

CANADA / JUDGMENT

## Minchin v. Movsessian

2021 BCSC 1303

COURT

Supreme Court of British Columbia

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2021 BCSC 1303 Minchin v. Movsessian

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Minchin v. Movsessian,

2021 BCSC 1303

Date: 20210706

Docket: S159202

Registry: Vancouver

Between:

Michael Anthony Minchin

Plaintiff

**And**

Vicken Movsessian The Corporation of Delta, Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Justice, Matthew Neumann, Gregory Neumann, Constable John Doe and Her Majesty the Queen as represented by the Attorney General for Canada

Defendants

Corrected Judgment: The front page of this judgment was corrected on July 28, 2021

Before: Master Elwood

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.

May 3-4, 2021

Place and Date of Judgment:

Vancouver, B.C.

July 6, 2021

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## I. INTRODUCTION

- [1] The defendants apply for production of documents. Their applications raise issues relating to the process for redacting documents and challenging those redactions, as well as Halliday orders.

## II. BACKGROUND

- [2] This action arises out of a police shooting.
- [3] On November 7, 2013, members of the Combined Forces Special Enforcement Unit ("CFSEU") were attempting to apprehend an armed and dangerous suspect. Based on intelligence and surveillance information, CFSEU believed the suspect was travelling in a particular Toyota Camry. Officers stopped the Camry in a high-risk "Code 5" vehicle stop. They approached the vehicle with their firearms drawn and ordered the occupants to comply with their commands. Two people in the front seat raised their hands. A man in the back seat initially raised his hands as well, but then arched his back and reached for something around his midsection. Constable Vicken Movsessian shot the man in the back seat. The man he shot was not the target of the police stop, but rather the plaintiff Michael Minchin.
- [4] On December 16, 2016, Judge Gardner of the Provincial Court acquitted Cst. Movsessian of a charge of careless use of a firearm. Judge Gardner found that Cst. Movsessian had reasonable grounds to believe that his life was in danger. In doing so, the judge accepted Cst. Movsessian's evidence that he believed that Mr. Minchin was reaching for a weapon.
- [5] Mr. Minchin brings this action in damages for personal injuries as a result of assault and battery, false arrest, false imprisonment and Charter violations. He alleges gross negligence that would deprive Cst. Movsessian of the qualified immunity from civil suit conferred by the Police Act. Mr. Minchin names the Corporation of Delta as a defendant based on vicarious liability, and the Provincial and Federal governments, based on the joint and several liabilities of the Minister of Public Safety and Attorney General of Canada, respectively, under the Police Act.
- [6] Mr. Minchin's alleged injuries include a gunshot wound to his left chest, loss of function in his left arm and shoulder, nerve damage, nervous shock, depression and anxiety.
- [7] Constable Movsessian, Delta and the Minister of Public Safety have filed a joint response to the civil claim (the "Provincial Defendants"). The Attorney General of Canada has filed a separate response.
- [8] The defendants allege that at the time he was shot, Mr. Minchin was carrying illegal drugs for his own use and/or for the purposes of trafficking. They deny liability and deny that Cst. Movsessian caused the alleged injuries. They allege that Mr. Minchin has failed to mitigate his damages, including by his continued use of harmful drugs.

- [9] Mr. Minchin's lists of documents in this action include documents from the Royal Columbian Hospital, records of various treating physicians and PharmaNet and MSP printouts.
- [10] Some of the medical records are redacted by Mr. Minchin's counsel "on the basis of Rule 7-1(a)(i)". The redacted documents have brief notations on them, such as "Irrelevant - lifestyle", "Irrelevant test results", "Transient aches and pains", or "Bacterial" or "Hematology".
- [11] On January 26, 2021, the Provincial Defendants filed and delivered a notice of application for an order that Mr. Minchin prepare an amended list of documents and produce unredacted copies of the records.
- [12] On January 27 and 29, 2021, Mr. Minchin's counsel advised that he "had a chance to review and rethink the redactions" to the clinical records and concluded that "some previously redacted redactions related to drug use may be relevant to this action".
- [13] Mr. Minchin delivered an amended list of documents that lifted redactions over information relating to drug use, but also indicated that additional, newly disclosed documents were redacted, again "on the basis of Rule 7-1(a)(i)". The additional redacted documents have notations such as "Men's Health", "Unrelated pathology results", "Irrelevant non-medical", "Non-plaintiff" and "Illegible - cannot prove or disprove a material fact".
- [14] The Provincial Defendants now apply for an order that Mr. Minchin produce complete copies of the redacted documents.
- [15] The Attorney General of Canada applies for an order that addiction treatment providers produce records relating to Mr. Minchin since the shooting and that the Ministry of Health produce a complete, updated copy of Mr. Minchin's PharmaNet and MSP printouts.
- [16] Mr. Minchin opposes both applications on the basis of relevance and privacy.

### III. APPLICATION BY THE PROVINCIAL DEFENDANTS

#### A. The Definition of a Relevant Document

- [17] A paralegal in the office of Mr. Minchin's counsel provided affidavit evidence explaining counsel's approach to producing and redacting the documents in this case:
43. As a usual practice, I review all records for redaction. Based on the pleadings, I mark portions I believe should be redacted as not disclosing anything which could be used by any party to prove or disprove a material fact at trial. I then review each redaction with the lawyer handling the case. Once those redactions are approved by the lawyer, I remove the passages and add an explanation. For example, if the client went to see the doctor for a cold, I would mark the redaction as "viral". Female clients might have redactions for "gynecological". In Mr. Minchin's case, we removed redactions related to drug abuse, on the basis that his being shot was not related to any drug use. These were removed with the

explanation "lifestyle". Some unrelated matters were redacted related to men's health issues.

44. Before we received the Defendants' application here, Mr. Harding and I had some discussions with Mr. Minchin, during which the client informed us that he believes his current opioid addiction was caused by the shooting - specifically the opioids he was prescribed to deal with the pain. Based on this, Mr. Harding instructed me to "unredact" all redactions before and after the shooting which related to drug abuse...

[18] Applying this approach, Mr. Minchin's counsel redacted: specific prescriptions in the PharmaNet printouts; laboratory results; all or parts of some medical records; individual entries in the clinical records; and, in one instance, three sentences from a social work progress note.

[19] Mr. Minchin argues that this approach is authorized, indeed mandated, by Rule 7-1(1). I do not agree.

[20] Rule 7-1(1)(a)(i) requires parties to list and produce:

all documents that are or have been in their possession or control that could, if available be used by any party of record at trial to prove or disprove a material fact.

(emphasis added)

[21] The premise of Mr. Minchin's position is that every entry in a medical or clinical record is a separate document, subject to a separate analysis under Rule 7-1(1) for whether it must be listed and disclosed. Mr. Minchin's counsel argues that every data field, every information box and every lab test result is a separate document, such that a single page of a hospital record, for example, may comprise multiple documents. Counsel went so far as to say that every topic in a medical record is a separate document, such that the social work note referred to above is, paragraph by paragraph, and even sentence by sentence, a series of separate documents.

[22] Mr. Minchin relies on the decision of Master MacNaughton (as she then was) in *Hyvarinen v. Burdett*, 2012 BCSC 1034. That case concerned clinical records of the plaintiff's treating physicians covering several years, hospital records for a number of attendances by the plaintiff and WorkSafeBC records relating to a series of workplace injuries. Master MacNaughton said this:

[19] [T]he documents sought in unredacted form are not, although generally listed as such, single documents. Rather, they are a series of records compiled over time from a number of interactions with the plaintiff. These records should not be approached globally as if they were a single document. Each entry requires a separate analysis as to whether it may prove or disprove a material fact or relate to a matter in a question in this action.

(emphasis added)

- [23] Similarly, in *Hadani v. Hadani*, 2012 BCSC 1142, Master Muir held that the records of a medical practitioner should not be treated as a single document, and "following that train of logic there can be no presumption that the entirety of such documents should be produced" (para.33).
- [24] In my view, Mr. Minchin takes the principle from *Hyvarinen* and *Hadani* too far. As noted in those decisions, medical documents and clinical records are often listed (as they were in this case) in bundles covering a period of time and a number of interactions. When records are listed in this way, each interaction or clinical attendance may properly be regarded as a separate event giving rise to a separate document and justifying a separate analysis as to whether it may prove or disprove a material fact. However, there is no authority for the proposition that a listing party may redact medical records by treating every medical condition, test result or topic of conversation within a single interaction as a separate document allowing for a separate analysis of relevance.
- [25] In *North American Trust Co. v. Mercer International Inc.* (1999), 71 B.C.L.R. (3d) 72, Lowry J. (as he then was) discouraged the practice of litigants "editing out substantial parts of a document production believed to be irrelevant" (para. 12). He held that:
- [13] Under the rules of this court, a litigant cannot avoid producing a document in its entirety simply because some parts of it may not be relevant. The whole of a document is producible if a part of it relates to a matter in question.
- [26] Since *North American Trust Co.* was decided, Rule 7-1(1) narrowed the scope of relevance for initial lists of documents. However, Rule 7-1(1) did not authorize litigants to edit documents on the basis of relevance alone. Generally speaking, the whole of a document must still be produced if a part of it may be used to prove or disprove a material fact: *Este v. Blackburn*, 2016 BCCA 496 at para 19.
- [27] More recently, in *Araya v. Nevsum Resources*, 2019 BCSC 1912, Madam Justice Ross rejected an attempt to redact Facebook posts for irrelevant content:
- [31] As noted above, in *North American Trust* at para. 12, Lowry J. warned that accepting a narrow meaning of documents and permitting litigants to engage in editing out substantial parts of document production on the basis of relevance could serve to make discovery even more contentious, time consuming and costly. In my view, the present application is an illustration of the accuracy of Justice Lowry's prediction. I note that while this application concerns only four documents, there are many more that have been redacted by the plaintiffs, the propriety of which has yet to be determined.
- [32] In my view, the plaintiffs' approach of treating each post as a separate document for the purposes of production and redaction is clearly not efficient, will increase cost, and cause delay. It is not the approach that best serves the truth seeking objective. Having regard to the nature of the document and the object of the Rules, ALE.000038 should be viewed as a single document for this purpose.

(emphasis added)

- [28] Some of Mr. Minchin's redactions, in this case, follow the logic of Hyvarinen and Hadani and properly remove entries in the medical records relating to separate interactions. However, his approach of treating each piece of information in the records as a separate document for production and redaction is, to quote Ross J., "clearly not efficient, will increase cost, and cause delay". The practice of redacting relevant medical records by removing information that counsel believes cannot be used to prove or disprove a material fact is not consistent with the rules, and should be discouraged by the court.
- [29] This is not to say litigants cannot remove irrelevant personal information from otherwise relevant documents. But the process of withholding such information must follow the guidelines laid down by the court for redacting relevant documents, discussed below. Such redactions are not as-of-right under Rule 7-1(1).
- [30] As will be seen, there are two consequences of this conclusion in the present application. First, the onus is on Mr. Minchin to justify the redactions within the documents, and not, as he argues, on the defendants to establish a basis for the production of "documents" he has withheld. Second, relevance alone is not sufficient to justify the redactions within documents; there must be a good reason why the information should not be disclosed.

## B. Redacting Relevant Documents

- [31] In *North American Trust Co.*, Mr. Justice Lowry allowed that an otherwise relevant document may be redacted where:
- a) the redacted material is irrelevant; and,
  - b) there is a good reason why it should not be disclosed (para. 13).
- [32] A listing party may redact information with a note to that effect in its list of documents, and then, on an application by the requesting party for production of the complete document, seek a ruling of the court under Rule 7-1(14)(a) upholding the redaction: *Este*, at para 20; *McCaw's Drilling & Blasting Ltd. v. Greenfield Construction Ltd.*, 2019 BCSC 2244, at para. 23.
- [33] When a redaction is disputed by the receiving party, the onus is on the party seeking to limit the disclosure to adduce evidence that satisfies the court that the material is likely irrelevant and a good reason favouring redaction: *Este*, at para. 21.
- [34] In *Este*, Madam Justice Newbury drew upon the comments of Mr. Justice Macaulay in *Gorse v. Straker*, 2010 BCSC 119, to explain this onus. *Gorse* was concerned about whether to order the production of documents by third parties on a "Halliday format" that would allow the plaintiff's counsel to review and remove irrelevant information before the documents were produced to the defendant. Mr. Justice Macaulay held:
- [40] It is not enough for a party or, as is often the case, a paralegal assisting the party's lawyer to swear an affidavit raising a mere possibility of privileged or irrelevant, private information.

- [41] The evidentiary burden is not an onerous one. The evidence necessary to support a conclusion that the particular records sought are irrelevant will vary according to the content of the pleadings and the nature of the record. In some cases, it may be possible to conclude, on an analysis of the pleadings, that they are irrelevant and, accordingly, not required to be produced at all. When it is apparent that some, but not necessarily all, of the records should be produced, there must be some evidence respecting the content of the records said to require the review by counsel contemplated by a Halliday order.
- [42] When the documents at issue are said to be private and irrelevant, it is usually the party who provides the evidence. For example, in *Grewal*, the plaintiff deposed that the consultation with her gynecologist related to the delivery of her two children and that, in her view, the records were not relevant to the claims that she had advanced.
- (emphasis added)
- [35] Mr. Minchin argues that the Halliday line of cases permits litigants to redact relevant information, if it is personal or confidential, or "where the probative value is outweighed by the prejudicial effect". This is incorrect.
- [36] Where a Halliday order is appropriate, a litigant may redact irrelevant or privileged information from otherwise relevant documents. The weighing of probative value and prejudicial effect is an evidentiary consideration that goes to the admissibility of documents at trial, not document production.
- [37] In exceptional cases, the court may make an order under Rule 7-1(14)(a) excusing a party from full compliance with the document disclosure rules. But privacy alone is not an exceptional circumstance relieving litigants of their obligation to list and produce all relevant documents.
- [38] Mr. Minchin did not provide an affidavit in this case. The paralegal's affidavit does not explain why the information was redacted, except that she did not believe it could be used to prove or disprove a material fact, and a lawyer approved her decisions. The brief notations in the documents themselves do not provide meaningful reasons for why the information was removed.
- [39] Counsel's belief that that certain information cannot be used to prove or disprove a material fact is not sufficient. Redacting documents for relevance without good reasons for withholding the information leads to unnecessary suspicion between parties, contested chambers applications, and added length and expense of proceedings. Redaction also runs the risk of withholding contextual information early in the proceeding, before the issues are fully defined, and therefore impairing the search for the truth.
- [40] On the other hand, the courts recognize that medical documents and clinical records often contain sensitive, personal information. In *Kaladjian v. Jose*, 2012 BCSC 357, Mr. Justice Davies held that the proportionality principle requires consideration of a plaintiff's legitimate privacy rights (para. 73-75). In his words: "Involvement in an automobile accident

does not amount to an implied waiver of privacy rights" (para. 78). Likewise, an action seeking compensation for injuries sustained in a police shooting is not a full waiver of the plaintiff's privacy rights.

- [41] However, the court will not assume that all irrelevant medical information is sufficiently sensitive to provide a good reason for withholding. In accordance with the authorities, redaction should be the exception, not the rule.
- [42] Mr. Minchin provided me with complete copies of the documents in issue. Below, I will set out my rulings on the specific redactions. For many of the redactions, it was possible for me to conclude on the basis of the pleadings and the context of the documents as a whole whether the redacted information was relevant. However, without evidence from Mr. Minchin, it was difficult for me to balance the competing interests and find reasons for why the information should not be disclosed.

### C. Relevance for the Purposes of this Application

- [43] Before turning to the documents, I will address the Provincial Defendants' approach to relevance for the purposes of this application.
- [44] Counsel for the Provincial Defendants set out three alternative pathways to a finding that the redacted information is relevant. First, is the redacted material relevant to an injury alleged by Mr. Minchin, such as nervous shock, anxiety or depression? Second, is it relevant to whether an injury alleged by Mr. Minchin was caused by the gunshot? Third, is it relevant to whether the injury was not caused by the gunshot, but rather by some other event or condition, before or after the shooting?
- [45] While I generally agree with this analysis, it is important to bear in mind the current stage of document production. At the listing stage of the proceedings, the relevant question is still whether the redacted information can be used by any party at trial to prove or disprove a material fact. I do not agree with the Provincial Defendants that "records pertaining to the plaintiff's medical conditions that are demonstrably unrelated to shooting incident are relevant precisely for that reason" (emphasis in the notice of application). Adopting that approach would essentially require Mr. Minchin to list and produce his entire medical history, which is not consistent with the authorities.
- [46] In *Chisholm v. Abbott*, 2020 BCSC 1905, the issue was the plaintiff's ability to deal with stress before and after a motor vehicle accident. The defendant argued he should be entitled to see anything that could bear on how the plaintiff dealt with "life's stressors", and what might have been causing her stress in the past. Mr. Justice Myers dismissed the application as a "gross overreach". On reviewing the authorities and the redactions, Myers J. concluded there had been "ample disclosure".

- [47] In Kaladjian, Mr. Justice Davies found that the rules generally require some evidence in support of an application for medical information that cannot be used to prove or disprove a material fact. A pro forma defence pleading of a pre-existing condition is not sufficient, Davies J. held, to require a plaintiff to produce additional personal medical information.
- [48] This case is not like McCaw's Drilling, where I applied the broader test of "relating to any or all matters in question in the action" to decide whether to allow the redactions. In McCaw's Drilling, the applicant provided evidence to support a connection between contract pricing information the listing party had withheld and the matters in question in the lawsuit.
- [49] To gain access to this broader scope of relevance under the "second stage" of document production, the defendants must provide some evidence of the existence and potential relevance of other events or medical conditions: Moore Marine Ltd. v. Shearwater Marine Ltd., 2011 BCSC 166, at para. 6-8.
- [50] To some extent, the documents already produced by Mr. Minchin provide an evidentiary link between the additional documents sought by the defendants and the matters in question in this action. However, to fully explore the causation issues raised in submissions, the defendants will need to make more targeted requests supported by reasons as to why those additional documents must be produced, followed, if necessary, by an application with a more developed evidentiary basis for production. An examination for discovery of is the most likely source of such evidence: Moore Marine Ltd. v. Shearwater Marine Ltd., 2011 BCSC 166, at para. 6-8.

#### D. Rulings on the Redactions

- [51] Unfortunately, the page numbers of the unredacted documents Mr. Minchin provided to me do not match the numbering of the defendants' redacted copies of those notes. For the parties' reference, I have used the document production numbers, and where possible, provided cross-references to the defendants' copies in the application record.

Documents B1.1 and B1.2

PharmaNet

(217 pages)

1 redaction - "men's health"

1 redaction - "viral"

- [52] The two redactions in the PharmaNet documents are a proper application of the principle from Hyvarinen. The entries result from separate interactions with the health care system. They may be regarded as separate documents. The redacted entries cannot be used, in my view, to prove or disprove a material fact. They are prescriptions unrelated to any of the injuries alleged in the notice of civil claim.

Documents B3.1 and B3.2

Dr. Phillip Walter

Evergreen Medical Clinic

Dr. Ruth Turnbull Medical

(147 pages)

43 redactions - "unrelated pathology results"

3 redactions - "transient aches and pains"

1 redaction - "dental"

1 redaction - "unrelated condition"

2 redactions - "illegible"

3 redactions - "non-plaintiff"

[53] It appears that Mr. Minchin's counsel has marked all of the laboratory results in the medical records as "unrelated pathology results". During oral submissions, Mr. Minchin's counsel acknowledged that tests for controlled substances are relevant, and agreed to "unredact" those results. However, there remain a large number of redactions for diagnostic and laboratory testing at material times. Mr. Minchin did not provide any evidence that the test results could not be used to prove or disprove a material fact. Unless the purpose of the test is stated on the face of the record in non-medical terms, it is not possible for me to conclude that this information is irrelevant. Nor is it possible for me to find a privacy interest to justify withholding the results.

[54] With the exception of tests for sexually transmitted diseases, the diagnostic and laboratory test results should be disclosed.

[55] The "transient aches and pains" redactions relate to a broken rib and injured right hand in March 2015 (AR Tab 7M, pp. 561, 563). These are properly separate documents, and, in my view, not within Mr. Minchin's initial obligation to list and produce relevant documents. The defendants may explore the March 2015 injuries on an examination for discovery and if justified, they can make a follow-up request.

[56] The "dental" redaction is for a discrete visit to Dr. Walter, a general practitioner, for tooth pain (AR., Tab 7L, p. 458 or Tab 7M, p. 525). It is a separate document. Dr. Walter notes that Mr. Minchin is a smoker, and gave the "usual advice". The Provincial Defendants assert that Mr. Minchin's dental conditions may be related to his drug use, but provide no evidence of this potential link. Without any evidence that apparently unremarkable tooth pain is indicative of drug use, this attendance note need not be disclosed.

- [57] The "unrelated condition" redaction is on a handwritten attendance note by Dr. Walter (AR., Tab 7M, p. 538). Mr. Minchin's counsel has redacted individual lines from this note. As discussed, this is not the proper approach to segregating documents. I do not know how counsel determined that some of the lines of this note are irrelevant while some others are relevant. There is no reason I can see to withhold parts of the note. The full note should be disclosed.
- [58] "Illegible" (AR, Tab 7M, p. 584) is not a valid reason to redact parts of a document. This document should be disclosed.
- [59] Three of the "non-plaintiff" redactions are information Mr. Minchin provided on a medical intake questionnaire concerning family history of addiction and medical problems (AR, Tab 7M, pp. 582, 586 and 587). These parts of the form are not separate documents. Mr. Minchin has not shown that his family history is irrelevant. His family members are not identified by name. The information should be disclosed.
- [60] Another "non-plaintiff" redaction removes the name of a child and where she lives (AR, Tab 7M, p. 588). This is a proper redaction.

Document B4.1

Royal Columbian Hospital

(118 pages)

2 redactions - "hematology"

1 redaction - "urology"

1 redaction - "irrelevant non-medical"

- [61] As stated, Mr. Minchin agrees to disclose blood tests for controlled substances. As discussed, the balance of the laboratory test results should also be disclosed, with the exception of tests for sexually transmitted diseases.
- [62] Mr. Minchin has redacted part of a social work progress note dated November 7, 2013, on the basis of "irrelevant - non-medical" (AR Tab 7R, p. 720). The three sentences removed from this note do not comprise a separate document. Mr. Minchin argues that the information is irrelevant because it relates to financial difficulties, which he submits are irrelevant because he does not make a lost income claim. I disagree.
- [63] First, the entire note is relevant to Mr. Minchin's claim to general damages for pain and suffering because it provides a "brief psycho-social assessment" of the challenges he was facing at the time of the shooting. The note itself was disclosed by Mr. Minchin. It is unclear why he severed the three sentences in question. Further, Mr. Minchin's employment situation discussed in these sentences is relevant to the allegation in paragraph 43 of the notice of civil claim that "As a result of the assault and battery the Plaintiff has suffered and continues to suffer loss of earning capacity and loss of opportunity to earn income, past,

present and future". The entire note must be produced.

Document B5.1

Dr. Rebecca Legge

The Phoenix Centre

(64 pages)

21 redactions - "illegible"

1 redaction - "transient medical issue"

8 redactions - "unrelated pathology"

3 redactions - "irrelevant"

7 redactions - "non-plaintiff"

[64] Mr. Minchin's counsel has marked sections of these clinical records as "illegible - cannot prove or disprove a material fact". This is not how the test for relevance operates. The question is not whether the document itself proves or disproves a material fact, but whether it could be used by a party for that purpose. An illegible clinical note can be translated by the doctor and used to prove or disprove a fact. Moreover, if the notes are illegible, Mr. Minchin cannot say they are irrelevant. No reason has been given for withholding parts of the doctor's notes. In my view, the complete notes should be disclosed.

[65] The medical imaging report from Surrey Memorial Hospital (AR, Tab 7N, p. 613) is an irrelevant document. It need not be produced at this time.

[66] As discussed, the "pathology" records should be disclosed, with the exception of tests for sexually transmitted diseases.

[67] The documents marked "irrelevant" in this bundle (AR, Tab 7N, pp. 630, 631, 634) concern one or more missed CT diagnostic scans. They are relevant, in my view, to mitigation and whether Mr. Minchin took reasonable steps to obtain medical care for his injuries. In any event, these same documents are fully disclosed elsewhere in Mr. Minchin's production (AR, Tab 8, pp. 63 - 64). The redacted copies should be unredacted.

[68] As discussed, the "non-plaintiff" redactions (AR, Tab 7N, pp. 652, 654, 659) should be disclosed, with the exception of the name and location of the child (p. 660).

Document 6.1

Dr. Roger Tom

Central City Medical Clinic

(8 pages)

1 redaction - "irrelevant condition"

1 redaction - "transient aches and pains"

1 redaction - "unrelated transient issue"

1 redaction - "unrelated pathology results"

[69] The "irrelevant condition" redaction (AR, Tab 7N, pp. 673) is part of an attendance note. It is not a record of a medical condition, but rather a doctor's note of aggressive behaviour by Mr. Minchin. In my view, Mr. Minchin's behaviour toward an attending physician is relevant both to drug use (he was demanding a prescription for Percocet at the time), and mitigation. In any event, there is no good reason to withhold this part of the note.

[70] I am satisfied that the notes in this set of clinical records marked "transient aches and pains" and "unrelated transient issue" (AR, Tab 7N, pp. 675) are irrelevant.

[71] As discussed, the "pathology" results should be disclosed, with the exception of tests for sexually transmitted diseases.

#### IV. APPLICATION BY THE ATTORNEY GENERAL OF CANADA

[72] The Attorney General of Canada applies for an order that Valley Oak Clinic, Royal Oak Clinic, Surrey Memorial Hospital, and Evergreen Medical produce medical records relating to Mr. Minchin. The Attorney General also seeks a complete print copy of Mr. Minchin's PharmaNet and MSP printouts from December 20, 2019, to present from the Ministry of Health.

[73] The Attorney General asked Mr. Minchin to obtain and produce these records from the record-holders themselves; with some exceptions, Mr. Minchin declined to obtain the documents.

[74] The Attorney General gave the record-holders notice of this application. Other than some input to the language of a draft order, the record holders take no position on the application.

[75] The documents sought by the Attorney General post-date the shooting. They are relevant, the Attorney General submits, to causation in the context of evidence that Mr. Minchin has a complicated and challenging medical and personal history.

[76] Mr. Minchin seeks to limit the production on the basis of relevance. Alternatively, he submits, the order should be in a Halliday format.

## A. Relevance - Non-Party Document Production

- [77] In *Kaladjian*, Mr. Justice Davies held that Rule 7-1(18) must be procedurally and substantively interpreted and applied in a manner consistent with Rules 7-1(10) to (14) (para. 53). Pleadings determine relevance, but some evidence is required to support an application for production of additional documents from non-parties (para. 62). Orders requiring document production from non-parties must also comply with the objective of proportionality and the legitimate privacy interests of the plaintiff and non-parties (para. 65).
- [78] Rule 7-1(18) is not intended to provide broad discovery of documents from non-parties. In *Northwest Organics, Limited Partnership v. Roest*, 2017 BCSC 673, Mr. Justice G.C. Weatherill held that:
- [81] It is apparent from the wording of Rule 7-1(18) that it was not intended to provide broad discovery of documents from non-parties, but rather a mechanism by which parties can access specific documents or classes of documents when it has been demonstrated that they are in the possession or control of a non-party and are relevant to an action.
- [79] The existing document production shows that Mr. Minchin suffered from drug addiction before and after the shooting. The evidence also demonstrates that Mr. Minchin suffered from a variety of physical ailments that may have impaired his quality of life and income-earning capacity.

## B. Rulings on the Non-Party Documents

- [80] Valley Oak Clinic is a medical practice that provides outpatient substance use services for people dealing with opioid addiction. Mr. Minchin has been a patient at Valley Oak Clinic since August 2016. Royal Oak Clinic is an addictions management clinic. Mr. Minchin has been a client of Royal Oak since August 2018.
- [81] Mr. Minchin alleges that his opioid addiction was caused by the shooting. He acknowledges that his treatments for drug addiction and his efforts at rehabilitation are relevant. The documents from Valley Oak Clinic and Royal Oak Clinic should be produced.
- [82] Mr. Minchin attended Surrey Memorial Hospital in 2014, 2015 and 2017 for a variety of ailments, including medical problems relating to drug use. If Mr. Minchin's condition was serious enough to warrant a trip to the hospital, he was likely suffering more than transient aches and pains. The hospital records may be relevant to his physical condition, capacity for employment, and general damages for pain and suffering. Subject to the comments below, they should be produced.

- [83] Evergreen Medical Centre is a community health centre that provides a range of health care services, including access to nurses, nurse practitioners, physicians, and mental health and addiction counsellors. Mr. Minchin has seen a variety of practitioners at Evergreen. It appears that he uses Evergreen as a walk-in clinic for his primary source of health care.
- [84] Mr. Minchin has produced Evergreen records from March 2013 to May 2018. Those records evidence several serious health issues, including drug use and withdrawal, PTSD, left shoulder pain, and painful skin conditions on his face and neck. Those health issues likely persisted beyond May 2018. Subject to the comments below, the Evergreen records should be updated to the present day.
- [85] Mr. Minchin has produced his PharmaNet and MSP records from March 2012 to December 2019, with only the minor redactions discussed above. As Mr. Minchin alleges ongoing disability and pain, updated PharmaNet and MSP records are relevant to his damages.
- [86] Updated PharmaNet and MSP records are also relevant to the defendants' allegations that Mr. Minchin has failed to mitigate his damages: *Edwards v. Granzer*, 2012 BCSC 138, at para. 58. Specifically, updated records are relevant to the defendants' allegations that Mr. Minchin continues to struggle with drug addiction, including addiction to prescription medications. They are also relevant to the defendants' allegations that Mr. Minchin failed to follow through to obtain reasonable medical care for his injuries and health conditions.
- [87] Subject to the comments below, the PharmaNet and MSP records should be updated to the present day.

#### C. Should the Records be Produced on a Halliday Format?

- [88] A Halliday order is not automatic: it generally requires affidavit evidence from the party seeking to review the documents prior to disclosure that there is likely to be irrelevant personal information in the production: *Gorse*.
- [89] As stated, Mr. Minchin did not provide an affidavit in this case. However, I have been satisfied from the documents he produced and redacted that there are some legitimate privacy concerns in this case. There may be further legitimate privacy concerns in the updated medical records.
- [90] In some decisions of the court, MSP records have been treated as a single document to be produced in their entirety (see, for example, *Edwards* and *Gorse*). However, in this case, given the range of medical care he has received over time, Mr. Minchin's MSP printout is properly regarded, in my view, as a series of separate interactions with the health care system.

[91] Mr. Minchin's counsel should have an opportunity to review the updated medical records for redactions before they are produced to the defendants. In doing so, Mr. Minchin's counsel must observe the limits on the scope of appropriate redactions discussed in these reasons for judgment. If any information is redacted, it must be done with a meaningful note of the grounds for the removal. Mr. Minchin should be prepared to defend any further redactions he makes.

## V. CONCLUSION

[92] There will be an order that Mr. Minchin produce complete copies of the documents identified in these reasons for judgment as requiring disclosure.

[93] There will also be an order on a Halliday format requiring the non-parties to produce the documents identified in the Attorney General's notice of application.

[94] The defendants are entitled to the costs of their applications in the cause.

"Master Elwood"

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