

CANADA / JUDGMENT

# R. v. Hernandez

2008 BCSC 1468

## COURT

Supreme Court of British Columbia

## DECIDED

18 March 2008

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

2008 BCSC 1468 R. v. Hernandez IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Hernandez, 2008 BCSC 1468 Date: 20080318 Docket: 23905 Registry: Vancouver Between: Regina And Jose Hernandez, Anh The Nguyen, Joshua Poncappo, Sam Tuan Vu, and Van Van Vu Ban on Disclosure 486.5(1) C.C.C. Inherent Jurisdiction Pursuant to s. 486.5(1) of the Criminal Code, there is a ban on the publication in any document or the broadcast or transmission in any way of any information that could identify the witnesses, identified in these proceedings as "Witness X" and "Witness Y". They are to be referred to as Witness X and Witness Y in any publication. There is a statutory ban, as well as a ban pursuant to the inherent jurisdiction of the Court, on the publication in any document or broadcast or transmission in any way of any information that could identify the person referred to in these Reasons as "Mr. Z". He may be referred to as Mr. Z in any publication. Before: The Honourable Mr. Justice Silverman Oral Ruling on Disclosure Application No. 2 March 18, 2008 Counsel for the Crown R. Cairns Q.C. S. M. Black, K. Murphy E. Duncan, K. Gagnon Counsel for the Accused Hernandez L. Smith Counsel for the Accused Nguyen K. Bastow Counsel for the Accused Poncappo D. Kontou Counsel for the Accused Sam Vu C. Corriveau Counsel for the Accused Van Vu C. Corriveau (as Agent) J. Whysall Place of Trial: Vancouver, B.C.

- [1] THE COURT: This ruling will be referred to as disclosure application number 2.
- [2] Ms. Smith, on behalf of her client, makes application for what is effectively disclosure of certain information and documentation relating to a particular phone number. I say effectively because her Notice of Application, filed March the 13th, frames her application in slightly different terms, but by dealing with it as a disclosure application I am satisfied it will deal with the entirety of her Notice of Application.
- [3] Argument on this matter was based entirely on counsel's submissions, oral and written. As a result, any findings of fact that I must make have that limitation, and clearly are not findings that will find their way into the evidence of the larger trial or any of the issues in the larger trial.

- [4] The defence do have the telephone number in question about which further disclosure is sought. It has been referred to in argument as the disputed number, and I will refer to it in that way as well. They have it because of prior disclosure. They have it subject to counsel undertakings. That prior disclosure also connects that disputed number on two different dates to two other phone numbers that are known, in the sense that there is a great deal more known about them, more information having been disclosed about them.
- [5] Those two known numbers both had intercepts upon them, I presume with lawful authorizations. Although that has not been in issue on this application, it may or may not be at a later time. The details of those known numbers are known to the defence. The first of those numbers is connected to a telephone which was apparently purchased at a time and location and by a person all of which arguably creates evidence of an indirect connection to one or more of the accused persons. The second of those phone numbers is a Vancouver Police phone, given to the McMynn family for ease of communication one presumes after the kidnapping and during the investigation, before and up to the time when Mr. McMynn was released.
- [6] The defence, Ms. Smith, seeks disclosure of details of the disputed number because that number, or a telephone connected to that number, contacted and engaged both the first and second known numbers on April 7th and April 9th respectively, and the defence says, and it is hard to disagree, that one's initial reaction to that might be to raise one's eyebrows. Here is a single telephone number, about which nothing is known, which in the space of two days is telephoning the two known numbers, one of which arguably is connected indirectly to one or more of the accused, and the other known number which is a phone in the possession of the McMynn family.
- [7] The defence, therefore, says it should be entitled to explore a possible relationship, just as was the basis of the prior disclosure application, between the kidnappers and the McMynn family, possibly between other potential kidnappers, instead of the persons who are before the Court. It seeks therefore disclosure of whose number is the disputed number, what is the address that goes with it, whatever documentary evidence may exist showing the history of that telephone and of the use of that telephone, and whatever other disclosure might be available.
- [8] The Crown opposes the application on the only grounds in law that it could possibly succeed with, that is relevance and privilege, and the process during argument was agreed upon - that I would review the Crown's materials supporting those arguments, with the understanding that my conclusion and ruling might result in the defence not only being denied disclosure, but not even being privy to the argument that I have received.
- [9] I have done that. The Crown materials that I have received, in addition to all those materials that Ms. Smith did receive, consist of what she did not receive as the following: (1) written submissions and (2) a one-page police report.

- [10] The defence application, based on the information available to it, is obviously well conceived. Ms. Smith could not possibly know what the Crown knew, and what I now know, and it is not satisfying unfortunately to dismiss such an application by simply concluding that the information is not only irrelevant, but also meets the test for Crown privilege.
- [11] It is unfortunate whenever the Court has to do this, because a bedrock principle of our system of justice is not only that matters should be disclosed in open court, but that the defence should be entitled to full disclosure of everything, not only that the Crown might rely upon, but also that might assist the defence.
- [12] I should say that the Crown will not be relying upon any of this, so we are down to my simply assuring Ms. Smith, and her client, and all of the accused, that there is nothing in there that would be of assistance and that I am -- frankly, I do not even see it as a judgment call. There is no independent person who would look at it in my view and could possibly come to any other conclusion.
- [13] If it were simply a matter of relevance, frankly, I would lean towards letting Ms. Smith see the matters, on the basis that the defence can draw their own conclusions as to relevance. But here the privilege argument prevails.
- [14] I can say this, that the privilege arises from circumstances which are unrelated to Ms. Smith's client or to any of the accused, unrelated to Mr. McMynn or his family, or to any matter which could possibly show any connection between any of the accused and Mr. McMynn and his family, or could possibly show the involvement of any particular person in this entire matter.
- [15] Aside from the argument of privilege, the information is also irrelevant. I wish I could say more. I cannot. As a result, Ms. Smith, I certainly agree that the application had to be made, but it also has to be dismissed, and it is dismissed.
- [16] I think that the Crown's book of documents, which contains the materials that Ms. Smith has, but also contains the materials that Ms. Smith did not have, but I have reviewed, should be put in a sealed envelope, in case some other judge is reviewing it later. Just so it is clear in that book prior to tab 1, paragraphs 37 to 46 were not available to Ms. Smith, and the one page behind tab 5 was not available to Ms. Smith. The rest of it was.
- [17] And while the Notice of Application and the selected pages from the Information to Obtain of Constable Prasobsin, while those two documents clearly do not need to be sealed, I think that because this is going to be such a large file, with documents all over the place, we should stick them in the same envelope. There of course can be copies of those two documents, which are unsealed as well, and the envelope will remain sealed, unless ordered opened by myself, or some other judge of equal or superior jurisdiction. "A. Silverman J."

-----  
The Honourable Mr. Justice Silverman

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://www.bccourts.ca/jdb-txt/SC/08/14/2008BCSC1468.htm>

**CASE PAGE**              <https://chat.esheria.ai/case-law/canada/r-v-hernandez-2008-bcsc-1468>

Prepared on 28 October 2026 · Esheria