

CANADA / JUDGMENT

R. v. Cancela

2025 BCSC 2672

COURT

Supreme Court of British Columbia

DECIDED

1 August 2025

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

2025 BCSC 2672 R. v. Cancela

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cancela,

2025 BCSC 2672

Date: 20250801

Docket: 26843-2

Registry: Nelson

Rex

v.

Andrew Lee Cancela

Before: The Honourable Madam Justice L.M. Lyster

Oral Ruling on Crown's Summary Dismissal Application

of the Accused's July 2, 2025 Notice of Application

Counsel for the Crown:

A. Aziz (by videoconference)

Counsel for the Accused:

M. Patterson (by videoconference)

Place and Date of Trial/Hearing:

Nelson, B.C.

July 16 & 28, 2025

Place and Date of Judgment:

Nelson, B.C.

August 1, 2025

[1] THE COURT: These are my reasons for judgment with respect to the Crown's application for summary dismissal of Mr. Cancela's application. As set out in his second amended notice of application filed July 2, 2025, Mr. Cancela applies for the following orders:

1. for the Crown to demonstrate that the informers exist;
2. for the following to be produced and provided to the applicant's defence counsel in this matter pursuant to s. 7 of the Canadian Charter of Rights and Freedoms and principles outlined in *R. v. Stinchcombe*:
 - a) the confidential source materials;
 - b) the briefing notes of the investigation; and
 - c) the handler notes and source briefing reports, collectively, the "Requested Materials".

[2] The materials sought are further particularized in the second amended application as follows:

- a) all dates of and notes from meetings with the informants;
- b) copies of the informants' unredacted criminal records;
- c) copies of the informants' unredacted PRIME records; and
- d) information as to whether any of the informants were observed during the surveillance conducted to observe the applicant and, if so, all notes made regarding the surveillance officers' observations of the informants.

[3] Mr. Cancela's present application is brought within the context of his challenge to the validity of a search warrant obtained by the Castlegar RCMP detachment on the strength of an Information to Obtain ("ITO") sworn by Constable Andrew Bachmann on April 21, 2021.

[4] As further particularized in his second amended notice of application, Mr. Cancela submits that the informants referred to and relied upon in the ITO, if they exist, are state agents and are therefore not entitled to the protection afforded to confidential informants. Mr. Cancela refers to the following passages from the ITO as the foundation for his position that the informants are state agents:

32.2 In the spring of 2021, specifically March [redacted] 2021, Informant "A" told Handler "A"

32.2.1 CANCELA sells cocaine;

32.2.2 CANCELA is the biggest cocaine dealer in Castlegar;

32.2.3 CANCELA delivers drugs in a black F-150;

32.2.4 CANCELA delivers drugs in black Honda.

33.4 Informant "B" has not received any promises as a result of the information provided to the police.

[]

33.7 Informant "B" provided information with the understanding that his/her identity would remain confidential.

- [5] Mr. Cancela submits, on the basis of the foregoing, that Informant A "seems to be a person that is involved in orchestrating drug sales at specific times and in large volume", and that it would appear that Informant A "is actively involved and working with encouraging sales or ordering drugs". Further, he submits that the information provided by Informant A "shows that Informant A is either an agent provocateur or is being directed to entrap the applicant".
- [6] With respect to the documents sought, Mr. Cancela submits that the requested materials are the fruits of the investigation and relevant information that came to the police's attention during the investigation and that they are therefore produceable pursuant to Stinchcombe.
- [7] The Crown applies for summary dismissal of Mr. Cancela's application. It submits that Mr. Cancela relies on conjecture and assumption and that his application lacks any evidentiary foundation.
- [8] As an application for summary dismissal, the Crown's application is governed by the principles set out by the Supreme Court of Canada in *R. v. Haevischer*, 2023 SCC 11. As such, the Crown bears the burden of establishing that the underlying application is manifestly frivolous. As stated at para. 67, at the same time "the 'frivolous' part of the standard weeds out those applications that will necessarily fail". As stated at para. 69, "manifestly" captures "the idea that the frivolous nature of the application should be obvious". As stated at para. 71, the "manifestly frivolous" standard "connotes the obvious necessity of failure".
- [9] As stated at para. 83, on a summary dismissal motion, "the judge must assume the facts alleged by the applicant to be true and must take the applicant's arguments at their highest". At the same time, "while there is no need to weigh the evidence or decide any facts on the summary dismissal motion, the applicant's underlying application should explain its factual foundation and point towards anticipated evidence that could establish their alleged facts. Where the applicant cannot point towards any anticipated evidence that could establish a necessary fact, the judge can reject the factual allegation as manifestly frivolous". Similarly, as stated at para. 84, the judge ought generally to assume the inferences suggested by the applicant are true. A judge should reject an inference only if it is manifestly frivolous, meaning that there is no reasoning path to the proposed inference.

- [10] As stated at para. 85, if the remedy requested cannot be granted, the application should be dismissed as manifestly frivolous.
- [11] It is with these principles in mind that I consider the Crown's summary dismissal application.
- [12] I consider first the application to summarily dismiss Mr. Cancela's application for the disclosure of materials related to the investigation.
- [13] The Crown relies on *R. v. Robertson*, 2016 BCSC 2075. That case involved an application for further disclosure regarding the confidential informant information, asking for the court to conduct an in camera hearing regarding unredacted source handler notes and source debriefing reports, and that the court then disclose to the applicants if certain information in the ITO was accurate. The court noted at para. 20 that there was no mention of such documents in the ITO and that it was apparent that they were not put before the issuing justice. They were not part of the evidentiary basis for the warrant and their disclosure was therefore not mandated.
- [14] The Crown submits that, similarly in the case at bar, there was no indication in the ITO that the affiant used such materials or that they were put before the issuing justice.
- [15] At para. 25 of *Robertson*, the court stated that if the disclosure request goes beyond what was before the authorizing justice or part of the investigative file disclosed pursuant to *Stinchcombe*, the applicant must show some basis for believing that there is a reasonable possibility that such material would be useful on a *Garofoli* application. In *Robertson*, the information sought was not part of the investigative file and was not before the issuing judge.
- [16] The Crown submits that the same is true here and that this aspect of the underlying application is therefore doomed to failure.
- [17] I am not persuaded that the underlying application is bound to fail on this basis. In the ITO at paragraph 32 with respect to Informant A and at paragraph 35 with respect to Informant B, Constable Bachmann states that he met with Handler A and obtained information that the two informants had provided to Handler A. Constable Bachmann then goes on to state the information that he was advised that each informant had provided to Handler A, including the information I quoted in the second amended application earlier in this ruling.
- [18] Constable Bachmann does not state how Handler A provided him with the information in question. He does not state if Handler A told him this information orally and, if so, whether Handler A was reading from their notes or source briefing reports or if Handler A showed him their notes. It is at least possible that Constable Bachmann reviewed Handler A's notes. Even if he did not, it seems apparent that Constable Bachmann was told by Handler A about the contents of their notes. This may distinguish the case at bar from the facts in *Robertson*.
- [19] In *R. v. McKay*, 2016 BCCA 391, at para. 142, the Court of Appeal stated that:

The affiant's notes used to prepare the ITO must be disclosed. SDRs the affiant has read and relied upon must be disclosed. Documents not seen by or provided to the affiant, such as the SHNs here, speak only to whether the informer was truthful or whether the information was accurately described to the affiant. Because such documents do not speak to the affiant's reasonable belief, they are not capable of supporting the challenge to the affidavit.

[20] If Constable Bachmann read and relied upon source debriefing reports, McKay would provide that those reports must be disclosed. It is arguable that the same would be true if Handler A read the reports to Constable Bachmann or even if Handler A paraphrased the reports to Constable Bachmann. I cannot determine that question on this summary dismissal application.

[21] The situation may ultimately be found to be more similar to *R. v. Aloysuis*, [2022] S.J. No. 477, where the Saskatchewan Court of Queen's Bench ordered the Crown to disclose sealed copies of unredacted intelligence reports and criminal records of the informants to the court for the court to review and redact for informant privilege. Whether that is the proper outcome in this case can only be properly determined on a full hearing of Mr. Cancela's application, not on a summary dismissal motion.

[22] The Crown relies upon McKay in support of its position that all of the materials sought are privileged and therefore could never be ordered. At para. 155 of McKay, the Court discussed the mosaic effect of disclosure which calls for heightened caution when it comes to editing information so as not to unwittingly deprive informers of the privilege which the law accords them. At para. 157 of McKay, the Court held:

In my view, where the Crown can establish that a document has been created to record information provided by a confidential informer that could tend to reveal the informer's identity, as it appears to have done to the satisfaction of the judge in this case, and the document is not disclosed or relied upon to obtain an order, there is no *prima facie* right to obtain an edited version of the document. The Crown should not be required to demonstrate that unedited portions are "clearly irrelevant". It is not the norm to so limit privilege and it seems strange to me to seek to routinely edit documents in this context, where the risk of inadequate editing is so great.

[23] At para. 158, the Court went on to hold that:

For that reason, even if I had concluded the material sought was relevant to the challenge to the warrant, I would not have ordered the disclosure of edited versions of the SHNs or SDRs that were not relied upon by the affiant or otherwise before the authorizing judge, without examining the documents to address the claim to blanket privilege.

- [24] In my view, that passage of McKay establishes that this aspect of the underlying application cannot be summarily dismissed. If I ultimately determine that the material sought is relevant to the challenge to the warrant, it may be that I will determine that it is appropriate to examine the documents to address the Crown's claim to blanket privilege. I cannot conclude that this aspect of the underlying application is bound to fail.
- [25] In conclusion, on the part of the underlying application seeking the production of materials, I find that the Crown has not met its burden of establishing that it is bound to fail or manifestly frivolous.
- [26] I turn to the part of the underlying application seeking an order requiring the Crown to establish that the informants exist. Although not specifically stated in the order sought in the second amended notice of application, I take it from counsel's submissions that this part of the underlying application seeks an order, in the alternative, that if the informants do exist that the Crown establish that they are not state agents. Mr. Cancela submits that the information provided by the informants is either public information and that there are no informants at all, or that the informants are state agents engaged in drug trafficking.
- [27] The Crown submits that this aspect of the underlying application is entirely speculative, and that no evidentiary basis is provided for the order sought. Crown counsel characterizes this aspect of the underlying application as a fishing expedition.
- [28] I agree with the Crown's submissions with respect to this part of the underlying application. No evidentiary foundation has been provided to indicate that Informant A was involved in orchestrating drug sales at specific times and in large volume or, more generally, that Informant A is an agent provocateur or is being directed to entrap Mr. Cancela. Mr. Cancela's submission that the information is either public information or is provided by state agents is a quintessential example of a speculative position.
- [29] Haevischer states that a judge ought generally to assume the inferences suggested by the applicant are true. It also states that a judge should reject an inference only if it is manifestly frivolous, meaning that there is no reasoning path to the proposed inference. I find that the suggested inferences that the informants either do not exist or, if they do, they are state agents, to be manifestly frivolous. No reasoning path is provided to those proposed and inconsistent inferences.
- [30] In this regard, the situation is unlike that in a case relied upon by Mr. Cancela, *R. v. Bernath*, 2015 BCSC 632, where the ITO stated that the confidential informant had arranged drug deals for the accused, and had provided him with customer information so that the accused could complete the sale. The ITO in the case at bar contains no similar information with respect to either confidential informant that would suggest that they are state agents.
- [31] I find that, on the record before the court at this time, the aspect of the underlying application seeking an order requiring the Crown to establish that the confidential informants exist or, if they do, that they are not state agents, is doomed to fail. Asserting a

theory that the informants are state agents is not the same as providing an evidentiary basis upon which that theory could be founded. There is simply no evidentiary basis provided by the applicant for the defence theories put forward that the informants either do not exist or are state agents.

- [32] I therefore grant the Crown's application for summary dismissal of that aspect of Mr. Cancela's application.
- [33] In dismissing this aspect of Mr. Cancela's application, I am mindful that the lay of the land could change as Mr. Cancela's challenge to the warrant proceeds. It may be that I will order the disclosure of some of the materials sought on a full consideration of Mr. Cancela's application. It may be that that material will provide an evidentiary basis for the part of Mr. Cancela's application that I have summarily dismissed.
- [34] The Supreme Court in *Haevischer* emphasized that a trial judge has discretion about how to deal with applications of this sort. At para. 89, the Court noted that the trial judge's power to summarily dismiss an application is ongoing. At para. 93, the Court stated that "given that a trial judge has discretion to determine how an application should unfold, the approach to a summary dismissal hearing should involve 'a flexible rather than a fixed process' "
- [35] Should an evidentiary basis for this aspect of Mr. Cancela's application develop, either through the disclosure of documents or, should it be sought and ordered, cross-examination of Constable Bachmann, Mr. Cancela will be at liberty to bring a fresh application with respect to the existence and status of the informants. By the same token, should it become apparent that the application for the production of documents is manifestly frivolous, the court may revisit its decision not to summarily dismiss it.
- [36] In summary, I grant the Crown's summary dismissal application with respect to the first order sought in the second amended notice of application. I dismiss the Crown's summary dismissal application with respect to the second order sought in the second amended notice of application.

"L.M. Lyster J."

LYSTER J.

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/sc/25/26/2025BCSC2672.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-cancela-2025-bcsc-2672>

Prepared on 27 October 2026 · Esheria