

CANADA / JUDGMENT

R. v. Teixeira

2023 BCSC 1475

COURT

Supreme Court of British Columbia

DECIDED

16 August 2023

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

2023 BCSC 1475 R. v. Teixeira

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Teixeira,

2023 BCSC 1475

Date: 20230816

Docket: 82939-2, 82939-58

Registry: New Westminster

Rex

v.

Brandon Nathan Teixeira

Further Corrected Judgment: The text of the judgment has been redacted for publication purposes, and the front page was corrected on December 18, 2025.

Corrected Judgment: The text of the judgment was corrected at paragraphs 5 and 7 on January 11, 2024.

Restriction on publication: There are restrictions on publication of these reasons pursuant to s. 486.5(1), s. 486.5(9) and s. 684 of the Criminal Code of Canada and the Inherent Jurisdiction of this Court. The restrictions remain in place until further order of the Court.

Before: The Honourable Justice Duncan

Oral Ruling on Reopening of Application #58

Counsel for the Crown:

M. Barrenger

A. Smith

Counsel for the Accused:

R. Thirkell

R. Mansoori-Dara

V. Williams

Place and Date of Trial/Hearing:

New Westminster, B.C.

July 25, 26 and August 10, 2023

Place and Date of Judgment:

New Westminster, B.C.

August 16, 2023

- [1] THE COURT: This is an oral ruling delivered within one week of the conclusion of argument on a complex, dense, and Byzantine series of applications that have been underway in one form or another since June 2022. Counsel need the results quickly to move forward with this matter. I reserve the right to edit these reasons for grammar and syntax, and to insert relevant case authorities and dates of proceedings, but the result will not change.
- [2] This is a defence application to reopen my rulings in Application 58, 2023 BCSC 155 ("Stage 1 Ruling") and 2023 BCSC 768 ("Stage 2 Ruling"). It is also a Crown application to revisit my conclusion in the Stage 2 Ruling that I do not have inherent jurisdiction to make disclosure orders that limit the scope of defence counsel's investigative inquiries in order to protect the valid claim of public interest privilege.
- [3] I will attempt to reduce the complicated narrative to its necessary components.
- [4] Brandon Teixeira is charged with the first degree murder of Nicholas Khabra and the attempted murder of Person A. The Crown's primary witness is X. X was paid for his work as a police agent in relation to Mr. Teixeira and he will be paid to give evidence at trial implicating Mr. Teixeira in the murder. X's credibility will be a significant feature of the trial. He is the very definition of a Vetrovec witness.
- [5] In February 2022, the Crown inadvertently disclosed the identity of an individual referred to in these proceedings as "Other Inmate", to defence counsel. Other Inmate was housed with X, and on May 3, 2019, invited X to participate in a phone call with someone outside the prison walls. The person has been referred to as "Community Member".

- [6] On June 9, 2022, the Crown realized it had inadvertently disclosed the real identity of Other Inmate and requested the return of the disclosure.
- [7] In the time period between the inadvertent disclosure and the Crown's discovery of it defence counsel told Mr. Teixeira the real name of Other Inmate and took instructions from him to investigate what he knew about X.
- [8] Shortly after the disclosure was returned to the Crown by defence counsel, the Crown offered to provide it to the defence if they entered into an undertaking to limit their investigation to protect the identity of other individuals serving time with X and the Other Inmate, as well as the location of the institution.
- [9] Defence counsel refused, taking the position that they were entitled to an unlimited scope of investigation in defence of their client. As a result, it was necessary to engage the services of amicus curiae to represent the interests of the accused at an in camera hearing concerning public interest privilege.
- [10] At the conclusion of the in camera hearing, I was satisfied that the public interest privilege claim had been proven. The issue was then what, if any, disclosure could be made balancing the privilege against the right to full answer and defence.
- [11] The Crown took the position that I had the jurisdiction to impose a limited use or future use order on the defence in the same terms that they had proposed since shortly after the inadvertent disclosure occurred.
- [12] The defence resisted this proposition, broadly arguing that the right to full answer and defence could not be circumscribed and advancing a variety of suggestions that I view as unworkable or impractical. I say broadly arguing because it was not until Application 85 came on for hearing, weeks after Application 58 Stage 2 was decided, that I heard details and nuanced submissions about the relevance and importance of the disclosure to the defence. These were submissions I should have heard during the course of Application 58. As I will explain in a moment, the detailed submissions in Application 85 triggered the reopening of Application 58.
- [13] The result of Application 58 was that I upheld the Crown's claim of public interest privilege, but was not persuaded I had the jurisdiction to make a limited use order pursuant to my inherent jurisdiction or the common law. Simply put, the disclosure sought by the defence seemed insignificant in relation to the importance of the privilege advanced, and I refused to order the Crown disclose the materials without redactions as to identity and location.
- [14] Subsequent to the ruling on Application 58, defence counsel advised that they were in an ethical dilemma. They had information, the real identity of Other Inmate, which Mr. Teixeira also had, but they could not do anything with it. If Mr. Teixeira instructed them to act on it, they could not do so ethically because of my ruling.

- [15] This ethical dilemma began Application 85, where defence applied for a stay of proceedings, or an order that the Crown be prevented from calling X as a witness, or an order that the disclosure about Other Inmate be made without any vetting for privilege. In his submissions on July 11, Mr. Mansoori-Dara's focus was almost entirely on the latter: disclosure without limitation.
- [16] Mr. Barrenger, for the Crown, observed that it sounded like an application to reopen my rulings on Application 58. I agreed, and Application 58 was reopened.
- [17] The initial defence submissions on the reopening of Application 58 focused on the importance of the disclosure rather than on my jurisdiction to order disclosure on conditions. My intention had been to limit submissions to the importance of disclosure. However, the Crown took the position the importance of the disclosure could not be divorced from balancing disclosure against the privilege. Specifically, Mr. Barrenger renewed the Crown's submission that I had inherent jurisdiction to make a disclosure order that limited the future use of disclosure while still protecting the privilege.
- [18] Defence counsel sought the right of reply to Mr. Barrenger's submissions on jurisdiction, having only anticipated the need to set out the importance of the disclosure more fully in the reopening of Application 58. I acceded to the defence request, and the matter was adjourned to August 10. On that date, Mr. Mansoori-Dara provided new and detailed submissions on why I did not have inherent jurisdiction, or jurisdiction under any aspect of the common law, to impose the type of limiting conditions the Crown was seeking.
- [19] As a result of hearing submissions from Crown and defence in the context of the reopening of Application 58, my decision that I do not have the inherent jurisdiction to impose the types of conditions the Crown is seeking on disclosure has not changed. Mr. Barrenger took me carefully through case law on public interest privilege at common law and how, in the Crown's view, it is no different than public interest privilege under s. 37 of the Canada Evidence Act, R.S.C. 1985, c. C-5 [CEA]. I am not persuaded that the similarities extend as far as the Crown has urged, at least not in terms of the jurisdiction to impose the types of conditions the Crown was seeking on disclosure.
- [20] I will start with the importance of this disclosure to the defence, then summarize the Crown and defence positions on jurisdiction. My summary will not do justice to the amount of time and effort counsel put into the submissions on the re-opening of Application 58, because this ruling was delivered quickly in order to move the pretrial applications in this matter to their conclusion.
- [21] There are three main aspects to the disclosure at issue: the May 3, 2019, phone call; Other Inmate's letter to his handlers; and police notes and other disclosure. In addition, defence counsel is focused on finding out how X and Y managed to exchange written correspondence and in what the defence can glean about X from other individuals serving time at the institution when X and the Other Inmate were there.

a) The May 3, 2019 Phone Call

- [22] Defence counsel largely accept my characterization of the contents of this recorded phone call, which I discussed at paras. 28 through 36 of my Stage 1 Ruling. I will reproduce them here for ease of reference:
- [28] A transcript of the phone call initiated by [REDACTED] is in the materials the Crown filed on this application. In summary, [REDACTED] called the Community Member and said he was going to get "this guy here" (which turned out to be X) and put him on the phone.
- [29] [REDACTED] told the Community Member not to tell X who he was, just to pretend like he was one of "Shop's" kids, to tell X that "they got a lot of love for you", "don't say anything about them and if you ever need anything, you'll be taken care of".
- [30] The Community Member says "Okay, Shop?" and [REDACTED] says Shop is Amir and that X would know who the Community Member was talking about. [REDACTED] told the Community Member to say "Hey, (X's real name)" then said to call him "Skinny", not to say his name. [REDACTED] repeated the script that he wanted the Community Member to play out: that he was one of Shop's kids, all the boys have a lot of love for you, don't ever say anything about them, no need to say anything about them to the cops. [REDACTED] reiterated that X would know what the Community Member was talking about.
- [31] [REDACTED] X onto the call and the Community Member said "[h]ey, what's up? Skinny?" X asked him what was going down and the Community Member repeated the script that [REDACTED] had fed him, introducing himself as Shop's kid, telling X to "let us know" if he ever needed anything and not to say anything to the cops.
- [32] X responded by saying, "[o]bviously not. I already told him I wasn't gonna say anything about those guys anyways, man. Those guys never did me wrong, bro." X went on to say "[REDACTED]" and them are clowns. I note parenthetically that [REDACTED], someone the Crown had originally intended to call as a witness in this prosecution.
- [33] X said he was facing a murder beef and he wasn't going to take a murder beef for those goofs; that he and his buddy "merked" this dude and these guys were trying to merk him; and that Shop showed him nothing but love.
- [34] The Community Member repeated "we got a lot of love for you, man" and X said if they tried to get him to testify, he would not. The Community Member thanked X, reiterated that if he needed anything to let them know, and X left the call.
- [35] [REDACTED] got back on the phone with the Community Member, who repeated what he had told X, including "whatever you do just don't say anything to the cops". [REDACTED] apparently laughed at that and the transcript ended.
- [36] To provide a bit more context, I was advised by counsel for the accused that "Amir" is Amir Eghtesad, a high-ranking member of an organized crime group who was in federal custody.

- [23] Defence counsel take issue with my characterization of Community Member being told to pretend like he was one of Shop's kids. This is something they say could only be learned from Community Member.
- [24] The defence maintains that the identify of Community Member is important because they are the only one who can explain what was meant by "if you ever need anything, just let us know, man" in connection with the apparent effort to have X refrain from saying anything about Amir Eghtesad.
- [25] The Crown has interviewed X about the contents of the call to get his view on what he was thinking at the time. The interview has been disclosed. The defence maintains that Mr. Teixeira should be able to undertake an investigation about the other end of the call, if only to determine whether or not cross-examining X on the contents of the call might be unwise. This issue, says Mr. Mansoori-Dara, engages issues of basic trial fairness and full answer and defence, as well as the "fairness of the fight" between the Crown and defence.
- [26] The Crown says that, as things stand, the defence is able to cross-examine X on the contents of the call. The defence seems to be arguing that it is important to them whether the Community Member was just pretending to know Eghtesad or whether he was actually associated with him. This is tied to Community Member saying, "[i]f you ever need anything, just let us know, man." The transcript makes it clear, in the Crown's submission, that the other inmate coached him to say this. But in any event, the Crown is not opposed to the defence speaking with Community Member, so long as the location from where the Other Inmate called and the identities of other individuals serving time there are not disclosed.
- b) The Letter to the Other Inmate's Handlers
- [27] I described the correspondence as follows in my previous ruling:
- [37] [REDACTED] wrote a letter to his police handler on May 20, 2019. In it, he expressed hope that they could meet in the near future. He apologized for his actions in custody and referred to making "that stupid embarrassing phone call" (sic), which he attributed to stress, paranoia, and self-preservation.
- [38] [REDACTED] wrote that X had been telling him and others that he was friends with Shop, bragged about being with "them" before he came in, that Shop never did anything to him, and he would never testify against "them".
- [39] [REDACTED] said he was stressing out thinking that if X was friends with Shop then "they" might do something to him before he got out of jail, that X was bragging about getting paid from the cops and was still friends with gang members on the street. He referred to X "three waying" a call a few months earlier. He claimed to have damaging information about X that needed to be brought out, including that he was going to kill an individual named Korasek (who the Crown maintains put up the money for the contract to kill Mr. Khabra) and Y.

[40] [REDACTED] said that X was bragging about doing all kinds of crime when he was an agent and getting away with it and that CAST (the Covert Asset Support Team) buried some of X's charges or tickets so they would not come up in court. He said there was probably a lot police did not know about X that should be brought forward. He said X punched a guy in the face in custody and threatened to smash an officer. [REDACTED] said he would wait for a response then give his information to his lawyer to pass on to the Crown. He said the police should stop harbouring individuals, presumably meaning individuals like X.

[Emphasis added by defence counsel in their written submissions.]

[28] Defence counsel maintain that the highlighted passages represent a potential avenue of investigation for Mr. Teixeira into aspects of X's credibility.

[29] The Crown says that much about the letter is clear from other parts of disclosure. For example, X acknowledged in his police statement that he was an acquaintance of Eghtesad, there was an agent scenario where X was with various people including Eghtesad at a bar, and the police did deal with X's traffic ticket.

[30] Other Inmate said he had damaging information about X. Mr. Barrenger says this is exceedingly vague. Other Inmate also said X was talking about killing an individual, Ricky Korasak, when he got out, and whacking Y. Mr. Barrenger says those allegations are vague as well.

[31] Overall, however, the Crown does not dispute that some of the Other Inmate's allegations are something that defence counsel might reasonably want to investigate but appear to have only the barest of relevance and do not outweigh the established public interest privilege.

c) Police Notes and Other Disclosure

[32] Defence counsel maintain that Other Inmate's assertions must be viewed against police notes, disclosure concerning X's incarceration, and other documents. In that context, the potential use of X to the defence is pronounced.

[33] Mr. Mansoori-Dara notes it appears that Other Inmate and an individual referred to in these proceedings as Y were on the same flight in June or July 2019. Both were federal inmates in transit from one province to another. Y was initially a Crown Vetrovec witness, but the Crown is no longer calling him.

[34] Y's handler notes reflect Y's assertions that Other Inmate was disparaging X to Y on the trip. Y was upset. Y's handler noted what Y reported he learned from Other Inmate: X pulled a fast one on the cops; X did the shooting and Teixeira did the stabbing; X wants to kill Y and another person, probably Ricky Korasak who allegedly put the contract out on Mr. Khabra's life. The handler's advice to Y was not to believe everything he heard and not to disclose any personal information or details about the case to anyone.

- [35] The defence underscores the importance of any statements attributed to X that he did the shooting, as that is not consistent with his NJI statement in which he minimized his involvement in killing Mr. Khabra. It is also important that X is said to have said to Other Inmate that he wanted to kill Y and Korasak, who allegedly paid for the murder of Khabra.
- [36] The defence also suggests that the timing of the conversation between Y and the Other Inmate in June or July 2019, after X and Y had been told not to communicate with each other, is of importance. X and Y would not know where each other was being housed, yet they managed to communicate by mail in August and September 2019. Other Inmate may well have been the conduit of that information, in the defence theory.
- [37] The Crown says much of this amounts to three degrees of hearsay. X talked to Other Inmate, who talked to Y, who talked to his handler. But aside from that, Mr. Barrenger agrees it is an area that defence counsel may reasonably want to probe and there is nothing in the disclosure order which prohibits this exercise from taking place.
- d) Witness X and Y Directed not to Communicate
- [38] Defence counsel say the timing of the conversation between Y and Other Inmate provides the inescapable inference of how Y learned where X was, which then provided the two with knowledge of how to communicate.
- [39] The Crown says defence can find this out by asking Y or Other Inmate. There is no need to probe who else was in the institution at the time or any details about the institution.
- e) Relevance of the Additional Inmates at the Institution
- [40] The defence want to ask Other Inmate about additional inmates serving time at the institution because X may have told some of them he was friends with Eghtesad. Crown notes that X acknowledged his association with Eghtesad in his police statements.
- [41] Other Inmate blamed X for his assault at the hands of two others. The Crown points out that Other Inmate does not say why he thinks X was the instigator of the assault, but tailored disclosure could permit defence counsel to ask Other Inmate about the circumstances of the assault and why he thinks it is related to X.
- [42] Other Inmate also claims X punched another inmate in the face in front of everybody. The Crown maintains that counsel could ask Other Inmate about the circumstances of the assault without inquiring into the location or the identities of those present.

Conclusion on the Importance of the Disclosure

- [43] It may well be that much of the disclosure sought will be inadmissible at trial because it is collateral or double and triple hearsay, but admissibility is not the touchstone of disclosure. I accept there may be something of value to the defence in speaking with Other Inmate or Community Member. The Crown does not suggest otherwise, although Mr. Barrenger did expose some potentially dubious assertions of relevance in some areas. Of particular note

are the assertions that the names of other individuals serving time with X and Other Inmate have any relevance.

Jurisdiction to Impose Conditions on the Disclosure Sought

- [44] In his reopening submissions on Application 58, Mr. Barrenger took me through a detailed analysis of public interest privilege at common law and public interest privilege under s. 37 of the CEA in an effort to persuade me that I have the inherent jurisdiction or some form of authority at common law to impose conditions on disclosure that respect the privilege but provide defence counsel with information they are entitled to have.
- [45] In summary, Mr. Barrenger focused on how the authorities treat public interest privilege at common law as interchangeable with privilege under s. 37 of the CEA. He placed significant reliance on civil authorities which, while helpful, do not focus on the issue of how tailored non-statutory disclosure orders impact on the right to full answer and defence in s. 7 of the Charter and other criminal law specific issues.
- [46] Mr. Barrenger relied on several criminal law cases to illustrate how I could craft an order under my inherent jurisdiction to provide disclosure and respect the privilege, including:
- R. v. Pickton, 2005 BCSC 697: while the Crown was ordered to disclose contact information so that defence counsel could follow up with potential witnesses, the disclosure could not be shared beyond counsel and private investigators. Counsel were also required to provide a court-issued standard form instruction when approaching witnesses for an interview: at paras. 13 and 14.
 - R. v. Belcourt, 2011 BCSC 1739: contact information of witnesses disclosed on an undertaking for defence counsel were disclosed on an undertaking not to provide the information to the accused: at para. 25.
- [47] Mr. Barrenger proposed the following disclosure order, which is substantially similar to the one that Ms. Wiedemann proposed as far back as the summer of 2022 to remedy the inadvertent disclosure:
1. Defence counsel must advise Other Inmate, before commencing any interview with him, that he is not to provide them with the name of the institution he was at in May 2019, nor the names of any inmates who were there, other than X;
 2. Any inquiries or investigations by defence counsel cannot include any questions about the name or location of the institution that Other Inmate was housed with X;
 3. Any inquiries or investigation by counsel cannot include any questions about additional inmates, besides X, who were housed at the institution where Other Inmate and X resided in May 2019;
 4. Discussions between Mr. Teixeira and his counsel cannot include any discussion about the name or location of the institution that Other Inmate and X were jointly housed;

5. Discussions between Mr. Teixeira and his counsel cannot include any discussion about other inmates housed at the institution where Other Inmate and X were jointly housed;
 6. These conditions apply to any person interviewed by counsel in relation to this matter, where counsel reasonably believes that the interviewee knows the name of the institution and/or the names of additional inmates who were housed at that institution.
- [48] Mr. Mansoori-Dara acknowledged that the Crown has identified, and I have accepted, the existence of a legitimate public interest, namely the safety of individuals, but public interest privilege or immunity is conferred over safety concerns only when they outweigh other interests identified by the defence. He reframed the jurisdictional question as follows:

Does the court have inherent jurisdiction to impose conditions that (a) impede the Applicant's lawful and constitutionally-protected right to conduct an independent inquiry in its defence, and (b) undermine the solicitor-client relationship that is protected by the constitution, common law, and rules of ethics?

- [49] Not surprisingly, Mr. Mansoori-Dara submits that the answer must be "no".
- [50] First, he argued s. 7 of the Charter protects the right to full answer and defence. In *R. v. Barros*, 2011 SCC 51, the Court analyzed the limits of full answer and defence, concluding that defence counsel were not prohibited from conducting legitimate investigation, even where it uncovers the identity of a confidential informant, so long as the investigation is not prohibited by law or the professional ethics of defence counsel.
- [51] In *R. v. McNeil*, 2009 SCC 3, the Court noted that trial judges can impose protective measures to prevent the dissemination of information for purposes that are unrelated to full answer and defence or the prosecution of an appeal, at para. 46. Mr. Mansoori-Dara notes that the measures proposed by the Crown go far beyond preventing dissemination. They direct and manage the questions defence counsel can ask potential witnesses in a manner that does not appear to have been done before in any authorities that anyone can locate.
- [52] Mr. Mansoori-Dara pointed out that in *Belcourt*, which the Crown relies on to demonstrate the availability of a limited use order, the trial judge expressly stated that conditions cannot impair the right to full answer and defence: at para. 22. In a similar vein, the decision in *Pickton* served to withhold from the accused information which was not relevant to full answer and defence; to wit, the contact information for witnesses.
- [53] Counsel submits that the disclosure in this case goes beyond contact information and falls squarely within the arena described in *McNeil* and other cases. It is necessary, for full answer and defence, for Mr. Teixeira's counsel to speak with Other Inmate and investigate avenues that permit him to assess the truth and reliability of a statement. The police dismissed Other Inmate's claims about X. The defence cannot let the claims wither on the vine without at least attempting to probe them, in the process potentially discovering more discreditable information about X.

- [54] Mr. Mansoori-Dara made further detailed submissions about the rules of ethics, the role of defence counsel, the importance of solicitor-client privilege, and the duty of candour to the client to underscore his contention that the orders sought by the Crown go far beyond managing the dissemination of information and go into the arena of managing the defence investigation.
- [55] In summary, then, while the Crown succeeded in demonstrating common law public interest privilege over the disclosure sought by the defence, the defence has persuaded me that the disclosure they seek is necessary to the defence of Mr. Teixeira, and I do not have inherent jurisdiction, or any jurisdiction at common law, to impose the conditions sought by the Crown.
- [56] Accordingly, the redactions of the names of Other Inmate, Community Member, and Community Member's phone number are to be lifted by the Crown and the disclosure provided to the defence.
- [57] I am aware that this order will trigger s. 37 CEA notice from the Crown and the Attorney General of Canada. I have made no determination about whether any of the orders sought by the Crown are available to me under s. 37(5) of the CEA, which provides the statutory power to craft conditions on disclosure, except to say that I expect that concerns with respect to the location of the institution can be easily addressed under s. 37(5).
- [58] In conclusion, I direct that a case management conference be held on August 21 or 22 to deal with scheduling a s. 37 hearing. I currently have a 9:15 matter on August the 22, so I would suggest a 10:00 a.m. start if that is the day everyone is available.
- [59] I want to reiterate what I said to counsel on August 10, when the s. 37 hearing was only a hypothetical: proceedings under s. 37 of the CEA will not derail, delay, or reorder the series of applications that were sequenced to be heard earlier this year, starting with Application 64. While it is likely preferable to hear the s. 37 matter first starting the week of September 11, if it cannot be heard at that time we will start with Application 64 and scheduled the s. 37 CEA hearing as soon as possible thereafter.
- [60] Further to the orderly arrangement of things, I require a commitment from all counsel that their schedules are free for the balance of 2023, and I note parenthetically that they should be because this matter was supposed to go to trial in September. I also require a commitment for the entirety of 2024, meaning that counsel should not set other matters for hearing that will interfere with proceeding to trial in this case. Bluntly put, Mr. Teixeira's matter has to take precedence over new matters. I have referred to the entirety of 2024 largely because I do not know the state of admissions or an accurate estimate for the trial.

[61] As a postscript, the submissions I heard from Crown and defence in July and August 2023 were the submissions I should have heard when Application 58 was first litigated. To the extent that there has been or will be any delay in proceeding as a result of the twists and turns relating to the disclosure relating to Other Inmate, the blame is shared equally by Crown and defence.

"Duncan J."

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/23/14/2023BCSC1475cor2.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-teixeira-2023-bcsc-1475>

Prepared on 28 October 2026 · Esheria