Indexed as:

R. v. Pinnacle Transport Ltd.

Between
Her Majesty the Queen, respondent, and
Pinnacle Transport Ltd. and Jeff Gillies, applicants

[2000] O.J. No. 3681
Information No. 21007949

Ontario Court of Justice
Libman J.

September 26, 2000.
(56 paras.)

Counsel:

Richard H. Shekter, for the applicants.
Donna Armstrong, for the respondent.
Alston Gunness, Provincial Prosecutor, for the respondent.

¶ 1 **LIBMAN J.**:— On 19 January 1999, at approximately 2:00 p.m., Josef Bailey was tragically killed in a motor vehicle accident on the Highway 401 westbound express lanes in the vicinity of Dufferin Street, in the City of Toronto.

¶ 2 The deceased's motor vehicle, a 1998 Hyundai, had been struck by a truck and crushed. The truck, in turn, had been hit by a tractor trailer. This tractor trailer was owned by the corporate defendant, Pinnacle Transport Ltd; the personal defendant, Gillies, was the driver.

¶ 3 Provincial Constable Hollihan was on routine patrol at the time. She arrived at the accident scene at 2:10 p.m. A provincial constable since April, 1998, she was designated on scene as the officer in charge of the investigation. One of the officers assisting her was Senior Constable Wilson, a commercial motor vehicle inspector. The latter has been a police officer for well over twenty years.

¶ 4 During the course of the investigation which followed, a number of witnesses were interviewed. One of them was Frederico Votto. Mr. Votto attempted to assist at the accident scene. He determined that the drivers of the two trucks were not injured, but he was not able to assist the deceased who was trapped inside his automobile. Mr. Votto asked the defendant Gillies what happened. He replied that he had hit potholes on the highway, losing control of his vehicle.

¶ 5 The authorities were also told by Mr. Gillies that he had hit these potholes and that this had caused the accident.

¶ 6 In fact, the day before the accident another motorist had lost control of his vehicle driving over the potholes, and reported the matter to the police. The Ministry of Transportation was notified of the problem and was in the process of dispatching a crew to repair the potholes.

¶ 7 There were five large potholes in the location of the accident. Three of them were clustered together, such that a vehicle would travel over them in a normal driving manner. [See Note 1 below] They measured two feet

wide and three and one-half inches deep. Following the accident they were filled in and repaved.

Note 1: This is depicted in the upper photograph in Exhibit 1, page 2. They also are illustrated in the Accident Reconstruction Report, contained in the Applicants' Memorandum of Argument Respecting Solicitor-Client Costs, Tab 7.

¶ 8 The defendant's truck came to a rest after the collision mounted on top of the north guide-rail where there was a large embankment of snow. [See Note 2 below] When it was removed from the scene, its entire front axle and systems attached to the two front wheels were no longer attached. [See Note 3 below]

Note 2: Exhibit 1, page 9, bottom photograph.
Note 3: See Exhibit 1, page 1, upper photograph.

¶ 9 On 21 January 1999, Provincial Constable Hollihan applied for a search warrant to retrieve numerous vehicle components from the defendant's truck the next day. It had been removed to an outdoor towing compound since the accident.

¶ 10 According to the information, the Pinnacle tractor trailer operated by Gillies was "mechanically unsound and not maintained". As a result, the police were conducting an investigation into the Criminal Code offence of criminal negligence causing death.

¶ 11 The justice of the peace who authorized this search warrant, however, was very seriously mislead by the police. The warrant should never have been issued. Constable Wilson, the senior officer who assisted Hollihan in preparing the information, conceded in cross-examination that no reasonable person could have believed, based on the information known by the police at the time, that the defendant was guilty of the Criminal Code offence which formed the basis of the search warrant application.

¶ 12 Although the information to obtain the search warrant refers to the observations of Mr. Votto, no reference was made to the defendant's statement to this eyewitness (and to the police themselves) that the accident resulted from the Pinnacle truck striking the large potholes.

¶ 13 Particularly egregious is the fact that no mention was made to the justice of the peace concerning the presence of several large potholes in the vicinity of the accident. Neither was it disclosed that there had been a near accident the day before due to these potholes, and that steps were being taken to repair the roadway at the material time.

¶ 14 Instead, the information recites in its concluding paragraph that, as a result of Senior Constable Wilson's "initial observations", there were several deficiencies in the steering axle, including elongated holes where the axle attached to the frame.

¶ 15 The physical piece of evidence upon which the authorities asserted that their case rested upon, the spring assembly leaves, was not mentioned in the list of vehicle components to be searched for. [See Note 4 below]

Note 4: Information to Obtain Search warrant, Appendix "A" [Exhibit 3]. They are shown in Exhibit 1, pages 3-5.

¶ 16 Neither were steps taken by the police to safeguard or preserve these vehicle parts, notwithstanding the focus of the investigation upon the steering axle. The parts in question were left outside in an outdoor pound, in pouring rain for four days, where they were in contact with salt and snow. Wilson also applied grease to the spring leaves, thereby furthering altering its original condition. No mention is made of this in any of the officers' notes or forensic reports. Neither did Constable Wilson record his observation of surface rust and discoloration, which he mentioned for the first time in his testimony.

¶ 17 Further, the police were given the maintenance records for the defendant's truck shortly after the accident. Despite repeated requests by the defence, they were never returned.

¶ 18 Charges of operating an unsafe motor vehicle under the Highway Traffic Act were ultimately brought against the defendants. [See Note 5 below] However, three months before the accident, the defendant's truck was found to be in good condition. In particular, there were no deficiencies noted in its suspension system, including the axle and spring assembly. [See Note 6 below]

Note 5: Pinnacle Transport Ltd. was charged with permitting the operation of an unsafe commercial motor vehicle; Gillies was charged with operating an unsafe commercial motor vehicle. Both offences are contrary to s. 84(1) of the Highway Traffic Act. Mr. Gillies was additionally charged with the s. 107(5) Highway Traffic Act offence of driving a commercial motor vehicle without a prescribed inspection.

Note 6: The report, dated 8 October 1998, was adduced into evidence by the defendants (Exhibit 2).

¶ 19 Constable Hollihan testified that she did not consider that Pinnacle's maintenance records were relevant evidence; Wilson, in turn, offered no explanation as to why the records had not been returned by him to the defence.

¶ 20 Following the completion of the evidence of Constable Wilson, after that of Mr. Votto and Constable Hollihan, the provincial prosecutor, who had only recently been assigned to the case, discontinued the prosecution and invited the court to dismiss the charges.

¶ 21 Mr. Gunness, the provincial prosecutor, is to be commended for this decision, which was eminently proper. However, the discontinuance of a prosecution is a hollow consolation to parties who have had to exonerate themselves, at considerable expence, on charges that ought not to have been laid. It is not a sufficient acknowledgement of the harm done to them. The allegations in question, it must be recalled, sought to attach liability to the defendants for negligent conduct which resulted in the death of Mr. Bailey.

¶ 22 I have concluded that the defendants' rights under the Charter have been flagrantly violated in this case. Their right to make full answer and defence, in particular, was irrevocably harmed and undermined by the actions of the authorities. I am particularly of the view that the community's sense of fair play and decency would be offended by the circumstances of this prosecution.

¶ 23 Notwithstanding the repeated requests for disclosure made by the defence, on 14 January 2000 two days of trial time were set aside for these proceedings (13-14 September 2000). Indeed, the defence continued to press for disclosure even as the trial commenced. The provincial prosecutor's office did not adequately respond to these requests. [See Note 7 below]

Note 7: A brief of transcripts tor each court appearance prior to trial (8 in total) and letters requesting disclosure (9) were filed before me for the purposes of this application. I note that counsel for the defence brought to the attention of the presiding justice of the peace on the defendants first court appearance, on 14 July 1999, that disclosure had not been provided. On 13 July 1999, the defendants formally requested in writing disclosure of "any and all information in the possession of the Provincial Prosecutor or the police and the Ministry of Transportation relating to this matter". The information charging the defendants with the offences before the court had been sworn on 6 July 1999. During the last set date appearance on 14 January 2000, defence counsel stated:

> We do not wish to set a trial date. It's [sic] been our position throughout there's disclosure outstanding and we wish to have dealt with ....

See Transcript of Proceedings, 14 January 2000, p. 3, 11.4-7 [Brief of Transcripts, Tab 8]. Defence counsel repeated this observation in writing in his 3 February 2060 letter to the provincial prosecutor. See Brief of Disclosure Documentation, Tab 8.

¶ 24 The setting of a trial date prior to disclosure being made to the accused is a procedure that ought not to have obtained. See Advisory Committee to the Attorney General on Screening of Criminal Charges, Resolution

Discussions and Disclosure, the Honourable G. Arthur Martin, Chair (Queen's Printer for Ontario, 1993), p. 148.

¶ 25 A clear example of the mischief which flowed from the above in the instant case is illustrated by the forensic report of John Mustard concerning his examination of the leaf springs. This report, which is dated 6 May 1999, and thus completed several months after the trial had already been scheduled, indicates that the fracture surfaces present in the leaf springs and spring hanger contain "some degree of pre-existing cracking". [See Note 8 below] On 12 May 1999, Constable Hollihan followed this up, and spoke to Mr. Mustard, asking him whether Gillies would have been aware of the existence of the alleged cracks. Mr. Mustard replied that he "couldn't say" whether the crack would have been visible before the accident. This comment was not recorded in the officer's notes, nor included in the subsequent forensic report. [See Note 9 below] It only came to the attention of the defence through its disclosure request for the entire case file of the witness - in this case; Mr. Mustard's case contact log. [See Note 10 below]

Note 8: The report has been filed by the Applicants in their Memorandum of Argument, Tab 5.

Note 9: An "additional" forensic report was done on 19 January 2000. See Memorandum of Argument, Tab 6.

Note 10: "Memorandum of Argument, Tab 2.

¶ 26 The Crown's obligation to disclose is a continuing one: R. v. Stinchcombe (1991), 68 C.C.C. (3d) 1 (S.C.C.). Moreover, it is important that investigations unearth as much evidence as possible, since it is antithetical to the administration of justice to proceed on the basis that the police should only search for evidence which incriminates a chosen suspect: Canadian Oxy Chemicals Ltd. v. Canada (Attorney General) (1999), 133 C.C.C. (3d) 426 (S.C.C.) at 435. Evidence which the Crown discovers in this manner must be preserved and disclosed to the accused. As the Martin Commission pointed out at p. 146, the "fruits of the investigation" which are in possession of the Crown are not the property of the Crown for use in securing a conviction, but, rather "are the property of the public to ensure that justice is done".

¶ 27 It remains to consider whether an award of costs would be appropriate, having regard to the violations as I have found them of the defendants' Charter rights.

¶ 28 The provincial offences court has the authority to make an order for costs against the Crown as a remedy for, inter alia, a Charter breach of non-disclosure. See R. v. 974649 Ontario Inc. (1998), 130 C.C.C. (3d) 1 (Ont.C.A.) at 17; leave to appeal to S.C.C. granted, [1999] S.C.C.A. No. 22, 137 C.C.C. (3d) v.

¶ 29 While such a remedy involves the court acting under s. 24(1) of the Charter of Rights, I do not consider that the notice of constitutional question provisions under s. 109 of the Courts of Justice Act, R.S.O. 1990, c. C.43, prohibit the awarding of costs in the circumstances of this case.

¶ 30 The requirement under s. 109 is designed to ensure that the federal and provincial Attorneys General are given proper notice where the constitutional validity or applicability of any law is sought to be challenged, and a remedy is claimed under s. 24(1) of the Charter in relation to an act or omission of the Government of Canada or the Government of Ontario. This provision is procedural in nature; it does not affect substantive rights. In particular, it does not preclude a party from ultimately securing relief under the Charter of Rights: R. v. Stranger (1983), 7 C.C.C. (3d) 337 (Alta.C.A.); McGillivary v. Manitoba (1989), 51 C.C.C. (3d) 60 (Man.Q.B.); R. v. Klemenic (1985), 36 M.V.R. 50 (Ont. Dist. Ct.).

¶ 31 Hence, in R. v. M.(N.B.) (1998), 123 C.C.C. (3d) 521 (B.C.C.A.) it was held that the Constitutional Question Act (B.C.) does not apply where the accused applies under s. 24(1) of the Charter for a stay of proceedings on the basis that the loss of forensic evidence violated his right to make full answer and defence.

¶ 32 Applications or motions may be brought without notice in provincial offences proceedings: R.R.O. 1990, Reg. 200, s. 7(7). I note in this regard that in R. v. 974649 Inc, supra, the Court of Appeal was satisfied that the justice of the peace, acting as a trial judge, had the jurisdiction to order the Crown to pay costs to the

accused incurred on the disclosure motion. The issue of notice does not appear to have been a relevant consideration.

¶ 33 Neither does the recent case of R. v. Mitchell, [2000] O.J. No. 735 (C.J.) support the respondent's reliance on the notice provisions under s. 109(1). There the justice of the peace was found on appeal to have erroneously invited the defendant (and others) to initiate motions before him to stay proceedings on account of unreasonable delay. That is not the situation here.

¶ 34 In brief, I cannot accept the proposition that precisely the same conduct which gives rise to a Charter remedy by a court of competent jurisdiction, in one forum, should be barred in the forum of provincial offences proceedings, merely for procedural reasons.

¶ 35 In any event, in this case the conduct establishing the charter violations was substantiated during the viva voce testimony of the prosecution's witnesses. There is no good reason to preclude the defendants from pursuing their constitutional remedies in such circumstances.

¶ 36 An award of costs in a criminal proceeding is a rare and exceptional remedy. Costs do not automatically follow from a finding that there has been an infringement of the defendants' Charter rights: R. v. Cole (2000), 143 C.C.C. (3d) 417 (N.S.C.A.); R. v. Pawlowski (1993), 79 C.C.C. (3d) 353 (Ont. C.A.), leave to appeal to S.C.C. refused, [1993] S.C.C.A. No. 187, 83 C.C.C. (3d) vi; R. v. Pang (1994), 95 C.C.C. (3d) 60 (Alta. C.A.); R. v. Robinson (1999), 142 C.C.C. (3d) 303 (Alta. C.A.)

¶ 37 In R. v. Jedynack (1994), 16 O.R. (3d) 612 (Gen. Div.) at 619-620, Goodearle J. provided the following general guidelines as to when it would be appropriate for a court of competent jurisdiction to award costs:

> ... such an order should only be made in circumstances where:
>
> (1) The acts or failures to act, collectively amount to something well beyond inadvertent or careless failure to discharge a duty;
> (2) Rather the conduct would have to fall within the term of recklessness, conscious indifference to duty, or whether conscious or otherwise, a marked and unacceptable departure from the unusual and reasonable standards of prosecution;
> (3) Such conduct must be seen to have resulted in an indisputable and clearly measurable infringement or denial of a right;
> (4) Where the costs order is intended to ensure compliance with an order or show disapproval for conduct which resulted in serious prejudice to the accused it should, as well, be founded in circumstances of clear and obvious compensatory need.
>
> Nothing even close to a standard of perfection should be imposed on prosecutors who, in this day and age, are overburdened with work and, as was the case here, often largely dependent upon outside resources over which they have little daily control in the development of their cases, which many times impact on the discharge or the manner in which they are able to discharge their duties.

¶ 38 These guidelines were recently applied by Stayshyn J. in R. v. Greganti (2000), 142 C.C.C. (3d) 77 (Ont. S.C.J.). In that case, a finding of "gross misconduct", arising out of the withholding of material evidence by the police, for which the Crown in law was liable, resulted in the Crown being held responsible for the total fees and disbursements claimed by the defence.

¶ 39 With respect to the manner in which costs were assessed, Stayshyn J. held that it was not the function of the court to scrutinize a solicitor's account item by item, and to analyze the necessity of the services or the lawyers in attendance or rates, the particular nature of disbursements and other relevant matters. Instead, a pragmatic approach should be taken, based upon the material filed, counsels, submissions, the experience of the presiding judge, and the importance and seriousness of the charges.

¶ 40 Having regard to the gross misconduct by the police in withholding material evidence, and the fees and disbursements which were fair, reasonable and necessary, Stayshyn J. awarded costs in the amount of $116,085.42. [See Note 11 below]

Note 11: The memorandum of costs submitted by counsel is reproduced in the judgment. It includes counsel fees, disbursements and GST for the preliminary hearing, trial preparation and abuse of process application trial preparation.

¶ 41 A similar procedure was followed by MacKenzie J. in R. v. Saplys, [1999] O.J. No. 4570 (S.C.J.) where a bill of costs was submitted to the court covering a fixed number of hearing days and the corresponding preparation time. [See Note 12 below]

Note 12: The parties in this case were in agreement that costs should be fixed, but were opposed as to which of the pre-trial motions ought to be covered by the order.

¶ 42 Here, the defence has submitted a bill of costs, and supporting affidavit material, setting out its expenses incurred in trial preparation, correspondence, court attendances and related preparation excluding trial, attendance at trial, costs submissions and preparation, disbursements and GST. The total fees and disbursements, including GST, are $49,046.21. For ease of reference, the bill of costs is set out in Appendix "A". [See Note 13 below]

Note 13: It appears in the Memorandum of Argument, Tab 3.

¶ 43 The Crown's position, as I understand it, is that the application for costs ought not to be made, principally due to the notice requirement provisions set out in s. 109 of the Courts of Justice Act. I have already given my reasons for rejecting this submission.

¶ 44 In the adjournment from 14 September to 26 September for the purposes of this costs application, the Crown's position remains that costs should not be awarded. While it was provided with a copy of the defendants, bill of costs, and supporting materials, the Crown does not appear to challenge the quantum of the order. Ms. Armstrong, the Crown Attorney appearing with the provincial prosecutor on the costs application return date, fairly took no issue with the particulars of the bill of costs.

¶ 45 There is authority for ordering costs on a solicitor and client basis in criminal cases due to serious misconduct giving rise to Charter violations. See, for example, R. v. Carlini Bros. Body Shop Ltd. (1992), 10 O.R. (3d) 651 (Gen. Div.) at 669; R. v. Saplys, [1999] O.J. No. 393 (Gen. Div.) at para 28 [See Note 14 below]; R. v. Greganti, supra, p. 82; R. v. Pendrak, [2000] A.J. No. 758 (Prov. Ct.) at para 3.

Note 14: This is the initial ruling in the case, staying the charges and ordering costs against the Crown. The name of the court was changed prior to the ruling referred to in paragraph 41 of these reasons.

¶ 46 These cases appear to apply the civil case principle that fixing costs as between parties on the solicitor and client scale is intended to be complete indemnification for all costs (fees and disbursements) reasonably incurred in the course of prosecuting or defending the proceeding: Apotex Inc. v. Egis Pharmaceuticals (1991), 4 O.R. (3d) 321 (Gen. Div.) at 325.

¶ 47 Awarding costs between parties on the solicitor and client scale permits the court, as Henry J. explained, to show its disapproval of conduct that is "oppressive or contumelious": Apotex Inc., supra. Failure to make disclosure of information "that would reveal the obvious", and thus result in injustice, exemplifies such conduct. See Condon v. Muskoka (District Municipality), [1997] O.J. No. 2537 (Gen. Div.) at paras 12-13.

¶ 48 The trial judge, who has the advantage of seeing the evidence unfold, and the evidence develop by examination or cross-examination, is in a "uniquely favourable position to render a just costs award": Khazzaka (c.o.b. E.S.M. Auto Body) v. Commercial Union Assurance Co. of Canada, [1999] O.J. No. 2591 (S.C.J.) at para 15.

¶ 49 In a criminal case, the court is required to conduct a separate inquiry to determine whether the additional remedy of costs is justified: R. v. Cole, supra. p. 439. This entails consideration of the guidelines set out in R. v. Jedynack, supra. With respect to the question as to whether costs should be fixed by the presiding judge, as opposed to referring the matter for assessment, the following remarks of Morden A.C.J.O., for the court, in Murano v. Bank of Montreal (1998), 41 O.R. (3d) 222 (C.A.) at 245, are instructive:

> (1) A judge should not fix costs on his or her own motion. If a judge is minded to fix costs, or if one party asks the court to do so, the parties should be given the opportunity to make submissions on whether costs should be fixed.
> (2) With due respect to the contrary view expressed by Henry J. in Apotex Inc. v. Egis Pharmaceuticals (1991), 4 O.R. (3d) 321 at p. 322, 37 C.P.R. (3d) 335 (Gen. Div.), I do not think that a judge has an unfettered discretion to fix costs. The power should only be resorted to when the judge, having received the parties, submissions, is satisfied that he or she is in a position to do procedural and substantive justice in fixing the costs instead of directing that they be assessed by an assessment officer.
> (3) Having decided to fix costs, the judge should, of course, conduct an appropriate hearing on the question of the amount to be fixed. Depending on the circumstances, this could properly take the form of the receipt of written submissions from the parties.

¶ 50 Morden A.C.J.O. went on to observe at p. 250 that the main advantage of the fixing procedure is its expedition, that is, the avoidance of delay in the determination of the costs part of the proceeding. However, this should not be "bought at the price of a less than reasonable procedure". Where a careful review by a judge is too time consuming, then the proper course is to refer the costs to assessment. [See Note 15 below]

Note 15: In R. v. Saplys, [1999] O.J. No. 393 (Gen. Div.) at para 28, MacKenzie J. adverted to this issue, inviting the parties to make further written submissions on the issue of whether the costs "in any event should be fixed by the court or referred for assessment".

¶ 51 Applying the guidelines and principles above to the case at bar, I conclude that there was gross misconduct on the part of the authorities. The police violated the defendants' Charter rights to such an extent that their ability to make full answer and defence was rendered meaningless. A search warrant, which is a highly intrusive investigative instrument, was obtained by misleading a judicial officer. The prosecutor, in turn, despite repeated requests for disclosure, persisted in advancing a "tunnel vision" position with respect to the existence of the potholes at the accident scene and the condition of the highway. Neither did it materially assist the defendant in having the maintenance records returned from the police so that they could be presented in court. The effect of this lack of disclosure has been that the defence was precluded from making meaningful and informed decisions prior to arraignment and throughout the proceedings. Such an approach is not appropriate on the part of the prosecutor: see The Commission on Proceedings Involving Guy Paul Morin: Report, Vol. I (Toronto: Ministry of the Attorney General, 1998), per the Honourable F. Kaufman at pp. 479-482.

¶ 52 In these circumstances, the court has the duty, in my respectful opinion, to denounce in the clearest of terms such misconduct, which has led to breaches of the defendants' rights under the Charter of Rights. Anything less would be to countenance the disrepute which has been done to the administration of justice.

¶ 53 This is a case, then, where there has been an indisputable and clearly measurable infringement or denial of a right. There are circumstances of clear and obvious compensatory need.

¶ 54 Taking a "pragmatic approach" to the materials filed by the applicants, as outlined in R. v. Greganti, supra, p. 81, there is no good reason to consider the solicitor's account excessive or improper. I note that it reflects the fees and disbursements claimed on behalf of two defendants, on serious charges, which could have had disastrous consequences on their livelihood. It comprises the work product of four solicitors, the most senior of whom has almost twenty-five years experience at the bar; it is calculated at a rate consistent with that charged by lawyers of comparable experience in the City of Toronto. [See Note 16 below] Further, there have been eight appearances in court prior to trial, including a pretrial hearing, all of which were attended by counsel, and two days of trial time where senior and junior counsel were both present, along with their expert witness.

Note 16: Memorandum of Argument, Tab 4, Affidavit of Anna Casemore, para 4.

¶ 55 Hence, the bill of costs appears to me to be fair, reasonable and necessary. I am also satisfied that the court is in a position to do procedural and substantive justice in fixing costs, and that there is no need to refer the matter for assessment.

¶ 56 In the result, I find the Crown is responsible for the total tees and disbursements, including GST, as claimed by the defence and set out above. Accordingly, there will be an order for costs against the Crown in the amount of $49,046.21.

LIBMAN J.

* * * * *

APPENDIX "A"

Court File No. 48159999921007948-00

ONTARIO COURT OF JUSTICE
(Toronto Region)

Between:

Her Majesty the Queen

and

Pinnacle Transport Ltd. and Jeff Gillies

Defendants

BILL OF COSTS OF THE DEFENDANTS

1. PREPARATION FOR TRIAL

a. Disclosure Organization

Richard Shekter	1.6 hours at $ 385.00 per hour	$ 616.00
Patrick Brown	6.8 hours at $ 185.00 per hour	1,258.00
Anna Casemore	1.2 hours at $ 125.00 per hour	150.00
Richard Frost	0.8 hours at $ 150.00 per hour	120.00

b. Brief Organization and Related Materials

Richard Shekter	5.1 hours at $ 385.00 per hour	$ 1,963.50

Anna Casemore	6.5 hours at $ 125.00 per hour	812.50

c. Legal Research

Richard Shekter	3.6 hours at $ 385.00 per hour	$ 1,386.00
Patrick Brown	1.2 hours at $ 185.00 per hour	222.00
Anna Casemore	4.2 hours at $ 125.00 per hour	525.00

d. Witness Interviews and Related Preparation

Richard Shekter 15.6 hours at $ 385.00 per hour $ 6,006.00 Anna Casemore 2.6 hours at $ 125.00 per hour 325.00

e. Document Organization and Preparation including Subpoenas, Notices, obtaining Transcripts etc.

Richard Shekter	0.6 hours at $ 385.00 per hour	$ 231.00
Patrick Brown	0.1 hours at $ 185.00 per hour	18.50
Richard Frost	0.1 hours at $ 150.00 per hour	15.00
Anna Casemore	13.1 hours at $ 125.00 per hour	1,637.50

f. Investigation

Richard Shekter	3.3 hours at $ 385.00 per hour	$1,270.50
Patrick Brown	1.9 hours at $ 185.00 per hour	351.50
Anna Casemore	0.5 hours at $ 125.00 per hour	62.50

2. CORRESPONDENCE

Richard Frost	0.3 hours at $ 150.00 per hour	$ 45.00

3. COURT ATTENDANCES AND RELATED PREPARATION EXCLUDING TRIAL

a) July 14, 1999 - Set Date and Disclosure Hearing

Patrick Brown	2.9 hours at $ 185.00 per hour	$ 536.50

b) August 4, 1999 - Set Date and Disclosure Hearing

Patrick Brown	2.1 hours at $ 185.00 per hour	388.50

c) August 20, 1999 - Set Date and Disclosure Hearing

Richard Shekter	0.2 hours at $ 385.00 per hour	$ 77.00
Patrick Brown	2.1 hours at $ 185.00 per hour	388.50

d) September 10, 1999 - Set Date and Disclosure Hearing

Patrick Brown	2.4 hours at $ 185.00 per hour	444.00

e) October 1, 1999 - Set Date and Disclosure Hearing

Patrick Brown	2.2 hours at $ 185.00 per hour	407.00

f) October 22, 1999 - Set Date and Disclosure Hearing

Patrick Brown	1.5 hours at $ 185 per hour	277.50

g) October 29, 1999 - Set Date and Disclosure Hearing

Richard Shekter Edward Chatterton 2.7 hours at $ 130.00 per hour		351.00

h) January 14, 2000 - Pre-trial Hearing

Richard Shekter	0.5 hours at $ 385.00 per hour	$ 192.50
Richard Frost	5.5 hours at $ 150.00 per hour	825.00

4. ATTENDANCE AT TRIAL - September 13 and 14, 2000, Room 210, The East Mall

Richard Shekter	2 days at $ 3,850.00 per day	$ 7,700.00
Anna Casemore	2 days at $ 1,250.00 per day	2,500.00

5. COSTS SUBMISSIONS AND PREPARATION

Richard Shekter	12.0 hours at $ 385.00 per hour	$ 4,620.00
Anna Casemore	14.0 hours at $ 125.00 per hour	1,750.00

Total Fees	$ 37,473.00	
Total GST at 7%	2,623.11	
Total Fees with GST		$ 40,096.11

DISBURSEMENTS

Paid to photocopies	$ 995.00	
Paid to telecopier	83.50	
Paid to postage	12.33	
Paid to transcripts	197.20	
Paid to binding	197.70	
Paid to courier	92.00	
Paid to Barry Raftery, P. Eng., forensic engineer	6,321.31	
Paid to Rental Car	135.54	
Service of Subpoenas	330.00	
Total Disbursements	$ 8,364.58	
GST at 7%	585.52	
Total Disbursements with GST		$ 8,950.10
TOTAL FEES AND DISBURSEMENTS WITH GST		$ 49,0546.21

Date: September 19, 2000

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