

CANADA / JUDGMENT

de Vries v. Pickton

2025 BCSC 1921

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1921 de Vries v. Pickton

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

de Vries v. Pickton,

2025 BCSC 1921

Date: 20251003

Docket: S133395

Registry: Vancouver

Between:

Sarah Jean de Vries

Plaintiff

And

Robert William Pickton and David Francis Pickton

Defendants

Before: The Honourable Justice A. Ross

Reasons for Judgment

Counsel for the Plaintiff:

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J. Henderson

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Place and Date of Trial/Hearing:

Vancouver, B.C.

August 27, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 3, 2025

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Introduction

- [1] This action is brought by the family of one of the victims of Robert Pickton. There are eight other actions commenced on behalf of eight other families.
- [2] The nine plaintiffs bring action against the (now deceased) Robert Pickton and his brother David Francis Pickton. The cause of action against David Pickton is framed within the Occupiers Liability Act, R.S.B.C. 1996, c. 337. David Pickton and Robert Pickton were co-owners of the pig farm where Robert Pickton committed several murders. That property was located on Dominion Avenue in Port Coquitlam (the "Dominion Property").
- [3] The plaintiffs assert that David Pickton had a duty to warn the women who entered onto the Dominion Property. The plaintiffs assert that the evidence of Robert Pickton's crimes was, or should have been, evident to David Pickton.

- [4] The plaintiff, Ms. de Vries, brings this application under Rule 7-6 of the Supreme Court Civil Rules for the preservation of certain evidence that was seized by the Royal Canadian Mounted Police ("RCMP") during the searches of the Dominion Property (the "Dominion Items").
- [5] The RCMP and the BC Coroner Service (the "Coroner") are the respondents to this application. Neither the RCMP nor the Coroner is a party to this action. The RCMP is a former defendant. It settled out of the action but agreed to assist with the preservation of evidence for the civil claims.
- [6] The plaintiff brings this application for an interim preservation order. She seeks an order limiting the steps that the RCMP can take with the Dominion Items. Specifically, the plaintiff seeks to prevent the RCMP from sending any items to the Coroner. The Coroner has issued an Order to Seize to the RCMP.
- [7] The plaintiff's application must be understood within the wider context of a related proceeding under the Criminal Code, R.S.C. 1985, c. C-46, wherein the RCMP is seeking directions on the proper method of dispersing or disposing of the Dominion Items which comprise more than 15,000 individual items.
- [8] On this application, the plaintiff asserts that the RCMP and, to an extent, the Coroner, have breached the spirit and intent of a prior order of this Court, which was pronounced in the related criminal proceeding. The plaintiff's counsel asserts some degree of collusion between the RCMP and the Coroner to improperly destroy certain items.
- [9] The RCMP and the Coroner do not accept the plaintiff's assertions and deny any impropriety. They submit that they are acting within the terms and the spirit of the order in the criminal proceedings. Further, they submit they are acting as mandated by the statutory regimes that govern them.
- [10] For the reasons set out below, I accept the position of the RCMP and the Coroner. I dismiss the plaintiff's application.

The Plaintiff's Application and the Issues to be Decided

- [11] The notice of application of the plaintiff seeks the following relief:
- a) an interim order that the RCMP refrain from destroying, distributing or disseminating any of the exhibits or information seized from the Dominion Property until further order of this Court; and
 - b) an interim order that the Coroner refrain from destroying, distributing or disseminating any exhibits or other material seized from or found on the Dominion Property, and provide counsel for the applicant with a list of items, exhibits or other materials given to the Coroner by the RCMP.

- [12] There is no dispute between the parties on the test to be applied on a Rule 7-6(4) application. The overall test requires the court to consider whether the preservation of evidence is necessary or expedient for the purpose of obtaining full information or evidence. The leading case in the area is *The Insurance Corporation of British Columbia v. Teck Metals Ltd.*, 2020 BCSC 1617 at paras. 28-67 [Teck]. A four-part test emerges. The applicant must establish:
- a) that the property in issue is property in question in a proceeding or relevant to an issue in the proceeding;
 - b) that there is a serious issue to be tried with regard to the property;
 - c) that interim preservation or custody of the property is necessary for a party to advance or defend its claim; and
 - d) the balance of convenience favours the relief.
- [13] Counsel for the plaintiff submits that all of these factors have been satisfied. Counsel for the two respondents submits that the test is not met.

Background Facts

- [14] The background facts to this case are notorious. Over a period of years, Robert Pickton murdered a number of women on the Dominion Property. The investigation of those murders and the related RCMP searches led to the seizure of thousands of items as potential exhibits. As noted, there is a related proceeding ongoing in the criminal context. For continuity, I adopt the background information set out by Justice Verhoeven in his decision *Pickton (Re)*, 2024 BCSC 1262 (Paragraphs 2 and 3 discuss the procedure that led the plaintiff to make the current application):
- [2] On November 14, 2023, the Royal Canadian Mounted Police ("RCMP"), represented by the Attorney-General of Canada ("AGC"), filed an application for directions from this Court as to the appropriate procedure under s. 490 of the Criminal Code, R.S.C. 1985, c. C-46 [Code] or the Court's inherent jurisdiction, governing the RCMP's intended applications for orders permitting it to dispose of approximately 15,000 items of property that the police seized from the former residence of Robert William Pickton ("Robert Pickton", "Mr. Pickton" or "Pickton") at 953 Dominion Avenue, Port Coquitlam.
- [3] The items were seized by the RCMP pursuant to search warrants executed between February 6, 2002 and November 23, 2003. I will refer to the seized items as the "Dominion items", or simply the "items".

- [12] Between 2002 and 2005, Robert Pickton was charged with 27 counts of first-degree murder. On December 9, 2007, he was convicted of six counts of second-degree murder. He was given a life sentence. All appeals related to his convictions were exhausted on July 30, 2010. One of the counts was quashed by the Court on February 13, 2006. On August 7, 2010, the British Columbia Prosecution Service ("BCPS") stayed the 20 outstanding murder charges against Mr. Pickton. Mr. Pickton died in custody May 31, 2024.
- [13] Only a small portion of the Dominion items were entered as exhibits at the trial. The exhibits entered as evidence of the trial have been returned to the custody of the RCMP.
- [14] The police investigation into Robert Pickton was the focus of the Province of British Columbia's Missing Women Commission of Inquiry ("MWCI") presided over by Wallace T. Oppal, K.C. which concluded November 19, 2012. Investigative failures of the police were a focus of the National Inquiry into Missing and Murdered Indigenous Women and Girls (the "National Inquiry") which concluded in June 2019.
- [15] With the conclusion of the prosecution and related inquiries the RCMP has commenced the process of seeking disposal of the items seized during Project Evenhanded.
- [16] In its submissions, the RCMP emphasizes that dispersal or disposition of the items is not to be equated with destruction. The RCMP states that every reasonable effort will be made to deal with the property in an appropriate and culturally responsible manner. It adds that it has been in communication with the family members of 23 victims of Robert Pickton, through a victim service worker. The RCMP states that families whose loved ones' effects have been identified and recovered are aware of the process and can expect personal effects to be returned to them. The RCMP states that all evidence gathered is being preserved. Each item seized has been photographed, each document photocopied, and all DNA profiles have been preserved and uploaded to a database.
- [17] The RCMP advises that each anticipated application for disposal of items will include appropriate affidavit evidence, which will include an itemized list and description of each of the seized items, and the manner in which the RCMP proposes to dispose of it, whether by return or otherwise. The affidavit evidence will include a summary of what steps have been taken to preserve any relevant forensic evidence, and detailed information as to the RCMP's efforts to notify the family members of Mr. Pickton's victims. The RCMP states that the Court will be provided with all necessary and relevant information to ensure that the RCMP has discharged its obligations pursuant to the s. 490 scheme.
- [18] The Pickton trial was presided over by Justice James Williams, who is now retired. In 2020 and 2021 Justice Williams dealt with several applications to dispose of items seized by the RCMP from locations or sources other than 953 Dominion Avenue, and made orders allowing the RCMP to dispose of the items, in various ways, as detailed, for each item, in an attached appendix to the orders. Following the retirement of Justice Williams, on August 18, 2023, the Associate Chief Justice assigned me to manage and preside over further applications relating to the disposal of items related to the prosecution of Mr. Pickton.

- [19] Although the previous RCMP applications were brought pursuant to s. 490(4) of the Code and the inherent jurisdiction of the Court, the court orders that ensued stated that the orders were made pursuant to ss. 490(6) and 490(9) of the Code and the inherent jurisdiction of the Court, except for an order made February 18, 2021 for the destruction of perishable items made pursuant to s. 490.01(b)(ii). There is no information as to why most of the Court's previous orders were apparently made on the authority of ss. 490(6) and 490(9), rather than s. 490(4).
- [20] Justice Williams provided brief reasons for judgment with respect to the RCMP's applications on March 9, 2022. The reasons for judgment are indexed as *R. v. Pickton*, 2022 BCSC 375.
- [21] Justice Williams heard an application for intervention brought by two persons, Norman Vincent Traversy and Zsuzsanna Holland. He dismissed their application on August 13, 2020, with reasons for judgment indexed as *R. v. Pickton*, 2020 BCSC 1200.
- [22] The RCMP's application for directions was scheduled to be heard by me January 25, 2024. However, prior to that date, the Court received several requests to appear on behalf of persons or parties who are not, or not necessarily, parties to the proceedings. At a case management conference on January 15, 2024, I ordered that the RCMP's application for directions then scheduled for January 25, 2024 be adjourned, and that any applications for intervenor status must be filed no later than January 31, 2024. The RCMP's application for directions was deferred, pending the outcome of the intervention applications that could be brought.
- [15] The nine plaintiffs with actions similar to Ms. de Vries' action, applied for intervenor status in the RCMP's application before Justice Verhoeven. Their application for intervenor status was dismissed. However, Justice Verhoeven, with the cooperation of the RCMP, exercised his discretion to order the following;
- [45] In summary, I am not satisfied that the plaintiffs have demonstrated that their intervention in these proceedings is warranted, or appropriate.
- [46] However, this does not mean that this Court could not, in its discretion, grant the plaintiffs with a limited right of audience on the hearing of an application, to address specific matters such as the status of any relief they have obtained or may seek to obtain from the civil court.
- [47] In conclusion:
1. the application of the plaintiffs to intervene is dismissed;
 2. I direct the AGC to provide the plaintiffs with not less than 30 days' notice of the RCMP's applications for disposal of items seized at 953 Dominion Avenue; and
 3. in its discretion, at the hearing of such applications, the Court may grant counsel for the plaintiffs a limited right of audience, if deemed necessary and appropriate.

- [16] The purpose of providing notice to the plaintiffs was to give them an opportunity to apply in these civil proceedings for a preservation order. Justice Verhoeven clarified:
- [39] However, the s. 490 statutory scheme does not preclude the possibility of recourse to the plenary jurisdiction of the British Columbia Supreme Court, as a superior court: *R. v. Raponi*, 2004 SCC 50 [Raponi] at paras. 17, 30, 33, and 42. Therefore, the plaintiffs would have an opportunity to seek remedies from this Court acting within its civil capacity in respect of the items that could be required for them to advance their claims. Providing them with reasonable notice of the RCMP's applications, and possibly, if necessary, a limited right of audience at the hearing of the applications should be sufficient to allow them to take steps to protect their legitimate interests.
- [41] Similarly, in this case, the appropriate avenue to address the plaintiffs' concern for preservation of property or evidence that could be required in their civil actions is through recourse to the civil court, acting within the context of the civil actions, and not for the plaintiffs to involve themselves as intervenors in the s. 490 proceedings.

The Plaintiff's Position

- [17] Within that context, the plaintiff says that she expected to receive notice of any move by the RCMP to disperse or dispose of any of the Dominion Items.
- [18] Counsel for the plaintiff indicates that he found out, by accident, that the Coroner had issued at least one Order to Seize to the RCMP.
- [19] The plaintiff's counsel submits that the Coroner (by issuing the Order to Seize) and the RCMP (by complying with it) are sidestepping the order of Justice Verhoeven. Counsel suggested that there was a degree of collusion between the RCMP and Coroner to destroy evidence. The plaintiff received no notice of the Coroner's Order to Seize. The plaintiff had no opportunity to make an application in respect of any items sent from the RCMP to the Coroner. Thus, the plaintiff has no information about the items that have been, or may be, destroyed.
- [20] That was the underpinning of the plaintiff's notice of application. She seeks an interim order to put a hold on the Coroner's Order to Seize.
- [21] The plaintiff's position is that she needs the physical items (in this circumstance, the human remains) in order to prosecute her civil claims.

The Respondents' Position

- [22] The evidence of the Coroner casts the circumstances in a different light.
- [23] The Coroner filed the affidavit of Ms. Laura Yazedjian, who is a coroner appointed under the Coroners Act, S.B.C. 2007, c. 15. Ms. Yazedjian states in her affidavit #1:

10. I have issued orders under the Coroners Act to the RCMP asking that they produce human remains they seized during their investigation of Robert Pickton. Attached to this affidavit and marked as Exhibit "A" is a copy of the first page of the most recent order, issued July 7, 2025.
- [24] In answer to the plaintiff's application, the RCMP and the Coroner take the following positions:
- a) During the investigation that resulted in the murder convictions of Robert Pickton, the RCMP gathered a number of exhibits identified as human remains and possible human remains. The RCMP did not identify every person who was associated with each of this type of exhibit (i.e., human remains).
 - b) With the close of the criminal investigation, the Coroner is now investigating to determine the identity of the people whose remains were gathered as exhibits. To that end, the Coroner has issued an order requiring the RCMP to deliver to its office "confirmed human remains exhibits including bone powder and all biological material exhibits which have not been determined to be non-human". The RCMP currently have in their possession dozens of unidentified samples.
 - c) Where the human remains are not identified (i.e., the exhibit has not been linked to an individual), the Coroner:
 - i. uses DNA testing to determine, wherever possible, whose remains they are; and
 - ii. where possible, will respectfully repatriate any remains available after testing, to the person entitled to receive them, so that they may be dealt with in accordance with the family's wishes.
 - d) Once the Coroner determines the identity of the persons whose remains have been found, it is able to notify those persons who are entitled to know, through the police, and provide them with confirmation that the identified remains belong to their loved one. The Coroner's notification or report may be the only way some survivors confirm their loved one is deceased and the remains have been found.
 - e) There are dozens of families who have not received confirmation whether their loved ones' remains are among the exhibits seized in the criminal investigation.
- [25] The Coroner says that the current application by the plaintiff seeks to delay the Coroner's ability to undertake the testing required. Within that factual background, the Coroner notes that it has a statutory obligation to conduct this testing under the Coroners Act.
- [26] The Coroners Act provides the Coroner with wide-ranging authority consistent with its purpose of answering five key questions regarding human remains: the identity of the deceased, and the determination of how, when, where and by what means the deceased came to their death. In order to carry out that mandate, the Coroner is empowered by the Coroners Act to:

- a) take possession of human remains for examination (s. 11(1)(a)-(b));
 - b) seize anything the Coroner has reason to believe is relevant to the investigation (s. 11(1)(f));
and
 - c) provide the human remains to experts for analysis (s. 13).
- [27] Further, the Coroner notes that it has statutory obligations under the Coroners Act. Specifically, pursuant to s. 11(3)(b), if an item seized by the Coroner is no longer required for an investigation or inquest, the Coroner must "dispose of it". In the case of human remains, s. 40 of the Coroners Act provides that the Coroner may release the body if the Coroner determines that the body is no longer required for an investigation or inquest. Such a disposition is then governed by the Cremation, Interment and Funeral Services Act, S.B.C. 2004, c. 35 [CIFSA]. Section 5(1) of CIFSA provides a prioritized list of those persons entitled to dispose of the body. That list includes 11 different persons starting with the personal representative named in the will of the deceased and progressing through persons with more distant relationships.
- [28] The Coroner notes that the list of persons with a right to control the disposition of human remains does not include a plaintiff in a tort action who seeks the remains for evidentiary purposes.
- [29] Further, the Coroner submits that there is no authority for this Court to release any human remains to the control of a person who is not identified in s. 5(1) of CIFSA.
- [30] The Coroner also notes that this Court has limited authority to compel the Coroner to produce records or information. On that basis, the Coroner submits that this Court has no authority in this case. Specifically, s. 65(3) of the Coroners Act explicitly states that a coroner must not be compelled to produce or permit inspection of any record for the purpose of a legal proceeding in which the coroner is not a party.
- [31] For its part, the RCMP notes that the decisions of Justice Verhoeven deal with items seized and retained under the regime established under s. 490 of the Criminal Code. Broadly speaking, that regime ensures that items seized from a suspect are catalogued and, when appropriate, either returned to the suspect or used in a prosecution. By definition, items that are suspected to be human remains fall outside of that regime. Human remains cannot be returned to the suspect whose property was searched. They do not "belong" to anyone. As noted, by operation of the Coroners Act, human remains must be forwarded to the Coroner to be dealt with under the Coroner's statutory regime.
- [32] The RCMP points to the decision of the Manitoba Court of Appeal in *R. v. Geisbrecht*, 2019 MBCA 35 at para. 37, where Justice Mainella indicated significant doubts over whether the s. 490 regime applies to human remains.
- [33] Taking all of the above into consideration, the RCMP and the Coroner submit:

- a) The Coroner is empowered to order the presentation of the Dominion Items that are or may be human remains.
- b) There is no authority for this Court to interfere with an Order for Seizure issued by the Coroner (other than judicial review).
- c) Once the Coroner is in possession of human remains, there is no statutory authority to release those remains to the plaintiff, unless the plaintiff is one of the individuals listed in s. 5(1) of CIFSA.

[34] The submissions of the Coroner and the RCMP were, in a word, compelling.

[35] Counsel for the plaintiff, in reply to the submissions, maintained the position that the plaintiff was entitled to an order preserving the actual human remains so that the plaintiffs could tender them in evidence or perform further testing upon them.

Discussion

[36] In short, I reject the plaintiff's submissions in their entirety.

[37] The position of the plaintiff's counsel is that the human remains of an unrelated deceased should be retained for the purpose of introducing those human remains as evidence at a civil trial.

[38] That concept not only offends CIFSA, it is morally offensive.

[39] This leads me back to the four-part test from Teck. In addressing the four factors, I consider each in light of the evidence that was before Justice Verhoeven, that being: "[e]ach item seized has been photographed, each document photocopied, and all DNA profiles have been preserved and uploaded to a database."

[40] With that evidence in mind, I find:

- a) The property in issue (i.e., human remains) is not property in question in a proceeding or relevant to an issue in the civil proceeding.
- b) There is no serious issue to be tried with regard to the actual human remains.
- c) Interim preservation of the human remains is not necessary for the plaintiff to advance her claim.
- d) The balance of convenience does not favour the relief sought.

[41] Given the cataloguing work that has been completed by the RCMP, I find that there is no possible scenario wherein the human remains themselves will be necessary for the plaintiff to advance her claim. Further, and looking at the matter from a different perspective, the statutory scheme is designed to treat human remains with the dignity they deserve. In my opinion, that regime precludes an order that would permit human remains to be used as evidence in a civil trial by persons who are not empowered to take charge of those remains.

[42] The plaintiff's application is dismissed.

"A. Ross J."

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