

CANADA / JUDGMENT

Party A v. British Columbia (Securities Commission)

2020 BCCA 88

COURT

British Columbia Court of Appeal

DECIDED

4 March 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCCA 88 Party A v. British Columbia (Securities Commission)

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Party A v. British Columbia (Securities Commission),

2020 BCCA 88

Date: 20200304

Docket: CA46596

Between:

Party A, Party B, Party C, Party D, and Party E

Appellants

And

British Columbia Securities Commission and

Executive Director of the British Columbia Securities Commission

Respondents

Before:

The Honourable Madam Justice Saunders

(In Chambers)

On appeal from: A decision of the British Columbia Securities Commission, dated November 21, 2019 (Re Application to revoke certain orders No. 2,

2019 BCSECCOM 416).

Oral Reasons for Judgment

Counsel for the Appellants:

J. Narwal

No one appearing on behalf of the Respondents

Place and Date of Hearing:

Vancouver, British Columbia

March 4, 2020

Place and Date of Judgment:

Vancouver, British Columbia

March 4, 2020

Summary:

The appeal concerns an investigation of the British Columbia Securities Commission. Procedurally, an investigation precedes issuance of a notice of hearing requiring parties to answer allegations of wrongdoing, and a notice of hearing may never issue. Evidence before the court is to the effect that the mere fact of an investigation may harm individual reputations, and the capital markets, in a situation where no wrongdoing may ever be alleged. This application is for an order the file be sealed, as was the Securities Commissions' file. Held: Application allowed. The appeal file is sealed until further order of the court on the condition an anonymized version of the notice of appeal, notice of application and sealing order are filed in the publicly available file.

- [1] SAUNDERS J.A.: I have before me an application by the appellants for an order that the appeal file be sealed until further order of the court, and that references to the parties be anonymized in a manner consistent with the naming protocol applied by the British Columbia Securities Commission in the proceedings below. The respondents British Columbia Securities Commission and the Executive Director of the British Columbia Securities Commission consent to the order sought.
- [2] There is always concern on the part of this court when orders are sought that would seal a file. The principle of the open court is important and we do not lightly seal a file, the act of which has the effect of foreclosing public knowledge of the contents of the file.

- [3] This appeal arises from an investigation of the appellants conducted by the British Columbia Securities Commission and the Executive Director of the British Columbia Securities Commission. Of course, the fact of the investigation does not mean that there will be allegations made against the appellants through a notice of hearing. By such a notice, the appellants would be required to answer to the Securities Commission for alleged wrongdoing.
- [4] In support of the application, Mr. Narwal has presented a complete brief with case authority and a very large affidavit of Maria-Niki Giovanis attaching certain documents. One of the important documents attached is an affidavit of Mr. Groia who appends his expert report to his affidavit. Mr. Groia has been a former regulator in the securities field and has practiced in this field for some time. He deposes that in his experience Commissions go to "great lengths to keep confidential the existence of an investigation" and he explains some of the harms that can occur where information about an investigation is released prematurely, before a decision to call the individuals investigated to account for alleged wrongdoing. In particular he opines:
28. If it is disclosed that the BCSC is carrying out an investigation that includes the Applicants in this case, I would expect that their venture capital and private equity business would be significantly harmed and their personal reputations would be significantly damaged. It is also possible that persons could draw connections to other companies and individuals related to the Applicants and damage the business or reputations of those other companies.
29. Although my opinion is limited to the potential prejudicial impact on the Applicants, if it were to be disclosed that the BCSC has launched an investigation naming all the Trading Subjects and Issuer Subjects (terms defined in the Amended Investigation Order dated January 22, 2019), the other named individuals and companies would also likely be harmed. As some of the Trading Subjects and Issuer Subjects are publicly-traded entities, concerns about the impact on the price of their securities should also be considered.
30. In my experience, many of the Commissions' investigations are closed with no enforcement action being taken. What heightens the unfairness in this case is that the disclosure of the issuance of a freeze order will leave the public with the erroneous impression that the Applicants have engaged in some kind of wrongdoing when no such inference can or should be drawn at this stage. In addition, in my experience, there is almost nothing the Applicants' will be able to say or do to counteract the prejudice they will undoubtedly suffer by this premature and misleading disclosure.
31. In my opinion, the integrity of this investigation, the capital markets in general and the Applicants in particular will all unfairly suffer harm from premature disclosure of this investigation. To that extent, in my opinion, it would be contrary to the public interest in the capital markets for these proceedings to proceed in a public setting.

- [5] I am satisfied that there is potential harm to the appellants, who are the applicants today, should the fact of the investigation become broadly known. I am also satisfied that there is potential harm to the public at large from knowledge of the fact of the investigation without information as to the content of the investigation or where it is likely to lead. For example, the public at large may respond in the capital markets to information that turns out to have little impact.
- [6] The file of the British Columbia Securities Commission is sealed pending further order. Proceedings in the Supreme Court of British Columbia dealing with a constitutional issue arising from the same investigation, I am told, are not sealed because that file itself does not involve inherently sensitive information, but nonetheless efforts are being made to anonymize those public proceedings.
- [7] I am satisfied that the circumstances presented by Mr. Narwal satisfy the test for sealing a file. Section 10(2)(a) of the Court of Appeal Act allows such an order to be made as a matter incidental to the appeal. Section 10(2)(b) also is engaged in the case. In *Sahlin v. The Nature Trust of British Columbia*, 2010 BCCA 516, Mr. Justice Tysoe granted an order sealing certain files. In doing so he said:
- [6] The Supreme Court of Canada dealt with an application for a confidentiality order in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522. Mr. Justice Iacobucci expressed the test for a confidentiality order as follows at para. 53

A confidentiality order under Rule 151 should only be granted when:

- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) The salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

It is to be noted the *Sierra Club* case did involve a public institution.

- [7] In *Blue Line Hockey Acquisition Co v. Orca Bay Hockey Limited Partnership*, 2007 BCSC 1483, 78 B.C.L.R. (4th) 100, Madam Justice Wedge considered an application by the media for access to an exhibit in litigation between private parties in relation to private interests. She noted that the balancing of competing interests is somewhat different in such litigation as a result of reasonable expectations of privacy. Madam Justice Wedge discussed how the balancing of those interests should be determined in terms of the opening words of the reasons in *Toronto Star*:

[49] I return then to the words of Fish J. in *Toronto Star*. Will a balancing of the competing interests in this case create a "cloud of secrecy" under which justice will wither? The answer must be "no".

I agree with the way in which Madam Justice Wedge has framed the issue.

[8] I am satisfied that, in the circumstances, the criteria for a sealing order are met and, accordingly, I would direct that this appeal file be sealed pending further order of this court or a single justice in chambers. That will be on condition that the appellants file an anonymized version of the notice of appeal, notice of application and order which will be in a public file.

"The Honourable Madam Justice Saunders"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/20/00/2020BCCA0088.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/party-a-v-british-columbia-securities-commission-2020>

Prepared on 27 October 2026 · Esheria