Court File No.: 36315

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE ONTARIO SUPERIOR COURT OF JUSTICE)

B E T W E E N:

WORLD BANK GROUP

Appellant

– and –

KEVIN WALLACE, ZULFIQUAR BHUIYAN, RAMESH SHAH, MOHAMMAD ISMAIL, HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondents

– and –

CRIMINAL LAWYERS' ASSOCIATION (ONTARIO), TRANSPARENCY INTERNATIONAL CANADA INC. AND TRANSPARENCY INTERNATIONAL E.V., BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, AFRICAN DEVELOPMENT BANK GROUP, ASIAN DEVELOPMENT BANK, INTER-AMERICAN DEVELOPMENT BANK AND NORDIC INVESTMENT BANK

Interveners

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> *"Society's interest in ensuring that the truth comes to light in legal proceedings is so strong that it is impossible to accept so broad and far-reaching an exception".*[1]

PART I – OVERVIEW

1. The last decade has seen a trans-nationalization of criminal investigation and prosecution. With it must come a corresponding trans-nationalization of disclosure and production obligations. When an international organization elects to play a law enforcement role by becoming actively involved in the investigation and prosecution of crime in Canada, the immunity of that organization cannot supersede the accused's *Charter* right to know the case against them.

2. The Criminal Lawyers' Association of Ontario (CLA) intervenes to propose a test for adjudicating applications for production of third party records held by international organizations in criminal proceedings. The public interest in upholding the immunity in question must be balanced against the accused's constitutional right to full answer and defence. If the state cannot provide a fair trial without the records sought, then it falls to the court to craft a remedy that preserves the appropriate balance while preventing the constitutionally intolerable: an unfair trial.

PART II – QUESTIONS IN ISSUE

3. The CLA will address the followings three questions in issue:

(1) What is the scope of international organization immunity?

(2) If an international organization claims immunity from production of third party records in a criminal proceeding, how should the Court balance this claim of immunity against the accused's *Charter* right to make full answer and defence?

(3) What remedies are available if production is required to ensure a fair trial?

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[1] *Algemene Bank Nederland v. KF and Others*, (1994) 96 ILR 344 (Supreme Court of the Netherlands), at p. 355.

PART III – ARGUMENT

I. The Scope of International Organization Immunity[2]

4. International organization immunity is not conferred by customary international law and is not seen as a blanket immunity attaching to the organization itself. Rather, it exists only for certain *functions* of that organization that are deemed essential to carrying out its purpose.[3] Moreover, the constituent treaty provision conferring immunity cannot be read in isolation and must be construed in conjunction with Canada's other international obligations. This includes the universal human right to a fair trial.[4]

5. The question of waiver by implication must begin from the premise that the parent of such immunity, state immunity, is no stranger to the principle of implied waiver.[5] Canada's *State Immunity Act* expressly recognizes that state immunity from enforcement in civil proceedings may be waived "either explicitly ***or by implication***."[6] If the language of the treaty, interpreted in conjunction with relevant international law, is ambiguous, then fairness dictates that implied waiver be read in.

6. Where fairness and consistency require, partial waiver can lead to full waiver:[7] a party cannot "cherry-pick" what evidence it wants to disclose while claiming immunity over related evidence. Thus where an international organization discloses part of its investigative file for the purpose of initiating a Canadian prosecution, it waives immunity over the entirety of its investigative file. *The international organization cannot instigate and feed a Canadian criminal prosecution and then oblige the court to place its immunity over the Canadian Constitution.* By

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[2] The CLA adopts the argument of the intervener the British Columbia Civil Liberties' Association (BCCLA) on this issue and will make only brief submissions.

[3] *Amaratunga v. Northwest Atlantic Fisheries Organization*, [2013] 3 S.C.R. 866, at paras. 29, 53; Hazel Fox and Philippa Web, *The Law of State Immunity*, Revised 3rd ed. (Oxford: Oxford University Press, 2015), at pp. 577-79 ("This functional criterion consequently determines the extent of an organization's immunities.").

[4] *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 172, art. 14. See also William M. Berenson, "Squaring the Concept of Immunity with the Fundamental Right to a Fair Trial: The Case of the OAS" (October 2011) 3 *World Bank Legal Review* 133.

[5] For instance, that principle has historically justified the commerciality exception to state immunity: by participating in commercial activity in the same manner as a private person, the state necessarily subjects itself to the commercial law of the host state (Fox and Webb, *supra,* at pp. 35-36). This implied waiver extends to the enforcement of any court order against the state's commercial assets (*Ibid.,* p. 517).

[6] *State Immunity Act,* R.S.C. 1985, c. S-18, s. 12(1)(a). [Emphasis added.] Similarly, United States legislation allows waiver "either explicitly or by implication" (*Foreign Sovereign Immunities Act of 1976,* Pub. L. 94-583, 90 Stat. 2891, 28 U.S.C. §§ 1605(a)(1)).

[7] *Halifax Regional Municipality Pension Committee v. State Street Bank*, 2011 NSSC 355, at paras. 322-326.

participating, the organization impliedly waives that right.

II. International Organization Immunity Must be Reconciled with Fair Trial Rights

7. Even if international organization immunity survives waiver by conduct, the Court remains obliged to consider whether production is necessary in order to preserve the accused's right to a fair trial. *O'Connor*[8] provides the template for a solution.

A. The overarching framework: *O'Connor* modified

8. It is no accident that the present case is an appeal from an *O'Connor* records application, which is an application for *Charter* relief under s. 7. Section 7 is engaged when a third party holds records relevant to the accused's defence.[9]

9. In an application for third party records, the court is confronted with a potential "clash" between rights or values of societal importance. *O'Connor* itself addressed the appropriate balance between an accused's right to full answer and defence and a third party's right to privacy. Here, the Respondents assert that their s. 7 rights trump a different third party concern, international organization immunity. Like in *O'Connor*, there is no fixed hierarchy; a balance must be struck in the particular circumstances at hand.

10. *O'Connor* sets out a two-step test. At the first stage, the accused must establish that the records are "likely relevant".[10]

11. The second stage of *O'Connor* requires a "balancing [of] the competing rights in question": "the judge must examine and weigh the salutary and deleterious effects of a production order and determine whether a non-production order would constitute a reasonable limit on the ability of the accused to make full answer and defence."[11] This is a flexible test that eschews a rigid or formulaic approach.

12. This balancing approach is readily adapted to reconciling the conflict of rights and interests in this case. A functionally similar test has been adopted in analogous cases. For

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[8] *R. v. O'Connor*, [1995] 4 S.C.R. 411.
[9] *O'Connor*, at para. 17.
[10] *O'Connor*, at para. 24.
[11] *O'Connor*, at paras. 30-31.

instance, a comparable balancing governs when the state claims public interest immunity.[12] At common law, in such a case, a court begins from the general principle that "all facts must be available to the court in the absence of an overriding public interest", and goes on to weigh the public interest in maintaining secrecy against the interest in disclosure in serving the proper administration of justice.[13] Similarly, once journalist-confidential source privilege is established, the court must consider "whether in the instant case the public interest served by protecting the identity of the informant from disclosure outweighs the public interest in getting at the truth."[14]

13. There is no reason in principal that international organization immunity claims ought not be subject to being tested against trial fairness. International organization immunity is not (unlike solicitor-client privilege) a 'core value' of our legal system subject only to limited exceptions like "innocence at stake".[15] Even *state* immunity is itself classified in international law as a "restricted immunity" and is not absolute.[16] As reviewed above, international organization immunity, as a *functional* immunity, is even more limited.

14. One of the few cases considering an order to compel production is a decision of the Supreme Court of the Netherlands in regards to allegations of a price-fixing scheme involving the International Tin Council (ITC). In ordering access to internal ITC deliberations said to be immune from production, the Dutch court aptly observed that while the "reliability of the Netherlands as a partner in international relations is at stake..., society's interest in ensuring that the truth comes to light in legal proceedings is so strong that it is impossible to accept so

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[12] Public interest immunity cannot be asserted by a non-governmental party in Canada, and therefore cannot apply to an international organization (*R. v. D.C.W.*, [1997] O.J. No. 4831 (Ont. Ct. (Gen. Div.)), at paras. 30-32).

[13] *Carey v. Ontario*, [1986] 2 S.C.R. 637. Section 37 of the *Canada Evidence Act*, R.S.C., 1985, c. C-5, now governs when disclosure ought to be ordered in the case of a specified public interest, but the broad balancing test at s. 37(5) is seen to codify the common law (see Hubbard, Robert W., Susan Magotiaux and Suzanne M. Duncan, *The Law of Privilege in Canada* (Aurora, Ont.: Canada Law Book, 2006) (loose-leaf updated August 2015, release No. 29), at p. 3-5).

[14] *R. v. National Post*, [2010] 1 S.C.R. 477, at paras. 53, 58.

[15] See e.g. *Smith v. Jones*, [1999] 1 S.C.R. 455, at para. 44, describing solicitor-client privilege as "the highest privilege recognized by the courts".

[16] See Fox and Webb, *supra*, at pp. 417-438 (describing the exceptions to state immunity from adjudication as being in regards to commercial transactions; ownership, possession and use of property; taking of property in violation of international law; infringement of intellectual property rights; participation in collective bodies; and for ships owned or operated by the state) and pp. 515-542 (describing the exceptions to state immunity from enforcement against state property as consent of the state; allocation of state property by the state; and use or intended use for commercial purposes).

broad and far-reaching an exception".[17]

15. That same observation must apply with even greater force here. Canada's reliability as an international partner does not trump Canada's constitutional guarantee of a fair trial.

B. Balancing s. 7 against international organization immunity

16. In considering the strength of the accused's s. 7 claim, the Court must assess factors including "the extent to which the record is necessary for the accused to make full answer and defence", and "the probative value of the record in question."[18] At this stage, it should be remembered that, as this Court held in *McNeil*, "[i]f the claim of likely relevance is borne out upon inspection, the accused's right to make full answer and defence will, with few exceptions, tip the balance in favour of allowing the application for production."[19]

17. On the other end of the scale – the importance of the international organization immunity in question – one factor will be the *degree* to which the immunity claimed meets the *Amaratunga* test. In other words, some immunities may be more "essential" than others for ensuring the "efficient and independent functioning" of the international organization.[20] In this case, for example, the need for the World Bank to maintain immunity from production orders in Canadian criminal proceedings could hardly be said to lie at the core of the World Bank's mission as an international financial institution. Moreover, this is not a case where the World Bank's adjudicative or enforcement immunity is engaged. It is not the defendant in the legal proceeding: it is merely a third party made subject to an ancillary order.

18. Other relevant factors may arise from the values underlying international organization immunity generally. The driving factor in the matter at hand is the extent to which the international organization has participated in the investigation or prosecution of the crime in Canada.

19. Where an international organization plays a substantial role in producing the investigative file relied on by the Crown, but withholds other evidence that is likely relevant,

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[17] *Algemene Bank Nederland v. KF and Others*, (1994) 96 ILR 344 (Supreme Court of the Netherlands), at pp. 353 and 355.
[18] *O'Connor*, at para. 31.
[19] *R. v. McNeil*, [2009] 1 S.C.R. 66, at para. 41.
[20] *Amaratunga*, at para. 53.

the balance must tip in favour of full answer and defence. Even if that does not amount to waiver, it is nevertheless relevant to assessing the salutary and deleterious effects of ordering production.

20. ***First***, participation necessarily dilutes the organization's claim of immunity. Feeding select documents to the Crown, with the intention of seeing them put before a Canadian court, precludes any claim that the organization's immunity would be crippled by putting related documents before the same court.

21. ***Second***, if the organization sees the prosecution of the accused as advantageous to it, and actively assists in that prosecution, it cannot claim unfairness in being asked to assume the consequent obligations of the Canadian justice system. Analogy here may be made to the benefits/burden doctrine in the context of Crown immunity. In *Sparling*, this Court found that "by taking advantage of legislation the [C]rown will be treated as having assumed the attendant burdens".[21] If the organization wishes to 'enter the fray', it should play by the rules.

22. ***Third***, and perhaps most importantly, failing to require production in such instances would have the grave deleterious effect of condoning a system of international crime investigation immune from disclosure obligations. The Crown could, by relying solely on the investigation performed by international organizations, produce an investigative file that contains purely incriminating material. Any exculpatory evidence could be left in the hands of international organizations, completely beyond the reach of the accused.

23. While such a scenario was once speculative, crime is becoming increasingly international and so too is its investigation. In this case, the investigation was conducted by the World Bank's investigatory arm, the Integrity Vice Presidency. But it is hardly the only international organization with a law enforcement or quasi-law enforcement role. Interpol, Europol, and the various investigatory bodies of the United Nations or international war crimes tribunals are but a few examples.

24. More investigations are being conducted by international organizations and then 'handed off' to Canadian authorities for domestic prosecution. It is essential that this Court ensure that resulting prosecutions before Canadian courts vindicate an accused's right to know

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[21] *Sparling v. Québec (Caisse de dépôt & de placement)*, [1988] 2 S.C.R. 1015, at para. 18.

the case against him or her. In such cases, the international organization is more than a custodian of documents – it is an active investigative agency. If s. 7 of the *Charter* extends to records in the hands of 'true' third parties with a remote connection to the litigation, then its reach surely extends with greater force to persons who actively gather evidence with a view to having criminal charges laid. If the Appellant is right then the *Charter* stops at the doorstep of international organizations, no matter the extent of their law enforcement role.

25. Where a transnational crime is being tried before Canadian courts on the basis of an investigation conducted by an international organization, to immunize from production *all* evidence in the hands of that organization would intolerably undermine the truth-seeking function of the court and the fair trial rights of the accused. On the other hand, where the international organization has played no role in the Canadian prosecution and truly is a mere custodian of documents, its immunity might weigh more heavily. This was the distinguishing feature of *Chalmers,* for instance, where a U.S. federal court refused to compel production from the United Nations where the latter had played only a passive role in the proceeding.[22]

III. Remedy

26. When the balance tips in favour of full answer and defence, there may be cases where production ought to be ordered even if immunity exists. Such an order would not unduly undermine Canada's international legal obligations where such obligations have been attenuated by the Court's superordinate obligations under the *Charter*.

27. Where the Court concludes that ordering production of likely relevant documents would harm Canada's treaty obligations, the answer cannot be to refuse the order and condone an unfair trial. If production is impossible, then other remedies must be crafted by the court. A court has an "ongoing responsibility to assess the overall fairness of the process and to grant remedies under s. 24(1) of the *Charter* where appropriate."[23]

28. A preliminary issue should be addressed. It might be suggested that a court has no jurisdiction to grant a discretionary remedy under s. 24(1) where the overall constitutionality of

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[22] *United States v. Chalmers,* 410 F. Supp. 2d 278 (2007). See the comments of Nordheimer J. on this case in the ruling below, at para. 44.

[23] *Canada (Citizenship and Immigration) v. Harkat,* [2014] 2 S.C.R. 33, at para. 77.

the statute compelling the unconstitutional effect is upheld or not challenged, as is the case here. That submission has previously been rejected – and for good reason. Pursuant to *Harkat*, it is now clear that even where the impugned statutory provisions are constitutional, situations may arise resulting in an unfair process. In that case, a court must craft appropriate remedies under s. 24(1).[24] One thing is therefore incontrovertible: whatever occurs, an unfair trial will not be tolerated by a Canadian court.

29. A variety of tailored *Charter* remedies are available to a court in order to cure the unfairness of depriving the accused of likely relevant evidence. Section 38.14 of the *Canada Evidence Act* is instructive. In cases where evidence is withheld on the basis of public interest immunity arising from national security or international relations concerns, s. 38.14 gives a trial judge jurisdiction to "make any order that he or she considers appropriate in the circumstances to protect the right of the accused to a fair trial". Section 38.14(2) specifies that such orders may include, but are not limited to: dismissing counts, or requiring the Crown to proceed on a lesser or included offence; making a "finding against any party on any issue relating to information the disclosure of which is prohibited"; or ordering a stay of proceedings. Two possible remedies in particular warrant further discussion: excluding evidence and staying the proceedings.

30. **Excluding evidence:** Where the records sought have the potential to undermine or discredit Crown evidence, an order excluding such evidence may be made.[25] Even where evidence has not been "obtained in a manner" that infringes *Charter* rights under s. 24(2), it may nonetheless be excluded under s. 24(1) where its admission would result in an unfair trial.[26] For instance, in 'lost evidence' cases, a court may exclude Crown evidence that is "closely integrated with the missing material".[27]

31. Such an order will only be appropriate where the records sought can be isolated in their effect. In other words, the records must only be relevant to a challenge made against other

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[24] *Harkat*, at para. 77; *R. v. Ahmad*, [2011] 1 S.C.R. 110, at para. 76.

[25] This remedy would seem to contemplated by s. 38.14(2)(c) of the *Canada Evidence Act*, whereby the court may make "an order finding against any party on any issue relating to information the disclosure of which is prohibited."

[26] *R. v. Bjelland*, [2009] 2 S.C.R. 651, at paras. 19-20.

[27] *R. v. Carosella*, [1997] 1 S.C.R. 80, at paras. 131-132 (per L'Heureux-Dubé J., for La Forest, Gonthier and McLachlin JJ., dissenting, but not on this point).

evidence, and not more broadly to the guilt or innocence of the accused. For example, this will be the case if the records are only relevant to an independent *Charter* application to exclude unconstitutionally obtained evidence. In that case, exclusion of the challenged evidence will remove any unfairness to the accused while allowing the trial to proceed.

32. **Stay of proceedings:** The availability of a conditional stay of proceedings to remedy non-disclosure or non-production of relevant evidence has an established pedigree in this Court's jurisprudence. In *O'Connor* itself, for instance, a stay was granted on the basis that the Crown had withheld first-party disclosure. Similarly, in *Carosella*, the Court ordered a stay in a sexual assault case where notes relating to a prior statement of the complainant had been destroyed by a quasi-governmental agency.[28]

33. This unanimous Court's comments in *Ahmad* with regards to the stay contemplated by s. 38.14 *CEA* are apposite:[29]

> This leads us to the further observation that the stay of proceedings remedy in s. 38.14 is a statutory remedy to be considered and applied in its own context. ***It should not be burdened with the non-statutory "clearest of cases" test for a stay outlined in R. v. Jewitt, [1985] 2 S.C.R. 128; R. v. Keyowski, [1988] 1 S.C.R. 657; R. v. O'Connor, [1995] 4 S.C.R. 411; and R. v. Regan, 2002 SCC 12, [2002] 1 S.C.R. 297***. The criminal court judge may be placed in a position of trying to determine an appropriate remedy where lack of disclosure has made it impossible to determine whether proceeding with a trial in its absence would truly violate "the community's sense of fair play and decency" (*Jewitt*, at p. 135). Nevertheless, ***the legislative compromise made in s. 38 will require a stay in such circumstances if the trial judge is simply unable to conclude affirmatively that the right to a fair trial, including the right of the accused to a full and fair defence, has not been compromised***. [Emphasis added.]

Here, where a similar common law compromise is to be struck, a court should equally order a stay in any case where it cannot *affirmatively* conclude that the right to a fair trial has been preserved. In particular, if the judge is unable to inspect the documents in order to discount their likely relevance, the trial's fairness would be in doubt. To continue it would therefore be incompatible with the *Charter*.

34. The stay may be entered conditional upon the records being provided. The international organization, having shown an interest in the prosecution and influenced by a request from the

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[28] *Carosella*, at paras. 55-57.
[29] *Ahmad*, at para. 35.

prosecutor, may well subsequently decide to provide the documents. An analogous result flows in the context of *Rowbotham* orders.[30] Where an indigent accused who does not qualify for legal aid requires legal representation in order to ensure a fair trial, the court may enter a conditional stay of proceedings until such time as the government provides counsel.[31] In this way, the prosecution is halted until the accused's fair trial rights can be accommodated.

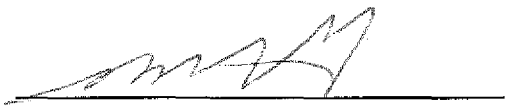
PART IV – COSTS

35. The CLA seeks no order as to costs.

PART V – ORDER SOUGHT

36. The CLA seeks permission to present oral argument at the hearing of the appeal. The CLA takes no position on the proper disposition of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of October, 2015.



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[30] *R. v. Rowbotham* (1988), 41 C.C.C. (3d) 1 (Ont. C.A.).
[31] *Ibid.*, at p. 69.

PART VI – TABLE OF AUTHORITIES

Domestic case law

International law

Commentary

PART VII – LEGISLATION CITED

Canadian Charter of Rights and Freedoms, Part I of the _Constitution Act_, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c 11

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

State Immunity Act, R.S.C. 1985, c. S-18

Execution

12. (1) Subject to subsections (2) and (3), property of a foreign state that is located in Canada is immune from attachment and execution and, in the case of an action *in rem*, from arrest, detention, seizure and forfeiture except where

(*a*) the state has, either explicitly or by implication, waived its immunity from attachment, execution, arrest, detention, seizure or forfeiture, unless the foreign state has withdrawn the waiver of immunity in accordance with any term thereof that permits such withdrawal;

Exécution des jugements

12. (1) Sous réserve des paragraphes (2) et (3), les biens de l'État étranger situés au Canada sont insaisissables et ne peuvent, dans le cadre d'une action réelle, faire l'objet de saisie, rétention, mise sous séquestre ou confiscation, sauf dans les cas suivants :

a) l'État a renoncé, de façon expresse ou tacite, à son immunité relative à l'insaisissabilité et aux autres mesures mentionnées ci-dessus, toute révocation ultérieure de la renonciation ne pouvant être faite que suivant les termes de la renonciation qui l'autorisent;

Canada Evidence Act, R.S.C., 1985, c. C-5

SPECIFIED PUBLIC INTEREST

Objection to disclosure of information

37. (1) Subject to sections 38 to 38.16, a Minister of the Crown in right of Canada or other official may object to the disclosure of information before a court, person or body with jurisdiction to compel the production of information by certifying orally or in writing to the court, person or body that the information should not be disclosed on the grounds of a specified public interest.

[...]

Disclosure order

(5) If the court having jurisdiction to hear the application concludes that the disclosure of the information to which the objection was made under subsection (1) would encroach upon a specified public interest, but that the public interest in disclosure outweighs in importance the specified public interest, the court may, by order, after considering both the public interest in disclosure and the form of and conditions to disclosure that are most likely to limit any encroachment upon the specified public interest resulting from disclosure, authorize the disclosure, subject to any conditions that the court considers appropriate, of all of the information, a part or summary of the information,

Protection of right to a fair trial

38.14 (1) The person presiding at a criminal proceeding may make any order that he or she considers appropriate in the circumstances to protect the right of the accused to a fair trial, as long as that order complies with the terms of any order made under any of subsections 38.06(1) to (3) in relation to that proceeding, any judgment made on appeal from, or review of, the order, or any certificate issued under section 38.13.

Potential orders

(2) The orders that may be made under subsection (1) include, but are not limited to, the following orders:

(*a*) an order dismissing specified counts of the indictment or information, or permitting the indictment or information to proceed only in respect of a lesser or included offence;

(*b*) an order effecting a stay of the proceedings; and

(*c*) an order finding against any party on any issue relating to information the disclosure of which is prohibited.

2001, c. 41, s. 43.

RENSEIGNEMENTS D'INTÉRÊT PUBLIC

Opposition à divulgation

37. (1) Sous réserve des articles 38 à 38.16, tout ministre fédéral ou tout fonctionnaire peut s'opposer à la divulgation de renseignements auprès d'un tribunal, d'un organisme ou d'une personne ayant le pouvoir de contraindre à la production de renseignements, en attestant verbalement ou par écrit devant eux que, pour des raisons d'intérêt public déterminées, ces renseignements ne devraient pas être divulgués.

Divulgation modifiée

(5) Si le tribunal saisi conclut que la divulgation des renseignements qui ont fait l'objet d'une opposition au titre du paragraphe (1) est préjudiciable au regard des raisons d'intérêt public déterminées, mais que les raisons d'intérêt public qui justifient la divulgation l'emportent sur les raisons d'intérêt public déterminées, il peut par ordonnance, compte tenu des raisons d'intérêt public qui justifient la divulgation ainsi que de la forme et des conditions de divulgation les plus susceptibles de limiter le préjudice au regard des raisons d'intérêt public déterminées, autoriser, sous réserve des conditions qu'il estime indiquées, la divulgation de tout ou partie des renseignements, d'un résumé de

Protection du droit à un procès équitable

38.14 (1) La personne qui préside une instance criminelle peut rendre l'ordonnance qu'elle estime indiquée en l'espèce en vue de protéger le droit de l'accusé à un procès équitable, pourvu que telle ordonnance soit conforme à une ordonnance rendue en application de l'un des paragraphes 38.06(1) à (3) relativement à cette instance, à une décision en appel ou découlant de l'examen ou au certificat délivré au titre de l'article 38.13.

Ordonnances éventuelles

(2) L'ordonnance rendue au titre du paragraphe (1) peut notamment :

a) annuler un chef d'accusation d'un acte d'accusation ou d'une dénonciation, ou autoriser l'instruction d'un chef d'accusation ou d'une dénonciation pour une infraction moins grave ou une infraction incluse;

b) ordonner l'arrêt des procédures;

c) être rendue à l'encontre de toute partie sur toute question liée aux renseignements dont la divulgation est interdite.

2001, ch. 41, art. 43.