R. v. Stinchcombe*, [1991] 3 S.C.R. 326, it was held that the Crown has an obligation to disclose all relevant material in its possession, so long as the material is not privileged. Material is relevant if it could reasonably be used by the defence in meeting the case for the Crown. ...

21 Clearly the threshold requirement for disclosure is set quite low. As a result, a broad range of material, whether exculpatory or inculpatory, is subject to disclosure... The Crown's duty to disclose is therefore triggered whenever there is a reasonable possibility of the information being useful to the accused in making full answer and defence. See *R. v. Chaplin*, [1995] 1 S.C.R. 727, at p. 742. (my emphasis)

[14] Cory J. then continued:

28 To minimize the risk of inadvertent non-disclosure, the Crown might well choose to disclose even those witness statements that do not initially appear to be relevant. The defence obviously knows its case better than the Crown, and something which seems irrelevant could have significance to the defence.... (my emphasis)

[15] In *R. v. McNeil*, 2009 SCC 3, the Supreme Court was dealing with an accused who sought production of police disciplinary and criminal investigation documents in the hands of a third party police force. Thus, the Court revisited the two-stage procedure originating from *O'Connor*. However, the Court also went on to discuss bridging the gap between first party disclosure and third party production. In particular, *McNeil* considers whether information about misconduct by a police officer involved in the investigation of

the accused should form part of the first party disclosure package provided by the investigating police force to the Crown (para. 53).

[16] At paras. 53 and 54, Charron J., speaking for the Court, held that an accused has no right to automatic disclosure of every aspect of a police officer's employment history, or to police disciplinary matters with no realistic bearing on the case against him or her. However, where the disciplinary information is relevant, in the sense that the findings of police misconduct may have a bearing on the case against the accused, it should form part of the first party disclosure package provided to the accused. In this regard, Charron J. considered and accepted a report by the Honourable George Ferguson, Q.C., commissioned by the Chief of the Toronto Police Service, which was released in January 2003 (the "Ferguson Report"). The report considered when, in what manner, and under what circumstances the police have an obligation to bring to the Crown's attention alleged or proven acts of misconduct by a police officer who will be a witness or was otherwise involved in an investigation that has led to a criminal proceeding. Charron J. addressed this at para. 57, as follows:

57 The Ferguson Report concluded that leaving the entire question of access to police disciplinary records to be determined under the *O'Connor* regime for third party production "is neither efficient nor justified" (p. 15). ...

[17] Charron J. then continued:

59 I agree that it is "neither efficient nor justified" to leave the entire question of access to police misconduct records to be determined in the context of the *O'Connor* regime for third party production. Indeed, as discussed earlier, the disclosure of relevant material, whether it be for or against an accused, is part of the police corollary duty to participate in the disclosure process. Where the information is obviously relevant to the accused's case, it should form part of the first



party disclosure package to the Crown *without prompting*....  
(my underlining; italics in original)

[18] The type of misconduct evidence which would be obviously relevant was touched on earlier by Charron J.:

15 As I will explain, records relating to findings of serious misconduct by police officers involved in the investigation against the accused properly fall within the scope of the "first party" disclosure package due to the Crown, where the police misconduct is either related to the investigation, or the finding of misconduct could reasonably impact on the case against the accused. The Crown, in turn, must provide disclosure to the accused in accordance with its obligations under *Stinchcombe*. Production of disciplinary records and criminal investigation files in the possession of the police that do not fall within the scope of this first party disclosure package is governed by the *O'Connor* regime for third party production.

[19] In *R. v. Quesnelle*, 2014 SCC 46, the Supreme Court dealt with what has become known as the *Mills* regime, under ss. 278.1 to 278.91 of the *Criminal Code*, which limits the disclosure of private records relating to complainants and witnesses in sexual offence cases. Karakatsanis J., speaking for the Court, helpfully reiterated the broad duty from *Stinchcombe* to make first party disclosure, and then went on to summarize *McNeil* and *O'Connor*:

A. *The Principles Governing Crown Disclosure*

(1) Disclosure in Criminal Cases Generally

11 The Crown has a broad duty to disclose relevant evidence and information to persons charged with criminal offences. *Stinchcombe*, at pp. 336-40, provides that the Crown is obliged to disclose all relevant, non-privileged information in its possession or control so as to allow the accused to make full answer and defence. For purposes of this "first party" disclosure, "the Crown" does not refer to all Crown entities, federal and provincial: "the Crown" is the

prosecuting Crown. All other Crown entities, including police, are "third parties". With the exception of the police duty to supply the Crown with the fruits of the investigation, records in the hands of third parties, including other Crown entities, are generally not subject to the *Stinchcombe* disclosure rules.

12 In *R. v. McNeil*, 2009 SCC 3, [2009] 1 S.C.R. 66, this Court recognized that the Crown cannot merely be a passive recipient of disclosure material. Instead, the Crown has a duty to make reasonable inquiries when put on notice of material in the hands of police or other Crown entities that is potentially relevant to the prosecution or the defence. This Court also recognized that police have a duty to disclose, without prompting, "all material pertaining to its investigation of the accused" (para. 14) as well as other information "obviously relevant to the accused's case" (para. 59).

13 In *R. v. O'Connor*, [1995] 4 S.C.R. 411, at paras. 15-34, this Court established a separate disclosure regime for records in the hands of "third parties" that are "likely relevant" to an issue at trial. Under *O'Connor*, an application is made to the court and the judge determines whether production should be compelled in accordance with a two-stage test. ...

[20] The facts in *Quesnelle* involved an accused charged with sexual assault who sought disclosure of a number of occurrence reports regarding prior complaints of violent sexual assault by one of the complainants. Karakatsanis J. commented about the occurrence reports as follows:

17 The mere fact that a police occurrence report concerns a complainant or witness is not enough to make the report relevant to an otherwise unrelated prosecution. ...However, occurrence reports which raise legitimate questions about the credibility of the complainant or a witness, or some other issue at trial, will be treated as relevant. (my emphasis)

## ANALYSIS

[21] As I indicated at the outset, the Crown here submits that the accused has an obligation to demonstrate how the various occurrence reports sought meet the test of relevance. In other words, the Crown says that the accused has an onus to establish relevance. No authority was expressly cited in support of this proposition. As I understand it, the argument arises from the procedure actually followed in this case.

[22] On July 7, 2014, the accused requested “any information in the possession of the Crown or RCMP about Tanya Murphy or Rae Lynn Gartner...[such as] occurrence reports... that could potentially relate to their credibility or reliability...” . In response, the Crown says that it could have required the accused to make an *O'Connor* application to obtain production of this information. However, in attempting to live up to the standard of “utmost good faith” set out in *Stinchcombe*, the Crown procured the information from the RCMP in the Yukon and in British Columbia and reviewed it for relevance. Nevertheless, despite being in possession of the material, the Crown maintains that this additional information does not fall within “the fruits of the investigation” (*McNeil*, para. 22) and therefore is not subject to the first party *Stinchcombe* disclosure regime.

[23] Over the ensuing months, the Crown disclosed some of this material to the accused, but withheld other information on the basis that it was clearly irrelevant. Ultimately, on December 30, 2014, the Crown wrote to defence counsel listing 82 occurrence reports regarding Tanya Murphy. In that list, the Crown identified five occurrence reports which it disclosed to the accused. The rest it refused to disclose on the basis that they were clearly irrelevant. For each occurrence report, the Crown provided a brief summary, varying from one to four lines, of the nature of the occurrence, the action taken, and, in some cases, the outcome.

[24] A mistake was later discovered on one of these clearly irrelevant items and disclosure about it (a common assault by Tanya Murphy on one Roger Smith in 2006) has since been provided to the accused.

[25] Thus, there are 76 contested items remaining on the list from December 30, 2014. In addition, there are two other occurrence reports at issue, for which more detailed summaries were provided to the accused on October 29, 2014.

[26] The Crown maintains that it has met its onus of establishing clear irrelevance by providing the summaries of the occurrence reports.

[27] Crown counsel further argues, as I understand him, that a hybrid procedure should be adopted by this Court, because the Crown has already procured the information from the third party police agency, rather than putting the accused to the trouble of subpoenaing the police to bring the information to court. Thus, the situation is as if we were at the first stage of an *O'Connor* application. Accordingly, the Crown urges that I consider imposing upon the accused an onus of establishing likely relevance, or at least some degree of relevance, for the remaining contested items.

[28] Alternatively, as I understand the argument, the Crown looks to *McNeil* as authority for the proposition that the accused must point to some “serious misconduct” by Tanya Murphy in the occurrence reports which is reasonably capable of having an impact on the case against the accused. It is only this type of misconduct which would be obviously relevant and therefore capable of forming part of the first party disclosure.

[29] In the absence of establishing a basis for the production of the remaining occurrence reports, the Crown maintains that the accused is simply on a fishing expedition.

[30] In my view, the occurrence reports in this case are clearly in the possession and control of the Crown, regardless of how that came to be. Therefore, the *Stinchcombe* regime of disclosure governs, and the Crown can only justify nondisclosure on the basis of clear irrelevance or privilege, and the latter is not at issue here. There is no onus on the accused to demonstrate any degree of relevance. All the accused need do is request the disclosure, which has been done. The onus remains with the Crown, in this case, to satisfy the reviewing court that the sought-after information is clearly irrelevant. If the Crown fails in that regard, then the information must be disclosed.

[31] Given this conclusion, it is largely moot whether the occurrence reports ought not to be considered as part of the “fruits of the investigation”, as the Crown urges. In any event, I am not necessarily persuaded that the reports are incapable of falling within that category of evidence, as it was broadly defined by the Supreme Court in *McNeil*, at para. 22, as follows:

... [T]he *Stinchcombe* disclosure regime only extends to material relating to the accused’s case in the possession or control of the prosecuting Crown entity. This material is commonly referred to as the “fruits of the investigation”.

Thus, the Court does not expressly limit the term to the evidence uncovered in the course of the investigation of the offence charged against the accused.

[32] The Crown also argued that the intention of the accused to use the additional occurrence reports to attack Tanya Murphy’s credibility is insufficient to meet the test for relevance. Given my conclusion that there is no onus on the accused, this argument must also fail. In any event, it seems to be solely based on a rather dated case from the British Columbia Court of Appeal, *R. V. Olson* (1997), 87 B.C.A.C. 118, which was dealing with an *O’Connor* application, for which there is an established onus on the

applicant accused. The case is therefore distinguishable for that reason alone.

Moreover, the Court of Appeal appears to have relied on its own decision in *O'Connor* in support of the proposition that credibility alone may be an insufficient reason for seeking disclosure. This is evident from what the Court said at paras. 20 and 21:

20 The trial judge then went on to mention this court's decision in *R. v. O'Connor* (1994), 90 C.C.C. (3d) 257, where it was suggested that information helpful on the question of credibility "at large" is not a sufficient basis for displacing privacy interests. I do not believe the majority of the Supreme Court of Canada in *O'Connor* disagreed with this when it included credibility as a possible basis for both a likelihood of relevance and also for disclosure. As noted, this court said that credibility "at large" was not sufficient. Having regard to the fact that the majority of the Supreme Court of Canada said that the purpose of the initial screening at the "likely to be relevant" stage is to prevent "speculative, fanciful, disruptive, unmeritorious, obstructive and time-consuming" applications, and having regard to the further fact that the Court also specified that disclosure of third party records requires a written Notice of Application, I believe it is necessary for the applicant to particularize the purpose for which disclosure is sought. As already mentioned, Mr. Goldberg in this case clearly specified the purpose for which he sought disclosure.

21 In my view, disclosure for the purpose of seeking evidence on the question of credibility generally would probably be insufficient, and could amount to a fishing expedition. This is not to say that, if required to read the file on other grounds, the judge would not require disclosure of anything relating to credibility likely to assist the defence regardless of the grounds which persuaded him or her to embark upon an examination of the material.

[33] This conclusion by the British Columbia court of Appeal appears to have been overtaken. I repeat what the Supreme Court more recently said in *Quesnelle*, at para.

17:

... [O]ccurrence reports which raise legitimate questions about the credibility of the complainant or a witness, or some other issue at trial, will be treated as relevant.

[34] I turn now to the Crown's summaries of the occurrence reports at issue. The first two are set out in an email from the Crown to defence counsel dated October 29, 2014.

I will repeat what the Crown has said about these verbatim:

**RCMP Occurrence Report 2009 53418**

On January 15<sup>th</sup>, 2009, RCMP were called to a noise complaint/domestic assault at Tanya Murphy's home on Jeckell Street.

Independent witnesses reported seeing [I.P.] on the street outside the home repeatedly kicking and punching Ms. Murphy. Mr. [P.] was arrested. Ms. Murphy was taken to WGH for medical treatment. Based on Mr. [P.'s] statement both Mr. [P.] and Ms. Murphy were charged with reciprocal assaults however none of the people present in the home corroborated Mr. [P.'s] statement that Ms. Murphy started the fight and then left the house. Ms. Murphy stated that she had no recollection of events inside the home apart from having an argument with Mr. [P.].

Crown counsel Sue Bogle conducted the Crown Charge Review, and determined that Mr. [P.] was the primary aggressor and directed a stay of proceedings on the assault charge against Ms. Murphy.

On August 31<sup>st</sup>, 2009, Mr. [P.] pled guilty to assault and was sentenced to 9 months of probation.

[35] It is important to note that this incident occurred after the alleged murder, on June 22, 2008, and before the trial which took place between October 13 - 27, 2009. I agree with defence counsel that it may be relevant (in the sense that it could possibly be of some use) to determine how Tanya Murphy perceived the favourable treatment she received with the stay of proceedings, in light of her upcoming testimony as a key

Crown witness in a murder trial. Accordingly, the Crown has not met its onus of establishing that this matter is clearly irrelevant and I order it to be disclosed.

[36] I will also set out the second matter verbatim:

**RCMP Occurrence Report 2009 51391**

On August 15<sup>th</sup>, 2009, Tanya Murphy reported she observed from across the street that [J.H., Tanya Murphy's daughter ] was assaulted by [B.F.] on Taylor Street. The RCMP attended and interviewed [H.], [F.] and [F.'s] mother [K.F.]. Conflicting statements from them indicated pushing, shoving and punching between the subjects of the complaint. Subjects were cautioned and advised to stay away from each other. No charges laid.

[37] In my view, the Crown has met its onus that this matter is clearly irrelevant and its nondisclosure is justified.

[38] The Crown summaries of the remaining 76 occurrence reports at issue are attached to these reasons as Appendix "A". For privacy purposes, Appendix "A" will not be attached to any published version of these reasons. Item number six and items 22, 34, 38, 39 and 77 (in bold type in Appendix "A") have already been disclosed.

[39] I am satisfied that the Crown has met its onus of establishing that several of the occurrence reports are clearly irrelevant. For the sake of brevity, I do not feel it is necessary to explain why I have come to that conclusion. In my view, the summaries of those reports speak for themselves, and in most, if not all cases, I would hope that my conclusion is self-evident. The occurrence reports which I find to be clearly irrelevant are items 1 - 4, 7, 9, 10, 14 - 16, 18 - 21, 24 - 28, 31- 33, 35 - 37, 40, 41, 43, 44, 47, 49 - 54, 56, 59 - 65, 67, 68, 71, 73, 81 and 82.

[40] The Crown has failed to establish that the following occurrence reports are clearly irrelevant:



**Item 5:** It may be relevant to the accused how Tanya Murphy conducted herself as a complainant/witness in this assault investigation which involved the same alleged victim, R.S., whom she allegedly assaulted the following year.

**Item 8:** It may be relevant to the accused whether Tanya Murphy was in compliance with her bail conditions.

**Item 11:** It may be relevant to the accused how Tanya Murphy conducted herself as a witness in this assault investigation.

**Item 12:** This appears to be a companion file to item 11.

**Item 13:** It may be relevant to the accused how Tanya Murphy conducted herself as a witness in this assault investigation.

**Item 17:** It may be relevant to the accused that Tanya Murphy apparently had an ongoing dispute with D.Y., resulting in mutual complaints to the police. In item 34, which was previously disclosed, Tanya Murphy was cautioned by the RCMP concerning false complaints.

**Item 23:** It may be relevant to the accused whether the report was substantiated.

**Item 29:** It may be relevant to the accused, if this item is connected with items 38 and 39, involving marijuana in Tanya Murphy's home.

**Item 30:** See item 29.

**Item 42:** It may be relevant to the accused how Tanya Murphy conducted herself as a witness in this domestic disturbance.

**Item 45:** It may be relevant to the accused whether Tanya Murphy was committing a driving infraction, as she seems to have been "cautioned" for this in item 46.

**Item 46:** See 45.

**Item 48:** It may be relevant to the accused, as it could indicate ongoing animus in the dispute between Tanya Murphy and D.Y.

**Item 55:** It may be relevant to the accused that Tanya Murphy was the subject of a complaint of assault causing bodily harm against A.C. (I believe this matter may already have been disclosed by the Crown according to its email of April 29, 2015).

**Item 57:** It may be relevant to the accused how Tanya Murphy conducted herself as a witness in this report of a fight between W.J. and D.W.

**Item 58:** This is a companion file to the above.

**Item 66:** It may be relevant to the ongoing dispute between Tanya Murphy and D.Y.

**Item 69:** It may be relevant to the accused why Tanya Murphy declined to provide a formal statement in support of this complaint by her.

**Item 70:** It may be relevant to the accused why Tanya Murphy declined to provide a formal statement in support of this complaint by her.

**Item 72:** It may be relevant to the accused how Tanya Murphy conducted herself as a witness in this impaired driving investigation.

**Item 74:** It may be relevant to the accused how Tanya Murphy conducted herself as a witness in this domestic dispute investigation.

**Item 75:** It may be relevant as the occurrence report could contain information about family dynamics between Tanya Murphy, her sister M.J., and her sister, the accused.

**Item 76:** It may be relevant to the accused that Tanya Murphy was reporting suspected cocaine trafficking, in the context of other occurrence reports indicating the presence of marijuana in her home.

**Item 78:** It may be relevant to the accused to confirm whether the drug paraphernalia reported by Tanya Murphy was confirmed.

**Item 79:** It may be relevant to the accused how Tanya Murphy conducted herself as a witness in this domestic dispute investigation.

**Item 80:** It may be relevant to the accused how Tanya Murphy conducted herself as a witness in this domestic dispute investigation.

[41] According to *Stinchcombe*, the Crown is under a general duty to disclose all information in its control or possession (first party disclosure) to the accused unless it establishes that the information is clearly irrelevant. For the above items in para. 40, the Crown has failed to do so and I order that it disclose these occurrence reports to the accused.

[42] The Crown also had concerns about the privacy interests of individuals identified in these occurrence reports. However, these privacy interests must yield to the right of the accused to make full answer and defence. In any event, I am satisfied that the relatively stringent conditions upon which the Crown provides disclosure in the normal course (e.g. its letter to defence counsel of October 20, 2014), limiting the extent to which the information can be copied and disseminated, adequately protect these privacy interests.

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Gower J.

## **APPENDIX "A"**

### **PIRS Records**

1. Haines Junction Detachment 1993 0000068– Identified as victim of sexual assault, along with her sister Alicia Murphy, by Dwayne Edward Johnson.
2. Whitehorse Detachment 1997 0003406 – Identified as a witness in Miranda Peter homicide. James Joe Ward plead guilty to manslaughter.
3. Whitehorse Detachment 1997 0008280 – Identified as a witness in sexual assault investigation involving Shawna Murphy (Victim) & Shane Venables (Accused). Accused convicted.
4. Whitehorse Detachment 1998 0004545 – Identified as a witness in sexual exploitation investigation involving Jennifer Duke (Victim) & Stuart Bond (Accused). Accused plead guilty, received conditional sentence.
5. Atlin Detachment 2005 0000357 – Identified as a complainant in assault investigation involving Roger Smith (Victim) & Jason Williams (Accused).
6. Atlin Detachment 2006 0000231 – Identified as a complainant in a domestic assault investigation involving Roger Smith.

### **BC PRIME Records**

7. Atlin Detachment 2010-50. Feb 12, 2010 Whitehorse Probation Services reporting 'tip' that Tanya Murphy drinking and causing problems contrary to bail order. Unsubstantiated. File concluded.
8. Atlin Detachment 2010-52. Feb 13, 2010 RCMP conduct bail conditions check on Tanya Murphy.
9. Atlin Detachment 2010-264. Tanya Murphy a passenger in vehicle involved in impaired driving investigation. Driver, Patrick O'Shea, issued 24 hour suspension.
10. Atlin Detachment 2010-265. RCMP conduct undertaking compliance check on Tanya Murphy's domestic partner, Patrick O'Shea.
11. Atlin Detachment 2010-285. Tanya Murphy identified as witness in an assault investigation involving an incident between Patrick O'Shea & Thomas O'Shea. Charge against Patrick O'Shea stayed by Crown. Tanya Murphy interviewed in respect of complaint.
12. Atlin Detachment 2010-286. Same as above.

13. Atlin Detachment 2010-340. Tanya Murphy identified as witness in an assault investigation involving an incident between Kenny Folbar & Patrick O'Shea. File documented for information and concluded.
  14. Atlin Detachment 2010-351. RCMP arrest Tanya Murphy's domestic partner, Patrick O'Shea, for breach of undertaking (abstain).
  15. Atlin Detachment 2010-365. Kaushee O'Shea requesting RCMP visit her home during her absence to confirm departure of Tanya Murphy & Patrick O'Shea. She called next day to revoke her request.
  16. Atlin Detachment 2010-370 – Anonymous informant on unknown reliability provides 'tip' that Ray Francour delivering drugs to Patrick O'Shea and Tanya Murphy. Unsubstantiated by RCMP.
  17. Atlin Detachment 2010-374. December 20, 2010, Tanya Murphy reports verbal dispute with Denise Yeomans, for RCMP information only.
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18. Atlin Detachment 2011-2. Complaint and request for assistance by Tanya Murphy, seeking to remove her belongings from Teddy Carlick residence.
  19. Atlin Detachment 2011-4. Complaint by Louise Gordon of missing jewelry. File closed at complainant's request.
  20. Atlin Detachment 2011-5. Louise Gordon informs RCMP of her permission for Tanya Murphy & Patrick O'Shea to occupy her residence.
  21. Atlin Detachment 2011-7. Nuisance dog complaint by Tanya Murphy.
  - 22. Atlin Detachment 2011-10. Complaint and request for assistance by Tanya Murphy, seeking to remove intoxicated Patrick O'Shea from their residence.**
  23. Atlin Detachment 2011-23. TRTFN employee Tanya Murphy reported finding used condom and bloody children's underwear while cleaning a vacant TRTFN building.
  24. Atlin Detachment 2011-29. Anonymous complaint that Tanya Murphy driving impaired. Investigation determined no offence and no further police action required.
  25. Atlin Detachment 2011-32. TRTFN employee Tanya Murphy reports workplace harassment by Ruth Jack. Harassment admitted, warning issued to Ruth Jack.
  26. Atlin Detachment 2011-74. Tanya Murphy a passenger in a parked vehicle involved in impaired driving & breach UT investigation. Driver, Patrick O'Shea, given a caution.
  27. Atlin Detachment 2011-76. Same as above.

28. Atlin Detachment 2011-98. April 20<sup>th</sup>, 2011, complaint and request for assistance by Tanya Murphy, seeking to remove intoxicated Patrick O'Shea from their residence. Tanya Murphy interviewed with regard to complaint.
29. Atlin Detachment 2011-116. Cannabis pipe seized from residence during above noted investigation.
30. Atlin Detachment 2011-143. Denise Yeomans reports third-hand information indicating Patrick O'Shea & Tanya Murphy selling marijuana from their residence.
31. Atlin Detachment 2011-148. June 2, 2011, Complaint and request for assistance by Tanya Murphy, seeking to remove intoxicated Patrick O'Shea from their residence according to terms of O'Shea's probation order. Tanya Murphy interviewed with regard to complaint.
32. Atlin Detachment 2011-161. RCMP mischief investigation. TRTFN employee Tanya Murphy consulted re window repair.
33. Atlin Detachment 2011-176. June 21, 2011, RCMP investigate banging sound near Tanya Murphy's residence. Tanya Murphy arrives home at time of investigation and is interviewed. RCMP locate Patrick O'Shea, intoxicated, and arrest him for breach. Tanya Murphy interviewed with regard to investigation.
34. **Atlin Detachment 2011-233. July 16, 2011. Anonymous complaint (by Tanya Murphy) reporting Denise Yeomans driving erratically and impaired around Five Mile Reserve. Yeomans found later in passenger seat of vehicle, determined by RCMP to be sober. Murphy cautioned by RCMP concerning false complaints.**
35. Atlin Detachment 2011-235. Call to RCMP by Ministry of Children and Family Development reporting 'tip' that Tanya Murphy intoxicated and unfit to care for her children. RCMP attended home, Murphy sober and two older children were fine. Youngest child away at camp. File concluded.
36. Atlin Detachment 2011-300. Call to RCMP by Tanya Murphy re black bear in neighborhood.
37. Atlin Detachment 2011-382. Complaint by Thomas O'Shea concerning argument with Tanya Murphy and assault by Patrick O'Shea. Thomas O'Shea doesn't want Patrick O'Shea charged. Apology offered by Patrick O'Shea and file concluded.
38. **Atlin Detachment 2011-397. November 3, 2011. Complaint by parent that Tanya Murphy's daughter, Jessica Harrison, had provided marijuana cigarette to complainant's daughter. Jessica Harrison admitted activity and stated that she had bought one joint from Tanya Murphy for \$5.00.**
39. **Atlin Detachment 2011-399. November 7, 2011. Complaint by Tanya Murphy's son, Jerry Harrison, that Tanya Murphy had slapped Jessica Harrison. Tanya Murphy admitted slapping Jessica Harrison for lying about Tanya selling**

**marijuana to Jessica. Children removed by Ministry of Children and Family Development. Murphy released without charges.**

40. Atlin Detachment 2011-401. November 1-7, 2011. Investigation of Patrick O'Shea for 'no-contact' probation breaches arising from above noted child protection investigation.
41. Atlin Detachment 2011-406. November 19, 2011. While Jessica Harrison residing in care she complained of sexual touching by her uncle, Robert Williams. Section 810(1) order made against Williams. Tanya Murphy interviewed with regard to complaint.
42. Atlin Detachment 2012-1. January 1, 2012, complaint of domestic disturbance at Tanya Murphy residence. Patrick O'Shea arrested walking away from the home, having left at the request of Tanya Murphy. Tanya Murphy interviewed with regard to complaint.
43. Atlin Detachment 2012-5. January 4, 2012, anonymous complaint that Patrick O'Shea at Tanya Murphy residence contrary to probation order. O'Shea arrested in home.
44. Atlin Detachment 2012-6. Hair pulling incident between Anthony Netro and his son Joseph Netro. Resolved without charges. Tanya Murphy indicated on file as "Other" contact.
45. Atlin Detachment 2012-23. Anonymous complaint that Tanya Murphy driving without valid license. Investigation determined Murphy had valid license. No further police action required.
46. Atlin Detachment 2012-24. Anonymous complaint that Sean O'Shea driving intoxicated. Vehicle located, Tanya Murphy driving, sober. Investigation determined Murphy license required Co-Driver. Murphy cautioned. File concluded.
47. Atlin Detachment 2012-52. February 25, 2012, Patrick O'Shea arrested for 'no contact' breach and assault against Tanya Murphy. Tanya Murphy interviewed in respect of complaint.
48. Atlin Detachment 2012-61. Complaint by Tanya Murphy against Denise Yeomans concerning unsafe driving. Yeomans interviewed. Admitted driving past Murphy and anger towards Murphy but denied driving complaint. File concluded.
49. Atlin Detachment 2012-70. Complaint by Jerry Harrison regarding Patrick O'Shea breach of 'abstain' condition. Tanya Murphy named on file as "Related Person(s)".
50. Atlin Detachment 2012-125. Investigation of Robert Williams for theft of TRTFN lumber. TRTFN employee Tanya Murphy interviewed in respect of complaint and whether suspect had permission to remove lumber.



51. Atlin Detachment 2012-150. May 26, 2012, TRTFN employee Tanya Murphy reports possible B&E of FN residence.
52. Atlin Detachment 2012-157. TRTFN employee Tanya Murphy seeks RCMP assistance to remove evicted resident from TRTFN residence.
53. Atlin Detachment 2012-164. Anonymous complaint that Tanya Murphy driving impaired. Murphy stopped. No signs of impairment. Voluntary ASD, passed. No further police action required.
54. Atlin Detachment 2012-182. Complaint of school yard bullying involving Tanya Murphy's daughter Jessica Harrison. Tanya Murphy indicated on file as "Other" contact.
55. Atlin Detachment 2012-189 – Tanya Murphy subject of complaint of assault causing bodily harm against Autumn Carlick. Charges not approved by Crown. Tanya Murphy interviewed with regard to complaint.
56. Atlin Detachment 2012-214. July 1, 2012, Tanya Murphy reports intoxicated people banging on her door, waking her up at 23:26. Tanya Murphy interviewed with regard to complaint. Suspects not located. File concluded.
57. Atlin Detachment 2012-219. Tanya Murphy reports fight in progress between William Jack & Derek Ward. RCMP locate Derek ward with minor injuries. Tanya Murphy interviewed with regard to complaint.
58. Atlin Detachment 2012-220. Same as above.
59. Atlin Detachment 2012-235. Tanya Murphy reports daughter, Jessica Harrison, missing following Atlin Arts and Music Festival. Youths located and returned to parents.
60. Atlin Detachment 2012-312. August 12, 2012, complaint and request for assistance by Tanya Murphy, seeking to remove intoxicated Patrick O'Shea from their residence according to terms of O'Shea's probation order. Tanya Murphy interviewed with regard to complaint.
61. Atlin Detachment 2012-313. August 13, 2012, anonymous complaint of loud party at Murphy residence and Tanya Murphy breaching 'abstain' condition. Investigation revealed that Murphy not on conditions and that kids and neighbor had marshmallow roast in back yard. Complaint determined to be unfounded. File concluded.
62. Atlin Detachment 2012-319. August 18, 2012, anonymous complaint (Denise Yeomans or her sister Deborah Wesley suspected) that Tanya Murphy and Patrick O'Shea drinking at their residence against conditions. O'Shea in custody at time of call Complaint determined to be unfounded. Yeomans and Wesley cautioned regarding false complaints and public mischief. File concluded.

- 63.** Atlin Detachment 2012-382. Tanya Murphy residence identified as contact address for Sharon Leech.
- 64.** Atlin Detachment 2012-396. Investigation of B&E at Nicole Gordon residence. Murphy's son, Jerry Harrison, among suspects. Tanya Murphy interviewed with regard to complaint.
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- 65.** Atlin Detachment 2013-11. Patrick O'Shea arrested for 'abstain' breach at Roy Wabisca residence. Tanya Murphy indicated on file as "Other" contact.
- 66.** Atlin Detachment 2013-42. Complaint by Tanya Murphy against Denise Yeomans concerning unsafe driving. Yeomans cautioned about reducing her speed. Yeomans agreed. File concluded.
- 67.** Atlin Detachment 2013-69. Complaint by Tanya Murphy against Jeffrey Williams concerning unsafe driving. Attempts to locate suspect failed. File concluded.
- 68.** Atlin Detachment 2013-88. Investigation of domestic assault between Real Sidney and Elisha Carlick. Tanya Murphy interviewed with regard to complaint.
- 69.** Atlin Detachment 2013-126. Complaint by Tanya Murphy that Caitlin O'Shea driving uninsured and without qualified supervisor. Murphy declined invitation to provide formal statement. File concluded.
- 70.** Atlin Detachment 2013-133. Complaint by Tanya Murphy that Caitlin O'Shea driving without qualified supervisor. Murphy declined invitation to provide formal statement. O'Shea cautioned by RCMP. File concluded.
- 71.** Atlin Detachment 2013-188. July 13, 2013, complaint and request for assistance by Tanya Murphy, seeking to remove intoxicated Patrick O'Shea from their residence according to terms of O'Shea's probation order. Tanya Murphy interviewed with regard to complaint.
- 72.** Atlin Detachment 2013-201. Impaired driving investigation involving Allen Cardinal. Tanya Murphy interviewed with regard to complaint.
- 73.** Atlin Detachment 2013-341. October 24, 2013, request for assistance by Tanya Murphy, seeking RCMP assistance to take away from Patrick O'Shea his house key to their residence. Tanya Murphy interviewed. RCMP advise Murphy to seek civil remedies. File concluded.
- 74.** Atlin Detachment 2013-390. December 14, 2013, complaint of domestic dispute and request for assistance by Tanya Murphy, seeking to remove intoxicated Patrick O'Shea from their residence according to terms of O'Shea's probation order. Tanya Murphy interviewed with regard to complaint.
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- 75.** Atlin Detachment 2014-41. February 18, 2014, Tanya Murphy reports harassing phone calls from sister, Michelle James, and requests apology from James if James

wants to continue to call or visit Tanya Murphy's home. James spoken to by RCMP. File concluded.

76. Atlin Detachment 2014-61. March 4, 2014. Call from Tanya Murphy to report second-hand information concerning suspected cocaine trafficking. Information forwarded to RCMP M Division and file concluded.
- 77. Atlin Detachment 2014-80. April 5, 2014, call from Tanya Murphy to report that Patrick O'Shea was intoxicated and had left their residence driving their truck. O'Shea located walking at the other end of the Reserve and denied driving.**
78. Atlin Detachment 2014-83. TRTFN employee Tanya Murphy reports finding a cash box containing drug paraphernalia during clean up of vacant TRTFN residence.
79. Atlin Detachment 2014-105. May 10, 2014, complaint of domestic dispute and request for assistance by Tanya Murphy, seeking to remove intoxicated Patrick O'Shea from their residence according to terms of O'Shea's probation order. Tanya Murphy interviewed with regard to complaint. Patrols made for O'Shea, unsuccessfully. File concluded.
80. Atlin Detachment 2014-128. June 4, 2014, complaint of domestic dispute and request for assistance by Tanya Murphy, seeking to remove intoxicated Patrick O'Shea from their residence. Tanya Murphy interviewed in respect of complaint but declined to provide a formal statement.
81. Atlin Detachment 2014-137. Complaint of mischief and request for assistance by Tanya Murphy regarding Cameron O'Shea damaging property in Tanya Murphy's home. Tanya Murphy interviewed in respect of complaint. Damaged property replaced by Cameron O'Shea. File concluded.
82. Atlin Detachment 2014-137. October 22, 2014, call from Tanya Murphy passing on a cause disturbance complaint related to Jason Williams. Williams located, somewhat intoxicated, agreed to leave work site. File concluded.)