Case Name:

R. v. Chartrand

Between
Her Majesty the Queen, and
Lourdes Chartrand and Kenneth Chartrand

[2003] O.J. No. 4309
Court File No. 99/0999

Ontario Court of Justice
P. Wright J.

August 6, 2003.
(7 paras.)

Charges: Section 5(4) and Section 7(2)(b).

Counsel:

B. Evely, for the Crown.
L. Greenspon and T. Brown, for the accused.

EXTRACT OF INTERIM RULING ON CHARTER APPLICATION

¶ 1 **P. WRIGHT J.**:— This is an Interim Ruling with respect to the procedure to be followed on a Charter Application.

¶ 2 The Defence objects to the calling of viva voce evidence by Crown, as a result of non-compliance with the rules, specifically, non-disclosure of the evidence, which is intended to be called.

¶ 3 The rules of the Court, which I observed earlier are not typically closely followed, are an attempt to regulate and clean up the practices in the Court. Indeed, although the Applicant served the affidavit and factum on the Respondent, it was not filed with the Court within the requisite timeframe. We proceed with the Charter Application, with no objection being taken and that brings us to the objection brought by the Applicant. Specifically, that the Crown has not provided material to complete the record in accordance with the rules.

¶ 4 I can indicate, had the Crown sought leave to file material late, even today, it would have been granted given the lateness in filing by Defence.

¶ 5 What is of concern, is that the Applicant has set out its' position in an affidavit and has now given viva voce evidence, and has been subject to cross-examination. In my view, it would be unfair to permit the Crown, at this point, to call viva voce evidence without having given any notice, even orally, before the commencement of Court today, as to what that evidence was expected to be.

¶ 6 I am mindful that Crown counsel was alerted by way of a letter, asking for the evidence of Mr. Petersen and Mr. Ross, and therefore, I rely upon the rules, the decision in Dumont and to the extent that it is applicable to the decision of the Supreme Court in Stinchcombe, [1991] 3 S.C.R. 326, and the Crown will not be permitted to call viva voce evidence in those circumstances.

¶ 7 Thank You.

P. WRIGHT J.

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