

CANADA / JUDGMENT

R. v. Haevischer

2025 BCSC 2409

COURT

Supreme Court of British Columbia

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2025 BCSC 2409 R. v. Haevischer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Haevischer,

2025 BCSC 2409

Date: 20251203

Docket: X072945-B

Registry: New Westminster

Rex

v.

Cody Rae Haevischer

Before: The Honourable Madam Justice Devlin

Oral Reasons for Judgment Re: Contempt of Court

Counsel for the Crown:

C.G. Baragar, K.C.

R. Khangura

Counsel for Mr. Haevischer:

S. Hutchison

J. Proskos

Amicus Curiae:

N. Khan

Place and Dates of Hearing:

Vancouver, B.C.

December 1 and 2, 2025

Place and Date of Judgment:

New Westminster, B.C.

December 3, 2025

THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.

Introduction

- [1] On July 30, 2025, I cited Cody Haevischer for contempt of court. The citation arose from Mr. Haevischer's conduct during his cross-examination by the Crown, while testifying as part of these proceedings. On December 1 and 2, 2025, a hearing was held to provide Mr. Haevischer an opportunity to show cause why he should not be found in contempt. These Reasons for Judgment provide my verdict on Mr. Haevischer's citation for contempt.
- [2] By way of background, on October 2, 2014, Justice Wedge found Mr. Haevischer and Matthew Johnston guilty of six counts of first degree murder and one count of conspiracy to commit murder: *R. v. Haevischer*, 2014 BCSC 1863 [Verdict Reasons]. The findings of guilt relate to the execution-style killing of six people on October 19, 2007, commonly known as the "Surrey Six murders": Verdict Reasons at para. 1.
- [3] Following the verdicts, Mr. Haevischer applied for a stay of proceedings for an abuse of process.[1] He alleged systemic police misconduct during the Surrey Six investigation and oppressive conditions of confinement while in pre-trial custody. Justice Wedge summarily dismissed the application for a stay of proceedings (*R. v. Haevischer*, 2014 BCSC 2172), entered the convictions against Mr. Haevischer, and sentenced him to life imprisonment (*R. v. Haevischer*, 2014 BCSC 2533). However, our Court of Appeal quashed the convictions and remitted the stay application to this Court for an evidentiary hearing: *R. v. Johnston*, 2021 BCCA 34 [Johnston]. The Supreme Court of Canada affirmed the Court of Appeal's decision: *R. v. Haevischer*, 2023 SCC 11 [Haevischer SCC].
- [4] After several months of pre-hearing applications, the evidentiary hearing commenced before me on November 4, 2024. It remains underway. To date, the Court has heard evidence from numerous witnesses called either by Mr. Haevischer himself or by the amici curiae, as part of in camera proceedings.[2] Mr. Haevischer's case is scheduled to conclude in early 2026, following which the Crown expects to call several witnesses of its own.

- [5] Mr. Haevischer testified as part of the evidentiary hearing. His evidence spanned 19 days, including 11 days of cross-examination, from June 23 to August 13, 2025. On the second day of his cross-examination (July 30, 2025), I cited Mr. Haevischer for contempt of court, at the Crown's request. I describe the basis for the citation below.
- [6] Mr. Haevischer's examination continued, and the contempt matter was adjourned for the purpose of a show cause hearing. These Reasons address whether Mr. Haevischer has shown cause why he should not be found in contempt. I begin by describing the context of Mr. Haevischer's citation for contempt. I then set out the governing legal principles, before describing the parties' submissions and turning to my analysis.

The Citation for Contempt

- [7] The Court cited Mr. Haevischer for contempt for his refusal to answer certain questions put to him by the Crown in cross-examination, despite directions from the Court to answer them. Mr. Haevischer's stated reason for refusing the Court's direction was that answering the questions would violate the "inmate code", which according to Mr. Haevischer prohibits "ratting" on fellow gang members or inmates who are still alive. Mr. Haevischer testified to his belief that violating the inmate code would place his life in immediate danger within jail.
- [8] Mr. Haevischer initially testified about the inmate code during his examination-in-chief. He did so in the context of being examined on the Surrey Six murders. At the outset, Mr. Haevischer testified about the sort of evidence that he is "unable" to provide:

Q Mr. Haevischer, I'm going to ask you about what happened on the day of the murders. But before I ask you about this, I understand that when you give evidence about this event, that you are unable to name or directly incriminate any person who is alive; is that true?

A That is true.

Q Okay. Could you explain that particular hinderance that you have and why you have it?

A Yes, absolutely. Madam Justice, this is -- as an inmate in prison, and a general population inmate specifically, naming names or cooperating in any way, I'll be viewed as a rat and put my life in immediate danger. I understand by not being able to answer certain questions, or I'm being reluctant to answer certain questions, it may jeopardize my credibility and it could very well cost me my freedom, but if I did answer these questions and name names and talk about other people's roles, it would put my life in danger. It would cost me my life.

Q And does that naming of names apply to a person who's alive -- alive, as you said?

A Any -- anyone who's alive who has any alleged involvement in this case or in the gang or -- yeah, I -- I don't -- I don't make the rules in jail. They existed long -- long, long before I ever got there, and I'm sure they'll still be there long after however I leave. They'll still be there. And they're deadly serious.

Q And how did you become aware of this rule?

A It's a common knowledge in jail. It's the culture. If anybody is even assumed to be cooperating with prison staff, with the police in any way, they're a target of extreme violence, like immediately. It's -- I've seen it myself, you know, in -- in jail.

Q Can you explain -- you've testified that cooperators with the police and the prison authorities is one thing, but you're now testifying in a courtroom. How does that "rat" --

A Well, if you testify about someone else and give evidence against someone else, identify someone else, explain someone else's role in any kind of crime, that's -- that's giving evidence. You're ratting on that person or that situation. And, yeah, you can't do that.

Q And does the rule apply to a person who's deceased?

A No. No. You can't -- you can't hurt someone else to save yourself, no matter how desperate or your situation is. The only reason why I'm still in jail 16-and-a-half years later is because I'm not a rat.

Q Does this rule interfere with your ability to tell the truth in this case?

A Not the truth, no. It makes it difficult for me to answer the questions to the best of my ability.

[Testimony of Cody Haevischer on June 23, 2025, pp. 7-9. Emphasis added.]

[9] Following this exchange, Mr. Haevischer provided his narrative of the Surrey Six murders. He testified that he attended the scene of the murders with Mr. Johnston to collect a \$100,000 debt. Mr. Haevischer denied any knowledge before the murders of a conspiracy to kill Corey Lal. He admitted to confining the victims in the apartment in which they were murdered, but he testified that at the time of the murders he was in the hallway, near the elevator. He denied shooting any of the victims or being present in the apartment when they were killed.[3]

[10] Mr. Haevischer's version of events is clearly inconsistent with the findings of guilt made against him by Justice Wedge. It bears emphasizing that those findings of guilt have withstood appellate review: see Johnston, in particular at paras. 115-215.

[11] As will become relevant to the citation for contempt, Mr. Haevischer's version of events also conspicuously omits reference to a third perpetrator of the offences, an individual known in these proceedings as Person X. In April 2009, Person X pleaded guilty to the murder of three of the victims in the Surrey Six murders, and to the murder conspiracy that inspired them: Verdict Reasons at para. 5. Justice Wedge's findings at trial refer to Person X's role in the offences. She found that:

· The perpetrators--Mr. Haevischer, Mr. Johnston, and Person X--were members of a pre-existing plan to murder Corey Lal.

- The perpetrators attended the scene of the murders to carry out the conspiracy to murder Mr. Lal.
- At the scene, the perpetrators encountered more individuals than anticipated (initially four and later six people).
- The perpetrators confined the victims at the scene.
- In a deliberate and calculated manner, the perpetrators decided to execute all six victims.
- Two of the three perpetrators shot the victims. The third perpetrator provided "backup". Either as a principal or as an aider or abettor, the third perpetrator's actions were "an essential, substantial and integral part of the killing of the victims".

(Verdict Reasons at paras. 710-716, 725-726.)

[12] Returning to Mr. Haevischer's testimony, during the balance of his examination-in-chief Mr. Haevischer, on occasion, invoked the inmate code as a basis for refusing to answer certain questions or provide certain evidence. For example, Mr. Haevischer refused to answer questions relating to a violent altercation in which he was involved while in pre-trial custody. [4] He also refused to identify other inmates (including his former co-accused, James Bacon) who were housed with Mr. Haevischer in the summer of 2009 in the Medical Isolation Unit ("MIU") of the Surrey Pre-trial Services Centre. [5] Parenthetically, at an earlier point in his direct examination Mr. Haevischer identified Mr. Bacon, by name, as an inmate housed with him at the MIU, and with whom he interacted in contravention of a court order prohibiting contact between the two co-accused. [6] That inconsistency aside, for obvious reasons Mr. Haevischer's counsel did not request the Court to direct Mr. Haevischer to answer the questions on those occasions.

[13] Crown counsel commenced his cross-examination of Mr. Haevischer on July 29, 2025. Counsel began by attempting to challenge Mr. Haevischer's narrative of the Surrey Six murders, including his failure to mention Person X. The resulting exchange precipitated the citation for contempt:

Q All right. Well, let me begin by asking you this. According to your version of events, on the day of the murders Matt Johnston alone showed up at your home. The two of you went to collect a debt. The two of you entered suite 1505. Matt Johnston kept bringing persons into the suite interspersed with rummaging around looking for money and drugs. And at some point he handed you a plastic bag and told you to go get the elevator, and presumably on his own he shot and killed all six persons. So my first question is was there another person with you?

A I can't answer that.

CNSL G. BARAGAR:

I would request that the witness be directed to answer the question.

THE COURT:

So, Mr. Haevischer, I'm sure you understand this is your application, and in this courtroom the way it works is when you're asked a question you're expected to answer the question. And your inmate code, as you've described it, isn't a code that prevails in this courtroom. And so when you're asked a question, the expectation is you will respond to the question. And I know what you've said with respect to you say you can't answer the question, but here in the courtroom the question and answer, that's how it works, that you're asked a question and you're expected to answer the question.

A I understand that, Justice, and it's not a disrespect of you or this court in any way. It would make things a whole lot easier if I could do this without threat to my life, but I -- I can't. I can't do it without a threat to my life. It's -- it's a very simple thing and I'm ...

Q Right. And I presume that, following the direction from the court, your answer is still, no, that you will not answer the question I just asked you; is that correct?

A That is correct, regretfully, and with -- without any disrespect to the court. That is what it is.

CNSL G. BARAGAR:

All right. I will be asking the court to cite the witness for contempt.

[Testimony of Cody Haevischer on July 29, 2025, pp. 28-29. Emphasis added.]

[14] I then adjourned Mr. Haevischer's cross-examination to provide him an opportunity to consult with independent counsel. On the following day (July 30, 2025), Mr. Haevischer's cross-examination resumed, culminating in his citation for contempt:

Q Mr. Haevischer, yesterday my question had been who was -- was there a third person in the Balmoral suite at the time of the murders who had accompanied you and Matt Johnston, and what was his role?

A Respectfully, to the court, I cannot answer that. I -- I will not answer that. I cannot put my long-term physical safety in jeopardy.

THE COURT:

All right. So to be clear, I'm -- I'm directing you to answer the question.

A I understand, Justice.

THE COURT:

And you are refusing to do so?

A Respectfully, I am.

THE COURT:

So as a result of that, Mr. Baragar, do you have an application?

CNSL G. BARAGAR:

The Crown requests that the court cite the witness for contempt.

THE COURT:

So, Mr. Haevischer, I've heard what you've had to say with respect to why you will not answer the question. But as a result of your refusal to answer the question -- I appreciate you giving me an explanation as to why you won't answer the question. But your refusal to answer the question posed by Mr. Baragar, as I directed -- I'm citing you for contempt.

THE COURT:

So -- and as we proceed in your testimony, if a question arises and you refuse to answer the question for the reasons that you've explained -- but if you refuse to answer the question, that too will form part of the contempt citation; all right? You understand that?

A I do --

THE COURT:

Okay.

A -- understand, yes.

THE COURT:

So there's no urgency at this point in having a hearing -- a show cause hearing with respect to why I should not find you in contempt. So I'm going to adjourn that to the end of your testimony. ... But to be clear, at this moment I have not found you in contempt. But I put you on notice that I have found your refusal to answer Mr. Baragar's question, as directed by me, to be contemptuous ...

[Testimony of Cody Haevischer on July 30, 2025, pp. 2-4. Emphasis added.]

[15] The contempt matter was put over to a later date for the purpose of a show cause hearing, and the cross-examination of Mr. Haevischer continued: see *R. v. Normore*, 2018 SCC 42 at para. 2. On seven additional occasions, I directed Mr. Haevischer to answer questions by the Crown, and he refused.

[16] I pause here to address a divergence in the parties' submissions on the scope of the contempt citation. Counsel for Mr. Haevischer submits that this contempt matter concerns only those instances in which Mr. Haevischer was explicitly directed by the Court to answer a question and nonetheless refused to do so. The Crown submits that Mr. Haevischer's citation for contempt encompasses all instances during his cross-examination in which he refused to answer a question, whether or not his refusal followed a direction by the Court.[7] The Crown identifies 37 such instances. The Crown refers to my caution to Mr. Haevischer on July 30, 2025, that "as we proceed in your testimony, if a question arises and you refuse to answer the question that too will form part of the contempt citation".

[17] I agree with counsel for Mr. Haevischer that, formally speaking, the scope of Mr. Haevischer's citation for contempt only encompasses those instances in which he explicitly refused to follow a direction by the Court. The Crown's reading of the exchange on July 30, 2025, relies on a single sentence, in isolation. Viewing the exchange in its totality, it is apparent that I put Mr. Haevischer on notice that his refusal to follow a direction by the Court constitutes contemptuous behaviour. Indeed, in the initial citation for contempt I advised Mr. Haevischer that the basis for the citation is his "refusal to answer the question posed [by Crown counsel], as I directed". As well, during the same exchange I provided Mr. Haevischer the following notice, while explaining to him the purpose of holding a show cause hearing:

But to be clear, at this moment I have not found you in contempt. But I put you on notice that I have found your refusal to answer Mr. Baragar's question, as directed by me, to be contemptuous

[18] For these reasons, I agree with counsel for Mr. Haevischer about the scope of the citation for contempt. However, the count provided by counsel for Mr. Haevischer (nine total incidents) appears to include the initial refusal by Mr. Haevischer to answer a question by the Crown, on July 29, 2025. As set out above, during that exchange Mr. Haevischer was not cited for contempt but was instead given an opportunity to reconsider his conduct and consult with counsel. Accordingly, based on my review of the record, there have been eight incidents that form part of the citation for contempt.

[19] That said, I have necessarily considered the totality of Mr. Haevischer's testimony as important context for his behaviour. This context includes the numerous additional exchanges that Mr. Haevischer had with Crown counsel in which he refused to answer a question put to him, but in which the Court made no direction for him to answer. As well, I acknowledge that at various points in Mr. Haevischer's cross-examination it was obvious, given Mr. Haevischer's previous evidence, that he would not answer the question put to him, with or without a direction. In any event, the ultimate issue of whether Mr. Haevischer should be found guilty of contempt is not a matter of quantity. It is the substance of his conduct as a witness that is determinative.

[20] Having addressed the issue of the citation's scope, I will not describe in great detail the eight incidents in which Mr. Haevischer refused to follow the Court's directions to answer the Crown's questions. The refusals fall into three broad categories: (1) refusing to name individuals involved in the Surrey Six murders, or their aftermath, and to describe their role; (2) refusing to confirm whether certain individuals were members of Mr. Haevischer's gang, the Red Scorpions; and (3) refusing to identify inmates depicted in a CCTV video taken in the MIU in the summer of 2009, or otherwise refusing to "narrate" the video.[8]

[21] With the context of Mr. Haevischer's citation for contempt in mind, I now turn to the governing legal principles.

Governing Legal Principles

Contempt of Court

[22] Contempt of court is the only remaining common law criminal offence in Canada. It is derived from the Court's inherent jurisdiction: *R. v. Jacob*, 2008 MBCA 7 at para. 24. The purpose of punishing criminal contempt is to maintain the dignity and authority of the judge and to ensure a fair trial (*R. v. Arradi*, 2003 SCC 23 at para. 29 [Arradi]), ultimately with a view to safeguarding the integrity of the justice system. Justice Ewaschuk, writing extrajudicially in *Criminal Pleadings and Practice in Canada*, 3d ed. (Toronto: Thomson Reuters, 2022), expresses the objective of the court's criminal contempt powers in the following terms (at § 29:5):

"Criminal contempt" is aimed at punishing "public acts" which tend to bring the administration of justice into disrepute and interfere with the due administration of justice. It is directed at the protection of the integrity of the administration of justice. Its general purpose is to protect the fairness of the trial process.

[Emphasis in the original. Cited with approval in *R. v. Lavallee*, 2022 MBCA 100 at para. 23 [Lavallee]]

[23] Contempt of court proceedings are generally approached in a manner similar to other criminal proceedings. Most importantly, they entitle the accused to the same protections ordinarily afforded to accused persons, including the presumption of innocence: *R. v. Hardy*, 2024 BCCA 254 at paras. 36-38, citing Arradi at paras. 29-30. The burden rests on the Crown to prove beyond a reasonable doubt that the accused committed the offence of contempt.

[24] However, where a witness refuses to be sworn in response to a subpoena or, having taken an oath or affirmation refuses to answer questions put to them, it is said that their conduct amounts to prima facie or "apparent" contempt in the face of the court: *R. v. Bengy*, 2013 ONSC 248 at para. 14 [Bengy]; *R. v. Bidesi*, 2015 BCSC 2532 at para. 5 [Bidesi], both referencing *R. v. Cohn* (1984), 48 O.R. (2d) 65, 1984 CanLII 43 [Cohn] (Ont. C.A.). In such cases, the court may, by citing the witness for contempt, put them on notice that they have "been contemptuous and will be required to show cause why they should not be held in contempt": *R. v. K.(B.)*, [1995] 4 S.C.R. 186 at 195-196 [K.(B.)], referring to *Dagenais v. Canadian Broadcasting Corporation*, [1994] 3 S.C.R. 835. Given Mr. Haevischer's deliberate and informed refusals to follow the explicit directions of the Court, the present case is clearly one of prima facie contempt.

[25] At first blush, Chief Justice Lamer's language in *K.(B.)* appears to place the burden of proof on the accused. However, the passage must be interpreted harmoniously with the accused's presumption of innocence. Thus, the burden resting on an accused to "show cause" in relation to prima facie contempt is not a persuasive burden, but simply an evidentiary one: *Bengy* at para. 14; *Bidesi* at para. 5. It is analogous to the air of reality standard that an accused person must satisfy to raise a defence at trial and which, once satisfied, places the burden on the Crown to disprove the defence beyond a reasonable doubt: see *R. v. Hart*,

2024 BCCA 181 at paras. 103-104, describing *R. v. Cinous*, 2002 SCC 29 [Cinous].

[26] As I discuss below, Mr. Haevischer has raised the defence of duress to show cause why he should not be found in contempt. Accordingly, I will describe the legal principles that govern the defence of duress.

Defence of Duress

[27] Duress is an excusatory defence; it does not negate the mens rea of an offence but rather excuses, by operation of law, typically criminal conduct. It is said that a person acting under duress has their will overborne by the threat of harm posed to them such that their conduct, although in theory a choice among alternatives, is not freely chosen. (See *R. v. Hibbert*, [1995] 2 S.C.R. 973 at 1011-1014 and *R. v. Ruzic*, 2001 SCC 24 at para. 44 [Ruzic]).

[28] The defence of duress has two sources: one statutory, the other common law. However, developments in the law of duress have generally minimized the differences between the common law and statutory defences, and have pointed instead to their "mutual underlying rationale": *R. v. Aravena*, 2015 ONCA 250 at para. 25 [Aravena], leave to appeal to SCC ref'd, 36747 (7 April 2016). (See also K. Roach, *Criminal Law*, 8th ed. (Toronto: Irwin, 2022) at 420).

[29] Justices LeBel and Cromwell, writing for the majority in *R. v. Ryan*, 2013 SCC 3 [Ryan], succinctly described the shared elements of the common law and statutory defences in the following terms:

[81] The defence of duress, in its statutory and common law forms, is largely the same. The two forms share the following common elements:

- There must be an explicit or implicit threat of present or future death or bodily harm. This threat can be directed at the accused or a third party.
- The accused must reasonably believe that the threat will be carried out.
- There is no safe avenue of escape. This element is evaluated on a modified objective standard.
- A close temporal connection between the threat and the harm threatened.
- Proportionality between the harm threatened and the harm inflicted by the accused. The harm caused by the accused must be equal to or no greater than the harm threatened. This is also evaluated on a modified objective standard.

[Emphasis added.]

[30] As stated earlier, the burden of proof rests on the Crown in criminal contempt proceedings. With respect to duress, the accused need only establish an "air of reality" to the defence. This means that the accused has a burden of introducing "some evidence", or establishing an "evidential foundation", for each of the elements of the defence: *Ruzic* at para. 100; *R. v. Pappas*, 2013 SCC 56 at para. 21. In deciding whether the accused has satisfied the "air of reality" standard, the Court must consider all of the evidence, and assume the evidence

relied upon by the accused to be true: Cinous at para. 53. The overarching question is whether a properly instructed trier of fact could acquit the accused if they believed the evidence: Cinous at para. 65.

- [31] If an accused establishes an evidentiary foundation for each of the elements of duress, it becomes the Crown's burden to disprove at least one of the elements of the defence beyond a reasonable doubt: Aravena at para. 27.

Parties' Submissions

Mr. Haevischer

- [32] Mr. Haevischer submits that in the circumstances of this case, his refusals to follow the Court's directions should be excused on the basis of duress. He submits, as I have described above, that he continues to benefit from the presumption of innocence in these contempt proceedings. He accepts that a witness who refuses to testify or to answer questions is *prima facie* contemptuous. However, Mr. Haevischer emphasizes that culpability in our system of criminal law is founded on moral blameworthiness. He urges the Court not to impose criminal sanctions in circumstances where he was presented with an "impossible" choice.
- [33] To that end, Mr. Haevischer says there is an air of reality to the defence of duress in his "unique circumstances", which serve to elevate his case above the usual or "average" cases of an incarcerated person who refuses to testify on a similar basis. These circumstances include: his years-long experience observing prison dynamics and violence; the expectation that if his application for a stay of proceedings is unsuccessful, he will likely spend most or all of his life in a prison setting; and the considerable attention, both in the media and within prison, that he perceives these proceedings have attracted. Mr. Haevischer submits that his fear of becoming an immediate target for violence if labelled a "rat" in the jail setting is not simply a vague assertion but rather an honest, well-placed belief, reached in good faith. In his written submissions, Mr. Haevischer analogizes the threat of violence he faces in prison to the threats at issue in *R. v. C.M.B.*, 2010 MBQB 269 [C.M.B.], a case I will return to in my analysis.
- [34] To raise an air of reality for the defence of duress, Mr. Haevischer refers to his own evidence about his perception of inmate culture and his experiences in custody. In addition, he refers to the evidence of other witnesses (primarily former prison officials and police officers) called in this case. The evidence relates generally to the dangers posed to justice system cooperators within provincial and federal corrections, and relates specifically to the difficulties associated with safely housing two cooperating witnesses in the Surrey Six prosecution, Person X and Person Y.
- [35] Mr. Haevischer points out that at the pre-trial stage of these proceedings, the Crown successfully applied for a publication ban in relation to the identities of Person X and Person Y, on the basis of threats to their safety flowing from the inmate code, as in-custody justice system cooperators: *R. v. Haevischer*, 2013 BCSC 1085, in particular at paras. 30-34, 50

[Publication Ban Ruling]. In a similar vein, Mr. Haevischer refers to several authorities in which judicial notice was taken of the threat of violence to which justice system cooperators are exposed within the inmate population: e.g., *Gill v. Canada* (Deputy Commissioner, Pacific Region, Correctional Services), [1988] 3 F.C. 361 at 368-369; *R. v. McLellan*, 2016 ONSC 3397 at para. 22; *R. v. Sam and Tom*, 2006 BCPC 437 at para. 25.

- [36] I will not exhaustively review the evidence from these proceedings cited by Mr. Haevischer. The thrust of the evidence is that "rats" in the jail setting are ordinarily targets of violence, including death, and that measures taken to protect them may be harmful (e.g., prolonged segregation) or otherwise imperfect (e.g., that "rats" also face violence in protective custody). [9] I will return to the notion that Mr. Haevischer's circumstances are informed by those of justice system cooperators, as part of my analysis.

The Crown

- [37] The Crown submits that Mr. Haevischer should be found guilty of contempt of court. For reasons I have already expressed, I do not accede to the Crown's submission with respect to the scope of the citation for contempt. However, I remain mindful that Mr. Haevischer's citation for contempt is a matter of substance, not quantity, and that the totality of his conduct as a witness informs the Court's task in these proceedings.
- [38] Turning to the law, the Crown generally agrees with Mr. Haevischer's description of the evidentiary onus on him to show cause and the elements of duress, which I have set out above. The Crown submits that in circumstances where a witness refuses to testify or answer questions, there can be no doubt about the facts that form the basis of the citation for contempt. The Crown refers to several cases, including *Bidesi* and *R. v. Johnston*, [1976] O.J. No. 1144, 1976 CarswellOnt 1255 (C.A.), for the proposition that while the "inmate code" may affect an inmate's social standing within prison, it has no place in the courtroom and is not recognized at law. In addition, the Crown challenges Mr. Haevischer's analogy of his circumstances to those in *C.M.B.*, and instead argues that his circumstances are more properly informed by *Bidesi*. I will return to both decisions in my analysis.
- [39] Ultimately, the Crown submits that Mr. Haevischer has failed to adduce an evidentiary foundation for the notion that he was threatened or that he had no safe avenue for escape. The Crown argues that Mr. Haevischer has inconsistently described and abided by the "inmate code" and has conflated his circumstances with those of actual justice system cooperators. The Crown further argues that the evidence adduced by Mr. Haevischer suggests he refused to answer certain questions simply because he did not want to be labelled a "rat", and consequently lose his standing within the prison hierarchy. The Crown also emphasizes that Mr. Haevischer had a choice whether or not to testify. They argue that his conduct, which had the effect of frustrating the Crown's attempts to challenge his evidence, amounts to an affront to this judicial process and must not be endorsed by the Court.

[40] Having set out the parties' submissions, I turn to my analysis.

Analysis

[41] I begin by considering Mr. Haevischer's claim of duress.

Has Mr. Haevischer established an air of reality for the defence of duress?

[42] I will first address whether Mr. Haevischer has provided an evidentiary foundation for the defence of duress, starting with the element of a threat. The caselaw on duress defines a "threat" as "acts, conduct or words" by another person that could reasonably be construed, implicitly or explicitly, as a threat: *R. v. Mena* (1987), 34 C.C.C. (3d) 304, 1987 CanLII 2868 at para. 55 (Ont. C.A.) [*Mena*]. In addition, the threat must have been made to compel the accused to commit a specific offence: *Ryan* at paras. 2 and 29; *R. v. Richer*, 2025 ONCA 439 at para. 16. Mr. Haevischer has not testified about a threat he has received in anticipation of his testimony from another person, in the form of acts, conduct or words, aimed at compelling him to be contemptuous. Mr. Haevischer has only testified about a generalized fear of violent consequences that he expects to face if he testifies about certain matters, and is therefore labelled a "rat". In other words, Mr. Haevischer's decision not to answer the Crown's questions, despite the Court's directions to do so, was made on his understanding of prison culture and his expectation of what might happen if he was seen to be violating the inmate code, as he understands it.

[43] To that end, the authorities make clear that "[m]ere fear does not constitute duress in the absence of a threat": *Mena* at para. 55, quoted with approval in *R. v. Delos Santos*, 2015 BCCA 122 at para. 17. Even a "fearful subordination to the orders of others", without more, "is miles from the kind of conduct required to bring the duress defence into play": *Aravena* at para. 89. That is precisely the circumstance in this case. Mr. Haevischer's testimony about inmate dynamics, and his understanding of prison violence and culture, may be truthful and reasonable, considering his circumstances and experiences. However, his evidence does not provide the necessary foundation for the sort of express or implied threat which could render Mr. Haevischer's decision not to follow the Court's directions a decision made under duress, as it is understood at law: *Bidesi* at para. 21.

[44] It is helpful at this juncture to address C.M.B. The witness in C.M.B. was subpoenaed to testify against two gang members who had allegedly assaulted him. He had testified against them at their preliminary inquiry. He was not in custody at the time, received police protection for his attendance in court, and was placed in the witness protection program, which involved relocating him to another province. Despite these measures, following the preliminary inquiry the witness was located by associates of his alleged assaulters and on one occasion was pushed into traffic. The witness's parents also received threatening phone calls in which he was called a "rat". This development prompted authorities to install a security system in the home of the accused's parents.

- [45] In the lead-up to trial, the witness in C.M.B. entered custody on an unrelated charge. He was housed in the same institution as associates of the men who had allegedly assaulted him. He was placed in segregation for his safety. He indicated to the Crown and police that he would not testify unless his safety was guaranteed. He asked to be moved to another institution, which was denied, and received no assurances about his safety. When the trial commenced, the witness was set to be the Crown's first witness. He initially refused to attend court altogether, and once he was brought to court he refused to testify. As a result, the witness was cited for contempt and the Crown entered a stay of proceedings.
- [46] At his show cause hearing, the witness in C.M.B. (now an accused on the contempt matter) explained that he had refused to testify because of fear for himself and his family. The hearing judge accepted the witness's defence of duress and acquitted him. Although the witness had not received direct threats with respect to his anticipated testimony, the totality of the circumstances amounted to an implicit threat which compelled him not to testify. The hearing judge reasoned as follows:
- [33] The Crown argues that a witness cannot avoid a conviction for contempt where his refusal to testify is based simply on a prison "code of silence". That may be true. But each case must turn on its own facts and the facts here are not simply that Mr. B. feared being labelled as a rat but that there had been an attempt by associates of the accused to seriously harm, if not kill, him. It was reasonable for him to believe that his ability to avoid further assaults was diminished once he was incarcerated in the same institution as these men.
- [34] In order to find Mr. B. in contempt, I must be satisfied beyond a reasonable doubt that he was not acting under duress. The onus on him is an evidentiary one. Mr. B. testified as to the nature of his fear and the actions he took to bring the matter to the attention of authorities. His evidence was that the attempts of authorities to protect him in the past had failed. Mr. B. has presented evidence of duress sufficient to shift the onus back to the Crown. The Crown has failed to discharge the onus on it to establish beyond a reasonable doubt that Mr. B. was not acting under duress and that he should be found guilty of contempt.
- [Emphasis added.]
- [47] C.M.B. is easily distinguishable from the present case. First, Mr. Haevischer was not subpoenaed to testify against gang members who had allegedly assaulted him; he chose to testify in support of his application for a stay of proceedings (although I will return to this point later in these Reasons). As well, the evidence Mr. Haevischer was asked and refused to provide is already a matter of public record or otherwise apparent from sources other than Mr. Haevischer himself (e.g., the role of Person X in the Surrey Six murders; the affiliations of certain individuals to the Red Scorpions; the inmates housed in the MIU at a specific time). Indeed, with respect to the subject of examination that initially prompted Mr. Haevischer's citation for contempt, Person X has admitted his role in the Surrey Six murders by pleading guilty. In no conventional sense could it be said that Mr. Haevischer would be "ratting" on Person X if he had described Person X's role in the offences. By contrast, the

evidence sought from the witness in C.M.B. was so foundational to the prosecution of his alleged assailants that, without it, the proceedings were stayed.

- [48] With respect to the element of a threat, Mr. Haevischer has not described any sort of violence committed against him by associates of people he expected to provide evidence about at the evidentiary hearing (akin to being pushed into traffic). Nor has Mr. Haevischer testified about any threatening messages like those directed at the witness's parents in C.M.B. Even if the entirety of Mr. Haevischer's testimony is accepted as true, an implied threat compelling him not to answer certain questions from the Crown simply does not arise from his evidence, as the threat in C.M.B. I conclude instead that in this case Mr. Haevischer has testified about nothing more than simply a fear of being labelled a "rat": C.M.B. at para. 33.
- [49] To that end, I agree with the Crown that the facts of Bidesi are more instructive. In Bidesi, a witness subpoenaed by the Crown refused to testify in the murder trial of his former co-accused. The witness had pleaded guilty to manslaughter in relation to the same incident. The witness was cited for contempt for refusing to testify. At his show cause hearing the witness described fears relating to the inmate code. He testified about his diminutive stature, his voluntary stay in segregation while in pre-trial custody due to issues with other inmates, and his general observations of prison violence against inmates perceived as "rats". When the witness received his subpoena, he did not ask for assurances as to his safety if he testified. The witness testified at his show cause hearing that he was afraid he would be permanently injured or killed if he testified. He did not testify about receiving a direct or indirect threat before or after receiving his subpoena. He testified that he "did not need to receive threats because it is common knowledge amongst inmates as to what happens to people who help the police": Bidesi at para. 15.
- [50] Justice Butler (then of this Court) expressed sympathy for the witness's predicament. However, he concluded that unlike in C.M.B., the defence of duress was not available in the circumstances of the case:
- [17] The defence of duress is not available to Mr. Martinez based on the evidence before the Court. He did not receive a threat of any kind, either direct or indirect, about what might happen to him if he testified. He gave no evidence from which I could find or infer that someone was going to do something to him or to a family member if he gave evidence at the trial of Mr. Bidesi. There is thus no evidence of a threat, and without the evidence of a threat, there is no temporal connection between a threat and his decision not to testify.
- [20] Here, Mr. Martinez did not provide any evidence of actions or conduct that could be construed as falling within that characterization. His decision not to testify was based on his understanding of the prison environment and his concern about what might happen to him if he was seen to be assisting the police in the prosecution of Mr. Bidesi.

- [51] The same comments apply to Mr. Haevischer. As I have already explained, Mr. Haevischer has not testified about an explicit or implicit threat directed towards him in anticipation of his testimony. He has only invoked the "inmate code" in general terms and has relied on his understanding of the prison environment and the culture that pervades it. That is simply an insufficient evidentiary foundation, at law, to ground a defence of duress.
- [52] While the facts in Bidesi are informative, there is an additional distinction I wish to address between Mr. Haevischer and other witnesses, like the witnesses in Bidesi and C.M.B., who may face a risk of inmate violence as a result of their testimony. Specifically, I am not persuaded that Mr. Haevischer's claim of duress is assisted by evidence in this case, or by prior judicial observations, relating to the dangers posed to justice system cooperators.
- [53] It is beyond dispute, and in fact a matter of judicial notice, that "inmates who cooperate as witnesses for the Crown, especially as against the interests of gang members, face heightened security threats while in jail": *R. v. Johnston*, 2019 BCCA 107 at para. 114 (emphasis added). However, it does not follow from this proposition that a witness who calls himself to testify in support of his own application for a stay of proceedings--as opposed to a witness called to assist the prosecution of others--is similarly at risk of harm. It is especially difficult to accept that a witness would be at risk of harm from his fellow inmates, owing to the "inmate code" and nothing more, if his evidence would not incriminate anyone. For reasons I have already expressed, the sorts of questions Mr. Haevischer resisted answering concerned events, roles, and identities that are generally already known in these proceedings and are, in some cases, a matter of public record. His circumstances are simply not the same as those of actual justice system cooperators in a prison setting. Indeed, this Court has heard evidence of direct threats made towards the primary in-custody justice system cooperators in this case, Person X and Person Y. These include threatening messages directed towards them and, in the case of Person X, an apparent \$500,000 contract on his life, prior to the Surrey Six trial.[10] As I have already described, Mr. Haevischer's testimony does not identify anything resembling these sorts of threats.
- [54] Thus, on the totality of the evidence, and accepting Mr. Haevischer's evidence to be true, I find that Mr. Haevischer's claim of duress lacks an air of reality. I find that Mr. Haevischer has not provided an evidentiary foundation for the claim that he was threatened, whether implicitly or explicitly. I disagree with Mr. Haevischer's submission that his case is somehow unique or exceptional, such that the inmate code presented a freestanding, concrete threat to him if he were to answer the Crown's questions. His circumstances do not rise above those in other cases in which a witness invoked the inmate code, without more, as a basis for refusing to answer questions put to them. Consequently, as Justice Butler found in Bidesi, "without the evidence of a threat, there is no temporal connection between a threat and [the accused's] decision not to testify": at para. 17.

- [55] Although these findings dispense with Mr. Haevischer's defence of duress, I wish to also address the parties' submissions on the third element of duress: i.e., that there be "no safe avenue of escape".
- [56] I agree with counsel for Mr. Haevischer that, in practical terms, the choice not to testify in these proceedings was not an objectively reasonable safe avenue of escape for a person similarly situated as Mr. Haevischer. It would be effectively impossible for Mr. Haevischer to advance certain components of his application for a stay of proceedings without testifying about his subjective experience of his conditions of confinement while in pre-trial custody, among other things.
- [57] Having said that, if Mr. Haevischer faced threats to his safety as a result of his anticipated testimony, Mr. Haevischer could have sought to protect his testimony from becoming known to other inmates. I emphasize that Mr. Haevischer had an opportunity to consult with counsel before being cited for contempt. After having done so, Mr. Haevischer did not raise the possibility of seeking a publication ban in relation to his evidence nor did he ask the Court to receive his evidence in camera. Indeed, Mr. Haevischer's counsel refers to the publication bans obtained in relation to the most prominent justice system cooperators in this case, Person X and Person Y, to support the notion that Mr. Haevischer could face violence due to the inmate code. Yet, Mr. Haevischer did not raise the possibility of receiving, or attempt to obtain, a similar form of protection with respect to his own testimony.[11]
- [58] Finally, Mr. Haevischer did not seek any protective measures from the Crown, the police, or provincial corrections. The thrust of Mr. Haevischer's evidence on this topic was that he did not want to enter protective custody, and that "rats" also face violence in protective custody. [12] On the evidentiary record before me, there is no reason to believe that the appropriate authorities--be they the police, the Crown or corrections--would not have taken steps commensurate with the danger that any threats to Mr. Haevischer presented, in anticipation of (or during) his testimony: e.g., *R. v. Atkinson*, 2017 MBQB 98 at para. 16. Even accepting that Mr. Haevischer may have been reluctant to seek recourse from the same authorities against which he advances allegations of misconduct in these proceedings, I reiterate that he did not seek any protective measures from the Court, as I have described. I find on the whole that Mr. Haevischer's evidence does not adequately address these "obvious" safe avenues of escape: *R. v. Boisclair*, 2010 ONCA 338 at para. 2.
- [59] It follows from these findings that Mr. Haevischer's defence of duress to show cause why he should not be found in contempt of court has failed.

Has the Crown proven contempt of court beyond a reasonable doubt?

- [60] Having concluded that Mr. Haevischer's defence of duress does not have an air of reality, I must now determine whether the Crown has proven the offence of contempt beyond a reasonable doubt.

- [61] I readily find Mr. Haevischer guilty of contempt. As stated earlier, a witness who has taken an oath or affirmation to testify but then refuses to answer questions--and especially a witness who refuses to follow the Court's directions to answer appropriate questions in cross-examination--is *prima facie* contemptuous: Bidesi at para. 5 and Bengy at para. 14, citing Cohn; Lavallee at para. 27. In addition, when the matter first arose the Court adjourned Mr. Haevischer's cross-examination to provide him an opportunity to reconsider his conduct and to receive independent advice. Having had this opportunity, Mr. Haevischer persisted in refusing to follow the Court's directions on the occasions I have described.
- [62] On that basis, I find the Crown has proven beyond a reasonable doubt that Mr. Haevischer committed contempt in the face of the Court. To protect the integrity of these proceedings and the justice system as a whole, I am satisfied that Mr. Haevischer's contemptuous behaviour must be met with criminal sanction.

Conclusion

- [63] For the foregoing Reasons, I find Mr. Haevischer guilty of contempt of court.

"Devlin J."

- [1] Mr. Johnston joined Mr. Haevischer on the application for a stay of proceedings but has since passed away.
- [2] For a description of the amici's role in this case, see Johnston at paras. 62-63.
- [3] See the testimony of Cody Haevischer on July 23, 2025, pp. 9-16.
- [4] Testimony of Cody Haevischer on June 30, 2025, p. 4.
- [5] Testimony of Cody Haevischer on July 29, 2025, p. 6.
- [6] Testimony of Cody Haevischer on June 24, 2025, pp. 20 and 37-38.
- [7] This number is taken from a chart included in Mr. Haevischer's written submissions, which identifies a total of 41 instances in dispute between the parties. I note that the chart reflects the Crown's initial submission that Mr. Haevischer's citation for contempt encompasses instances in his examination-in-chief in which he refused to answer questions on the basis of the inmate code. The Crown abandoned this position at the show cause hearing.
- [8] See the testimony of Cody Haevischer on: July 30, 2025, pp. 3, 54-55, 58-59, 77-78; July 31, 2025, pp. 6-7, 60; August 1, 2025, pp. 74-75; and August 6, 2025, pp. 40-41.
- [9] E.g., testimony of Luciano Bentenuto on November 29, 2024, p. 30-31; testimony of Steven Phillips on March 20, 2025, p. 24; testimony of John Robin on August 21, 2025, p. 38; testimony of Frederick Stratton on September 10, 2025, p. 3.

- [10] See, in relation to Person X: the testimony of Dennis Erickson on May 6, 2025, p. 18; the testimony of John Robin on May 29, 2025, p. 51 and August 20, 2025, pp. 24-28; and Exhibit 139, p. 12. In relation to Person Y, see the testimony of John Robin on August 22, 2025, pp. 11-12.
- [11] As part of the show cause hearing, the amicus curiae provided the Court with in camera submissions, in the form of a letter, touching on this point. I have considered the amicus's submissions. However, they do not affect my findings with respect to the "safe avenue of escape" element of duress, in the circumstances of this case. Without describing the details of the amicus's submission, I observe (for reasons I have already expressed) that the circumstances of Person X and Person Y as in-custody justice system cooperators are clearly distinct from those of Mr. Haevischer.
- [12] E.g., testimony of Cody Haevischer on July 30, 2025, p. 9.

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