Court File No. 32147

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

THE MINISTER OF JUSTICE and THE ATTORNEY GENERAL OF CANADA, THE MINISTER OF FOREIGN AFFAIRS, THE DIRECTOR OF THE CANADIAN SECURITY INTELLIGENCE SERVICE, and THE COMMISSIONER OF THE ROYAL CANADIAN MOUNTED POLICE

Appellants

- and -

OMAR AHMED KHADR

Respondent

- and -

CRIMINAL LAWYERS' ASSOCIATION (ONTARIO), BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, and UNIVERISITY OF TORONTO, FACULTY OF LAW – INTERNATIONAL HUMAN RIGHTS CLINIC AND HUMAN RIGHTS WATCH

Interveners

FACTUM OF THE INTERVENER, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)

Ruby & Edwardh
11 Prince Arthur Avenue
Toronto, ON M5R 1B2

John Norris – LSUC #34411P
Tel: 416-964-9664
Fax: 416-964-8305
Email: john@ruby-edwardh.com

Solicitors for the Criminal Lawyers' Association (Ontario)

Paliare Roland Rosenberg Rothstein LLP
250 University Avenue, Suite 501
Toronto, ON M5H 3E5

Brydie Bethell – LSUC #50692F
Tel: 416-646-4302
Fax: 416-646-4301
Email: brydie.bethell@paliareroland.com

Solicitors for the Criminal Lawyers' Association (Ontario)

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Tel: 416-964-9664
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Email: john@ruby-edwardh.com

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Toronto, ON M5H 3E5

Brydie Bethell – LSUC #50692F
Tel: 416-646-4302
Fax: 416-646-4301
Email: brydie.bethell@paliareroland.com

Solicitors for the Criminal Lawyers' Association (Ontario)

Gowling Lafleur Henderson LLP
160 Elgin Street Suite 2600
Ottawa, ON, K1P 1C3

Ed Van Bemmel
Tel: 613-786-0212
Fax: 613-788-3500
Email: ed.vanbemmel@gowlings.com

Ottawa Agents for the Criminal Lawyers' Association (Ontario)

ORIGINAL TO: **THE REGISTRAR**

COPIES TO:

Department of Justice Canada
211, 10199 – 101 Street
Edmonton, AB T5J 3Y4

Doreen Mueller
Tel: 780-495-2938
Fax: 780-495-6300
Email: Doreen.Mueller@justice.gc.ca

Solicitors for the Appellants

Justice Canada
234 Wellington Street
East Tower, Room 1212
Ottawa, ON K1A 0H8

Christopher Rupar
Tel: 613-941-2351
Fax: 613-954-1920
Email:christopher.rupar@justice.gc.ca

Ottawa Agent for the Appellants

AND TO:

Edney, Hattersley & Dolphin
#1971, 10123 – 99th Street
Edmonton, AB T5J 3H1

Dennis Edney
Tel: 780-423-4081
Fax: 780-425-5247
Email: dedney@shaw.ca

Solicitors for the Respondent

Lang Michener LLP
Suite 300 – 50 O'Connor Street
Ottawa, ON K1P 6L2

Eugene Meehan, Q.C.
Tel: 613-232-7171
Fax: 613-231-3191
Email: emeehan@langmichener.ca

Ottawa Agent for the Respondent

Parlee McLaws LLP
#1500, 10180 – 101 Street
Edmonton, AB T5J 4K1

Nathan Whitling
Tel: 780-423-8658
Fax: 780-423-2870
Email: nwhitling@parlee.com

Solicitors for the Respondent

AND TO:

Arvay Finlay
1350 – 355 Burrard Street
Vancouver, BC V6C 2G8

Joseph J. Arvay, Q.C.
Tel: 604-689-4421
Fax: 604-687-1941
Email: jarvay@arvayfinlay.com

Solicitors for the Intervener, British Columbia Civil Liberties Association

Raven, Cameron, Ballantyne & Yazbeck LLP
1600 – 220 Laurier Avenue West
Ottawa, ON K1P 5Z9

Paul Champ
Tel: 613-567-2441
Fax: 613-567-2921
Email: pchamp@ravenlaw.com

Ottawa Agent for the Intervener, British Columbia Civil Liberties Association

AND TO:

Goodmans LLP
250 Yonge Street, Suite 2400
Toronto, ON M5B 2M6

Tom A. Friedland
Tel: 416-979-2211
Fax: 416-979-1234
Email: tfriedland@goodmans.ca

Solicitors for the Intervener, University of Toronto, Faculty of Law – International Human Rights Clinic and Human Rights Watch

Nelligan O'Brien Payne LLP
1900 – 66 Slater Street
Ottawa, ON K1P 5H1

Dougald E. Brown
Tel: 613-231-8210
Fax: 613-788-3661
Email: dougald.brown@nelligan.ca

Ottawa Agent for the Intervener, University of Toronto, Faculty of Law – International Human Rights Clinic and Human Rights Watch

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PART I – OVERVIEW and STATEMENT OF FACTS

1. The Criminal Lawyers' Association (Ontario) ("CLA") submits that the Canadian agencies in question have a duty to disclose all documents in their possession or control that may be relevant to the charges the Respondent is facing before the United States military tribunal. In summary:

a) The 'liberty and security of the person' interests protected by s.7 of the *Charter* are engaged in any criminal prosecution.

b) The fact that the Respondent is not being prosecuted by Canadian officials does not absolve Canadian agencies of *Charter*-based obligations towards the Respondent in the particular circumstances of this case. Canadian officials chose to become participants in the prosecution of the Respondent by sharing the fruits of their investigation with the prosecuting authority.

c) A prosecution by Canadian authorities is sufficient for s.7 of the *Charter* to be engaged but it is not a necessary condition. There is a sufficient causal nexus between the gathering of information by Canadian officials, the sharing of that information with the United States, and the subsequent charges against the Respondent to engage s.7 of the *Charter*. The Appellants should bear the burden of disproving this nexus to defeat the claim that the *Charter* is engaged.

d) Disclosure is an essential component of the right to make full answer and defence guaranteed by s. 7 of the *Charter*.

e) This right imposes a broad duty on Canadian agencies to disclose material in their possession and control unless it is privileged or clearly irrelevant to the prosecution of the accused. The *Stinchcombe* standard applies. The Appellants' failure to fulfill these obligations is a breach of the Respondent's rights under s.7 of the *Charter*.

f) This breach occurred, and continues to occur, in Canada. To order disclosure would not offend principles of comity or the sovereign authority of the prosecuting state.

g) The appropriate remedy under s. 24(1) of the *Charter* is a disclosure order, subject to s.38 of the *Canada Evidence Act*, as ordered by the Federal Court of Appeal.

2. The CLA adopts the statement of facts in the Respondent's Memorandum of Argument filed in this appeal.

PART II – POSITION ON APPELLANTS' QUESTIONS

3. The Appellants' submit that the issue in this case is: Did the Appellants have a legal duty to produce the documents sought by the Respondent in the Whitling request?

4. CLA's position is that the Appellants have a duty arising arising under the *Canadian Charter of Rights and Freedoms* ("the *Charter*") to disclose material that may assist the Respondent in making full answer and defence to charges against him pending before an American military tribunal. The Apellants breached the Respondent's s. 7 *Charter* right, and the appropriate remedy is a disclosure order.

Appellants' Factum, at paras. 26-30, 35

Exhibit Q to the Affidavit of Richard J. Wilson, dated January 20, 2006, A.R., vol. 2, pp. 236-237

PART III – STATEMENT OF ARGUMENT

A. Disclosure is an essential component of the right to make full answer and defence

a) Threat to liberty and security of the person

5. It goes without saying that the Respondent is facing a deprivation of his liberty and security of the person. Indeed, he faces a deprivation that is virtually unprecedented in its scale and impact.

b) The duty to disclose is based on s.7 of the *Charter*

6. The underlying rationale of imposing disclosure obligations on the Crown is to ensure that the accused has access to information useful in making full answer and defence. Disclosure is a means to an end. The end is to ensure that the accused can make full answer and defence to the charge. The right to make full answer and defence is an essential feature of a fair trial. It is one of the pillars of criminal justice on which we depend to ensure that the innocent are not convicted.

> *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 ("*Stinchcombe*"), at paras. 10, 17-18
> *R. v. Taillefer, R. v. Duguay*, [2003] 3 S.C.R. 307 ("*Taillefer*"), at paras. 17, 64-69

7. The duty to disclose was recognized at common law prior to the adoption of the *Charter*. The *Charter* reinvigorated the duty to disclose as an aspect of fundamental justice guaranteed, *inter alia*, by s. 7. The failure to disclose material that ought to have been disclosed can be a free-standing *Charter* violation entitling the accused to a just and appropriate remedy.

> *R. v. Dixon*, [1998] 1 S.C.R. 244, at paras. 22, 32-35
> *Taillefer*, at paras. 64-69, 71

8. Under *R. v. Stinchcombe*, disclosure obligations are broad. The Crown is required to disclose all material in its possession that is not privileged or clearly irrelevant. Material is relevant if there is a "reasonable possibility" it may be used by the defence in meeting the case for the prosecution or, more generally, making full answer and defence. The relevance threshold is set "quite low"; even information that is only of "marginal value" must be disclosed. This standard applies whether or not the prosecution intends to introduce that material in evidence, and whether or not the information would be admissible as evidence.

> *R. v. Dixon*, [1998] 1 S.C.R. 244, at para. 23
> *Taillefer,* at para. 59
> *Stinchcombe*, at para. 29

c) The role of Canadian officials is sufficient to engage s.7 of the *Charter*

9. The case at bar differs from those in which the *Stinchcombe* principles usually apply because the Respondent is not being prosecuted by the Crown or some other prosecuting authority directly subject to s.32(1) of the *Charter.* On this basis, the Appellants advance the position that since Canada is a "third party" to a foreign prosecution, this is determinative of the Respondent's constitutionally-based claim for disclosure. The CLA submits that the Appellants' position turns on a false dichotomy concerning the disclosure obligations of Canadian agencies.

> *Purdy v. Canada (Attorney General),* (2003), 230 D.L.R. (4th) 361 (B.C.C.A.) ("*Purdy*"), at para. 22

10. This Court has held that s.7 of the *Charter* can be engaged even when the ultimate deprivation of a protected interest is effected by a non-Canadian actor. In *Suresh v. Canada (Minister of Citizenship and Immigration),* the Court held:

> the guarantee of fundamental justice applies to deprivations of life, liberty, and or security effected by actors other than our government, if there is a sufficient causal connection between our government's participation and the deprivation ultimately effective.
>
> *Suresh v. Canada (Minister of Citizenship and Immigration),* [2002] 1 S.C.R. 3 ("*Suresh*"), at para. 54
>
> *United States of America v. Burns,* [2001] 1 S.C.R. 283, at para. 60

11. The case at bar bears important similarities to *Purdy v. Canada (Attorney General).* There, the Crown challenged the jurisdiction of the court to entertain a s. 7 claim for disclosure in the absence of any criminal process in Canada, as is the case here. The accused had been induced to travel to the United States as part of a joint sting operation involving the RCMP and police in the United States. Although the investigation unfolded for the most part in Vancouver, the accused was arrested on his arrival in the United States, where he was charged with cross-border money-laundering charges. The arrest was effected in the United States by American police pursuant to an agreement between the RCMP and the FBI that, after the investigation, charges arising therefrom would be prosecuted in the United States.

> *Purdy*, at para. 11

12. *Purdy* was decided prior to the decision of this Court in *Hape*, discussed below. Accordingly, the British Columbia Court of Appeal applied the test articulated in *R. v. Cook* concerning the applicability of the *Charter*. The Court found that s. 32(1) of the *Charter* applied not only to the Canadian police investigation in Canada, but also to the means taken to effect Mr. Purdy's arrest in the United States, holding that both were actions "of an arm of the Canadian government." Donald J.A. held that the causal connection between the investigation and the deprivation of Mr. Purdy's ability to make full answer and defence in the US was "direct and obvious".

Purdy, at paras. 15, 20, 22

13. In the case at bar, Canadian officials conducted an investigation of the Respondent and gathered information independently of the detaining authority. They then elected to share information with the United States. It is submitted that the fact that Canada is not a party to the American prosecution of the Respondent does not absolve Canadian agencies of their duties under the *Charter*. Canada participated in the prosecutorial process by sharing some of the information it gathered with the US prior to the US laying charges against the Respondent. There is a causal connection between the actions of Canadian officials and the deprivation of the Respondent to make full answer and defence in the foreign proceeding.

14. The Appellants seek to attack this argument as a "speculative linking" between the Canadian investigation and the American prosecution of the Respondent. The CLA submits that the fact that Canadian officials shared at least some of the information they obtained during their visits to Guantanamo with the US prior to the US laying charges gives, at the very least, an "air of reality" that some of that information formed part of the US's case against the Respondent, assisted in preparing its case against him, assisted the US in conducting its investigation, and/or contributed to the decision to proceed with prosecuting him.

Appellants' Factum, at paras. 39, 52

15. The CLA submits that there is a sufficient causal nexus between the supply of the information by Canadian officials to the US and the US decision to prosecute the

Respondent. It may be that only American officials know whether or to what extent the information they received from the Canadian officials in question affected their decision to prosecute or will assist them in proving their case. However, at the pre-charge level, the fact is that the fruits of the Canadian investigation became part of the fruits of the American prosecution, giving rise to a sufficient causal connection between the information supplied by the Canadian officials and the prosecution by the US.

16. Given that there is no way for the Respondent to prove that Canada's participation caused or influenced the decision to prosecute, the CLA submits the onus should shift to the Canadian officials to disprove the causal nexus.

17. The alternative would produce an absurdity: if the onus were placed on an accused to demonstrate that the information police shared with his adversary formed part of the case against him, or contributed in some way to the decision to lay charges, it would be an impossible onus for an accused to discharge. Not knowing what information was shared with his adversary, how could the accused ever discharge this onus? Furthermore, once information is commingled with other information, it may not be realistic or practical to identify which information or factors gleaned from information from a discrete source formed part of the ultimate decision to prosecute. In the circumstances of this particular case, in which the Respondent has been detained for several years, most of those years without charge, the passage of time exacerbates the difficulty of identifying what information from which source became determinative of the decision to prosecute.

Affidavit of Richard J. Wilson, dated January 20, 2006, at para. 12, A.R., Vol. 1, p. 55

18. The CLA submits that the most practical view which preserves the underlying principles of disclosure generally, and of *Stinchcombe* principles in particular, is that Canada, having shared the information with an accused's foreign adversary, should bear the burden of disproving the nexus to defeat the claim that the duty has arisen, and if appropriate, that the *Charter* is engaged in the particular circumstances of each case.

19. In this case, Canada was not acting pursuant to any agreement with the United States and was not acting under American instructions. Canadian officials

independently chose to share the information with the Respondent's foreign prosecutorial adversary.

Appellants' Factum, at paras. 1, 62

Khadr v. Canada, [2006] F.C.J. No. 640, at para. 19, A.R. vol. 1, pp. 6-7

Cross-Examination of William Hooper, RFER, Vol. 1, pp. 77-79, 83, 88-89, 94-95, 95-96

20. Moreover, in choosing to share the information with the Respondent's adversary, the Canadian officials took no steps to implement any safeguards to protect the Respondent's interests. For example, there is no evidence that Canadian officials interviewed the Respondent in the presence of counsel, or that he was even advised of his right to counsel. Canada has adduced no evidence to demonstrate that it placed any limits or conditions on the use of the information it gathered. Accordingly, given the circumstances in which the Respondent was being held, it must have been reasonably foreseeable that the United States might use that information in building its case against him. This Court held in *Suresh* that where a deprivation is an entirely foreseeable consequence of Canada's participation, the government cannot escape the requirements of fundamental justice merely because the deprivation in question would be effected by someone else's hand. In short, having elected to assist the Respondent's adversary, Canadian officials and agencies owe a duty to the Respondent to ensure, to the extent they can, that he is equipped to respond to the charges that have resulted.

Suresh, at paras. 53-55

Khadr v. Canada, [2006] F.C.J. No. 640, at para. 19, A.R., vol.1, pp. 6-7

21. The intervener, Human Rights Watch and the University of Toronto Human Rights Clinic, submits in this appeal that it was a reasonably foreseeable consequence that conveying the fruits of the Canadian interrogation of the Respondent to U.S. officials would put Canada in violation of its international human rights obligations. The CLA adopts these submissions.

d) The foreign venue of the prosecution does not change the analysis

22. The Appellants take the position that the prosecution conducted by the United States is not a matter within the "authority of Parliament" so as to engage s. 32(1) of the *Charter*. The Appellants assert that this position is consistent with principles of comity, since it is the U.S. trial court that is in the best position to determine what should be disclosed to the Respondent and how he may make full answer and defence. It is submitted that the Appellants' position misapplies the s. 32(1), as it was recently interpreted by this Court in *R. v. Hape*.

> Appellants' Factum, at para. 81
>
> *R. v. Hape*, [2007] S.C.J. No. 26 ("*Hape*")

23. The majority held in *Hape* that while s. 32(1) defines to whom the *Charter* applies (state actors), not where it applies, s. 32(1) also defines in what circumstances the *Charter* applies to those state actors. The Court split on whether the actions of Canadian police officers investigating the criminal activities of a Canadian citizen in a third country were circumstances in which the *Charter* applied.

24. *Hape* concerned a cross-border criminal investigation by the RCMP into the money-laundering activities of a Canadian citizen in the Turks and Caicos Islands ("TCI") which culminated in a prosecution in Canada. The majority held that while the *Charter* applied to the RCMP, the searches they carried out in the TCI were not a matter within the authority of Parliament because the TCI authorities controlled the investigation at all times.

25. LeBel J., for the majority, set out a two-step test. The first question is whether there is a state actor in the sense of a government agent or official possessing statutory authority or exercising a public function. It was held that police officers were "clearly" state actors to whom, *prima facie*, the *Charter* applied. LeBel J. acknowledged that Canada has some jurisdiction over Canadian agents acting abroad on the basis of nationality, but held that their activities must still meet the second step of the test. At this stage, the question is whether their activities fall with the scope of the phrase "in respect of all matters within the authority of Parliament or the provincial legislatures."

Matters were not "within the authority of Parliament" if they infringed principles of comity or otherwise interfered with the sovereign authority of the foreign state.

> *Hape*, at paras. 68-69, 103-104; see also *R. v. Cook*, [1998] 2 S.C.R. 597, at para. 124

26. Applying the majority reasoning in *Hape*, the first step is to determine whether the Canadian officials who interviewed the Respondent and gathered information in Guantanamo Bay are state actors in the requisite sense. The record shows that the Canadian officials in question were agents of CSIS, DFAIT and possibly the RCMP. There can be no question that the *Charter* applies to such agencies and their representatives.

> *Hape*, at para. 103; P.W. Hogg, *Constitutional Law of Canada* (looseleaf ed., 2007+), vol. 2, at pp. 37-13 to 34-16 and 34-18 to 34-19
>
> *R. v. Malik*, [2002] B.C.J. No. 3219 at para. 14; *R. v. Malik*, [2004] B.C.J. No. 842
>
> Cross-Examination of William Hooper, RFER, Vol. 1, p.75
>
> Affidavit of Richard J. Wilson, dated January 20, 2006, A.R., Vol. 1, pp. 58-59, paras 24-27and Exhibits N and O thereto, A.R., Vol 2, pp. 223-232
>
> Appellants' Factum, at paras. 16-19

27. It is submitted that the actions of the Canadian officials were also "matters within the authority of Parliament" and thus also satisfy the second step of the test set out by LeBel J. in *Hape*. The record shows that the Canadian officials' actions at issue in this appeal include: information gathering in Guantanamo and Canada; interviews with the Respondent in Guantanamo in the absence of his counsel; making summaries of information gathered in Guantanamo or Canada or both; and information-sharing with the US in Guantanamo or Canada, or both.

> Appellants' Factum, at para. 62

28. In contrast to *Hape*, the Canadian officials in question in the case at bar took a primary role in gathering information, and acted independently at all times, a fact which the Appellants concede.

> *Khadr v. Canada*, 2007 FCA 192, at para. 8, A.R. p. 19
>
> Appellants' Factum, at paras. 59, 81

29. Furthermore, the US authorities consent to the visits, and investigative activities, of the Canadian officials in Guantanamo. Having consented, it cannot lie with the US authorities to have any objections to legal consequences that flow therefrom *in Canada.* It must be inferred that the US authorities would have considered any such legal consequences in giving their consent to the Canadians. There can be no interference with principles of comity for the reciprocal recognition by Canada to accept the US authorities' consent, and for the US to affirm the Canadian officials' authority to carry out their activities respectively.

Hape, at paras. 48-52, 69

30. Accordingly, in carrying out their activities in Guantanamo, the Canadian officials in question undertook their own investigation, which cannot be said to have impinged on principles of comity, nor can it be said that Canadian officials were acting in any enforcement capacity such that would interfere with the sovereign authority of the United States.

31. For clarity, the CLA is not concerned with the question of whether or not the *Charter* applies to the Canadian officials in gathering the information. That question is the subject of separate litigation. The breach entitling the Respondent to a remedy occurred, and continues to occur, because Canadian officials refused or otherwise failed to disclose material in their possession or control.

O'Connor does not apply

32. The Appellants submit that Canada is a "third party" to the American prosecution within the meaning of *R. v. O'Connor.* If accepted, this analysis effectively dilutes any disclosure obligations the Appellants may otherwise have had towards the Respondent and places additional burdens on the Respondent in his efforts to obtain information from the Appellants.

R. v. O'Connor, [1995] 4 S.C.R. 411 ("*O'Connor*")
Appellants' Factum, at para. 52

33. It is submitted that the analogy with third-party production which the Appellants seek to draw is inappropriate for several reasons.

34. First, for the reasons set out above, the Appellants are not mere bystanders to the prosecution. To find that Canada is a "third party" in the *O'Connor* sense requires ignoring the role of Canadian officials in sharing the fruits of their investigation with the United States. The CLA submits that, at the very least, the information that Canada shared with the United States cannot be "third party records" at all by the very fact that Canada voluntarily put that information into the hands of the prosecuting party.

35. Second, the *O'Connor* production framework was created to protect the reasonable expectations of privacy on the part of complainants or witnesses – true third parties to a prosecution. The *O'Connor* case itself involved an accused seeking disclosure of certain personal records of sexual assault complainants in order to attack their credibility. The documents in issue were medical, school and counseling records concerning the complainant that were not originally in the possession of the Crown and not part of the case the accused had to meet. In the case at bar, on the other hand, there is no issue with respect to the protection of privacy interests of any of the parties. To extend *O'Connor* in the way that the Appellants suggest would be inconsistent with both principle and policy.

36. Third, the *O'Connor* regime is typically engaged with respect to records whose subject and whose keeper owe no constitutional duties to the accused seeking access because they do not come within s.32(1) of the *Charter*.

37. Finally, third-party production has been disengaged from *Stinchcombe*-mandated disclosure to prevent burdensome, if not impossible, obligations from being imposed on the Crown. The third party production rules curtail the application of the *Stinchcombe* standard to avoid a situation where the Crown is compelled to become an investigator at the behest of the defence. This concern does not arise here.

> *O'Connor,* at para. 22; see also D. Paciocco, "Filling the Seam between *Stinchcombe* and *O'Connor*: The '*McNeil*' Disclosure Application" (2007) 53 *Criminal Law Quarterly* 161, at pp. 194-204

38. Accordingly, the CLA submits that the *Stinchcombe* standard, and not the *O'Connor* standard, applies in the circumstances of this case.

The application of the *Stinchcombe* standard

39. The Crown is obliged to disclose all information in its possession and control that is not privileged or clearly irrelevant. As Sopinka J. put it in *Stinchcombe*, "the fruits of the investigation which are in the possession of counsel for the Crown are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done."

Stinchcombe, at para. 12

40. In the circumstances of this appeal, the material required to be disclosed would include all materials that are in the control of the Canadian officials in question that are relevant to the charges the Respondent faces in Guantanamo. The materials caught by this requirement would include not only those materials that are the direct result of the Canadian officials' information-gathering activities, but also those that Canadian officials know to exist and which are in the possession or control of Canadian agencies or officials. This knowledge-based obligation would catch material such as the summaries that Canadian officials were shared with US, but also the information on which the summaries were based.

R. v. Chaplin, [1995] 1 S.C.R. 727, at paras. 23, 25 30-32

R. v. L.A.T. (1993), 84 C.C.C. (3d) 90 (Ont. C.A.)

R. v. Fudge, [1999] O.J. No. 3121 (S.C.J.), at para. 6

B. The breach of the Respondent's s. 7 right occurred in Canada because of the (ongoing) failure to disclose

41. The *Charter* governs the relationship between the individual and the state. Canadian nationals have a right to expect protection from interference with rights by our government or its agents regardless of where that interference took place.

Purdy, at paras. 15 and 20

R. v. Harrer, [1995] 3 S.C.R. 562, at para. 11

42. Significantly for the purposes of this appeal, in *Purdy* the British Columbia Court of Appeal found that the breach of Mr. Purdy's right to full answer and defence occurred *in Canada* by the RCMP's refusal to disclose, even though the effect of the breach would be "felt" in the United States

Purdy, at para. 20

43. In the case at bar, the CLA submits that the breach of the Respondent's s. 7 right did not occur in a foreign state. Rather, the infringement occurred *in Canada*, and continues to occur in Canada, because of the continuing refusal and/or failure of Canadian officials to disclose. Canadian officials gathered some information in Guantanamo (it is arguable that information was also gathered in Canada) and then shared information with the United States in circumstances where the United States was manifestly in an adversarial relationship with the Respondent. The refusal or failure to disclose to the Respondent, and the continuing refusal or failure to disclosure, occurred and occurs *in Canada*, even though the effect of the breach is "felt" in the United States because the Respondent is impeded from making full answer and defence to his prosecution there.

Khadr v. Canada, 2007 FCA 192, at para. 8, A.R., vol. 1, p. 19

44. Since the breach occurred (and continues to occur) in Canada, the application of the *Charter* in this case and finding a breach of the Respondent's s. 7 right would not interfere with the sovereign authority of the foreign state and thereby generate an extraterritorial effect, as Canada suggests.

Purdy, at para. 18; *Cook*, at paras. 45-46

C. The appropriate remedy is a disclosure order

45. Where government action infringes or denies a *Charter* right, a remedy under s. 24 of the *Charter* is called for. A remedy under s.24(2) is not available in the circumstances of this case. Even apart from the question of whether some of the evidence or information in question was obtained in a manner that infringed the *Charter* (a question that may not be squarely before the Court in this appeal), no Canadian court

can order the exclusion of evidence in a foreign proceeding, for obvious reasons. The focus must therefore be on s.24(1).

Taillefer, at para. 127

46. Non-disclosure discovered at the pre-trial stage can be remedied under s.24(1) in a variety of ways. The standard remedy, unsurprisingly, is a disclosure order. Other ancillary remedies (e.g. an adjournment or costs) may also be ordered. In the most serious cases of non-disclosure, a stay of proceedings may be ordered.

47. In the circumstances of the case at bar, it is submitted that a disclosure order is the appropriate and just remedy. Indeed, as in *Purdy*, it is "the only practical remedy." Unlike a domestic prosecution, a failure to disclose giving rise to a *Charter* breach cannot be remedied at the post-trial stage should the Respondent be found guilty. A Canadian court obviously could not order a new trial or stay the proceedings. Monetary damages alone would be of doubtful remedial value.

Purdy, at para. 12

48. Disclosure at the pre-trial stage would put the Respondent in a position to know the case against him. It may assist him in other ways in answering that case. The Respondent may ultimately seek to rely on what he learns to challenge the case against him. He may even seek to tender some of what he has acquired through this disclosure in the course of the trial in the United States. Any evidence or information that the Respondent learns or obtains by means of a disclosure order would still be subject to the rules of admissibility governing the U.S. proceeding (just as is the case with any information or evidence the Respondent has been able to obtain through Canadian access to information requests or by any other means). A disclosure order is entirely consistent with principles of comity and has no objectionable effects on the sovereign authority of the prosecuting state. As the British Columbia Court of Appeal held in *Purdy*:

> disclosure does no more than put the respondent in the position where he can offer the evidence obtained by disclosure to the U.S. court; it does not decide for the court whether to admit the evidence or how it should be used. Disclosure is sought to enable the respondent to present the defences [...]. Whether the

> defences are accepted is for the U.S. court to determine, and nothing in the [disclosure] order impinges on that authority.
>
> *Purdy*, at para. 24

49. Accordingly, the CLA submits that the appropriate and just remedy pursuant to s.24(1) of the *Charter* is a disclosure order under the *Stinchcombe* standard, subject to s.38 of the *Canada Evidence Act*, as ordered by the Federal Court of Appeal.

PART IV – COSTS

50. The CLA does not seek costs, and requests that none be awarded against it.

PART V – ORDER REQUESTED

51. The CLA takes no position on the disposition of this appeal.

ALL OF WHICH IS RESPECTUFLLY SUBMITTED

Dated this 22nd day of February, 2008

John Norris
Ruby Edwardh

Of Counsel for the Intervener,
The Criminal Lawyers' Association
(Ontario)

Brydie Bethell
Paliare Roland Rosenberg Rothstein LLP

Of Counsel for the Intervener,
The Criminal Lawyers' Association
(Ontario)

PART VI – TABLE OF AUTHORITIES

		Paragraphs where authorities cited
1.	*R. v. Stinchcombe*, [1991] 3 S.C.R. 326	5, 7, 36
2.	*R. v. Taillefer; R. v. Duguay*, [2003] 3 S.C.R. 307	5, 6, 7
3.	*R. v. Dixon*, [1998] 1 S.C.R. 244	6, 7
4.	*R. v. O'Connor*, [1995] 4 S.C.R. 411	29, 34
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6.	*R. v. Fudge*, [1999] O.J. No. 3121 (S.C.J.)	37
7.	*R. v. Chaplin*, [1995] 1 S.C.R. 727	37
8.	*Purdy v. Canada (Attorney General)*, (2003), 230 D.L.R. (4th) 361 (B.C.C.A.)	8, 10, 11, 38, 39, 41, 44, 45
9.	*Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3	9, 18
10.	*R. v. Hape*, [2007] S.C.J. No. 26	23, 24
11.	*R. v. Cook*, [1998] 2 S.C.R. 597	23, 41
12.	*R. v. Harrer*, [1995] 3 S.C.R. 562	38
13.	*United States v. Burns*, [2001] 1 S.C.R. 283	9
14.	*R. v. Malik*, [2002] B.C.J. No. 3219 (B.C.S.C.)	24
15.	*R. v. Malik*, [2004] B.C.J. No. 842 (B.C.S.C.)	24
16.	D. Paciocco, "Filling the Seam between *Stinchcombe* and *O'Connor:* The *"McNeil"* Disclosure Application" (2007) 53 C.L.Q. 161-205	34

PART VII – LIST OF STATUTES/REGULATIONS/RULES

N/A