R v STINCHCOMBE [1991] 3 SCR 326 – Duty of the Crown to Disclose evidence to the Defence

# Facts

William Stinchcombe was a lawyer in Alberta and Jack Abrams was his client. Mr. Abrams accused Mr. Stinchcombe of misusing property that belonged to him, which he had given to Mr. Stinchcombe to hold on his behalf in trust. To hold something in trust means that the person holding the property (in this case, Mr. Stinchcombe) becomes the legal owner of the property and holds it in trust for the beneficiary (in this case, Mr. Abrams). When something is held in trust, the trustee is not permitted to do anything with the property that would be harmful to beneficiary’s interest in it. Here, the Crown accused Mr. Stinchcombe of breach of trust, as well as theft and fraud. In response, Mr. Stinchcombe claimed that he was not holding the property in trust for Mr. Abrams, and that he was lawfully entitled to use it. At the preliminary inquiry, Mr. Stinchcombe’s former secretary, Patricia Lineham, was called as a witness. She gave oral testimony that supported Mr. Stinchcombe’s defence. After the preliminary inquiry, but prior to the trial, Ms. Lineham was interviewed by a police officer and the interview was tape recorded. The Crown informed the defence about the existence of the tape, but refused to disclose it to them. Later, during the trial, Ms. Lineham was again interviewed by a police officer and a written statement was taken. Again, the Crown informed the defence about the existence of the written statement but refused to disclose its contents. The Crown did not call Ms. Lineham as a witness during the trial.

In the Trial Court the trial judge ruled that there was no obligation on the Crown to call the witness and there was no obligation on the Crown to disclose the contents of the statements and Mr. Stinchcombe was found guilty of breach of trust and fraud. Mr. Stinchcombe appealed to the Alberta Court of Appeal, which upheld the trial decision. Mr. Stinchcombe then appealed to the SCC, the highest appeal court in Canada.

# Issues

Did the Crown violate Mr. Stinchcombe’s section 7 right to *life, liberty and the security of the person* by refusing to disclose all relevant evidence in possession of Crown including the statements of persons not intended to be called as witnesses by prosecution? Did this refusal violate the fundamental principles of justice?

If so, are the Crown’s actions a reasonable limitation to Mr. Stinchcombe’s legal rights under section 1 of the Charter?

## Relevant Charter Sections:

### Section 1.

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### Section 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.

# Decision:

In a unanimous decision, the SCC overturned the Alberta Court of Appeal’s decision and held that the Crown did have an obligation to disclose the tape and the written statement to the defence. A new trial was ordered where the defence would receive the tape and written statement in question.

The SCC ruled that a Crown’s obligation to disclose will save the court’s time because cases will be settled with more guilty pleas or withdrawal of charges. Witnesses are also entitled to refresh their memories by reviewing any previous testimony they gave. Although this eliminates the element of surprise and certain advantages for the Crown during cross-examination, ultimately, justice is more likely to be served.

A Crown’s obligation to disclose is also important because the Crown and the defence play different roles in the judicial system. The Crown’s role is not to secure a conviction, but to present to the court all the credible evidence against the accused. The defence, on the other hand, can “assume a purely adversarial role”. They have no corresponding duty to disclose and no duty to assist the Crown in their prosecution. The Crown’s failure to disclose all of the relevant information meant that Mr. Stinchcombe was unable to make full answer and defence with regard to the charges against him. In other words, because he did not have all the information that the Crown had, he was not given a fair trial and thus his Section 7 right was violated.

# Questions:

1. What three courts heard this case and in what order? What was the outcome at each level?
2. Explain, in your own words, why the SCC ruled that Stinchcombe’s Section 7 right was violated.
3. Suppose the Crown receives information halfway through the trial that is favourable to the accused. Is the Crown obligated to disclose this to the defence?
4. Suppose prior to trial the Crown accidentally misplaces evidence that it would have been obligated to disclose to the defence. What do you think should happen? Would it make any difference if the Crown had deliberately destroyed the evidence?
5. Prior to this case, the Crown had no duty to disclose all relevant evidence to the defence. Though most evidence was generally disclosed, the customs varied across the country. By changing the law, the SCC removed the element of surprise between the Crown and defence from the criminal process. Do you think the SCC was correct in doing so? Why or why not?