
CANADA / JUDGMENT

R. v. Haevischer

2014 BCSC 1015

COURT

Supreme Court of British Columbia

DECIDED

24 April 2014

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

2014 BCSC 1015 R. v. Haevischer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Haevischer,

2014 BCSC 1015

Date: 20140424

Docket: X072945-B

Registry: New Westminster

Regina

v.

Cody Rae Haevischer and Matthew James Johnston

Before: The Honourable Madam Justice Wedge

Oral Ruling on Application #129

Application by Michael Le for Publication Ban

Counsel for the Crown:

M.K. Levitz, Q.C.

C.G. Baragar

K.M. McIntosh

Counsel for the Accused Haevischer:

S.R.A. Buck

D. Dlab

Counsel for the Accused Johnston:

M. Tammen, Q.C.

B.A. Martland

Counsel for Quang Vinh Thang Le:

C.S. Johnson

J. Winteringham, Q.C.

Place and Date of Hearing:

Vancouver, B.C.

April 23 and 24, 2014

Place and Date of Judgment:

Vancouver, B.C.

April 24, 2014

- [1] THE COURT: Very briefly by way of background, on April 2, 2014, the Crown, shortly before calling a Crown witness, Mike Le, applied pursuant to s. 486.5 of the Criminal Code, the common law, and the Court's inherent jurisdiction for certain publication ban orders concerning Mr. Le.
- [2] One of the orders sought at that time was a ban on publication of Mr. Le's name. Another was a ban on publication of the names of any Triad gang members identified as such by Mr. Le in his evidence. Neither of those orders was granted in my subsequent ruling, which is indexed as 2014 BCSC 691.
- [3] In essence, I ruled that an order concealing Mr. Le's name at this stage of the trial would be a meaningless one, as his connection to the trial was both close and recent. He was an accused on the indictment for the first two months of the trial, and there has been extensive evidence about his alleged involvement in the offences for the entire six months of the trial.
- [4] I contrasted Mr. Le's circumstances with those of Witnesses X and Y who are governed by an earlier ban. The identities of those two witnesses have been protected since well before the trial commenced, and both are serving life sentences in federal institutions.
- [5] I ruled that a ban on publication of Mr. Le's likeness, as well any steps taken for his safety would provide an effective means of reducing the risk of harm to Mr. Le, both while incarcerated and while on statutory release in the community.

- [6] Mr. Le has now taken the witness stand and testified for two days. His entire evidence-in-chief is on the public record. Any person or persons with knowledge of or interest in this trial knows Mr. Le's name, his identity, his admitted role in the conspiracy to murder, his guilty plea to the conspiracy count, and his agreement to testify for the prosecution against his former co-accused.
- [7] As a result of apparent recent threats directed toward him, Mr. Le has brought his own application for an order banning publication of his name and those of any persons identified by him as a member of the Triads in his evidence at trial. The basis for the renewed application for those orders is information provided several days ago about two threats made in relation to Mr. Le. The first involves the fact that there is a \$500,000 hit on his life, which apparently dates to at least January of this year. The second threat, attributed to the head of an unnamed gang, is to the effect that the gang leader and others are intent upon killing Mr. Le on the basis of his evidence.
- [8] Further, on April 18, 2014, the scene from the film *The Departed* was posted on the Vancouver Sun blog. The scene depicts the execution of an informant. The video clip was posted under the headline, "Michael Le says he fled Canada in 2008".
- [9] Mr. Le argues that while the accused have known since his plea and sentencing hearing in December of last year that he is a justice system participant, others in the criminal community do not. I have grave doubts about that assertion. First, while there was a ban on publication of Mr. Le's status as a cooperating witness at the time of his plea, any member of the public in the courtroom had that knowledge. The only ban was a ban on publication of the fact.
- [10] Second, Mr. Le has almost completed his direct evidence, which has already been widely reported in the media. Any individuals wishing to do Mr. Le harm know that he is a cooperating witness currently giving evidence.
- [11] Mr. Le is himself a Triad member; he testified to such in this trial. He was a colleague of Sophon Sek, another Triad member who was charged separately with manslaughter in connection with these crimes.
- [12] There is currently a ban on publication of Mr. Le's likeness and any steps taken to ensure his safety. Those two measures at least have the potential, as I indicated earlier, to reduce the risk of continued disclosure of Mr. Le's identity to those who do not already know it.
- [13] This renewed application was brought specifically and narrowly on the basis of information provided to counsel for Mr. Le last week. That is, the application was renewed because of recent knowledge of these threats. At paragraph 1 in the grounds for the application, it states:

... This person [meaning the unidentified affiant] disclosed that he/she was present during a gathering of individuals believed to be members of a gang with connections to a man believed to be the leader of this gang. During this gathering, the individual heard statements that the leader of the gang and others intended to find the Applicant and kill him. This application relates to that threat and the circumstances surrounding it.

- [14] Counsel for Mr. Le has tendered an affidavit in which the unnamed person deposes to the information he says he received. No one, not the parties in this case nor, more significantly, this Court, has been advised of the affiant's identity or the basis for the affiant's knowledge of the matters to which he deposes. Lengthy portions of the affidavit itself are redacted. The affidavit is replete with hearsay, and even the source of the hearsay is not identified. I cannot accept evidence tendered in this form. There is no means by which the Court can test the accuracy or reliability of the facts asserted.
- [15] However, even were I to accept the affidavit, and even were I to accept the source of the facts deposed to in the affidavit, I cannot accept the arguments advanced by Mr. Le.
- [16] The Dagenais/Mentuck test itself requires at a minimum that the ban is necessary in order to prevent the identified risk of harm. In this instance, banning publication of Mr. Le's name cannot realistically prevent the identified harm which is advanced as the basis for this application. How could it possibly be so when the very individuals purportedly wanting to harm Mr. Le know who he is.
- [17] For the same reason, the ban sought cannot have any salutary effect because it will have no effect at all. The deleterious effects have already been described in my previous ruling on this issue.
- [18] The Crown, all of the justice system partners, and Mr. Le himself have been aware, from the time Mr. Le signed the plea and immunity agreement in November of last year, that entering the plea and obtaining the benefit of the joint submission on sentencing would place him at risk of harm. It is up to justice system participants, correction system participants, and the police to ensure that Mr. Le remains safe.
- [19] Nor, in my view, can I issue an anticipatory ban on the publication of names of Triad members that might be mentioned in Mr. Le's evidence. If the answers given by Mr. Le relating to gang associations are relevant to any live issue in this trial, and if the actual identity of specific gang associates is relevant to those live issues, then they must be answered. There is no basis on which to order concealment of those answers.
- [20] If the identity of gang associates is not relevant, I will hear any objection from the Crown at the time the questions are asked and rule on those objections at the time.
- [21] In the result, this application is dismissed. However, there will continue to be a ban on publication of any material filed in support of this application.
- [22] Any questions?

[23] MS. WINTERINGHAM: My Lady, if I could just address the publication of your reasons and the fact of the application, but not the submissions with respect to the application itself. Will that -- is that the order that's in place, similar to what was contained in 126?

[24] THE COURT: Yes, that is the order.

[25] MS. WINTERINGHAM: Thank you.

[26] THE COURT: Thank you.

[27] MS. WINTERINGHAM: So it's the fact of the application and reasons.

[28] THE COURT: To clarify, the fact of the application and my reasons may be published, but nothing else.

The Honourable Madam Justice C.A. Wedge

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/14/10/2014BCSC1015.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-haevischer-2014-bcsc-1015>

Prepared on 26 October 2026 · Esheria