

**Minor Case Management Session #35**  
**Pre-Trial and Mid-Trial Disclosure: Professional Responsibilities of the Prosecutor**

**SCENARIOS FOR DISCUSSION**

***1. R v Beer***

You are the Crown in extra bail court this morning and there are three bail hearings, all ready to proceed. One of the accused set for a bail hearing today is Mr. Beer, who is charged with an assault causing bodily harm arising out of a bar fight. The bail hearing was set right out of Mr. Beer's first appearance, which was yesterday. His defence lawyer, Ms. Wine, comes to see you a few minutes before the hearing starts this morning. She has the charge sheet (synopsis) and Mr. Beer's criminal record. Ms. Wine says she believes a witness (Mr. Liquor) spoke to the arresting officer at the scene and told the officer that the victim started it and Mr. Beer was only defending himself. Having read the brief last night, you know full well that Mr. Liquor did indeed make this comment to the arresting officer, and it is mentioned in the report. You also know that Mr. Liquor is the accused's buddy who was belligerent with police and refused to give a written statement. Ms. Wine asks for a copy of the arresting officer's typed report to use during the bail hearing. You tell her she will need to wait for disclosure. Ms. Wine says, "I'm not asking for disclosure, I'm just asking to take a look ..."

- Should you give defence a copy of the arresting officer's report?
- What is the most fair and responsible way to deal with this information?

***2. R v O'Toole***

You are prosecuting Mr. O'Toole for sexual offences against his two younger sisters, who are now 14 and 16 years old. All three victims were interviewed on video several months ago. The offences against both victims were repeated over years. During their interviews, the investigator did not ask them to describe every single incident. Rather, he asked them how many incidents occurred, and asked them to describe the first one and the last one. You arrange two different witness prep sessions with these victims. In the first session you meet them as a group and do not discuss the evidence; the sole purpose of the meeting is to answer questions about the court process and develop rapport. In the second session you meet with each victim individually, play their statements for them, and review questions that will be asked in court. The second session takes place the day before a three-day preliminary hearing. At the end of the session (at about 3:00 p.m.) the victims tell you that they remember the details about additional incidents that were not described in the video interview.

- What, if anything, should you do to obtain and document the details of the additional incidents?

### **3. *R v Goodson***

You are prosecuting Mr. Goodson for a fraud against his (now deceased) mother. He attempted to steal his mother's house by filing a forged Deed of Land with the Land Registry Office. You conducted the preliminary hearing and are now preparing the two-week trial in Superior Court. You have one week of prep and the investigating officer has set up interviews with all of your witnesses. The investigator makes notes of each witness interview and gives them to you. One of your witnesses is a family member who will be explaining the history and relationships of the parties. You asked her to bring photographs to the witness interview, and she brings a handful of pictures with her. Another of your witnesses is a health professional who will be testifying as an expert. You previously requested an updated copy of her CV, but she doesn't give it to you until the witness interview.

- How should you disclose the different kinds of information and material gathered during witness interviews?

### **4. *R v Driver***

You are prosecuting Mr. Driver for impaired and over 80. You received the file yesterday afternoon and prepared last night. The trial is set for one day. You expect to call one civilian (who saw the collision and phoned police ) and two police officers. This morning you meet your witnesses at 9:30 a.m. and make sure the civilian has a chance to review her statement. She mentions that, at the time of the incident, she drew a diagram of the collision on a piece of paper that was in her glove box (an envelope). She didn't mention this in her statement, and she has the envelope with her. The diagram shows details about the bad driving that are not in the witness' statement.

- What, if anything, should you do with the diagram?

### **5. *R v Temper***

You are prosecuting Mr. Temper for a domestic assault. Two of your witnesses are independent civilians who overheard and saw a portion of the altercation between Mr. Temper and his girlfriend. Both of them called 9-1-1. Both witnesses reviewed the transcripts of their 9-1-1 calls prior to testifying. Ms. First's 9-1-1 call contains a real-time description of part of the incident. Ms. Second's 9-1-1 call cuts off after only a minute. Both witnesses (who do not know each other) seem to have seen and heard the same incident. Ms. First remembers more details, many of which are contained in the 9-1-1 call that she reviewed prior to testifying. While Ms. Second is in cross-examination she explains that her 9-1-1 call is short because her phone accidentally disconnected, but the police called her right back and she continued to describe the incident as it was unfolding. This additional portion of the 9-1-1 call has never been ordered by the investigating officer or disclosed. It appears that if Ms. Second were given an opportunity to review that 9-1-1 call, she would probably recall more details and help to corroborate the other civilian witness.

- Is there anything you can do to get the additional portion of the 9-1-1 call?

- Even if you could get the call, you're in the middle of the trial and this witness is in the middle of cross. Are you allowed to use the new disclosure?

## 6. *R v Stroganoff*

You are prosecuting Mr. Stroganoff for an indecent act. He committed the indecent act while sitting in his parked car on his driveway. Neighbours called police. Police attended and questioned Mr. Stroganoff, who made incriminating statements. At trial defence has brought a *Charter* application to exclude the statements. The *Charter* application claims that Mr. Stroganoff's s. 10(a) and 10(b) rights were breached because he only speaks Russian, and therefore did not understand the reason for his arrest or the right to counsel warning. The I/O is a patrol officer, Cst. Rookie. On the first day of trial you advise her of the *Charter* issue. On the second morning of trial she tells you that she searched Mr. Stroganoff on RMS and found two prior occurrence reports. On both occasions Mr. Stroganoff is dealing with the police and speaking fluent English. Cst. Rookie gives you one of the reports and says she didn't print off the other one. That afternoon Mr. Stroganoff takes the stand on the *Charter voir dire* and testifies (through an interpreter, of course) that he only speaks Russian, he doesn't speak a word of English. In cross-examination you begin to confront Mr. Stroganoff with one of the prior occurrence reports. Defence objects that it hasn't been disclosed.

- When (if ever) should these reports have been disclosed?

## 7. *R v Sloshed*

You are prosecuting Mr. Sloshed for impaired and over 80. The trial is set for one day. This morning you meet your witnesses at 9:30 a.m. You believe that ASAP will likely be an issue at trial so you speak with the arresting officer Cst. Rookie to clarify a few things. Cst. Rookie explains a five-minute hole in the timeline by telling you that there were several other officers on scene and he was checking in with them. In particular, he consulted with his sergeant, who told confirmed he should go ahead and make a breath demand. Cst. Rookie makes no reference to a sergeant being present or being consulted anywhere in her notes or report, nor does any other officer.

- Should you disclose this information to defence? If so, how?

## 8. *R v Seamus*

You are prosecuting Mr. Seamus for historical domestic assaults. The day before trial you and the investigator meet with the victim Ms. Ancy for trial prep. Ms. Ancy reviews her statement, you tell her about the court process and clarify some facts, and you speak with her about topics that will be covered in examination-in-chief, and that will likely be covered in cross-examination. One issue you tell her will come up is why she disclosed the abuse when she did. You do not tell her how to answer, you simply advise that she should tell the truth but that the question will be asked. After the witness interview finishes you review the investigator's notes. The investigator wrote the sentence, "Coming forward was the right thing to do, not the easy thing to do." One way this could be interpreted is that you told the witness to give this answer if she is

asked why she came forward. However, you are sure that you never told her any such thing, and in fact that nobody ever said those words at any time during the witness interview. You disclose the notes promptly. The next morning at trial defence applies for you to be removed as Crown counsel for misconduct. Defence is using the above sentence as proof that you coached the witness.

- Should the erroneous information about the witness prep meeting have been disclosed?

### ***9. R v Platinum***

You are prosecuting Mr. Platinum for an aggravated assault and robbery. Mr. Platinum was one of a number of young men who taunted and threatened the victim on Facebook before eventually attacking him after school one day. On Facebook Mr. Platinum goes by the name “Ace P. Beretta.” One night during the trial you searched on Google and discovered that all Beretta firearms say “P. Beretta” on the logo. Mr. Platinum takes the stand the next morning, and you begin to cross-examine him. He claims that “Beretta” is the name of his friend’s brother’s dog. During the lunch break you download images of the “P. Beretta” logo, which you use to confront the accused in the afternoon.

- Is there an obligation to disclose information from the public domain like a Google search?
- At what point should the “P. Beretta” information or documents be disclosed?

### ***10. R v Earth and Wind***

You are prosecuting Mr. Earth for a violent crime. The case has been going on for a couple of years. At some point or another you were given an old PSR for Mr. Earth from a prior sentencing. You close your case and defence calls evidence. First Mr. Earth testifies, then he calls Mr. Wind, a co-accused who pled out at an earlier stage. Mr. Wind takes the stand and claims he was solely responsible for the crime and acted alone. He says he is coming forward now because he doesn’t want Mr. Earth to go to jail for years and be separated from his children, who he cares about a great deal. You remember that Mr. Earth’s old PSR explains that Earth’s children were adopted years ago. You confront Mr. Wind in cross-examination. Defence objects that the PSR was never disclosed and accuses the Crown of “misconduct.”

- Did the Crown do anything wrong?
- When should the PSR have been disclosed?