

CANADA / JUDGMENT

R. v. Haevischer

2025 BCSC 1621

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Supreme Court of British Columbia

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2025 BCSC 1621 R. v. Haevischer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Haevischer,

2025 BCSC 1621

Date: 20250820

Docket: X072945-B

Registry: New Westminster

Rex

v.

Cody Rae Haevischer

Before: The Honourable Madam Justice Devlin

Reasons for Judgment re: Application to File a Second Supplemental Notice of Abuse of Process
Application

Counsel for the Crown:

M. Wolf

L. Fillingham

Counsel for the Accused:

S. Buck, K.C.

D. Dlab

S. Hiscock

Amicus Curiae:

N. Khan

Place and Date of Hearing:

Vancouver, BC

August 15, 2025

Place and Date of Ruling given to Parties with Reasons to Follow:

Vancouver, B.C.

August 19, 2025

Place and Date of Judgment:

New Westminster, B.C.

August 20, 2025

Introduction

- [1] Cody Rae Haevischer has applied for a judicial stay of proceedings for an abuse of process. The evidentiary hearing of Mr. Haevischer's application commenced on November 4, 2024. It remains underway.
- [2] By way of a Notice of Application dated July 31, 2025, Mr. Haevischer applies for leave to advance additional allegations of state misconduct in this case. He asks for permission to file a Supplemental Notice of Application setting out those allegations. Mr. Haevischer also asks for permission to call or recall several witnesses in support of his proposed new allegations. The Crown opposes Mr. Haevischer's application.
- [3] I received particulars for Mr. Haevischer's application on August 8, 2025. An outline of the Crown's response and supporting materials followed on August 13, 2025. I then heard the parties' submissions on August 15, 2025. On August 19, 2025, I advised the parties by way of a memorandum to counsel that Mr. Haevischer's application is dismissed, with Reasons to follow. These are those Reasons.

Background Context

- [4] The procedural history of this case has been set out in prior rulings: e.g., *R. v. Haevischer*, 2023 BCSC 2111 at paras. 7-13. Stated briefly, on October 2, 2014, Justice Wedge found Mr. Haevischer guilty of six counts of first degree murder and one count of conspiracy to commit murder, in relation to offences committed on October 19, 2007, widely known as the "Surrey Six murders": see *R. v. Haevischer*, 2014 BCSC 1863. Mr. Haevischer seeks a stay of proceedings with respect to those verdicts.

- [5] Mr. Haevischer's application for a stay of proceedings was initially summarily dismissed: *R. v. Haevischer*, 2014 BCSC 2172. Appeals to the Court of Appeal and the Supreme Court of Canada ultimately resulted in the application being remitted to this Court for an evidentiary hearing in April 2023: *R. v. Haevischer*, 2023 SCC 11 [Haevischer SCC]. Mr. Haevischer filed a revised Notice of Application for a stay of proceedings in August 2023, which he has since revised again on two occasions. This Court adjudicated a number of pre-hearing applications, starting in October 2023, before commencing the evidentiary hearing itself on November 4, 2024. To date, the hearing has been ongoing for 113 days, and in that time the Court has heard evidence from 28 witnesses called by Mr. Haevischer (or called on his behalf in closed proceedings), including Mr. Haevischer himself.
- [6] Leaving aside the present application, Mr. Haevischer expects to call several more witnesses. He estimates that his case will conclude in October 2025. The Crown then expects to call its case for several weeks. Following the Crown's case the Court will hear evidence in camera and ex parte, with the assistance of the amicus curiae. The parties will then make their submissions on the application for a stay of proceedings.
- [7] It is within this backdrop that Mr. Haevischer now asks the Court to permit him to expand the scope of the evidentiary hearing, both in terms of the allegations that he advances and the evidence that he elicits. Before turning to those matters, I make some preliminary observations.
- [8] First, I note that this application is not the first time Mr. Haevischer has asked the Court for permission to expand the scope of the hearing. On April 1, 2025, the Crown applied for an order prohibiting Mr. Haevischer from expanding the scope of the hearing, or alternatively for an order directing Mr. Haevischer to supplement his pleadings and to be restricted from amending them further without leave of the Court. The Crown did so in response to out-of-court communications between counsel in which counsel for Mr. Haevischer indicated their intention to advance allegations of abuse of process that are not contained in Mr. Haevischer's pleadings.
- [9] As a result of the Crown's application, I permitted Mr. Haevischer to advance one additional allegation of abuse of process. Mr. Haevischer was directed to file a Supplemental Notice of Application setting out the allegation: see *R. v. Haevischer*, 2025 BCSC 635 [Witness Endangerment Application]. In permitting Mr. Haevischer to advance a new allegation of abuse of process, I made the following comments:
- [26] Since the evidentiary hearing has already been underway for several months, it should be apparent that Mr. Haevischer requires leave of the Court to amend his pleadings further or to file any additional Supplemental Notices of Application, moving forward. To be clear, I consider permitting Mr. Haevischer to amend his pleadings at this late stage of the proceedings to be extraordinary. Any further requests for amendments or supplements to the pleadings are unlikely to be granted, absent something truly novel arising in the hearing or other extraordinary circumstances.

[Emphasis added.]

[10] Second, I emphasize that the purpose of these proceedings is to provide the Court with an evidentiary foundation upon which to adjudicate Mr. Haevischer's application for a stay of proceedings. It is trite that Mr. Haevischer is not entitled to a perfect process, but only to one that is fundamentally fair: see *R. v. Find*, 2001 SCC 32 at para. 28. I have previously expressed my intention to exercise my case management powers in these proceedings, and made clear that Mr. Haevischer cannot expect to advance his application in any way he sees fit: *R. v. Haevischer*, 2024 BCSC 1635 at para. 119. Instead, I continue to be guided by Justice Martin's instructive comments in *Haevischer* SCC:

[107] Exercising these case management powers not only calls for proportionate proceedings which balance trial efficiency and trial fairness, but may require a comparative assessment of what approach best meets the exigencies and equities of a particular case. Judges should bear in mind that the summary dismissal power is not their only tool to manage the underlying application and consider whether their other case management powers are better suited to managing the underlying application (*Samaniego*; *Cody*, at para. 38). The values of trial efficiency and trial fairness may be better served by holding a voir dire on the underlying application that is tailored through the use of judicial discretion to only what is necessary for a fair consideration of the substance of the allegations. When judges exercise their case management powers in this way, they fulfill the underlying purposes of case management powers: ensuring that trials proceed in a fair, effective and efficient manner (*Samaniego*, at para. 21).

[Italic emphasis in original. Underlined emphasis added.]

[11] With these comments in mind, I turn to Mr. Haevischer's application.

Mr. Haevischer's Position

[12] I will endeavour to clearly and succinctly summarize the new allegations that Mr. Haevischer proposes to advance in this case. Before doing so, I acknowledge that Mr. Haevischer's materials on this application also contain additional complaints and grievances in relation to disclosure. I consider it unnecessary to address those matters. Some of Mr. Haevischer's complaints have already been addressed by this Court. In any event, I find that they have no bearing on whether Mr. Haevischer should be granted leave to advance new allegations of abuse of process.

Allegation #1: Contact between Mr. Haevischer and Mr. Bacon at Surrey Pre-trial Services Centre

- [13] The primary new allegation that Mr. Haevischer wishes to advance relates to his conditions of confinement immediately after his arrest for the Surrey Six murders. Mr. Haevischer spent his initial period on remand at the Surrey Pre-trial Services Centre ("SPSC"), from April 6 to July 24, 2009.[1]
- [14] Mr. Haevischer was housed, at times, in SPSC's Medical Isolation Unit (the "MIU"), including one period from late May to June 17, 2009. Mr. Haevischer was moved to the MIU on that occasion at his own request.[2] CCTV footage captured within the MIU from June 4 to 17, 2009, was the subject of a previous ruling in this case: *R. v. Haevischer*, 2025 BCSC 1424. The footage depicts Mr. Haevischer, his co-accused James Bacon, and several other inmates interacting with each other through the doors of their cells. Portions of the footage were played during Mr. Haevischer's cross-examination by the Crown.
- [15] Mr. Haevischer asks for leave to allege that BC Corrections deliberately housed him and Mr. Bacon in the MIU in order to gather evidence about the Surrey Six murders, as well as to justify continuing to separately confine them and their co-accused Matthew Johnston. Mr. Haevischer says that BC Corrections did so knowing that Mr. Haevischer and Mr. Bacon were bound by conditions to have no contact with each other, and that BC Corrections intentionally failed to act when it became aware that Mr. Bacon and Mr. Haevischer were breaching their no-contact conditions while in the MIU.
- [16] In addition, Mr. Haevischer says that the investigation into the Surrey Six murders, which the police called Project E-Peseta, learned of the breaches before Mr. Haevischer was removed from the MIU. He alleges that the notes and reports generated by investigators in relation to the breaches misled him, by suggesting that investigators only became aware of the breaches after BC Corrections removed Mr. Haevischer from the MIU. Mr. Haevischer says that police in fact learned of the breaches prior to Mr. Haevischer being removed from the MIU, by way of weekly conference calls held at the time with BC Corrections. As I will discuss, these submissions primarily focus on notes and related materials prepared by Sergeant Joe Sobotin, including Task Action Reports dated June 18 and 19, 2009.[3]

Allegation #2: Witness Endangerment of Jody Elliott

- [17] Mr. Haevischer also wishes to advance an allegation with respect to an individual who provided information to police regarding Mr. Bacon. Specifically, Project E-Peseta investigators received information from a person named Jody Elliott that Mr. Bacon had offered Mr. Elliott \$10,000-15,000 to kill a witness known in these proceedings as Jane Doe 1. [4]
- [18] Sergeant Rosauro Joaquin, a Project E-Peseta investigator who primarily carried out witness management duties, testified about Mr. Elliott's involvement with the investigation. According to Sgt. Joaquin, Mr. Elliott had provided information to police about a homicide

related to the Surrey Six case: that of Raphael Baldini, the tenant of the apartment in which the murders took place.[5] On June 4, 2009, Sgt. Joaquin, in the accompaniment of Corporal Danny Michaud, received the threat information concerning Jane Doe 1 from Mr. Elliott.[6] Mr. Elliott told Sgt. Joaquin and Cpl. Michaud that Mr. Bacon had made the offer for the contract to kill Jane Doe 1 while Mr. Elliott and Mr. Bacon were in jail together, housed in adjacent cells. Sergeant Joaquin considered the information provided by Mr. Elliott to be of "unknown reliability".[7] Following discussions with fellow investigator Sergeant Derek Brassington, Sgt. Joaquin recorded the threat information in a Source Debriefing Report.[8]

- [19] Prior to learning of this threat, Project E-Peseta investigators had also received more general information from Mr. Elliott about the Surrey Six murders. Specifically, a Task Action Report prepared by Constable Moe Hadaddkar indicates that on March 30, 2009, Cst. Hadaddkar and Cpl. Michaud met with Mr. Elliott.[9] During the meeting, Mr. Elliott advised that in July 2008 and in early 2009, Mr. Bacon had told Mr. Elliott various things about the Surrey Six murders. The Crown's materials on this application advise that the Task Action Report was disclosed to Mr. Haevischer and his co-accused on April 14, 2011. I note that the information provided by Mr. Elliott to the police on this occasion was inconsistent with the police theory of the offences, and ultimately with the findings of fact made by Wedge J. at trial.
- [20] Returning to the information that Sgt. Joaquin and Cpl. Michaud learned from Mr. Elliott on June 4, 2009, the threat disclosed by Mr. Elliott was used by Sgt. Brassington and Corporal Eric Boucher as a basis for executing a "duty to warn" for Jane Doe 1 on June 6, 2009.[10] In particular, Sgt. Brassington's notes concerning the duty to warn refer to Mr. Elliott's threat information.[11] Mr. Elliott's name was vetted for privilege when the notes were initially disclosed to Mr. Haevischer, but in February 2016 the Crown re-disclosed the notes with the vetting removed. As well, additional disclosure was provided by the Crown to Mr. Haevischer during these proceedings containing, essentially, the same information already provided in February 2016.
- [21] I also note that several Project E-Peseta investigators provided evidence about the threat information obtained from Mr. Elliott during their examinations for discovery in the course of civil proceedings initiated by Jane Doe 1. Portions of the transcripts of those examinations were produced to Mr. Haevischer following a successful O'Connor application: see *R. v. Haevischer*, 2024 BCSC 1409. The transcripts (like Sgt. Brassington's notes) originally vetted Mr. Elliott's name as privileged (along with some more general information about the threat he disclosed to police). In June 2025, at the request of counsel at the Department of Justice, this Court authorized the re-production of the Jane Doe transcripts with vetting removed (including over Mr. Elliott's name and threat information) to be consistent with Crown disclosure.
- [22] It is within this context that Mr. Haevischer now asks for permission to allege that BC Corrections housed Mr. Elliott in a cell adjacent to Mr. Bacon despite Mr. Elliott having spoken to the police about matters relevant to the Surrey Six case. The same, Mr. Haevischer alleges, is true with respect to Mr. Elliott later being housed near Mr. Johnston at the North

Fraser Pre-trial Centre in July 2009, as evidenced by BC Corrections records introduced into evidence in this case.[12] He says this placement runs contrary to the concern communicated by police to BC Corrections in order to justify placing Mr. Bacon, Mr. Haevischer, and Mr. Johnston in separate confinement, namely, that witnesses in the Surrey Six investigation faced risks of intimidation or harm from Mr. Bacon and his co-accused.

- [23] Accordingly, this proposed allegation appears to flow from the broader allegation that this Court permitted Mr. Haevischer to advance in April 2025, relating to alleged endangerment of witnesses by the police: see Witness Endangerment Ruling at para. 20. Mr. Haevischer says he is justified in asking for permission to advance this allegation at this late stage in the proceedings because of "late disclosure" with respect to Mr. Elliott. He points to various instances in which Mr. Elliott's name was redacted or in which he was identified as a "source" (including Sgt. Joaquin's use of a Source Debriefing Report to log the threat information) to suggest that the police deliberately attempted to conceal Mr. Elliott from the accused under a false assertion of privilege.

Remedies Sought

- [24] To advance these new allegations, Mr. Haevischer asks the Court for leave to file a Supplemental Notice of Application. He also asks for permission to re-call the following witnesses:

- Steven Phillips, the former Deputy Warden of Operations at SPSC. Mr. Phillips testified from March 17 to 20, 2025.
- Superintendent John Robin, the former Team Commander of Project E-Peseta and Officer in Charge of the Integrated Homicide Investigation Team. Superintendent Robin testified from May 26 to June 10, 2025, without completing his evidence. The Court expects the Crown to resume cross-examining Supt. Robin on August 20, 2025.
- Sgt. Brassington, who testified on February 24 to 27 and March 10 to 13, 2025.
- Cpl. Michaud, who testified on November 8 and 15, 2024.
- Sgt. Joaquin, who testified on April 10 to 11 and May 8 to 13, 2025.

- [25] Finally, Mr. Haevischer advises that if he is permitted to advance new allegations with respect to the no-contact breaches by Mr. Haevischer and Mr. Bacon at SPSC, he will seek to call Sgt. Sobotin as a witness.

Crown's Position

- [26] The Crown opposes the entirety of Mr. Haevischer's application. I will not canvass the Crown's comprehensive submissions in detail. The thrust of the Crown's position is that the allegations Mr. Haevischer now seeks to advance are fanciful, lack an evidentiary basis, or are otherwise founded upon information that Mr. Haevischer and his counsel knew (or had access to) far in advance of these proceedings. In other words, the Crown submits that none

of the proposed allegations are based on novel information or arise in exceptional circumstances. They say the interests of justice favour prohibiting Mr. Haevischer from expanding the scope of the evidentiary hearing at this late stage of the proceedings.

- [27] As well, the Crown challenges Mr. Haevischer's apparent criticism of the police's notetaking practices and actions in the face of breaches by Mr. Haevischer and Mr. Bacon of their no-contact conditions. The Crown submits that there is no basis in law for rooting an abuse of process in the police's notetaking practices or discretion to investigate crime: citing, among others, *Holmes v. White*, 2014 ONSC 5809 and *R. v. Whitton*, 2016 BCSC 1799.
- [28] Finally, the Crown strongly resists the notion that it has made late disclosures in these proceedings, or that it has failed to comprehensively furnish Mr. Haevischer with information necessary for him to advance his case. As I have already stated, I consider it unnecessary to address those grievances.

Analysis

- [29] I will first address Mr. Haevischer's proposed allegation that BC Corrections deliberately housed Mr. Haevischer and Mr. Bacon together to assist the Surrey Six investigation and to justify their further detention in separate confinement. I consider this proposed allegation to be entirely unfounded. There is no basis to conclude from any materials available in this case that communications between Mr. Haevischer and Mr. Bacon at the MIU were being intercepted or otherwise assisted investigators in gathering evidence for the Surrey Six investigation--let alone evidence to support that moving Mr. Haevischer to the MIU was done deliberately for the purpose of gathering evidence.
- [30] Even if this supposed "scheme" were supported by some evidence within the disclosure or other materials in this case, I find that the notion cannot possibly ground an allegation of abuse of process. It should be evident that Mr. Haevischer's failure to comply with a no-contact condition in relation to Mr. Bacon following his arrest for the Surrey Six murders was a choice that he alone made. BC Corrections did not force him to communicate with his co-accused, or with anyone else.
- [31] It may well be the case that Mr. Haevischer's decision to communicate with Mr. Bacon, in a jail unit to which he specifically requested to be moved, later justified continuing to impose restrictive conditions of confinement on him and his co-accused. However, that is a consequence of his choices, and not those of BC Corrections. The proposed allegation amounts to nothing more than a bare, unfounded assertion, and one to which the Court ought not dedicate additional resources and time.

- [32] Relatedly, the supposed "failure" of police to document their knowledge of contact between Mr. Bacon and Mr. Haevischer at the MIU is entirely peripheral to the live issues in this case. The police did document their knowledge of contact between Mr. Haevischer and Mr. Bacon close in time to when the contact happened. Mr. Haevischer has been in possession of disclosure documents since 2011, essentially the outset of these proceedings, that make this apparent.
- [33] It seems Mr. Haevischer nonetheless wishes to pursue an allegation that police (specifically, Sgt. Sobotin) deliberately withheld information from their notes and reports in 2009 for the purpose of later misleading his counsel about the precise timeline of police knowledge concerning the contact between Mr. Haevischer and Mr. Bacon. He says the effect of Sgt. Sobotin's notes and reports was such that it appeared police only learned of the breaches of the no-contact orders after BC Corrections had remedied the issue by moving Mr. Haevischer out of the MIU.
- [34] I find that this notion lacks any foundation. Indeed, the allegation is clearly not true with respect to Supt. Robin. Superintendent Robin's notes about a conference call with BC Corrections on June 10, 2009, which both he and Sgt. Sobotin attended, make abundantly clear that police learned of contact between Mr. Bacon and Mr. Haevischer during the call. [13] The Crown advises that Supt. Robin's note was disclosed to Mr. Haevischer in April 2011. Sergeant Sobotin's "failure" to make a similar note with respect to the June 10, 2009 conference call--a call that he did not attend alone on behalf of Project E-Peseta--cannot in any conventional sense be construed as "misleading".
- [35] Even if the allegation were true (i.e., that Sgt. Sobotin deliberately withheld information about breaches of the no-contact orders on June 10, 2009), it is difficult to comprehend how minor omissions in the investigative record--viewed in a legal context in which police do not have a duty to record every scintilla of information they learn in the course of a complex investigation--could ever support a finding of abuse of process. In asking for permission to pursue this allegation, I consider Mr. Haevischer to be asking to conduct nothing more than a peripheral fishing expedition that will add nothing of substance to the truly live issues in this case.
- [36] Finally, I turn to Mr. Haevischer's allegation regarding the witness endangerment of Jody Elliott. I find there to be no justification to permit Mr. Haevischer, at this very late stage of the proceedings, to advance any allegation of abuse of process with respect to Mr. Elliott. It is clear from the comprehensive timeline of disclosure provided by the Crown on this application that counsel for Mr. Haevischer have known about the threat information provided by Mr. Elliott, and the identity of Mr. Elliott as the source of the information, since at least February 2016. The additional "late" disclosures identified by Mr. Haevischer were simply recitations of this same underlying information. I see no purpose for permitting Mr. Haevischer to now pursue a (relatively unclear) allegation that the police somehow endangered Mr. Elliott because of decisions made by BC Corrections (at an unspecified time) to house Mr. Elliott near to Mr. Bacon, or by housing Mr. Elliott near Mr. Johnston in July

2009.

- [37] In that respect, I observe that the circumstances of Mr. Elliott described to the Court on this application differ significantly from those of other witnesses for which I granted Mr. Haevischer leave to pursue an allegation of endangerment by the police. Unlike the witnesses at issue on the previous application, Mr. Elliott's involvement with police was not revealed to Mr. Haevischer and his co-accused as part of evidence presentations during their post-arrest interviews. Instead, his cooperation was only subject to disclosure by way of the Crown's disclosure process, which commenced in earnest in 2010. In other words, disclosure of Mr. Elliott's involvement with police only occurred after Mr. Elliott was housed in the vicinity of both Mr. Bacon and Mr. Johnston, per the materials identified on this application.
- [38] That said, I agree that there appears to be some confusion about the status of Mr. Elliott. While the confusion has no substantive bearing on the determination of this application, if other issues arise from the handling of Mr. Elliott by police, I leave it to the Crown and the amicus curiae to examine those matters and to raise them with the Court in closed proceedings, if needed.

Conclusion

- [39] As I have stated previously, barring something exceptional or truly novel arising in this case, Mr. Haevischer may not expand the scope of this hearing further. Mr. Haevischer has failed to demonstrate that any of the new allegations he proposes to advance satisfy this standard. They are all founded on either speculation or information that, in some form or another, Mr. Haevischer and his counsel have known about (or had access to) well in advance of this hearing. These proceedings have been ongoing for months. The preparation by counsel for this matter has taken years. The disclosure in this case has spanned more than a decade. It should be clear to all parties that these proceedings must come to an end fairly, effectively, and efficiently.
- [40] For the above Reasons, Mr. Haevischer's application is dismissed.

"Devlin J."

- [1] See Exhibit 167 at paras. 1-2.
- [2] See Exhibit 22, Tab 5, pp. 109 and 111.
- [3] I have referred to police officers in these Reasons by their rank at the time of Project E-Peseta.
- [4] See the notes of Derek Brassington on June 6, 2009, marked as Exhibit 81 in these proceedings, and the past recollection recorded of Derek Brassington, marked as Exhibit 80.
- [5] Testimony of Rosauro Joaquin on May 13, 2025, transcript at pp. 51 (line 23) to 52 (line 44).
- [6] Testimony of Rosauro Joaquin on May 13, 2025, transcript at p. 53 (line 1) to 54 (line 3).

- [7] Testimony of Rosauero Joaquin on May 12, 2025, transcript at p. 35, lines 4-42.
- [8] Testimony of Rosauero Joaquin on May 13, 2025, transcript at p. 54, lines 4-26.
- [9] A copy of the report was provided to the Court on this application as Exhibit "I" of the affidavit affirmed by Lily Sun on August 13, 2025, and filed by the Crown.
- [10] Sergeant Brassington and Cpl. Boucher also relied on information that investigators had learned by way of intercepted communications between Mr. Bacon and his brother Jonathan Bacon: see the Executive Summary authored by Mr. Brassington and dated July 14, 2009, marked as Exhibit 75.
- [11] See Exhibit 81.
- [12] See Exhibit 11, pp. 281-282.
- [13] A copy of Supt. Robin's notes for the June 10, 2009, conference call was provided to the Court on this application as Exhibit "C" of the affidavit of Lily Sun affirmed on August 13, 2025, and filed by the Crown.
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