Citation: *R.* v. *Wing and Richard*, 2009 YKTC 113 Date: 20091019
Docket: 08-11023
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

REGINA

v.
William Michael Chow Wing
and
Graham Lawrence Richard

Appearances:
Bonnie Macdonald — Counsel for Crown
Edward J. Horembala — Counsel for William Michael Chow Wing
Richard Fowler — Counsel for Graham Lawrence Richard

RULING ON *VOIR DIRE*

[1] Graham Richard and William Wing are jointly charged with possession of cocaine and marijuana for the purposes of trafficking. The charges follow the execution of a search warrant, granted August 10, 2008 pursuant to s. 11 of the *Controlled Drugs and Substances Act,* S.C. 1996, C.19, in relation to Mr. Wing's residence located at 552 Harper Street in Dawson City, Yukon.

[2] On August 10, 2009, counsel for Mr. Wing filed a Notice of Application, seeking the following: the search warrant be quashed; the evidence seized as a result of the search be excluded; leave to cross-examine the affiant; a stay of proceedings and/or exclusion of evidence pursuant to sections 24(1) and (2) of the *Charter*; and removal or variation of the sealing orders.

[3] At the date set for the hearing of the application, counsel for Mr. Wing indicated that he would only be proceeding with the application to quash the

search warrant on the basis that the information to obtain is, on its face, insufficient to support the search warrant, thereby breaching of Mr. Wing's s. 8 *Charter* right to be secure against unreasonable search and seizure. Counsel for Mr. Wing further seeks exclusion of any evidence obtained in the search, pursuant to section 24(2) of the *Charter*.

[4] It should be noted that the application is advanced only in relation to Mr. Wing. Counsel for Mr. Richard conceded that his client, who was not a resident of the premises searched, does not have standing to challenge the validity of that search. However, counsel for Mr. Richard sought, and was granted in an earlier ruling, leave to make submissions with respect to Mr. Wing's application.

Facts:

[5] The evidentiary basis for the application consists of the information to obtain, the search warrant, and a number of photographs depicting the house and surrounding area.

[6] The information to obtain is a brief, four-page document, detailing information received from two anonymous sources, one of proven reliability and one of unknown reliability. Information contained in two paragraphs of the document has been edited to protect the identity of Source A, the informant of known reliability.

[7] On August 8, 2008, Source A, an individual with a history of having provided information to the Dawson City RCMP, leading to the arrest and conviction of several persons on drug related charges, advised the police that a male named "Willie", who lives in a white coloured house by the Dawson City Health Centre and who drives a white Ford truck, had a large quantity of cocaine and other unknown drugs in his home for sale. There appears to have been no physical description provided of "Willie". In August 2008, Source A further advised that he or she had witnessed drug transactions between "Willie" and

another person(s). There is no mention of when or where these transactions took place.

[8] Source B, an individual of unknown reliability, provided information on June 3, 2008 indicating that Willie Wing was in possession of a large quantity of MDMA, commonly known as Ecstasy.

[9] Investigatory attempts to corroborate the information received are limited to the Informant receiving information from another officer that William Michael Chow Wing resides at a 552 Harper Street, a white coloured house within a one-block radius of the Dawson City Health Centre, and drives a white pick-up truck with Yukon licence plate "WW". The Informant then conducted a criminal records check on Mr. Wing, indicating no criminal record, and confirmed Mr. Wing's ownership of a white 2005 Ford pick-up truck with Yukon licence "WW" through a Motor Vehicle Branch search.

[10] The photographs filed as Exhibit 2 on the *voir dire* depict the house located at 552 Harper Street, Mr. Wing's white Ford pick-up truck, as well as some of the buildings in the surrounding area.

The Issues:

[11] The issues are:

1. Has the Applicant's right to be secure against unreasonable search and seizure, pursuant to s. 8 of the *Charter*, been violated on the basis the information to obtain the search warrant is insufficient on its face?

2. If so, should the evidence obtained as a result of the search be excluded from the trial pursuant to s. 24(2) of the *Charter*?

1. Section 8 Issue: Sufficiency of the Information to Obtain

Standard of Review:

[12] In assessing the sufficiency of the information to obtain to support the issuance of the search warrant, my task as the reviewing judge is not to determine whether I would have granted the search warrant had I been the authorizing judge. As noted by the Supreme Court of Canada in *R.* v*. Garofoli,* [1990] 2 S.C.R. 1421 at para. 56:

> The reviewing judge does not substitute his or her view for that of the authorizing judge. If, based on the record which was before the authorizing judge as amplified on the review, the reviewing judge concludes that the authorizing judge could have granted the authorization, then he or she should not interfere.

[13] In this particular case, the record, as put before me, has been edited by the Crown to protect the identity of an informant such that I have not seen the entirety of the information put before the authorizing judge. However, the law is equally clear that the determination as to sufficiency must be made on the basis of the information to obtain as edited. As noted by the Ontario Court of Appeal in *Canada (Commissioner of Competition)* v*. Falconbridge Ltd*., [2003] O.J. No. 1563 at para. 23:

> The facial sufficiency of the informations must be assessed on the basis of these edited informations. If the informations have been so heavily edited that the reviewing judge cannot find that they are sufficient, and if the state refuses to reconsider the editing, the informations and warrant would have to be set aside.

[14] In effect, the application before me is to be decided as if there had not been further information before the authorizing judge.

The Reasonable Grounds Test:

[15] The search warrant for Mr. Wing's residence was sought and granted pursuant to s. 11 of the *Controlled Drugs and Substances Act*, *supra,* which reads, in part:

> 11. (1) A justice who, on ex parte application, is satisfied by information on oath that there are reasonable grounds to believe that
>
> (a) a controlled substance or precursor in respect of which this Act has been contravened,
>
> (b) any thing in which a controlled substance or precursor referred to in paragraph (a) is contained or concealed,
>
> (c) offence-related property, or
>
> (d) any thing that will afford evidence in respect of an offence under this Act or an offence, in whole or in part in relation to a contravention of this Act, under section 354 or 462.31 of the *Criminal Code*

is in a place may, at any time, issue a warrant authorizing a peace officer, at any time, to search the place for any such controlled substance, precursor, property or thing and to seize it.

[16] In *R.* v*. Law*, 2002 B.C.C.A. 594, the B.C. Court of Appeal equated the test for a search warrant under s. 11 of the *Controlled Drugs and Substances Act* with that required under s. 487(1) of the *Criminal Code,* notwithstanding the different wording, and went on to say at para. 7:

> So, whether expressed as "reasonable grounds to believe," "reasonable belief," "reasonable probability," or "probable cause," the question is whether the evidence is sufficient to found what the Supreme Court called a "credibly-based probability" in this oft-cited passage from *Hunter* v*. Southam Inc*., [1984] 2 S.C.R. 145 at 167:
>
> > The state's interest in detecting and preventing crime begins to prevail over the individual's interest in being left alone at the point where credibly-based probability replaces suspicion.

[17] A number of cases have considered the reasonable grounds or credibly-based probability standard, within the context of tips from informants. The leading case is that of *R.* v*. Debot*, [1989] 2 S.C.R. 1140, which concerned a warrantless search of an accused pursuant to information received from an informant regarding a future drug transaction. Wilson J. sets out what have commonly become known as the three C's (namely compelling, credible, and corroborated) as considerations to be applied in assessing information received from informants at para. 53:

> In my view, there are at least three concerns to be addressed in weighing evidence relied on by the police to justify a warrantless search. First, was the information predicting the commission of a criminal offence compelling? Second, where that information was based on a "tip" originating from a source outside the police, was the source credible? Finally, was the information corroborated by police investigation prior to making the decision to conduct the search? I do not suggest that each of these factors forms a separate test. Rather, I concur with Martin J.A.'s view that the "totality of the circumstances" must meet the standard of reasonableness. Weaknesses in one area may, to some extent, be compensated by strengths in the other two.

[18] In *Garofoli*, *supra*, at para. 63, the Supreme Court noted:

> Moreover, I conclude that the following propositions can be regarded as having been accepted by this court in *DeBot* and *Greffe*:
>
> > (i) Hearsay statements of an informant can provide reasonable and probable grounds to justify a search. However, evidence of a tip from an informer, by itself, is insufficient to establish reasonable and probable grounds.
> >
> > (ii) The reliability of the tip is to be assessed by recourse to "the totality of the circumstances". There is no formulaic test as to what this entails. Rather the court must look to a variety of factors, including:
> >
> > > (a) the degree of detail of the "tip";
> > >
> > > (b) the informer's source of knowledge; and

(c) indicia of the informer's reliability, such as past performance or confirmation from other investigative sources.

(iii) The results of the search cannot, ex post facto, provide evidence of reliability of the information.

Application to the Case at Bar:

[19] Counsel for Mr. Wing argues that the information to obtain in this case is deficient in meeting the reasonable grounds standard, noting it to be devoid of essential factual information linking the limited information provided by the informants to the house to be searched. Crown counsel argues that the information to obtain is sufficient when viewed in its totality.

[20] The information provided by the informants can be summarized as follows:

1. Paragraph 5: On August 8, 2008, Source A advised that a male named "Willie" had a large quantity of cocaine and other unknown drugs for sale in his residence described as a white house near the Dawson City Health Centre. "Willie" is noted to drive a white Ford pick-up truck;

2. Paragraphs 6 and 11: On an unspecified date in August of 2008, Source A advised that he or she had observed transactions between "Willie" and another person(s) for the purchase and sale of cocaine; and

3. Paragraph 10: On June 3rd, 2008, Source B advised that Willie Wing was in possession of a large quantity of Ecstasy.

[21] In assessing whether the information provided by the informants can be said to be compelling, there are two significant concerns. Firstly, there is a decided lack of detail in the tips. The white house is not described beyond its colour and an unspecified proximity to the Dawson City Health Centre. Obvious details, such as the colour of trim, whether the house is one story or two, a description of neighbouring houses, or how the house is situated in relation to the Health Centre, which could assist in identifying the particular white house are

noticeably absent. It should also be noted, that the photos clearly depict at least one and possibly two other white houses in the immediate vicinity.

[22] Similarly, there is a lack of information to assist in identifying "Willie". There is no physical description, such as height, apparent age, hair colour, eye colour or ethnic background, nor is there any other identifying information such as occupation or known associates. The one distinguishing feature noted is the fact that "Willie" drives a big white Ford pick-up truck; however, again, there are several unique, distinguishing features with respect to Mr. Wing's truck, as evident from the photographs, which are absent from the tip. These include flames on the side of the vehicle, a vanity licence plate with the initials "WW", and the website address for a Dawson City hotel clearly stenciled on the tailgate of the vehicle.

[23] This lack of detail does not suggest a high degree of personal knowledge in the informant, Source A.

[24] While it could be said that the co-occurrence of a white house, a white truck, and an individual with the name William, for whom "Willie" could be a nickname, is highly suspicious, the lack of specificity in the information is such that the information is not elevated beyond mere suspicion.

[25] The second, and in my view most important, concern with respect to the issue of whether the tip information can be characterized as compelling, is the question of the originating source of the information provided.

[26] In *R.* v. *Greffe*, [1990] 1 S.C.R. 755, the Supreme Court noted at para. 24:

> There must be an independent inquiry into the source and reliability of the confidential information in order to determine whether, in the totality of the circumstances, there existed reasonable and probable grounds to believe the appellant was carrying the heroin or whether there was mere suspicion. Relevant to this inquiry is whether the information received contains sufficient detail to ensure that it is based on more than mere rumour or gossip, whether the source or means of knowledge is revealed

> and whether there is any indicia of the reliability of the source of the information, such as supplying reliable information in the past.

[27] There is absolutely no indication before me as to the origin of Source A's knowledge of any of the information contained in paragraph 5 of the information to obtain. There is nothing contained therein to indicate personal or first-hand knowledge. Conversely, there is absolutely no information to negate the possibility that the information was based on mere hearsay, rumour, or gossip. The same can be said of the very limited information provided by Source B in paragraph 10.

[28] Absent a clear indication of the origin of the information, there is no way to meaningfully assess the reliability of the information provided.

[29] It should be noted that the information contained in paragraphs 6 and 11 does at least suggest direct, first-hand knowledge on the part of Source A; however, as there is no indication of when and where the transactions occurred, the information lacks both the temporal connection and the connection to the subject house which would make the information compelling.

[30] Turning to informant credibility, Source B is noted to be an informant of unknown reliability. This coupled with the lack of detail in Source B's tip, and the fact the tip is of unknown origin, renders the information provided by Source B to be of little to no weight or value.

[31] With respect to Source A, paragraph 4 of the information to obtain does detail Source A's history of involvement providing information to the RCMP, including information leading to arrests and convictions for drug offences, such that the record does support the conclusion that Source A is a reliable informant. However, as was aptly pointed out by counsel for Mr. Richard, the reliability of an informant who passes on gossip does not, in turn, make that gossip reliable information.

[32] The final of the three C's to be assessed in determining sufficiency is that of corroboration. In *Debot*, *supra,* the Supreme Court elaborated on this requirement by saying at para. 63:

> In my opinion, it should not be necessary for the police to confirm each detail in an informant's tip, so long as the sequence of events actually observed conforms sufficiently to the anticipated pattern to remove the possibility of innocent coincidence.

[33] In this case, the steps taken by the police to corroborate the tip include locating a white house with a white truck parked outside within one block of the Dawson City Health Centre. However, no mention is made of the total number of white houses or white trucks within a particular perimeter around the Health Centre, even though the photographs filed as Exhibit 2 clearly show at least one, and possibly two, other white houses in the vicinity. Furthermore, no explanation is given as to why the police single out this particular house, though perhaps one could assume selection had something to do with the white truck also located at the residence, which the police were able to confirm was registered to Mr. Wing through a motor vehicle search.

[34] The efforts at corroboration, however, also create some confusion as Cst. Hutton describes Mr. Wing's address as 552 Harper Street, while the motor vehicle search lists Mr. Wing's address as the intersection of Eighth Avenue and Harper Street. No explanation is offered to explain the apparent disparity, not even to explain whether these two locations may be alternate descriptions of the same location.

[35] Lastly, the information intended to corroborate the tip includes a criminal records check of Mr. Wing indicating no criminal record, and a physical description of Mr. Wing. Neither of these adds anything of value to the strength of the tip, particularly when one considers that Source A failed to offer any physical description of "Willie".

[36] Counsel for Mr. Wing argues that the efforts of the police in this case do not amount to corroboration as they did little more than obtain what can be described as public information. *Hutchison's Canadian Search Warrant Manual 2005* (Toronto: Thomson Carswell, 2004) at 123, notes:

> Corroboration in this context must be confirmation of something more than innocent details (or publicly available information) in the context of an anonymous tip. For example, if the police received a tip that John Smith would be traveling by plane to Toronto on a particular flight and that he would have drugs with him, it would not be enough to confirm that such a passenger was on the flight. There must be confirmation of something more than innocent facts which might be readily known. This is not to say that there must be other directly inculpatory evidence, but it does mean that something beyond superficial confirmation is needed. The question is whether the police confirmation is sufficient to remove or displace the possibility of innocent coincidence, mistake or fabrication.

[37] Crown counsel argues that the police corroborated everything they could corroborate from the tip, noting that they could not corroborate the presence of drugs in the home without a search warrant.

[38] In my view, the investigative efforts of the police in this case were not 'sufficient to remove or displace the possibility of innocent coincidence, mistake or fabrication'.

[39] Rather it appears that no more than minimal investigatory steps were taken before seeking judicial authorization for the search. No efforts appear to have been made to ascertain the source or origin of Source A's information. No efforts appear to have been made to elicit further detail from Source A to narrow the possibilities and minimize the potential for coincidence. No efforts appear to have been made to confirm with Source A that the location the police apparently believed to be most consistent with the tip was indeed the location referred to by Source A.

[40] Much of the information collected could have been obtained by anyone driving past the residence. Furthermore, the information obtained from the Motor Vehicles Branch, while not generally accessible to the general public, is

information which, nonetheless, is easily accessed by several agencies including the police. This is not to say that the police ought not to haven taken these investigative steps; it is simply to say that these steps alone were insufficient.

[41] The biggest, and most troubling, gap in the investigative efforts to corroborate the tip, is the lack of any evidence to corroborate the presence of criminal activity occurring in or around the residence. Most notably, there was no effort to conduct surveillance on the residence to determine whether there was any suspicious activity occurring at the home, consistent with drug trafficking. Such information could easily have amounted to corroboration sufficient to remove the possibility of innocent coincidence. This was not done.

[42] There are obvious weaknesses in each of the three C factors enunciated in *Debot*, *supra,* when applied to the circumstances of this case. Had there been more detail to the tip along with a clear indication as to the source of the information, this could well have balanced off the weaknesses in other areas. Had there been confirmation by Source A that the police had located the correct house along with, again, a clear indication as to the origin of Source A's information, this could well have balanced off the weaknesses in other areas. Had there been police surveillance on the home indicating suspicious activity consistent with drug trafficking, this may well have balanced off the weaknesses in other areas.

[43] Unfortunately, there are no such strengths in one area which could be said to balance off the weaknesses in another. As a result, I reach the conclusion that the information to obtain is, when considered in its entirety, insufficient on its face. The information contained therein falls well short of the reasonable grounds standard and cannot, therefore, support the issuance of the search warrant. Accordingly, both the information to obtain and the search warrant must be set aside. Absent a valid search warrant, I must conclude that there has been

a violation of Mr. Wing's right to be secure against unreasonable search and seizure pursuant to s. 8 of the *Charter*.

2. Section 24(2): Exclusion

[44] Exclusion of evidence subsequent to a *Charter* breach is, as always, governed by s. 24(2) of the *Charter*, which states:

> (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this *Charter*, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[45] Adjudication of this case follows on the heels of a paradigmatic shift in the Supreme Court of Canada with respect to the factors to be considered in assessing the impact of admission of evidence obtained in breach of the *Charter* on the administration of justice. The Court has significantly modified the long established test set out in *R.* v*. Collin*s, [1987] 1 S.C.R. 265 and modified in *R.* v*. Stillman*, [1997] 1 S.C.R. 607. The revised approach to s. 24(2) has been articulated by the Supreme Court in the recent decision of *R.* v*. Grant*, 2009 S.C.C. 32, and applied in the companion decisions of *R.* v*. Harrison*, 2009 S.C.C. 34 and *R.* v*. Suberu*, 2009 S.C.C. 33.

[46] In assessing the intent and application of s. 24(2), the Supreme Court in *Grant*, *supra*, set out the following guiding principles at paras. 68-70:

> The phrase "bring the administration of justice into disrepute" must be understood in the long-term sense of maintaining the integrity of, and public confidence in, the justice system. Exclusion of evidence resulting in an acquittal may provoke immediate criticism. But s. 24(2) does not focus on immediate reaction to the individual case. Rather, it looks to whether the overall repute of the justice system, viewed in the long term, will be adversely affected by admission of the evidence. The inquiry is objective. It asks whether a reasonable person, informed of all relevant circumstances and the values underlying the *Charter*, would conclude that

the admission of the evidence would bring the administration of justice into disrepute.

Section 24(2)'s focus is not only long-term, but prospective. The fact of the *Charter* breach means damage has already been done to the administration of justice. Section 24(2) starts from that proposition and seeks to ensure that evidence obtained through that breach does not do further damage to the repute of the justice system.

Finally, s. 24(2)'s focus is societal. Section 24(2) is not aimed at punishing the police or providing compensation to the accused, but rather at systemic concerns. The s. 24(2) focus is on the broad impact of admission of the evidence on the long-term repute of the justice system.

[47] The Court went on to articulate the three factors to be considered in the application of s. 24(2):

When faced with an application for exclusion under s. 24(2), a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to:

(1) the seriousness of the *Charter*-infringing state conduct (admission may send the message the justice system condones serious state misconduct),

(2) the impact of the breach on the *Charter*-protected interests of the accused (admission may send the message that individual rights count for little), and

(3) society's interest in the adjudication of the case on its merits.

The court's role on a s. 24(2) application is to balance the assessments under each of these lines of inquiry to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute.

(1) The Seriousness of the Charter-Infringing State Conduct:

[48] The Supreme Court in *Grant, supra,* at para. 72, elaborated on the first of the three factors to be considered as follows:

The first line of inquiry relevant to the s. 24(2) analysis requires a court to assess whether the admission of the evidence would bring the

> administration of justice into disrepute by sending a message to the public that the courts, as institutions responsible for the administration of justice, effectively condone state deviation from the rule of law by failing to dissociate themselves from the fruits of that unlawful conduct. The more severe or deliberate the state conduct that led to the *Charter* violation, the greater the need for the courts to dissociate themselves from that conduct, by excluding evidence linked to that conduct, in order to preserve public confidence in and ensure state adherence to the rule of law.

[49] Crown counsel argues that the violation in this case ought not to be considered a serious one, noting that there was no evidence of bad faith on the part of the police. They followed the procedure they are supposed to follow by seeking prior judicial authorization; and any insufficiency in the information to obtain is a result of the editing required to protect the informant's identity.

[50] In reviewing the information to obtain, I am of the view that there is a carelessness to both the investigation of the tip and to the drafting of the document which are of concern. On the face of the information to obtain, the police failed to determine the origin of Source A's information, failed to elicit more detailed information from Source A and/or failed to have Source A confirm the suspect house was indeed the house referred to by Source A, and failed to take appropriate steps to corroborate whether there were reasonable grounds to believe criminal activity was occurring within the home.

[51] With respect to the drafting of the information to obtain, police are well aware of the need to protect the identity of informants and that this is normally done by editing out information which would tend to disclose identity. They ought also to be aware that any challenge to the facial validity of the information to obtain will be determined on the basis of the edited copy of the document. Thus extreme care must be taken to ensure the information to obtain is drafted in such a way as to clearly denote the reasonable grounds in a manner which will survive the editing process, as the reviewing judge cannot speculate as to what has been edited out in making the necessary determinations on review.

[52] Had the investigation been more thorough and the drafting more precise, there may well have been no challenge to the validity of the information to obtain and search warrant in this case.

[53] It must be remembered that the prior judicial authorization process is an *ex parte* one, which does not allow for the accused to challenge the validity of information being presented to the issuing judge before a search warrant is granted and executed. Given this, it is vital that there be scrupulous adherence to the standards expected in the process as established in both legislation and case law. With respect to a request for a warrant to search a private residence, the standard of reasonable grounds is a clear and well-established one, and must be recognized to be the absolute minimum standard which must be met to support state intrusion into someone's home. To condone intrusions which fall short of this standard runs the risk of eroding the standard itself by sending the message that so long as there is no bad faith and so long as there is some evidence, it does not matter if the minimum standard is met.

[54] In assessing the nature of the conduct in this case, I would not place it in the egregious category, but neither would I describe it as trivial or merely technical in nature. On balance, I would conclude the conduct to be serious in nature, weighing in favour of exclusion of the evidence obtained as a result of the search.

(2) Impact on the Charter-Protected Interests of the Accused:

[55] With respect to this second line of inquiry, the Supreme Court, in *Harrison*, *supra,* summarized the approach by saying, at para. 28:

> This factor looks at the seriousness of the infringement from the perspective of the accused. Did the breach seriously compromise the interests underlying the right(s) infringed? Or was the breach merely transient or trivial in its impact? These are among the questions that fall for consideration in this inquiry.

[56] In *Grant*, *supra*, the Court noted at para 78:

> [A]n unreasonable search contrary to s. 8 of the *Charter* may impact on the protected interests of privacy, and more broadly, human dignity. An unreasonable search that intrudes on an area in which the individual reasonably enjoys a high expectation of privacy, or that demeans his or her dignity, is more serious than one that does not.

[57] In the case at bar, the unreasonable search, while not involving human dignity, was effected on Mr. Wing's private residence. It is universally accepted that an individual is entitled to a significant degree of privacy in his or her own home. Where that privacy is violated by the state without the requisite reasonable grounds, as occurred here, it can only be considered a significant intrusion on the individual's *Charter*-protected interests, which would weigh in favour of exclusion of the evidence obtained pursuant to the unreasonable search.

(3) Society's Interests in an Adjudication on the Merits:

[58] As noted in *Harrison*, *supra,* "[a]t this stage, the court considers factors such as the reliability of the evidence and its importance to the Crown's case" (para. 33). The drugs and other items obtained as a result of the *Charter*-infringing search, in this case, must be considered highly reliable, and, as is usual in cases of this nature, they are crucial to the successful prosecution of the Crown's case against Mr. Wing. In addition, as in *Harrison*, *supra,* "the evidence cannot be said to operate unfairly having regard to the truth-seeking function of the trial" (para. 34).

[59] Accordingly, one can only conclude that an assessment of this factor, in this case, would clearly favour admission of the evidence obtained as a result of the *Charter* breach.

Balancing the Factors:

[60] In determining how to balance my conclusions with respect to the three factors set out in *Grant*, *supra,* I am mindful of the following passage from *Harrison, supra,* at para. 36:

> The balancing exercise mandated by s. 24(2) is a qualitative one, not capable of mathematical precision. It is not simply a question of whether the majority of the relevant factors favour exclusion in a particular case. The evidence on each line of inquiry must be weighed in the balance, to determine whether, having regard to all the circumstances, admission of the evidence would bring the administration of justice into disrepute. Dissociation of the justice system from police misconduct does not always trump the truth-seeking interests of the criminal justice system. Nor is the converse true. In all cases, it is the long-term repute of the administration of justice that must be assessed.

[61] Considering the totality of the circumstance before me, I am of the view that the long-term repute of the administration of justice does require dissociation from the misconduct in this case.

[62] As noted, the evidence obtained is both inherently reliable and crucial to the Crown's prosecution of a serious offence, favouring exclusion. Indeed, it was once the case that non-bodily physical evidence when coupled with a serious offence would lead to almost automatic admission of the evidence. However, it is important to note that the recent trilogy of cases led by Grant have made it clear that there are no longer to be any categories of either automatic inclusion or of automatic exclusion.

[63] Furthermore, the seriousness of the offence, while still a consideration, ought not to trump the other considerations relevant to the s. 24(2) inquiry:

> In our view, while the seriousness of the alleged offence may be a valid consideration, it has the potential to cut both ways. Failure to effectively prosecute a serious charge due to excluded evidence may have an immediate impact on how people view the justice system. Yet, as discussed, it is the long-term repute of the justice system that is s. 24(2)'s focus. As pointed out in *Burlingham*, the goals furthered by s. 24(2)

> "operate independently of the type of crime for which the individual stands accused" (para. 51). And as Lamer J. observed in *Collins*, "[t]he *Charter* is designed to protect the accused from the majority, so the enforcement of the *Charter* must not be left to that majority" (p. 282). The short-term public clamour for a conviction in a particular case must not deafen the s. 24(2) judge to the longer-term repute of the administration of justice. Moreover, while the public has a heightened interest in seeing a determination on the merits where the offence charged is serious, it also has a vital interest in having a justice system that is above reproach, particularly where the penal stakes for the accused are high. (*Grant*, *supra,* at 84)

[64] In my view, the need to safeguard the integrity of the prior judicial authorization process, particularly in relation to searches of private residences, outweighs the truth-seeking interests of the trial. As a result, I would grant the defendant's application and exclude any and all evidence obtained as a result of the police search from the trial in this matter.

Ruddy C.J.T.C.