

FILED Lethbridge  
JAN 15 2018  
Provincial Court of Alberta

DOCKET# 170558944P1

IN THE PROVINCIAL COURT OF ALBERTA  
JUDICIAL DISTRICT OF LETHBRIDGE

BETWEEN:

HER MAJESTY THE QUEEN

RESPONDENT

- and -

[REDACTED]

APPLICANT/ACCUSED

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NOTICE OF MOTION

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**TAKE NOTICE THAT** an application will be made by Counsel for the Applicant, Patrick C. Fagan, Q.C., for a stay of proceedings and/or quashing of the Information underlying these proceedings, and such other relief as this Honourable Court deems fit, including general damages, special damages, pecuniary damages and costs on a solicitor-client basis commensurate with the loss and injury sustained by the Applicant as a consequence of the egregious conduct of the Respondent pursuant to Common Law and Section 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (the "Charter"). The Applicant alleges a violation of Sections 7 and 9 of the *Charter*.

**AND FURTHER TAKE NOTICE THAT** the Applicant will be bringing an application to quash the Information underlying these proceedings due to non-compliance with Section 504(a) of the *Criminal Code of Canada*.

**AND FURTHER TAKE NOTICE THAT** this Notice is based on anticipated evidence and does not contain admissions. The Applicant reserves the right to raise additional *Charter* arguments that are disclosed by the evidence advanced during the course of judicial proceedings and not otherwise disclosed by the Crown and which are not the subject of the within Notice per *R v Baker*, [2004] AJ No 1355 (ABPC) and *R v Dwernychuck* (1992), 77 CCC (3d) 385 (ABCA).

### Anticipated Evidence

1. In December 2016, the Combined Forces Special Enforcement Unit of the Lethbridge Police Service (hereinafter referred to as the "Police") began an investigation into the alleged drug trafficking activities of a group purported to be travelling throughout western Canada for the purpose of purchasing wholesale quantities of controlled substances which would thereafter be distributed in Lethbridge.
2. Police investigation, which included ongoing surveillance during the months of January and February 2017, resulted in the identification of several members of the alleged drug trafficking group – [REDACTED], [REDACTED], [REDACTED] and [REDACTED].
3. Police investigation, including ongoing surveillance, further confirmed that the Applicant was a girlfriend of [REDACTED]. It is significant to note that at no time during the course of the protracted Police investigation giving rise to this prosecution was the Applicant ever observed to be engaged in conduct consistent with illegal activity. What ongoing Police surveillance did confirm relative to the Applicant, is that she was gainfully and lawfully employed.
4. On February 11, 2017, Cst. Snowdon (as "Affiant") applied for a Section 11 CDSA Warrant to Search the following locations:
  - a. The upstairs dwelling and attached garage at [REDACTED] Lethbridge;
  - b. The dwelling and attached garage at [REDACTED] Lethbridge;
  - c. The detached garage at [REDACTED]. Lethbridge; and
  - d. The detached garage at [REDACTED] Lethbridge.
5. In furtherance of Cst. Snowdon's application for the Warrant to Search, he prepared and swore to the contents of the corresponding Information to Obtain ("ITO"). This sworn document speaks volumes as to the complete absence of any evidence that would or could manifest itself in a suspicion let alone grounds to believe that the Applicant was complicit in the unlawful activity being investigated or for which the Applicant was ultimately arrested and charged. It will be submitted that the following are but salient examples of same:
  - a. Cst. Snowdon swore that a multitude of drug offences had been committed by [REDACTED], [REDACTED] and [REDACTED]. The Applicant, by contrast, was not alleged to have committed any criminal offence.

- b. Cst. Snowdon's ITO contains multiple sworn averments relative to the receipt of reliable confidential information from no less than seven separate informants vis a vis members of and persons otherwise complicit in the drug trafficking activities under investigation. Bottom Line: None of the informants even mention the Applicant.
  - c. Voluminous Crown disclosure relative to the protracted investigation giving rise to this prosecution (including that of multiple co-accused) reveals the complete absence of any evidence remotely probative of any degree of criminal complicity let alone culpability on the part of the Applicant.
6. On February 11, 2017, the Police executed the Warrant to Search at the named locations. The Applicant was not a so-called "found-in" (a person located by Police on premises at the time of execution of a Warrant to Search so as to give rise to an inference of possession of impugned items located therein) at any of the locations. The Police, however, conducted themselves in such a manner as to transform the Applicant into a potential "found-in". Specifically, as the Police were executing the Warrant to Search at [REDACTED] Lethbridge they spoke with the Applicant by telephone. During the course of that telephone conversation the Police told the Applicant that her attendance at the residence was required to assume care of the dogs found therein.
  7. The Applicant immediately attended at [REDACTED] Lethbridge in accordance with the instruction of the Police for the purpose of caring for the dogs. On arrival at the residence, the Applicant was not afforded the opportunity of caring for the dogs. Rather, she was immediately placed under arrest and escorted to the local office of the Lethbridge Police Service.
  8. Since the date of the Applicant's arrest, she has repeatedly informed the Police that she had absolutely nothing to do with any of the alleged crimes with which she is charged.

### **SECTIONS 7 & 9**

**Section 7** of the *Charter* guarantees that everyone has the right to life, liberty and security of the person and the right not be deprived thereof except in accordance with the principles of fundamental justice.

**Section 9** of the *Charter* guarantees that everyone has the right not to be arbitrarily detained or imprisoned.

## **Unlawful Arrest**

9. The Police did not have the requisite grounds for arrest. As a result, the Applicant's arrest was unlawful and in violation of her Section 7 and 9 *Charter* rights.

## **Abuse of Process – No reasonable and Probable Grounds**

10. A person who swears an Information must subjectively have reasonable and probable grounds that a criminal offence occurred; those grounds must also be justifiable from an objective point of view. In this case, the person swearing the Information lacked both subjective and objective grounds.

## **Abuse of Process – Police Misconduct**

11. The Applicant states that the Police in this case committed an abuse of process by orchestrating the Applicant's attendance at [REDACTED] Lethbridge on a ruse to justify and facilitate her arrest. In other words, the Police manufactured a scenario whereby the Applicant is ostensibly transformed into a "found-in". This is an abuse of process.
12. The egregious conduct of the Police aforesaid was compounded by the Police charging the Applicant with 3 counts of possession of a Controlled Substance for the Purpose of Trafficking contrary to Section 5(2) of the *Controlled Drugs and Substances Act* (hereinafter referred to as the "CDSA"); one of those offences carries with it on conviction a maximum penalty of life imprisonment. The Police took steps to broadcast and did broadcast the name and charges facing the Applicant to the general public by way of a media release.
13. On December 19, 2017 (approximately 10 months after arresting and charging the Applicant) the Police finally prepared a Drug Expert Report in relation to the drugs seized from [REDACTED] Lethbridge which form the basis of the 3 charges of Possession of a Controlled Substance for the Purpose of Trafficking against the Applicant. In each and every instance the author of the Drug Expert Report was "*. . .unable to form the opinion these drugs were possessed for the purpose of trafficking*".
14. As a direct consequence of the conduct of the Police, the Applicant has sustained irreparable damages including but by no means limited to her

reputation, her post-secondary pursuits as [REDACTED] and future professional prospects.

### **Remedy**

15. The appropriate remedy is the quashing of the Information and/or a stay of proceedings and such other relief as this Honourable Court deems fit.

### **DATE, TIME & PLACE OF HEARING OF THIS APPLICATION:**

16. **On March 12, 2018 at 9:30 a.m. in the Provincial Court of Alberta (Criminal Division), 320 4 St., S. Lethbridge, AB T1J 1Z8, or such other date and time this Honourable Court deems fit.**

### **IN SUPPORT OF THESE APPLICATIONS, THE APPLICANT RELIES UPON THE FOLLOWING:**

#### RPG

1. *R v Mellenthin*, [1992] 3 SCR 615, [1992] SCJ No 100
2. *R v Caslake*, [1998] 1 SCR 51
3. *R v Collins*, 38 DLR (4th) 508
4. *R v Stillman*, [1997] 1 SCR 607

#### Section 7 – No RPG for Information

5. *R v Awad*, 2015 NSCA 10
6. *R v Reddick*, 1995 Canlii 4377 (NSSC)
7. *R v Peavoy* (1974), 15 CCC (2d) 97 (Ont H Ct)

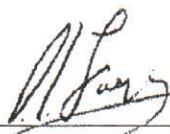
#### Evidence to be Relied Upon:

8. Crown disclosure
9. The ITO
10. Cross-examination of investigating officers
11. ALL Police correspondence concerning the Applicant whether by email, memorandum, investigating report

12. Such further material as counsel may advise and this Honourable Court may permit

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**THIS 16<sup>th</sup> DAY OF JANUARY, 2018**



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**PATRICK C. FAGAN, Q.C.**

**Counsel for the Applicant**

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