

CANADA / JUDGMENT

R. v. Haevischer

2025 BCSC 635

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2025 BCSC 635 R. v. Haevischer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Haevischer,

2025 BCSC 635

Date: 20250403

Docket: X072945-B

Registry: New Westminster

Rex

v.

Cody Rae Haevischer

Before: The Honourable Madam Justice Devlin

Reasons for Judgment - Crown Application re: New Allegations of Abuse of Process

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Amicus Curiae:

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Place and Date of Parties Submissions:

Vancouver, B.C.

April 2, 2025

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

Vancouver, B.C.

April 2, 2025

Place and Date of Judgment:

New Westminster, B.C.

April 3, 2025

Introduction

- [1] Cody Rae Haevischer applies for a judicial stay of proceedings for an abuse of process. The evidentiary hearing of Mr. Haevischer's application for a stay of proceedings commenced on November 4, 2024, and remains underway.
- [2] On the present application, made by way of a Notice of Application dated April 1, 2025, the Crown applies for Mr. Haevischer to be prohibited from expanding the scope of the evidentiary hearing. In particular, the Crown applies for an order requiring Mr. Haevischer to proceed with the hearing on the basis of his Second Revised Notice of Application, filed on January 24, 2025 (the "Abuse NOA").
- [3] Alternatively, the Crown asks that Mr. Haevischer be ordered to file a final Abuse NOA outlining his allegations of abusive state conduct, and that he not be permitted to add new allegations or amend the Abuse NOA without further leave of the Court. If so ordered, the Crown asks that the evidentiary hearing be adjourned until the Crown has had sufficient time to consider its response to Mr. Haevischer's new allegations of state misconduct (which I discuss below).

- [4] Mr. Haevischer resists the Crown's application. He says that the interests of fairness favour allowing him to advance new allegations of abusive state conduct as the evidentiary hearing unfolds. Mr. Haevischer advises that he is prepared to provide further particulars of his new allegations to the Crown and the Court, including by identifying the witnesses from which he expects to elicit evidence in support of those allegations and amending his pleadings to reflect the allegations.
- [5] I heard the parties' submissions on the Crown's application on April 2, 2025. I provided the result of the application on the same day, with Reasons to follow. These are those Reasons.

Background Context

- [6] The procedural history and general context of Mr. Haevischer's stay application have been set out in previous rulings: see, for example, *R. v. Haevischer*, 2024 BCSC 1409 at paras. 7-15. Stated briefly, Mr. Haevischer alleges that the police, BC Corrections officials, and the Crown committed various forms of misconduct during the investigation and prosecution of the murders of six people in Surrey, BC, on October 19, 2007, known as the "Surrey Six murders". The Surrey Six murders were carried out by Mr. Haevischer and fellow members of the Red Scorpions gang (the "RS"). Justice Wedge found Mr. Haevischer guilty of the murders on October 2, 2014: *R. v. Haevischer*, 2014 BCSC 1863 [Verdict Reasons].
- [7] On March 25, 2025, Mr. Haevischer called Donald Adam, a retired Inspector of the Royal Canadian Mounted Police ("RCMP"), as a witness in the evidentiary hearing. Mr. Adam testified that following his retirement from the RCMP, he acted as a consultant on the RCMP's investigation into the Surrey Six murders, which the police called Project E-Peseta. Mr. Adam testified that his role included conducting interviews of suspects and advising superior officers on the management of the investigative file and on various investigative strategies.
- [8] On the first day of Mr. Adam's evidence, counsel for Mr. Haevischer asked Mr. Adam about D.Y.,[1] an associate of the RS who played a facilitating role in the Surrey Six murders. D.Y. cooperated with police on the Project E-Peseta investigation and ultimately testified for the Crown at Mr. Haevischer's trial: see Verdict Reasons at paras. 509-529. Among other things, Mr. Adam was asked whether the police considered it important to keep D.Y.'s status as a cooperator secret from other members or associates of the RS.[2]
- [9] This line of questioning prompted out-of-court discussions between Crown counsel and counsel for Mr. Haevischer about what appeared to be a potentially new allegation of abusive state conduct. The Crown provided excerpts of these discussions in their Notice of Application for the present application.

- [10] On March 28, 2025, counsel for Mr. Haevischer advised the Crown that Mr. Haevischer alleges "the RCMP employed a technique of disclosing or making it appear to RS members or their associates that certain other RS members or their associates were talking to the police". Mr. Haevischer alleges that in doing so, the individuals identified as cooperators by police were endangered. For ease of reference, I will refer to this as the "witness endangerment allegation".
- [11] On March 31, 2025, counsel for Mr. Haevischer provided the Crown with further particulars of the witness endangerment allegation. Counsel for Mr. Haevischer provided additional particulars at the hearing of the Crown's application, which I will return to below.
- [12] Counsel for Mr. Haevischer also requested disclosure of the BC Corrections records relating to Kenny Kao, an RS member and D.Y.'s "boss" within the gang (Verdict Reasons at para. 258). Mr. Adam testified that he interviewed Mr. Kao on a number of occasions, and that in the course of those interviews Mr. Kao provided police information on how investigators could "break apart" or "dismantle" the RS.[3] Mr. Adam later testified that S/Sgt. Paul Dadwal showed a video of Mr. Kao giving a statement to police to K.M., an RS associate who reluctantly cooperated with police and testified at Mr. Haevischer's trial (see Verdict Reasons at para. 482).[4]
- [13] As well, on the previous day (March 30, 2025), counsel for Mr. Haevischer advised the Crown that they intend to pursue an additional allegation of abuse, concerning the murder of Hardeep Bassi. Former Sgt. Derek Brassington, who has already testified in the evidentiary hearing, testified that he obtained a statement from a witness known in these proceedings as Jane Doe, in which she said that James Bacon (one of the leaders of the RS) had confessed to her that he killed Mr. Bassi.[5] Mr. Brassington testified that senior officers at Project E-Peseta--in particular, Supt. John Robin, S/Sgt. David Attew, and Sgt. Joe Sobotin--directed Mr. Brassington not to turn over Jane Doe's statement to investigators working on the Bassi murder investigation, in order to avoid Jane Doe being "tested" at another trial before the Surrey six murders could be prosecuted.[6] Counsel for Mr. Haevischer advised the Crown on March 30, 2025, that they intend to allege that this direction to Mr. Brassington was abusive, on the basis that it prevented Mr. Bacon from being charged for the Bassi murder. [7]
- [14] These discussions prompted the Crown to bring the present application.

Parties' Positions

The Crown's Position

- [15] The Crown's primary position is that it is not in the interests of justice to permit Mr. Haevischer to advance new allegations of abuse in the midst of the evidentiary hearing. In other words, the Crown asks that the scope of the hearing remain confined to the allegations set out in Mr. Haevischer's Abuse NOA as presently filed.

- [16] In relation to the witness endangerment allegation, the Crown emphasizes that the police using the cooperation of some RS members and associates to attempt to secure the cooperation of others has been known by defence counsel since the outset of this case. The Crown similarly says that the circumstances relating to Jane Doe's statement concerning the murder of Mr. Bassi are not new. The Crown submits that, absent a cogent explanation for why these allegations were not pled by Mr. Haevischer at the outset of these proceedings, he should not be permitted to now pursue them.
- [17] The Crown submits that it will be prejudiced by allowing the scope of this hearing to be expanded to include the new allegations which Mr. Haevischer seeks to advance. The Crown says that it has an obligation to research the materials it is aware of in this case in order to elicit positive evidence to refute Mr. Haevischer's allegations. The Crown advises that doing so in a case as complex as this one would be time intensive, and risks undermining the proportionality (and thereby the integrity) of these proceedings.
- [18] Alternatively, the Crown submits that if Mr. Haevischer is permitted to advance the new allegations he has identified, Mr. Haevischer ought to be restricted from adding additional allegations in the future without leave of the Court, and the Crown ought to be given time to prepare to rebut the allegations. The Crown asks that the evidentiary hearing be adjourned for that purpose.

Mr. Haevischer's Position

- [19] Mr. Haevischer submits that he should be permitted to advance his new allegations of abuse as part of the hearing presently underway. Mr. Haevischer concedes that the Abuse NOA, as presently pled, does not reflect his new allegations, but says that he should not be constrained to the four corners of the Abuse NOA. His counsel admits that although the evidence relevant to the new allegations have been known in this case through disclosure for some time, the witness endangerment allegation only "crystallized" for defence counsel recently.
- [20] Counsel for Mr. Haevischer endeavoured to particularize the new allegations further by way of a document that he provided to the Crown and the Court at the hearing of the Crown's application. That document limits the witness endangerment allegation to five persons: Mr. Kao, Matthew Johnston (Mr. Haevischer's co-accused), D.Y., Aaron Hausner, and Johnny Ho. I will not review those particulars in detail. The thrust of the particulars is that Mr. Haevischer intends to allege that each of these individuals was potentially endangered by the police disclosing or (in the case of Mr. Johnston) making it appear as if these persons were cooperating with police to members or associates of the RS, generally through evidence presentations. In the case of Mr. Kao, Mr. Haevischer also intends to allege that the effect of disclosing his cooperation with police included requiring that he be placed in segregation while in pre-trial detention at the North Fraser Pre-trial Centre.

- [21] Counsel for Mr. Haevischer advises that, if permitted, Mr. Haevischer would seek to elicit evidence in support of the witness endangerment allegation through witnesses which he has already indicated he expects to call at the evidentiary hearing, including primarily Supt. Robin, S/Sgt. Dadwal, Cst. Huffman, Sgt. Joaquin, and Mr. Haevischer himself.
- [22] With respect to the murder of Mr. Bassi, Mr. Haevischer emphasizes that Jane Doe was a "peripheral" witness to the Surrey Six murders but a central one to the Bassi murder. Mr. Haevischer says that his intended allegation, if permitted, would be that in withholding Jane Doe's statement from the Bassi investigation, Project E-Peseta investigators deprived the Bassi investigators of evidence which, if believed, could have founded a conviction of Mr. Bacon.

Governing Legal Principles

- [23] As Justice Martin explained in *R. v. Haevischer*, 2023 SCC 11 [Haevischer SCC], a judge hearing an application for a stay of proceedings is endowed with case management powers. Those powers include determining how the application will be heard, what type of evidence can be elicited, directing the order of calling evidence, placing reasonable limits on the submissions of counsel, and determining whether or not to allow new applications mid-hearing. These powers must be exercised with a view to ensuring that the interests of justice are best served. An applicant is only entitled to a process which ensures a fair consideration of the substance of their allegations. In other words, they do not have free licence to argue their application for a stay of proceedings however they choose. The time and leeway given to counsel to present and argue the application must be proportionate, in the sense that the application should proceed fairly, effectively, and efficiently. See *Haevischer SCC* at paras. 102, 106-107.

Analysis

- [24] I will begin with the witness endangerment allegation. As mentioned earlier, at the hearing of the Crown's application Mr. Haevischer particularized the allegation such that its focus is on five individuals: D.Y., Mr. Kao, Mr. Johnston, Mr. Hausner, and Mr. Ho. I accept that this allegation is new and was only identified by counsel for Mr. Haevischer recently. In the interest of fairness, Mr. Haevischer will be permitted to advance this allegation. It is foreseeable that in a hearing such as this, as the evidence unfolds, the theory of the case advanced by both parties is subject to evolve, even on the basis of disclosure already known at the outset. I also appreciate the efforts of Mr. Haevischer's counsel in particularizing the allegation at the hearing of this application.
- [25] Counsel for Mr. Haevischer is directed to file a Supplemental Notice of Application setting out the factual basis and remedy sought in relation to the witness endangerment allegation. The Supplemental Notice should incorporate, by reference, the Abuse NOA filed by Mr. Haevischer on January 24, 2025. The witness endangerment allegation must be confined to the five individuals which Mr. Haevischer's counsel particularized at the hearing of the

Crown's application (namely, D.Y., Mr. Kao, Mr. Johnston, Mr. Hausner, and Mr. Ho). Mr. Haevischer must file the Supplemental Notice of Application by Friday, April 4, 2025.

- [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.
- [27] I note, as pointed out by counsel for Mr. Haevischer, that a number of anticipated defence witnesses seem positioned to provide evidence relevant to this new allegation, including S/ Sgt. Dadwal, Supt. Robin, and Sgt. Joaquin. If the defence intends to call additional witnesses to advance this allegation, who are not presently identified in the defence's witness schedule, they must identify those witnesses and their anticipated evidence in the Supplemental Notice of Application. As well, if the Crown determines that it needs to cross-examine certain witnesses who have already been called in the defence's case in order to respond to this new allegation, I anticipate permitting that those witnesses be recalled for the purpose of cross-examination before the Crown's case commences.
- [28] With respect to the custodial records of Mr. Kao, clearly those records are the third party records of BC Corrections. The Crown is under no obligation to disclose them. There is no application before me at this time for the production of third party records under *R. v. O'Connor*, [1995] 4 S.C.R. 411. I will not consider the issue further. I would just comment that at this stage, I fail to see how those records could be likely relevant to an issue in this case.
- [29] Turning to the defence's allegation in relation to the murder of Mr. Bassi, whether or not charges are approved in a given case depends on a multitude of factors. Mr. Haevischer is certainly entitled to ask questions of his witnesses concerning Jane Doe's statement, and the circumstances of its handling by investigators. However, I emphasize that charge approval constitutes an exercise of core prosecutorial discretion, with which Courts are loathe to interfere: see *Krieger v. Law Society of Alberta*, 2002 SCC 65 at para. 46. The actual reasons for why Mr. Bacon was or was not charged in relation to Mr. Bassi's murder simply have no relevance to this hearing, and will not be entertained.
- [30] Finally, having permitted Mr. Haevischer to expand the scope of the evidentiary hearing to include consideration of the witness endangerment allegation, I grant the Crown's request for a one week adjournment to Wednesday, April 9, 2025.

Conclusion

- [31] In sum, the result of the Crown's application is as follows:

1. Mr. Haevischer is directed to file a Supplemental Notice of Application by Friday, April 4, 2025, setting out the factual basis and legal remedy sought in relation to the witness endangerment allegation.
 2. Mr. Haevischer is not permitted to advance an allegation of abuse of process concerning the reasons for why Mr. Bacon was or was not charged in relation to the murder of Mr. Bassi.
 3. The evidentiary hearing of Mr. Haevischer's application for a stay of proceedings is adjourned to Wednesday, April 9, 2025.
- [32] Finally, I wish to reiterate that the evidentiary hearing of Mr. Haevischer's application for a stay of proceedings has been underway for several months. Mr. Haevischer does not have free licence to advance his application in any way he sees fit, and the scope of the hearing will not expand further without leave from the Court. I emphasize that I will continue to exercise my case management powers to ensure that the hearing proceeds and concludes fairly, effectively, and efficiently.

"Devlin J."

- [1] D.Y.'s identity is subject to an active publication ban: R. v. Haevischer, 2013 BCSC 2013 at para. 39 [Publication Ban Reasons].
- [2] Testimony of Donald Adam, March 25, 2025. Transcript at p. 54, line 17 to p. 55, line 20.
- [3] Testimony of Donald Adam, March 25, 2025. Transcript at p. 59, lines 26-45.
- [4] K.M. is also subject to an active publication ban: Publication Ban Reasons at para. 39.
- [5] Testimony of Derek Brassington, March 10, 2025. Transcript at p. 26, lines 36-47.
- [6] Testimony of Derek Brassington, March 10, 2025. Transcript at p. 29, line 12 to p. 30, line 24.
- [7] I note that on March 31, 2025, counsel for Mr. Haevischer further advised the Crown that they intend to pursue an unrelated allegation under s. 8 of the Charter. At the hearing of this application, Mr. Haevischer's counsel abandoned that allegation. I will not address it further.

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