

CANADA / JUDGMENT

R. v. Pickton

2007 BCSC 2037

COURT

Supreme Court of British Columbia

DECIDED

5 October 2007

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2007 BCSC 2037 R. v. Pickton IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Pickton, 2007 BCSC 2037 Date: 20071005 Docket: X065319 Registry: New Westminster Regina v. Robert William Pickton Publication Restriction Notice: Pursuant to s. 486.4, s. 486.5 and the inherent jurisdiction of the Court, information that may identify certain witnesses and undercover police officers may not be published, broadcast or transmitted in any manner. All other publication ban orders issued during this proceeding have expired. This version of the Reasons for Judgment complies with the existing publication bans. Before: The Honourable Mr. Justice Williams Oral Ruling on Application #91 Counsel for the Crown: J.N. Ahern Counsel for the Accused: R.M. Brooks, C.M.A. Karlssons Counsel for Lynn Ellingsen K.S. Pechet Place and Date of Judgment: New Westminster, B.C. October 5, 2007

- [1] THE COURT: This is an application by the defence for disclosure of records held by a third party agency, National Money Mart, which relate to an individual named Lynn Ellingsen. Ms. Ellingsen was a Crown witness in this case. The records have been provided to the Court in a sealed packet by a representative of Money Mart.
- [2] Today I heard the submissions of counsel for the applicant. I heard the submissions of counsel for Ms. Ellingsen, the individual whose privacy interests are affected by the application, and I also heard brief submissions from counsel for the Crown. I found that the first stage of the so-called O'Connor test had been met and so retired to examine the records. Copies of the records in question were provided to counsel for Ms. Ellingsen.
- [3] The records that have been provided to me, I am going to assume, comprise the Money Mart file as it relates to that particular individual.
- [4] The issue I have to deal with now is essentially the second stage analysis as it arises from O'Connor. I start out by emphasizing that the issue here is production. It is not admissibility. I am not commenting in any way upon whether any of these records would be admissible at trial. That is quite another matter. That has to be absolutely understood.

- [5] I acknowledge that there is a not inconsequential privacy interest in banking records, a point that has been made by counsel for Ms. Ellingsen. I accept that there is a reasonable expectation of privacy that a person is legitimately to have in records that their financial institution may make with respect to them.
- [6] The probative value of these records is a consideration that must be assessed as potential, not necessarily actual. In this case, I find that there is a reasonable measure of probative value to the records. I am satisfied that the issue of whether the cheques in question were negotiated by Ms. Ellingsen is relevant to the case being advanced by the accused. The timing of her involvement with Mr. Pickton is relevant. I am satisfied that the probative value arises from her credibility as a witness, in that she has at some point in this trial testified that she did not receive cheques from Mr. Pickton.
- [7] Accordingly, I am not prepared to accede to the proposition that these records are not subject to disclosure. However, I am working in a bit of a vacuum here because I really do not have a clear understanding of what these records are. I have, to some degree, surmised what the records represent.
- [8] One of the documents is a transaction history. To my mind, the only transactions that could have any relevance are those that relate to the negotiation of the cheques in question, that is the P&B cheque of June 7 and the P&B cheque of July 9, 1999. Accordingly, the customer transaction history will be edited or redacted so that it will not disclose any transactions other than those related to the cheques in question. It is manifestly apparent to me that there is nothing in this application that gives rise to an entitlement for the defence to have access to other transactions engaged in by Ms. Ellingsen, and I understand from the submissions of Ms. Karlsson that the defence properly recognizes that to be the case, as well. So I will permit production of that document, subject to that edit.
- [9] The second document is entitled "Customer Registration Form". It contains both general and personal information with respect to Ms. Lynn Ellingsen. I will permit production of that document but I will edit it so that her name remains, while other personal information will be redacted. In that way, there will be a document which will establish for the defence that Ms. Ellingsen apparently maintained a file or had a customer registration with Money Mart. To my mind, none of the other information that is contained there is in any way relevant to the issue, and it is also personal information which the Court has an obligation to protect. Accordingly, that document will be significantly redacted to reflect the concerns that I have set out.
- [10] Apparently, part of the file is a photo and what I conclude is a sample signature. Reproductions of each of those are found on the third sheet in the material. I observe that they are dismally vague and of poor quality, but nevertheless, they do comprise part of the file and I am satisfied that those ought to be subject to disclosure.

- [11] The order that I have fashioned here, in my view, addresses legitimate concerns that are raised by the applicant, but at the same time, ensures that the privacy interests of Ms. Ellingsen are properly protected to the maximum extent possible, having in mind the issues of relevance.
- [12] Is there anything you want to add to that, sir?
- [13] MR. PECHET: No, just I was going to ask simply the implementational aspect of this. Who did you wish to do the editing? It varies from case to case.
- [14] THE COURT: Well, in this case, it is my office that does it.
- [15] MR. PECHET: Okay.
- [16] THE COURT: Yes.
- [17] MR. PECHET: Okay. That is fine, then. I will not --
- [18] THE COURT: No.
- [19] MR. PECHET: I will not worry about it.
- [20] THE COURT: What I will do is ensure that you, or your client through you, will be provided with a copy of the material that has been ordered disclosed. That will be in an envelope that can be picked up at the registry and it will have your name on it.
- [21] MR. PECHET: I can say that I am instructed that she has no difficulty with that being provided to the Crown as well.
- [22] THE COURT: All right, very well. I was just about to get to that. When the copies of the disclosed material are made available, copies will be set aside for the Crown and you can pick those up, as well.
- [23] MR. AHERN: Thank you, My Lord.
- [24] THE COURT: Anything else?
- [25] MS. KARLSSON: If I could, one brief comment, My Lord, just on the redacting of the personal information. It appears to me that on the back of one of the cheques there seems to be a birthdate and I am not sure that we have that, Ms. Ellingsen's birthdate, we have it as at this point, and that piece of information, if it is personal, part of her personal information, would be quite relevant for comments that might be made with respect to these cheques.
- [26] THE COURT: I accept that. I do not know whether or not that information has been otherwise established. There is apparently a date of birth recorded on the backside of the cheque dated July 9, 1999, that is, cheque number 5687. That, to my mind, constitutes sufficient relevance that the date of birth will not be redacted from the --
- [27] MS. KARLSSON: Thank you, My Lord.

[28] THE COURT: -- Customer Registration Form. [DISCUSSION BY COUNSEL]

[29] THE COURT: I will attend to the redaction of those materials forthwith and in 15 minutes they will be available for pick-up at the court registry in this building. "The Honourable Mr. Justice Williams"

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Prepared on 29 October 2026 · Esheria