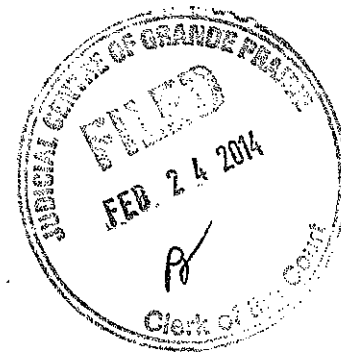


Court of Queen's Bench of Alberta

Citation: R v Siggelkow, 2014 ABQB 101



Date:
Docket: 120113055Q1
Registry: Grande Prairie

Between:

Her Majesty the Queen

Crown

- and -

Edwin Siggelkow

Accused

Restriction on Publication

Preliminary Inquiry – See the Criminal Code, section 539.

By Court Order, this decision and the evidence given in the preliminary inquiry must not be published, broadcast, or transmitted in any manner.

NOTE: This decision is available from the court file, and it may be published after the accused is discharged after a preliminary inquiry or, if the accused is committed to stand trial, after the end of the trial.

**Reasons for Judgment
of the
Honourable Mr. Justice E.C. Wilson**

Introduction

[1] The accused is facing trial charged with eight offences involving allegations of income tax evasion, goods and services tax evasion, and counselling and aiding others to commit tax fraud.

[2] The Crown alleges that these charges arise from the accused's association with a group calling itself the Paradigm Education Group (hereinafter "Paradigm") which was started by Russell Porisky. Porisky, his wife and others of this group have been convicted of tax evasion themselves. The Crown further alleges that the accused was an "Educator" in Paradigm, which role meant that he instructed other persons how to evade the payment of their income taxes and G.S.T. The workings of Paradigm have recently been chronicled in *Mead v Mead*, 2012 CarswellAlta 1607 (Q.B.) – see paragraph 87 and following.

Background

[3] The accused apparently came to the attention of the authorities as a result of information obtained during the execution of a search warrant upon the B.C. residence of Porisky on December 3, 2008.

[4] Further investigation led to the execution of a search warrant upon the Grande Prairie, Alberta residence of the accused on August 25, 2010.

[5] On January 27, 2012 an Information was sworn charging the accused with seven offences with the first court appearance in Grande Prairie Provincial Judges court (criminal) set for March 14, 2012.

[6] At a subsequent court appearance on June 20, 2012 the Crown elected to proceed by indictment and the accused elected trial by judge and jury.

[7] At a subsequent Court appearance on November 22, 2012 the proposed 10 day preliminary hearing was bifurcated into two segments of one week each – July 8-12, 2013 and August 26-30, 2013. Had the matter proceeded uninterrupted, the earliest 10 day block of time was in October, 2013.

[8] The preliminary hearing began on July 8, 2013 and ended on July 11, 2013 at which time the accused was committed for trial.

[9] An eight count indictment was filed in this court on August 23, 2013 with arraignment set for September 9, 2013 in Grande Prairie.

[10] On August 29, 2013, pursuant to s. 551.1(1) of the *Criminal Code*, I was appointed the case management judge by the Chief Justice.

[11] On September 9, 2013 a four week jury trial was confirmed by the parties. The earliest time available for such in Grande Prairie was taken and is to proceed September 8 – October 3, 2014. These dates were confirmed on September 23, 2013 as the court's 2014 sitting dates were not yet known on September 9, 2013.

[12] The accused has been and apparently is content to continue representing himself.

[13] On September 10, 2013 the accused confirmed he was planning on bringing a number of pre-trial applications.

[14] The court set filing deadlines. The accused's various applications were to be in writing with any relevant case law and statutes attached and filed by October 31, 2013. The Crown's reply was to be filed by November 29, 2013. An oral hearing regarding the applications by telephone conference call proceeded December 9, 2013 at 9:30 a.m.

[15] The accused filed a written response to the Crown's Reply brief without prior direction or permission. In the circumstances, the court found that no prejudice was caused to the Crown.

[16] The oral hearing was fairly brief as both sides were content to rely, in the main, upon their written submissions.

[17] Two issues arose during the oral hearing.

[18] The hearing was adjourned to allow the Crown time to determine if a matter said to be governed by solicitor-client privilege might yet be discussed. This matter touched on the accused's complaint regarding an alleged CRA policy to apply for a search warrant under the *Criminal Code* as opposed to proceeding under the search provisions of either the *Income Tax Act* or *Excise Tax Act*. The Crown subsequently advised that the privilege has not been waived by the CRA client.

[19] The second issue raised during oral submissions revolved around the accused's complaint that these charges should not be before the Court of Queen's Bench but, rather, before the Tax Court of Canada. No materials had been filed by the accused on this issue although he claimed he had done so in Provincial Court.

[20] To ensure fairness, the accused was given until December 31, 2013 to file his submissions; the Crown response was to be filed by January 14, 2014 and the accused's reply, if any, was to be filed by January 21, 2014.

[21] The parties were advised that the Court's decision on the various applications brought by the accused would also include this "wrong court" complaint of the accused.

The Accused's Applications

[22] The accused's various applications seek the following:

- (i) a judicial stay of proceedings pursuant to s. 24(1) of the *Charter* alleging a breach of s. 7 of the *Charter* based upon a claim of abuse of process;
- (ii) an application for disclosure of information related to (i) above;
- (iii) a judicial stay of proceedings pursuant to s. 24(1) of the *Charter*; alternatively an order for exclusion of evidence pursuant to s. 24(2) of the *Charter* based upon various complaints related to the application for and the execution of the two search warrants and a subsequent Production Order;
- (iv) dismissal of all charges alleging a lack of jurisdiction in the Alberta Court of Queen's Bench;
- (v) a judicial stay of proceedings pursuant to s. 24(1) of the *Charter* based upon a complaint of unreasonable trial delay contrary to s. 11(b) of the *Charter*.

[23] The accused's applications, affidavits, written submissions and case authorities are found within his filed nine volumes of materials.

[24] Each application will be dealt with in turn.

(i) **An Application for Judicial Stay of Proceedings Pursuant to s. 24(1) of the *Charter* alleging a breach of s. 7 of the *Charter* based upon a claim of abuse of process**

[25] The accused believes that this prosecution is being used for the purpose of collecting a civil debt – being the outstanding taxes that the CRA alleges he owes.

[26] I find that the accused has arrived at this belief through a mistaken interpretation of certain documents and that, as a result, his complaint is without foundation and not supported in law.

[27] It is necessary to examine the documents and to track the apparent “evolution” in the accused’s thinking and interpretations in order to properly deal with the accused’s complaint.

[28] When the CRA executed the search warrant at the accused’s residence on August 25, 2010 he and his family were not at home. When they returned home on August 29, 2010 the accused discovered some documents left by CRA investigators.

[29] One document was a copy of the search warrant which outlined potential tax offences relating to tax years 2005-2008 and that the focus of the various items being sought was related to the determination of the accused’s taxable income and tax payable for those tax years.

[30] A second document was a letter dated August 25, 2010 from David Poon of the Canadian Revenue Agency which outlined to the accused that his income tax affairs were now “the subject of a criminal investigation that may result in charges being laid for non-compliance with the *Income Tax Act* ... and the *Excise Tax Act*”; that the CRA were investigating his tax returns for 2005-2008 and if wilful or fraudulent discrepancies were found “charges may be laid against you under either and/or both Acts”. The letter also detailed what fines and/or jail sentences he could face under each statute if he was found guilty on summary conviction. The penultimate paragraph read: “Finally, be advised that there exists an option of early resolution of the criminal case. If you wish to pursue an early resolution of this matter, please contact the investigator”.

[31] On September 1, 2010, Mr. Poon sent another letter to the accused which provided information regarding the seizures made on August 25, 2010. In that letter Mr. Poon again advised the accused “that your income tax affairs are the subject of a criminal investigation which may result in charges being laid for non-compliance” with the two tax statutes.

[32] The accused wrote the investigator, Richard Harris on September 6, 2010 demanding receipt of certain material and the return of CRA seizures. He also claimed that the search warrant was “ineffective”, complained about the search activity itself and, at the end of his three page letter, made a reference to Mr. Poon’s August 25, 2010 letter. The accused sought clarification – “have I been charged with something” and that he was “very much in favour of an early resolution to this matter, whether or not there is a criminal case. So please elaborate.”

[33] Mr. Harris responded on September 14, 2010. In his letter to the accused he wrote the following:

In regards to your request for more information regarding early resolution, it is an option to reduce the time and costs associated with investigation and prosecution of tax offences in the criminal justice system. Early resolution is a negotiated disposition of a criminal tax case prior to referral by the CRA to the Public Prosecution Service of Canada (PPSC).

Compromise on the part of the CRA, PPSC and the subject of the investigation is essential to facilitating and achieving an early resolution.

If you are interested in pursuing this option we would encourage you to seek legal representation as it requires an admission of guilt based on a sound evidentiary foundation. The PPSC, in consultation with the CRA, will deal exclusively with the disposition of the criminal matters. The disposition of the civil part of the case rests solely with the CRA.

[34] At paragraph 8 of his affidavit sworn October 30, 2013 the accused offered his interpretation of Mr. Harris' September 14, 2010 letter: "I took Mr. Harris' statement to mean that I was facing criminal charges, but that these charges would be dropped if I engaged in a "compromise" with the Canada Revenue Agency in regard to the alleged civil tax debt".

[35] The accused's interpretation is not supported by even a cursory glance at the letter. Clearly there was no reference to any "alleged civil tax debt" in Mr. Harris' letter. Nor is there any hint that the laying of possible criminal charges was contingent upon some mutual agreement regarding any outstanding owing of tax, the quantum thereof or of any payment.

[36] Nor did the accused even hint at this "interpretation" in his November 9, 2010 response to Mr. Harris which is reproduced here in its entirety:

I received your letter dated Sept 14, 2010.

The last paragraph of your letter offers an opportunity for an early resolution. This has raised some questions. When considering the time, effort and cost involved, I would like to weigh that against your proposal. So two questions for you.

1) What facts would I be asked to plead to?

2) What would be the recommendations for sentence?

[37] At paragraph 11 of his affidavit, the accused asserts that Mr. Harris did not respond to the accused's letter nor to further written queries from the accused in December, 2010 and January, 2011.

[38] This prompted the accused to write on February 2, 2011 which is reproduced here in its entirety:

You invited me to consider an early resolution to this issue and you said that you would be sending me a copy of the terms and conditions that you felt equitable to both parties. That was several months ago and I have still not received your offer.

In the event that you have decided to renege on your offer of an early resolution and you have no intent to resolve this case without an action then would you please advise me.

[39] Again, I find there is no hint of the interpretation he now advances in his affidavit.

[40] More telling is the fact that no-one – be it the accused or the CRA knew what tax amounts, if any, were even allegedly owing until **July 4, 2011** when CRA wrote the accused with its **proposed** adjustments to the accused's 2005-2008 Income Tax and GST returns, which loosely translated into the accused allegedly earning hundreds of thousands of dollars of unreported business income and failing to remit associated GST. The CRA also announced at that time it would be levying the statutorily permitted penalties upon and in addition to the taxes

that would be owing. The CRA advised it would delay the proposed re-assessment for 30 days to provide the accused with the opportunity to submit any additional information or explanation.

[41] That letter also stated the following:

In addition, we will be referring this case to the Public Prosecution Service of Canada for prosecution action. The details will be mailed to you at a later date under separate cover.

[42] At paragraph 13 of his October 30, 2013 affidavit, the accused deposed to the following:

... Given that Mr. Harris had previously raised the concept of a "compromise" between the Canada Revenue Agency and myself so as to avert prosecution by the PPSC, I took the July 4 letter to mean that if I were to pay the alleged civil tax liability, prosecution would not proceed. ...

[43] Clearly there is no language either in CRA's letter of July 4, 2011 nor any reference in it to correspondence from the previous fall that could reasonably bear the interpretation that if the accused was to pay his outstanding taxes he would not be prosecuted or that if he did not pay his outstanding taxes he would be prosecuted.

[44] Indeed in his August 2, 2011 letter to Mr. Harris the accused offered a wide ranging challenge to the July 4, 2011 proposed adjustment premised upon a number of assertions, all seemingly rooted in the "natural person -- artificial person" notion found within the Paradigm view of taxation law.

[45] But, most importantly, on page 3 of that letter the accused wrote:

I have not violated any law nor did the taxpayer omit from the returns any taxable income.

[46] On that assertion the accused made it clear that he owed no taxes nor would he be paying any alleged outstanding taxes. That would also offer, of course, a complete answer to any criminal complaint made against him.

[47] Criminal charges were laid against the accused on January 27, 2012. The accused, in his written submission, argues at paragraph 11:

The fruits of the Criminal Code search warrant were used first and foremost to prepare a detailed civil reassessment of the Applicant's tax liability. The criminal charges laid on January 27, 2012 were an afterthought, filed in response to the Applicant's non-payment of the alleged civil debt.

[48] The accused does not appear to understand that, by suggesting that the charges were but an "afterthought", this runs counter to his initial interpretation of events that the "civil debt" and potential prosecution were, from the outset, different sides of the same coin.

[49] In a letter dated January 30, 2012 the accused wrote to both the investigator and the prosecutor reiterating a desire for possible early resolution of his charges. He said nothing in that letter of tying a resolution on the criminal charges to any outstanding tax liability.

[50] On May 18, 2012 the Crown wrote to the accused on a "Without Prejudice" basis a confirmation of their discussions after court on May 14, 2012. In that letter the Crown outlined her opinion that at trial the accused would be convicted of certain offences and what would be the Crown's position on sentencing. The letter carried on to indicate that in the event of an early

resolution the Crown would seek convictions on certain charges, would withdraw others and join in an 18 month conditional sentence with fines of 75% of the total tax evaded, being approximately \$47,475.00. As one of the sentencing conditions the Crown wanted the accused to cease promoting Paradigm or providing tax advice.

[51] The Crown advised that even with a joint submission the sentencing judge was not bound by it and had the ultimate authority in deciding sentence.

[52] The Crown added the following:

... In addition, the Court would be more likely to accept a joint proposal for such a low sentence if you could demonstrate that you had made significant efforts to pay your civil assessments prior to entering your guilty plea, as this is seen as a significant mitigating factor. You should contact CRA as soon as possible to set up a repayment schedule.

[53] At paragraph 28 of his October 30, 2013 affidavit the accused submitted his interpretation of the above:

I took the aforementioned statement to mean that payment of the alleged civil tax debt would be a necessary precondition for early resolution of my case.

[54] With respect, even a cursory reading of the Prosecutor's remarks do not support any such interpretation.

[55] Interestingly, in his June 13, 2012 lengthy 12 page response to the Prosecutor, captioned at the top "TAKE FULL NOTICE WITH PREJUDICE", the accused never asserts the interpretation he now provides. Indeed on page 2 of his letter, he details the Crown's early resolution offer but makes no mention of any pay down of the tax liability at all.

[56] In any event, it is clear that in his response the accused rejected the Crown's offer.

[57] But in that response he did offer to "conditionally" accept the Crown's offer. But his conditions do not appear sincere as they include demands that the Crown agree that various provisions of the tax statutes do not say what the enactments specifically state; that certain reported cases do not say what they do in fact say; and that the Crown essentially adopt the natural person-artificial person dichotomy that is part of the Paradigm view of the tax laws; etc, etc.

[58] Based upon a review of all the correspondence recorded by the parties and referred to above, I find that there is no valid basis to claim that the criminal prosecution of the accused only came about in order to collect his outstanding taxes. Indeed, at no time in any of his numerous letters to the investigator or the prosecutor did the accused ever make such a suggestion. Nor does a fair reading of correspondence from the investigator or the prosecutor suggest otherwise.

[59] The accused appears to have come to his "interpretation" rather recently, notwithstanding that in his written submissions to the Court he implies that he took certain "meanings" at the time that he received the correspondence.

[60] It might be suggested that the accused is not really being sincere in his claim of an abuse of process that his tax liabilities are being collected through the use of the criminal process.

[61] But it is not necessary for the Court to have to come to a firm conclusion, one way or the other, on such a suggestion.

[62] A more charitable view, perhaps, is offered in the Crown's written submission at paragraph 47:

Much of the confusion regarding early resolution appears to be as a result of the Accused's lack of understanding of the differences between the civil assessment process and the criminal process, and his lack of knowledge of the criminal legal process. He was told often and early that he should seek legal advice regarding his position, but has not done so.

[63] I am also mindful of the accused's contention found in his written Reply filed December 6, 2013 that his submission relies on what he claims to be the true "intentions" of the letter writers notwithstanding their plain language to the contrary (see paragraphs 19 and 20). He then submits that "the only rational explanation" is that the threat of prosecution was to extract payment of the outstanding taxes (see paragraph 21).

[64] The accused's interpretation is not supported in the correspondence he received nor upon a fair reading of straightforward language. His speculations are not evidence.

[65] There is no evidence of any abuse of process as alleged by the accused. His application for a judicial stay of proceedings is, accordingly, dismissed.

(ii) **An Application for Disclosure Related to (i) Above**

[66] The accused has identified four items he wishes disclosed. These are:

- a. a copy of the CRA Policy Manual;
- b. all CRA investigator training courses;
- c. a print out of all time reports of CRA employees who worked on the Siggelkow file; and
- d. a power point presentation about the PEG from the Vancouver CRA office in 2008 or 2009.

[67] The Crown has refused disclosure on the grounds that the material is not relevant.

[68] The accused argues at paragraph 5 of his written submission in support of this Application that the material is relevant to his claim of an abuse of process.

[69] The Court has, earlier in these Reasons, ruled that there is no abuse of process involved here. Accordingly there is no relevance to the material being sought.

[70] The accused argues at paragraph 12 of his written submission that what it seeks is relevant in order to determine whether the CRA obtained *Criminal Code* search warrants for the purpose of attempting to collect civil debts.

[71] This is but a variation on the theme of an alleged abuse of process. I have already found no such abuse of process. Accordingly there is no relevance to the material being sought.

[72] The application of the accused for this disclosure is dismissed.

- (iii) **A Judicial Stay of Proceedings Pursuant to s. 24(1) of the *Charter*; alternatively an order for exclusion of evidence pursuant to s. 24(2) of the *Charter* based upon various complaints related to the application for and the execution of the two search warrants and a subsequent Production Order;**

[73] This broad application subsumes a number of complaints of the accused regarding two search warrants.

[74] One of the impugned search warrants has nothing to do with the accused. It was a search warrant executed on December 3, 2008 at the B.C. residence of Russell Porisky and his wife Elaine Gould. For the sake of argument, the court will presume that the accused can establish an expectation of privacy in seizures from Porisky's residence – see *R v Edwards* [1996] 1 SCR 128 at page 144 paragraph 44.

[75] The accused makes two related complaints in relation to the Porisky search warrant.

[76] The accused argues that the Porisky search warrant was cast in “over-broad” language as it permitted the CRA to seize email communications relating to various group email accounts apparently held by Porisky – thus including emails sent to Porisky by third parties, including the accused – notwithstanding “there were no grounds to believe that those parties had committed any offence”. The accused points out that the Information to Obtain the Porisky search warrant only named Porisky and his wife as suspects.

[77] The accused apparently misunderstands the law. The seizures made under the Porisky search warrant – including emails sent to him were specifically authorized by the search warrant. These lawful seizures might provide evidence in the prosecution of Porisky but might also provide evidence that could justify investigation of persons who sent the emails to Porisky.

[78] The reality is that emails are not created and sent by themselves. There is a sender and a recipient; there may be multiples of both.

[79] But until one reads what was received by the recipient – here Porisky – one doesn't know who sent the email to him, nor what was said.

[80] Thus, by definition, only after the lawfully seized emails are read will the identity of all the parties to the communication and the content of the message be known.

[81] This is not the result of unpardonable overreach in the search warrant – the so-called “over-broad” language. It is rather a reflection of the reality of email communications.

[82] Related to the complaint that the Porisky search warrant was over-broad in its scope is the accused's complaint that the execution of that search warrant resulted “in over-seizure of information including information about the accused.”

[83] The short answer is that what was seized was either permitted by the terms of the search warrant itself and/or permitted by s. 489(1) of the *Criminal Code*.

[84] It is also of no moment that the accused was not a suspect when the Porisky warrant was obtained. The accused appears to believe that if he was not then a suspect, he is immunized from subsequent investigation or prosecution. That is not the law. Nor is it the law that the investigator had to tell the judge who issued the search warrant that other presently unknown suspects or persons of interest might be identified, investigated and prosecuted as a result of the warrant being executed.

[85] The accused next argues that the search for and seizure of “hundreds of electronic communications” between himself and Porisky were, in effect, an interception of private communications.

[86] He asserts that it was improper for the CRA to utilize the two s. 487 search warrants to effect this interception. The CRA was obliged, he says, to have sought a Part VI *Criminal Code* judicial authorization – a wiretap order.

[87] But later, in his subsequently filed Reply, the accused asserts (at paragraph 12) that rather than a wiretap order, the CRA was obliged to seek a general warrant pursuant to s. 487.01 of the *Criminal Code*.

[88] In either event, the accused argues that the failure by the CRA to properly seek either a wiretap order or a general warrant resulted in a violation of his s.8 privacy rights.

[89] The accused rests his claim that a wiretap order was required in order for CRA to lawfully access the stored emails upon the decision of *R v Telus Communications Company* 2013 SCC 16.

[90] In *Telus*, the Supreme Court dealt with text messages – not emails, but that distinction is an insufficient basis to distinguish its application here.

[91] But what is significantly different in *Telus* was that the Supreme Court was dealing with a third party service provider that was storing messages between persons as part of its ongoing communications process and service. That is not what occurred here. Here the recipients stored their own messages – no third party is implicated in that process.

[92] Another significant difference is that in *Telus* the Supreme Court was dealing with the prospective production of future text messages, i.e. future private communications, which explains, in part, why a wiretap order would be required.

[93] What the Supreme Court was not called upon to decide and which has particular application to the case before me was expressed by the majority of the Court at paragraph 15:

We have not been asked to determine whether a general warrant is available to authorize the production of historical text messages, or to consider the operation and validity of the production order provision with respect to private communications. Rather, the focus of this appeal is on whether the general warrant power in s. 487.01 of the *Code* can authorize the *prospective* production of future text messages from a service provider’s computer. That means that we need not address whether the seizure of the text messages would constitute an interception if it were authorized after the messages were stored.

[94] As decades of experience have shown and what is made clear by the *Telus* decision, wiretap orders target the interception of future or prospective communications. This is clearly implicated by the language found in various provisions of Part VI of the *Code* eg s. 185(1)(e) requiring a description of the place at which the private communications “are proposed to be intercepted” and the manner of interception “proposed to be used”; s.186(4)(e) setting the valid time period for execution at 60 days; s. 186(6) renewal authorizations require particulars of prior interceptions and information learned therefrom.

[95] Simply stated wiretap orders are not given to intercept private communications that have already taken place even if one of the participants may have recorded them.

[96] As was bluntly stated in *R v Giles* [2007] BCJ No. 2918 (QL) S.C. at paragraph 46:

The particular threat to privacy posed by interception of private communications is different from the threat posed by the seizure of existing communication [being 164 emails stored in accused's Blackberry]. Section 183 should not apply to the latter."

[97] Secondly, interpreting Part VI in the manner urged by the accused would create a conflict with s. 487(2.1) and (2.2), which specifically govern searches of computers and obtaining data contained in or available to a computer system.

[98] As Parliament is not presumed to enact conflicting legislation, the only explanation must be that Part VI has no application to the circumstances involving the stored emails in the case at bar. And I so find. See also *R v Bahr* 2006 ABPC 360.

[99] The accused's alternative submission that a general warrant was required here is equally erroneous. The s. 487 search warrant was available and appropriate. Accordingly a general warrant could not have issued due to the restrictions found in s. 487.01(1)(c).

[100] The accused carries the onus of proving his s.8 *Charter* complaints on a balance of probabilities and he has failed to do so. I should also add that in my deliberations I have presumed that the Crown would be seeking at trial to introduce all of the emails seized from both Porisky and the accused's computers. I was forced to do so because the Crown was not able to identify which, if any, of the emails it would seek to tender.

[101] The accused's next complaint is that the Siggelkow search warrant was improperly signed and issued by the Provincial Court Judge because he neglected to fill in the time of day during which the warrant was to be executed.

[102] Richard Harris, the CRA investigator who applied for the search warrant, deposed in his affidavit sworn November 22, 2013 that when he received the search warrant signed by the judge he noticed that the entry and exit times were not entered. He so advised a court official who contacted the judge to advise of this deficiency. The judge had the official ask Harris what times he was seeking and Harris responded with "between 8 am and 9 pm". The official took that back to the judge who had the official advise Mr. Harris to write those times into the warrant. Mr. Harris did so.

[103] The accused speculates that the judge's failure to enter the times and stamp his name under his signature "give rise (at the very least) to an inference that Judge Walter was careless in issuing the warrant, and may not have given due consideration to the contents of the Information to Obtain" (paragraph 31 of accused's "Application for Exclusion of Evidence &/or Judicial Stay").

[104] That is, in my view, nothing more than a complaint about technical deficiencies dressed up by idle conjecture.

[105] The deficiencies are of little moment. See *R v Herbert*, 2002 OJ No. 3307 (C.A.).

[106] The accused's next complaint argues that CRA's policy of relying upon s. 487 *Criminal Code* search warrants as opposed to the search warrant provisions contained in the *Income Tax Act* and the *Excise Tax Act* violates s. 8 of the *Charter*.

[107] He points to the decision in *White, Ottenheimer & Baker v A.G. of Canada* 2000 NFCA 36 where, faced with an identical complaint, the Court stated at paragraph 14:

There would appear to be no current reason why Revenue Canada should not have recourse to the Income Tax Act rather than the Criminal Code to deal with search and seizure situations.

[108] The accused chose not to quote from the two sentences immediately following:

For whatever reason, here it did not. That in itself I do not see as fatal ...

[109] It is no surprise that recourse to s. 487 search warrants is not improper. The Supreme Court of Canada had previously ruled that it was entirely appropriate to do so: *Multiform Manufacturing et al v A.G. of Canada* [1990] 2 SCR 624 at p 631; *R v Grant* [1993] 3 SCR 223.

[110] The accused's arguments parallel arguments raised by accuseds in other proceedings. They have all been summarily rejected by the Courts – see *R v Porisky* 2012 BCSC 68; *R v Amell, Keyzer and Amell* 2013 SKCA 48.

[111] I agree with those decisions and with the reasons expressed and I adopt them here.

[112] I find the accused has failed to establish any breach of his s. 8 *Charter* rights.

[113] The accused next poses this question: “Does the CRA’s exclusive reliance on Section 487 of the *Criminal Code* create an absurdity of statutory interpretation?”

[114] Even presuming an answer in the affirmative, the accused makes no submission regarding what remedy should then follow.

[115] Nevertheless, the short answer to the accused’s question is ‘No’. There is no absurdity. Parliament’s amendment to s. 487 of the *Code* permits CRA to do what it did here. The Supreme Court of Canada has twice agreed that the procedure followed by the CRA is lawful and appropriate. End of discussion.

[116] Last, the accused complains that “the manner in which the search of Mr. Siggelkow’s home was conducted is indicative of bad faith and abuse of authority on the part of the Canada Revenue Agency” (paragraph 66 of Application for Exclusion of Evidence &/or Judicial Stay).

[117] The impugned “manner of search” lacks any evidentiary support. The accused was not present. All that he has provided is his own affidavit of what unnamed neighbours allegedly told him they saw or heard. That is inadmissible hearsay when being used for the truth. I disregard it therefore.

[118] The accused is also vexed that in an August 26, 2010 email between CRA employees, one of them expressed a hope that there would be media coverage “on the coordinated search effort”. There is no evidence that the media were tipped off about the search nor that there was any media coverage at all.

[119] But the accused interprets that email as well as an unreleased CRA draft press release authored by the same employee identifying the accused and his wife as “tax protesters” as demonstrating “that the desire for media publicity was a significant motivating factor behind the ‘concentrated effort’” (paragraph 65(d) of Application for Exclusion of Evidence &/or Judicial Stay).

[120] The Court cannot come to the same or a similar interpretation. The search warrant was obtained August 19, 2010 and was executed August 25, 2010. The informant was not the person who composed the August 26, 2010 email and the August 24, 2010 draft press release. The motivations of one CRA employee do not automatically become the motivation of every other CRA employee.

[121] There is no evidence of bad faith nor abuse of authority associated with the search of the accused's residence.

[122] At paragraph 66(f) of the Application for Exclusion of Evidence &/or Judicial Stay the accused makes the claim that a temporary pay raise for Mr. Harris may not have come about had he followed the search provisions of the *Income Tax Act*. This is rank speculation. If the accused is suggesting that this investigation or any part of it was motivated by Mr. Harris wanting a temporary pay raise, the Court cannot agree. There is no evidence to support such a suggestion.

[123] At paragraph 67 of his Application for Exclusion of Evidence &/or Judicial Stay the accused asserts that the number of officers who attended the search may not lead to a *Charter* breach but it is a relevant factor for any s. 24(2) *Charter* analysis. How that could be so is not explained. But it is, on its face, wrong in law. There is no s. 24(2) *Charter* remedy or analysis until a breach has first been proven by the accused. The accused appears not to understand this and has placed the cart before the horse, as it were.

(iv) An Application seeking Dismissal of all Charges alleging a Lack of Jurisdiction in the Alberta Court of Queen's Bench

[124] Consistent with his earlier comments that any tax problems are only civil issues the accused now submits that these criminal charges should be before the Tax Court of Canada and not the Court of Queen's Bench of Alberta.

[125] The accused claims that his activities were "non-commercial in nature" and that monies received were through "personal endeavours." In his interpretation of the *Income Tax Act* the accused appears to believe that this results in him having no taxable income and thus he should not be criminally charged for tax evasion.

[126] The Crown's view is that this is a case of wilful tax evasion.

[127] The accused's submission repeats or parallels the claim of "non-taxability and therefore no criminal court jurisdiction" found in a number of cases set out in the Crown's materials. Some of those cases also involve Paradigm adherents. All such claims have been dismissed and, in my view, properly so.

[128] Disputing taxability does not oust a court's criminal law jurisdiction.

[129] At its highest what the accused is really advancing is a purported defence to the charges.

[130] A trial in this court will determine if the Crown has proven its case beyond a reasonable doubt which includes proving taxability beyond a reasonable doubt.

[131] Accordingly the accused's application to dismiss these charges on jurisdictional grounds is dismissed.

(v) **A Judicial Stay of Proceedings Pursuant to s. 24(1) of the *Charter* based upon a Complaint of Unreasonable Trial Delay contrary to s. 11(b) of the *Charter*.**

[132] The accused's complaint about delay has two facets – pre-charge delay and post-charge delay.

Pre-Charge Delay

[133] I find that s. 11(b) of the *Charter* does not apply to pre-charge delay because the language of the *Charter* dictates this conclusion.

[134] Section 11(b) reads:

Any person charged with an offence has the right

(b) to be tried within a reasonable time

(emphasis mine)

[135] Clearly the s. 11(b) “clock” cannot begin ticking until the accused is charged. Hence pre-charge delay cannot be part of the s. 11(b) analysis. See *R v Kalanj* (1989) 48 CCC (3d) 459 (S.C.C.); *R v Carter* (1986) 26 CCC (3d) 572 (SCC).

[136] Constitutional complaints regarding pre-charge delay can be brought but they are circumscribed by s. 7 and s. 11(d) of the *Charter* and target the effect of the delay upon the fairness of the trial. See *R v W.K.L.* (1991) 64 CCC (3d) 321 (SCC) at page 328 et seq.

[137] Thus, an application for a stay of proceedings based upon pre-charge delay cannot be brought at this time. It must await until the end of the trial or at least until the Crown closes its case. See *R v Oracz* 2011 CarswellAlta 2172 (C.A.) at para 14; relying upon *R v Francois* (1993) 15 O.R. (3d) 627 (O.C.A.) at p. 630.

Post Charge Delay

[138] The time line in question is as follows:

January 27, 2012	-	Charges laid
March 14, 2012	-	First appearance; Adjourned to May 14, 2012 to provide disclosure
April 13, 2012	-	Disclosure provided
May 14, 2012	-	Adjourned to May 18, 2012
May 18, 2012	-	Adjourned to June 20, 2012 for Crown to provide an offer of early resolution and to receive accused's response
June 20, 2012	-	Early resolution refused, Crown elects to proceed by indictment. Crown uncertain how long a preliminary hearing would take as accused gave indications that he might wish to call up to 100 witnesses. Crown sought adjournment for case management to July 6, 2012.

- July 6, 2012 - Accused advises he wishes to bring preliminary motions and Judge Golden set them for hearing on October 31, 2012.
- August 27, 2012 - Accused's three applications are filed.
- October 31, 2012 - All applications were dismissed as they sought *Charter* relief from the preliminary hearing court which had no jurisdiction. Case adjourned to set a preliminary hearing to November 26, 2012.
- November 26, 2012 - Crown uncertain how long preliminary hearing will take as accused still wishes to call some witnesses and some Crown continuity witnesses as certain admissions sought by the Crown were not forthcoming. Crown estimates a 10 day preliminary hearing will be required. The earliest 10 day block of time in Grande Prairie P.J.C. would be in October, 2013. However two 5 day blocks of time were available and their earliest times were July 8 - 12, 2013 and August 26 - 30, 2013. Matter adjourned accordingly.
- July 8, 2013 - Preliminary Hearing begins.
- July 11, 2013 - Accused committed to stand trial in Court of Queen's Bench. Arraignment date September 9, 2013.
- September 9, 2013 - Accused arraigned, case management set for September 10, 2013 with four week trial indicated.
- September 10, 2013 - Earliest available four week judge and jury trial in Grande Prairie is selected and matter adjourned to September 8 to October 2, 2014. Accused bringing a number of pretrial motions and returnable date of October 31, 2013 set. Schedule for responses/replies also set with oral hearing set for December 9, 2013.
- December 9, 2013 - Count seeks further information from the Crown and accused advises he wishes to bring a further pretrial application. Schedule is set for filings and responses/replies in January, 2014.

[139] The time line in question here is January 27, 2012 until the end of the trial October 2, 2014 which amounts to approximately 32 months – which is a length of time that raises an issue as to the reasonableness of the delay. See *R v Morin* [1992] 1 SCR 771, para. 31.

[140] Approximately 17-1/2 months of that time was spent within the Provincial Judges Court.

[141] I adopt as my first guideline, the words of McLachlin, C.J.C. in *R v MacDougall* (1998) 128 CCC (3d) 483 (SCC) at para. 44 and 45:

44 The period of time attributable to inherent time requirements is the period of time that would normally be required to process a case, assuming the availability of adequate institutional resources. The period of time attributable to inherent time requirements is neutral and does not count against the Crown or the accused in the s. 11(b) reasonableness assessment.

45 The inherent time required to process a particular case must not be confused with the average time required to process a case of that type. All cases have “inherent time requirements needed to get a case into the system and to complete that case”: *R. v. Allen* (1996), 1 C.R. (5th) 347 (Ont. C.A.) at pp. 363-64, *per* Doherty J.A., *aff’d* [1997] 3 S.C.C. 700 (S.C.C.); *Morin*, at p. 792, *per* Sopinka J. While the complexity of a case is often cited as a factor contributing to delay resulting from inherent time requirements, “each case will bring its own set of facts which must be evaluated”: *Morin*, at p. 792. In other words, the inherent time requirements of a case are not limited to commonplace delays which occur in every situation, but may include delay due to extraordinary and unforeseeable events: *Allen*, *supra*.

[142] Since it is clear that inherent time requirements are neutral, I will determine what time to assign to the inherent time requirements of this case in Provincial Judges Court.

[143] I find that, from January 27, 2012 to July 6, 2012 the activities which occurred can be properly characterized as inherent time requirements from first court appearance through the provision of disclosure, through the offer for early resolution and the accused’s detailed refusal thereof.

[144] Thereafter, the accused’s desire to bring his preliminary motions, his filing of same and the court’s subsequent dismissal of them on October 31, 2012 should be all characterized as “actions of the accused.” (see also paragraph 160). I find that, in this case, these motions had to be dealt with before anyone – including the court - would know if this case would even be proceeding to the calling of evidence.

[145] The accused faults the Crown and the Court for failing to give him early legal advice that his application seeking *Charter* relief could not be heard by a Court hearing a preliminary inquiry.

[146] If the accused is suggesting that either the Crown or the Court has some general responsibility to advise an accused how to best advance his defence he is mistaken. Neither entity can demand that an accused reveal his defence – thus it would be quite impossible for either to give the accused advice or assistance on how to best advance that defence.

[147] Secondly, long experience with self-represented accuseds reveals that what they may say and then what they may subsequently do are often self-contradictory. So, the best course is not to influence an accused on what he might wish to say in his written motion or how best to say it, until there is something concrete put forward by the accused.

[148] In this case, the applications were filed at the end of August, 2012 with a hearing date set for October 31, 2012 – two months later. In the interim the Crown’s materials would have been

filed. That narrowed the two month window. Time was then required for the Court to review the materials and reflect upon the parties' submission. That activity narrowed the time frame further.

[149] There is, I find, no merit to the accused's submission that the Crown or the Court's failure to provide some early legal advice should be branded as institutional delay.

[150] No one has advised why the preliminary hearing date could not have been set on October 31, 2012 and had to wait until November 26, 2012 to do so. As a result no "blame" can attach to either side.

[151] On November 26, 2012 the preliminary hearing was set into July and August, 2013 – some eight or nine months later. This delay seems clearly to have been occasioned by the amount of time that the parties were estimating would be required. No case, even if only a preliminary hearing, should be split up into a hodge-podge of a day or two here and a day or two there as the case slowly moves to completion. Hence blocks of time are required.

[152] The accused was self-represented with no prior trial experience. Clearly he would have no way of intelligently estimating how long the preliminary hearing might take from his perspective. The Crown and Court did not know how long the accused might take in questioning witnesses. The charges were technical and are rarely litigated. With respect to those who hold a different view, the reality is that everyone was really trying their best to estimate the time line, but handicapped by great uncertainty how this case would unfold.

[153] It is noteworthy that the decision to bifurcate the 10 days meant that the preliminary hearing proceeded several months before it could have been accommodated had it been kept at the 10 day block of time.

[154] In all of the circumstances there is nothing about this 8 to 9 month institutional or systematic delay before the commencement of the preliminary hearing that raises concerns even if one adds in the October 31, 2012 to November 26, 2012 time period. Indeed it falls precisely within the 8 to 10 month guideline set in *R v Morin* [1992] 1 SCR 771 at p. 799.

[155] The delay between committal for trial and Queen's Bench arraignment – approximately two months - is clearly part of the inherent delay in having a case proceed to arraignment over the summer when the Queen's Bench rural sittings are fewer than during the rest of the year.

[156] At arraignment, the earliest time available to commence a one month jury trial in Grande Prairie was September, 2014 meaning there was a 13 month delay until the trial's scheduled end date.

[157] Delaying the start of a trial for one year is, on the surface, unacceptable.

[158] But the reality is that, due to the various applications being brought by the accused, no one could forecast at the September, 2013 arraignment if the trial would/would not proceed; what evidence would/would not be admissible if there was a trial; what more material would/would not the Court order to be disclosed to the accused.

[159] In other words, this was not a case ready to proceed to trial in September, 2013. No matter when the trial was scheduled, time was required to first deal with the accused's various applications before a trial could actually start, if ever.

[160] The time to deal with these applications fall under the heading "actions of the accused" (*R v Morin*, p. 793) and this time is to be deducted from the overall delay. Alternatively this can

be characterized as the accused waiving the associated delay. (see *R v Navales* 2014 ABCA 70, paragraphs 9 and 10).

[161] Written submissions were completed in January, 2014. These reasons are being issued in February, 2014 – 5 months after arraignment and 7 months before the trial is to commence and 8 months before it is to end.

[162] That is not to suggest that the next 7 to 8 months is all institutional delay which was defined, again, in *R v Morin* as being “the period that starts to run when the parties are ready for trial but the system cannot accommodate them.” (page 795).

[163] This is because some part of that time would be needed for pre-trial preparation. Surely it would not be unreasonable to suggest that the accused, as a self-represented litigant, would spend one month to prepare for this trial given its complexity of issues and his unfamiliarity with conducting a jury trial. (*R v Morin*, p. 791)

[164] That reduces the 7 to 8 months to 6 to 7 months of institutional delay in the Court of Queen’s Bench.

[165] That time falls within the *Morin* guideline of 6 to 8 months (p. 799).

[166] The accused was never arrested nor detained in custody. Had it been otherwise, an argument to shorten the *Morin* guideline might have been valid.

[167] Turning to the last consideration – prejudice to the accused – the accused’s list of same is far from impressive. I agree with the Crown’s submission that there is little, if anything, to the accused’s various complaints.

[168] Having considered the relevant factors, I am satisfied that the accused has failed to establish any breach of s. 11 (b) of the *Charter*.

Conclusion

[169] In the result, all of the accused’s applications are dismissed with the exception of his complaint regarding pre-charge delay. He is at liberty to raise this matter again, if he wishes, but no earlier than when the Crown closes its case.

Dated at the City of Calgary, Alberta this 24th day of February, 2014.

A handwritten signature in cursive script, appearing to read 'E.C. Wilson', written over a horizontal line.

E.C. Wilson
J.C.Q.B.A.

Appearances:

Kim Gowen
for the Crown

Edwin Siggelkow
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