

CANADA / JUDGMENT

R. v. Bacon

2023 BCCA 417

COURT

British Columbia Court of Appeal

DECIDED

17 November 2023

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

2023 BCCA 417 R. v. Bacon COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Bacon, 2023 BCCA 417 Date: 20231117 Docket: CA44953 Between: Rex Appellant And James Kyle Bacon Respondent Restriction on Publication: A publication ban has been mandatorily imposed under

s. 517(1) of the Criminal Code restricting the publication, broadcasting or transmission in any way of the evidence taken, the information given, or the representations made and the reasons, if any, given or to be given by the justice presiding over the application for judicial interim release (bail). Restriction on Publication: A publication ban has been imposed under s. 486.5 of the Criminal Code restricting the publication, broadcasting or transmission in any way of evidence that could identify a witness/undercover officer. This publication ban applies indefinitely unless otherwise ordered. APPEAL FILE SEALED Before: The Honourable Madam Justice Saunders The Honourable Mr. Justice Willcock The Honourable Mr. Justice Hunter On an application to amend the sealing orders covering the sealed version of the judgment of the Court of Appeal for British Columbia, dated December 1, 2017 (R. v. Bacon, 2020 BCCA 140, Vancouver Docket CA44953). Counsel for the Applicant: M.J. Wolf Written Submission received from Crown Counsel: August 4, 2023 Place and Date of Judgment: Vancouver, British Columbia November 17, 2023 Written Reasons of the Court Summary: The order sealing the full reasons for judgment 2020 BCCA 140, is amended to allow them to be used by Crown Counsel and Amici Curiae in the Supreme Court of British Columbia in related court proceedings in R. v. Haevischer file X072945-136. The reasons are also available to the presiding justice in that case. Written Reasons for Judgment of the Court:

[1] Crown Counsel applies to seal the materials filed on this application, and seeks an order varying the order sealing this court's reasons for judgment in R. v. Bacon, 2020 BCCA 140 (CA44953) ("Bacon"). The purpose of the application is to ensure those sealed reasons are provided to Madam Justice Devlin, trial judge in R. v. Haevischer, Vancouver file X072945-136 ("Haevischer"); and to allow them to be provided to: Amici Curiae, being Anil Kapoor, Nusra Khan and Lucy Chiappetta, appointed in Haevischer; Crown Counsel in Haevischer, being Karima Andani, K.C and Mark Wolf; and those working with those persons. By such an amendment those persons are or will be made aware of the privileged information in the sealed reasons in Bacon.

- [2] We have determined that this application is suitable for decision based on the written materials filed.
- [3] The purpose of the proposed order is to facilitate the hearing before Justice Devlin of an abuse of process application brought by Mr. Haevischer in proceedings in the Supreme Court of British Columbia. That hearing will have an in camera component, ex parte Mr. Haevischer. The issues to be decided at that in camera hearing include allegations of abuse of process arising from police conduct that were addressed by this court in Bacon. The full judgment in Bacon has been sealed because it contains privileged information, and a summary version was released publicly under the index number above.
- [4] In our view, the application must be allowed in the interests of the administration of justice, particularly as applies to Haevischer.
- [5] The sealed reasons in Bacon must be provided to Justice Devlin. That release will be within the envelope of privilege in Haevischer, itself within the envelope of the Supreme Court of British Columbia's process, and will be appropriately protected.
- [6] The reasons must also be released, on terms, to Crown Counsel as required, and to Amici Curiae named above, all for the purposes of determining the issues in the in camera, ex parte hearing in Haevischer. As a term of this release to Crown Counsel and Amici Curiae, we require that the counsel named above who will have access to the sealed reasons in Bacon sign an undertaking in the form attached as Schedule A. We recognize that some of the persons from whom we require such an undertaking have had access to the sealed reasons by virtue of their involvement in Bacon. However, the use of the reasons in Bacon now contemplated is in a cause other than Bacon, and prudence recommends all persons having access to the Bacon reasons in the Haevischer case other than Justice Devlin (and court personnel directed by her in Haevischer) enter into an express undertaking to maintain the confidentiality of the sealed reasons to only those who have signed the undertaking attached or who come within its terms.
- [7] There being no reference in the application materials to the privileged information that has required the reasons in Bacon to be sealed, nor none in these reasons, we direct that the application materials shall not be sealed. "The Honourable Madam Justice Saunders" "The Honourable Mr. Justice Willcock" "The Honourable Mr. Justice Hunter" Schedule A Court of Appeal for British Columbia Undertaking of Counsel R. v. Bacon (CA44953)
- 1) I, the undersigned, acknowledge that the sealed reasons for judgment in the above-captioned appeal are being provided to me for the sole purpose of my review, comment and use in in camera, ex parte proceedings in R. v. Haevischer Supreme Court indictment X072945-136 ("Haevischer").
- 2) This undertaking refers to "Reasons" collectively as any or all of the above.

- 3) Except in accordance with paragraphs four, five and six below, I undertake that I will not, nor will I allow any person to:
- a) copy, photograph, view, describe, discuss, distribute, transmit or broadcast in any manner the contents of the Reasons;
 - b) except for the purpose of transmitting the sealed reasons in Bacon to a court in Haevischer proceedings, upload the Reasons to the internet or otherwise make their contents available through any electronic medium, and then only in accordance with the instructions of the said justice, or;
 - c) store the Reasons in an unsecure location of any kind.
- 4) The individuals below may view and discuss the Reasons under my personal direction and control and in my physical or secure virtual presence: Counsel of record in my office, including administrative staff who work on Haevischer and any other counsel or administrative staff of my office who has signed a similar undertaking. This term specifically does not include other lawyers, administrative staff, or employees of my law firm or government department who did not or will not appear or work on Haevischer in relation to in camera, ex parte proceedings.
- 5) In my review and use of the sealed reasons, I may edit or otherwise create subsequent drafts or notes related to the sealed reasons, and refer to those drafts or notes in in camera, ex parte proceedings in Haevischer.
- 6) I may also provide the Reasons to the trial judge presiding in Haevischer, and refer to the Reasons as required in any in camera, ex parte hearings in R. v. Haevischer Supreme Court indictment X072945-136.
-

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/23/04/2023BCCA0417.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-bacon-2023>

Prepared on 29 October 2026 · Esheria