Citation:	R. v. Bily - Excerpt Oral Reasons for Judgment	Date:	20040810
2004 BCPC 0415		File No:	38649-1
		Registry:	Vernon

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

BEVERLY ANNE BILY

RONALD STANLEY BILY

EXCERPT FROM PROCEEDINGS

ORAL REASONS FOR JUDGMENT

OF THE

HONOURABLE JUDGE J. J. THRELFALL

Counsel for the Crown:	P.D. Pool
Counsel for the Defendant:	N. Schabus, articling student
Place of Hearing:	Vernon, B.C.

Date of Hearing: August 10, 2004

Date of Judgment: August 10, 2004

[1] **THE COURT**: Beverley Anne Bily and Ronald Stanley Bily are charged under the ***Prevention of Cruelty to Animals Act*** with one count of failing to act appropriately and thereby permitting an animal to be or continue to be in distress, contrary to Section 24(1) of that **Act**.

[2] At the commencement of trial, counsel brought on an application for a judicial stay based on what is alleged to be an infringement of Section 7 of the ***Charter***. In essence, the accused argue that their right to make full answer and defence has been breached as a result of the failure of Crown to provide a full, complete and timely disclosure of material information that is necessary to allow them to make an educated and informed decision with respect to instructing counsel and preparing their case.

[3] The offence is alleged to have occurred between April 11th, 2003, and June 4th, 2004. A trial date was originally scheduled for May 31st, 2004. Mr. Tessmer was subsequently retained as counsel on April of 2004. He applied for and was granted an adjournment until today's date. Requests for full disclosure were made by letter on June 8th, 2004, over Ms. Schabus' signature. Among other requests, she asked for copies of the appointments of special constables of the Society for the Prevention of Cruelty to Animals personnel involved, copies of the notes of all witnesses, and information concerning the expertise of the witnesses with respect to their special knowledge of Peruvian Pasos, a breed of horse.

[4] On June 17th, 2004, she wrote again indicating that the defendants would be arguing that their Section 8 rights had been breached and alleging that the S.P.C.A. had no authority to enter their premises. She also asked again for the disclosure set out in her letter of June 8th.

[5] It is argued that the defence never received a response from Crown counsel other than some disclosure provided July 14th, 2004, at the trial confirmation hearing, and additional disclosure provided this morning. It is conceded that Crown talked with defence yesterday. There was also a letter filed by defence dated August 9th, 2004, which the defence maintains was faxed to Crown counsel, but Mr. Pool says he never received.

[6] At the trial confirmation hearing a couple of issues were dealt with. One, the presiding judge did not require the Crown to provide further information on various witnesses' expertise with respect to the Peruvian Paso horse, directing rather that this was a matter for trial; secondly, Crown provided the curriculum vitae of one of the vets to be called. It also provided the ***Police Act*** appointments for one of the investigating personnel from the S.P.C.A. as well as a copy of the complaint sheet and twenty pages of notes of the lead investigator. The Crown failed to provide notes or statements of any additional witnesses or an explanation as to whether these notes were available. Crown concedes that it did not comply with Section 657.33 of the ***Criminal Code*** in that it failed to provide the curriculum vitaes of the vets at least thirty days prior to trial.

[7] On the morning of trial Crown provided one page of notes regarding the testimony of an R.C.M.P. officer, information regarding the lost notes of an S.P.C.A. witness named Towell, and an edited version of the complaint sheet. No notes or statements were provided for additional S.P.C.A. personnel, Woodward or Caldwell, who apparently attended the defendants' property with Special Constable Kokoska, the principal investigator. Certainly, some of the problems with

disclosure were occasioned by the summer holidays and the fact that the trial was scheduled in August.

[8] The Supreme Court of Canada in ***Stinchcombe*** dealt with the issue of disclosure. At the time that ***Stinchcombe*** was decided there had been much argument and discussion as to what the obligations were that Crown counsel had to comply with. I am going to read a couple of very brief excerpts from ***Stinchcombe***. At page 13 of the volume provided to me in the defence's book of authorities, and this is the **Canadian Criminal Case** version, 68 C.C.C. (3d) 1, at page 13, paragraph (g):

> There are, however, two additional matters which require further elaboration of the general principles of disclosure outlined above. They are: (1) the timing of disclosure, and (2) what should be disclosed. Some detail with respect to these issues is essential if the duty to disclose is to be meaningful. Moreover, with respect to the second matter, resolution of the dispute over disclosure in this case requires a closer examination of the issue.

[9] And at page 14:

> With respect to what should be disclosed, the general principle to which I have referred is that all relevant information must be disclosed subject to the reviewable discretion of the Crown. The material must include not only that which the Crown intends to introduce into evidence but also that which it does not. No distinction should be made between inculpatory and exculpatory evidence.

[10] And at paragraph (h):

> A special problem arises in respect to witness statements and is specifically raised in this case. There is virtually no disagreement that statements in the possession of the Crown obtained from witnesses it proposes to call should be produced. In some cases the statement will simply be recorded in notes taken by an investigator, usually a police officer. The notes or copies should be produced. If notes do not exist then a "will say" statement, summarizing the anticipated evidence of the witness, should be produced based on the information in the Crown's possession.

[11] And at page 15:

> I am of the opinion that, subject to the discretion to which I have referred above, all statements obtained from persons who have provided relevant information to the authorities should be produced notwithstanding that they are not proposed as Crown witnesses. Where statements are not in existence, other information such as notes should be produced, and, if there are no notes, then in addition to the name, address and occupation of the witness, all information in the possession of the prosecution relating to any relevant evidence that the person could give should be supplied.

[12] I am satisfied that full and timely disclosure has not been complied with. Moreover, Section 657.33 of the **Code** with respect to the expertise of the vets was late in being complied with. The result has been an inability of the defence to properly prepare for trial.

[13] The next issue is what remedy should be ordered. The case could be adjourned or a judicial stay directed. I note that other than the disclosure provided at the trial confirmation hearing on July 14th there was no correspondence or discussion between Crown and defence

until the very eve of trial. It may well be as Crown contends that the S.P.C.A. personnel who attended at the scene cannot provide any other relevant information. That, however, is not the Crown's decision in these circumstances. In fact, on the submissions before me, no one is able to make that decision because nothing with respect to these individuals has been disclosed. The Crown was aware that an issue was raised with respect to the S.P.C.A.'s authority to attend the property. These individuals may well have information relevant to that issue and others. If the Crown was of the view that these witnesses had no relevant information to provide, the defence should have been notified promptly. This matter is over a year old and the original trial date was May 31st, 2004. The Crown's obligation is to provide the information before a plea and the fixing of the trial date. It is difficult to understand why the necessary information or explanations could not have been provided over the last year, certainly if not to Mr. Tessmer to previous counsel.

[14] Requests for disclosure were, as I have indicated, repeatedly made. The issues to be raised at trial were set out by Ms. Schabus in June, who on more than one occasion conveyed to Crown their clients were extremely anxious about the case and that an adjournment was not an acceptable option. The defendants have been put to the expense of retaining counsel and suffering the publicity of a serious and personally damaging allegation. An adjournment will prolong that anxiety and add to their legal costs. In my view, this is one of those cases where an adjournment is not the appropriate remedy. Although, I am mindful of the fact that judicial stays should be directed in only clearest of cases, since it means there will be no trial on the merits, I am of the view that this is one of those cases where a judicial stay is appropriate and I so direct.

[15] **MS. SCHABUS:** Thank you.

(EXCERPT CONCLUDED)