

CANADA / JUDGMENT

R. v. Wiwchar

2024 BCSC 2155

COURT

Supreme Court of British Columbia

DECIDED

4 October 2024

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

2024 BCSC 2155 R. v. Wiwchar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Wiwchar,

2024 BCSC 2155

Date: 20241004

Docket: 27393-A

Registry: Vancouver

Rex

v.

Dean Michael Wiwchar

Restriction on publication: A publication ban has been imposed under ss. 486.5(1), 486.31(1) and 648(2) of the Criminal Code and the Inherent Jurisdiction of the Court.

Before: The Honourable Madam Justice Ker

Oral Ruling on Applications #193, #226, and #228

re Disclosure

Counsel for the Crown:

S.L. Dworkin

N. Grégoire

A. LaBar

M.J. Sheardown

The Accused, appearing in person:

D.M. Wiwchar

Counsel appearing as Amicus Curiae:

T.M. Arbogast, K.C.

K.A. Kirkpatrick

Counsel for British Columbia Corrections:

F. Zaltz

Place and Date of Hearing:

Vancouver, B.C.

September 26, 2024

Place and Date of Judgment:

Vancouver, B.C.

October 4, 2024

- [1] These reasons for judgment were delivered as oral reasons. They have since been edited for distribution.

Introduction

- [2] This ruling addresses the accused Dean Michael Wiwchar's application for disclosure of recordings and related records he contends the Surrey Pretrial Services Center possesses. The alleged materials are not part of the Crown's disclosure dataset and do not relate to the fruits of the investigation with respect to the two charges for which he is before the Court, those being one count of first-degree murder alleged to have been committed on January 17, 2012, and one count of conspiracy to commit murder with a date frame for that offence being between August 6, 2011, and August 8, 2012.
- [3] As the materials Mr. Wiwchar seeks are not part of the investigation into the offences, he has filed a third-party records application, commonly referred to as an O'Connor application after the seminal Supreme Court of Canada case, *R. v. O'Connor*, [1995] 4 S.C.R. 411, 1995 CanLII 51 [O'Connor].
- [4] This application is supplemented by Applications 226 and 228, which are identical applications and more correctly are described as Mr. Wiwchar's efforts to particularize what he is seeking on this application.

- [5] As this is an O'Connor application for third party records, it is conducted in a two-stage approach. This ruling addresses the Stage 1 facet of the application.
- [6] The materials or records that Mr. Wiwchar seeks all pertain to the October 25, 2022, search of the cell of another inmate, Tyrel Nguyen, at Surrey Pretrial Services Centre. During the search of Mr. Nguyen's cell, a number of items of contraband were seized and he was internally charged for possessing contraband.
- [7] Mr. Wiwchar maintains that one of the items seized from Mr. Nguyen's cell was a tape recorder. Mr. Wiwchar believes the tape recorder may have contained recordings of himself disclaiming any responsibility for the shooting death of Sandip Duhre, the deceased in Count 1 of the indictment on which Mr. Wiwchar is charged, plus other discussions about his defence.
- [8] Application 193 was filed on October 6, 2023, by Mr. Wiwchar's then counsel. They maintained that the tape recorder and recordings were in the possession of B.C. Corrections at Surrey Pretrial Services Centre.
- [9] It has since come to light that there was no tape recorder seized from Mr. Nguyen's cell. Mr. Wiwchar challenges this assertion and so seeks, through the O'Connor regime, disclosure of a number of items that pertain to the search of Mr. Nguyen's cell. Specifically, he seeks the following:
- a) CCTV footage from the Range E1 while the search was conducted;
 - b) the handheld camera footage used to record the search of the cell;
 - c) the CCTV footage from the disciplinary hearing room from the day of the search;
 - d) the original charge papers in respect of Mr. Nguyen; and
 - e) the disciplinary hearing materials from the contraband charges, including the audio recording of the disciplinary hearing.
- [10] Mr. Wiwchar's purpose in seeking the alleged tape recordings of him relates to wanting to be able to adduce his prior consistent statements at his trial to assist in establishing his innocence. Of course, prior consistent statements are presumptively inadmissible and, for the purpose outlined by Mr. Wiwchar, would never be admissible at his trial. If he wants to place before the jury his denial of being the shooter in Count 1, he can take the witness stand and tell the jury that and be subjected to cross-examination. He cannot tender unsworn prior consistent statements to try to establish this point.
- [11] Since the application was filed, BC Corrections has provided a number of affidavits that establish that no tape recorder was seized in the search of Mr. Nguyen's cell, and that reference to a tape recorder as being part of the contraband in Mr. Nguyen's cell is a mistake.

- [12] Mr. Wiwchar does not accept this. He asserts that he saw charge papers written by Correctional Officer ("CO") Arvin Basran which established Mr. Nguyen did have a tape recorder.
- [13] Mr. Basran and others have filed affidavits contradicting Mr. Wiwchar's assertions. Mr. Wiwchar now contends that there is a coverup. His alternate purpose for seeking production of the requested materials is to establish this alleged coverup and add that to an omnibus abuse of process application.
- [14] BC Corrections and the Crown oppose the application, contending Mr. Wiwchar is on a fishing expedition that is a waste of the Court's time, particularly because the evidentiary materials filed by BC Corrections unequivocally establishes that no tape recorder or tape recordings were seized from Mr. Nguyen. Reference to it in the first disciplinary hearing proceeding was a mistake by the adjudicator referencing a photo pack received.
- [15] Before reviewing the evidence filed on this voir dire, it will be helpful to first set out the analytical framework that governs this application.

Governing Legal Principles

- [16] The general principles governing the production of third-party records are not in dispute. Third party production in criminal proceedings is governed by the two-step process set out in O'Connor. Recently in *R. v. Haevischer*, 2024 BCSC 1635, Justice Devlin summarized the O'Connor regime:
- [91] The general principles governing the production of third party records are not in dispute.
- [92] Third party production in the criminal context is governed by the two-step process set out in O'Connor. Justice Fitch recently summarized the O'Connor regime in *R. v. Lowry*, 2023 BCCA 423:
- [3] At the first stage, the applicant must demonstrate that the records sought are "likely relevant" in the context of the use that is proposed to be made of them in the underlying proceeding: *R. v. O'Connor*, [1995] 4 S.C.R. 411, 1995 CanLII 51 at para. 19; *R. v. Johnston*, 2019 BCCA 107 at paras. 60-61. If the applicant meets the likely relevance threshold, the documents will be produced to the Court.
- [4] At the second stage, the Court must weigh the salutary and deleterious effects of a production order to determine whether, and to what extent, the records should be produced to the applicant. This will involve consideration of the extent to which production of the record is necessary, the probative value of the record, and countervailing interests, including third-party privacy interests that could be implicated by an order disclosing the record to the applicant: O'Connor at paras. 30-31. At the second stage, it will often be helpful for courts to assess first the true or actual relevance of the targeted record, which will frequently be determinative of the application: *R. v. McNeil*, 2009 SCC 3 at para. 39; *R. v. Gubbins*, 2018 SCC 44 at para. 27.

- [93] The "likely relevance" threshold is not onerous, but is designed to avoid "fishing expeditions". The standard is met where there is a reasonable possibility the information sought is logically probative to an issue at trial or the competence of a witness to testify: Gubbins at paras. 26-29.
- [17] The onus is on the applicant to establish that the records sought are "likely relevant". This is a higher standard than the standard articulated in *R. v. Stinchcombe*, [1991] 3 SCR 326 [Stinchcombe], of "whether the information may be useful": O'Connor at paras. 22, 138-139.
- [18] At Stage 1 of the O'Connor framework, the applicant must demonstrate, on admissible evidence, (i) the specific grounds for production of the third-party record: O'Connor at para. 20; and (ii) that the information is likely to be relevant to his trial proceedings: O'Connor at para. 140. This is the "likely relevant" threshold.
- [19] Stage 1 is intended to ensure the proceedings remain focused on the issues to be tried to ensure the effective administration of justice. The likely relevant threshold ensures that the court plays a "meaningful role in screening applications to prevent the defence from engaging in "speculative, fanciful, disruptive, unmeritorious, obstructive, and time-consuming requests for production"" that consume scarce judicial resources: *R. v. McNeil*, 2009 SCC 3 at para. 29 [McNeil]. The "likely relevant" threshold is therefore a first-step inquiry designed to prevent fishing expeditions: *R. v. Gubbins*, 2018 SCC 44 at para. 28 [Gubbins].
- [20] The "likely relevant" threshold under the O'Connor framework is a higher threshold of relevance than exists under *Stinchcombe* because "third parties have no obligation to assist the defence": O'Connor at para. 19. An applicant must therefore justify the use of the court's power to compel the production of records in the possession of a third party.
- [21] Records will be likely relevant where (i) there is a reasonable possibility that the information is logically probative to an issue at trial or the competence of a witness to testify, or (ii) where there is a reasonable possibility that the records may assist the accused in exercising his right to make full answer and defence: *R. v. Jackson*, 2015 ONCA 832 at para. 129; O'Connor at para. 22.
- [22] The applicant must also establish a basis which would enable the Court to conclude that material which may be useful to the accused in making full answer and defence actually exists: O'Connor, para. 100, citing *R. v. Chaplin*, [1995] 1 S.C.R. 727 at 743-745 [*R. v. Chaplin*]. Mere speculation about what a file might contain is insufficient: *R. v. McClure*, 2001 SCC 14 at para. 53. Fishing expeditions and conjecture must be separated from legitimate requests for disclosure: *Chaplin* at 743-745.

- [23] Assertions alone are not enough to satisfy the "likely relevance" test and affidavit evidence is required: *R. v. Guarino*, 2012 ONSC 3901 at paras. 35-40. Assertions without evidence are nothing more than mere speculation: *R. v. Hayer*, 2023 BCSC 234 at paras. 46-52; *R. v. Baker*, 2017 BCSC 997 at para. 42. The mere assertion that records sought may be relevant is not sufficient to justify production: *R. v. Sipes*, 2011 BCSC 150 at para. 16.
- [24] Simply listing the reasons why records should be disclosed in the application itself is not sufficient to order disclosure. There needs to be evidence or another reliable basis. Otherwise, the simple filing of an application would result in the disclosure orders sought: *R. v. Commodore*, 2023 BCSC 1806 at para. 26.
- [25] In *Gubbins*, Justice Rowe, writing for the majority, stated:
- [26] Information will be "likely relevant" where there is "a reasonable possibility that the information is logically probative to an issue at trial or to the competence of a witness to testify": O'Connor, at para. 22 (emphasis deleted). The "likely relevant" threshold has been described as significant, but not onerous: O'Connor, at para. 24; McNeil, at para. 29. The reason that the relevance threshold is "significant" is to allow the courts to act as gatekeepers, preventing "speculative, fanciful, disruptive, unmeritorious, obstructive, and time consuming" requests for production: O'Connor, at para. 24, quoting *R. v. Chaplin*, 1995 CanLII 126 (SCC), [1995] 1 S.C.R. 727, at para. 32.
- [27] Nevertheless, the burden on the accused is not onerous. "Likely relevance" is a lower threshold than "true relevance", and has a "wide and generous connotation" that "includes information in respect of which there is a reasonable possibility that it may assist the accused in the exercise of the right to make full answer and defence": McNeil, at para. 44; see also O'Connor, at para. 21. Only after information has been shown to be likely relevant will the courts assess the actual relevance of the record sought. The courts then consider competing interests at the second stage of an O'Connor application: McNeil, at para. 39. It may be apparent "upon inspection by the court that the claim of likely relevance established at the first stage of the O'Connor application is simply not borne out": McNeil, at para. 40.

Factual Background

- [26] Mr. Wiwchar is detained in custody at Surrey Pretrial Services Centre awaiting his trial on one count of first-degree murder and one count of conspiracy to commit murder.
- [27] Mr. Wiwchar contends that another inmate, whom he refers to as Tyrone Nguyen, was detained in the same range and that Mr. Nguyen had in his possession a tape recorder which he used to "surreptitiously record the private conversations" of Mr. Wiwchar.
- [28] On October 25, 2022, Surrey Pretrial Services Centre correctional officers searched Mr. Nguyen's cell. Contraband was found and Mr. Nguyen was internally charged.

- [29] Mr. Wiwchar alleges a tape recorder was seized and says he saw a tape recorder on the table when staff were conducting the search. Mr. Wiwchar claims the recordings contain private, privileged discussions about his charges, his innocence, and his defence. He says they are likely relevant to his trial and he must know their contents to make full answer and defence. He does not explain how or why they are likely relevant.
- [30] Initially, Mr. Wiwchar sought the recordings, the names of persons who have or could have accessed the recordings, and all disciplinary/investigative material related to the creation and seizure of the recordings. In his particularization of Application 193, Mr. Wiwchar also sought CCTV footage from Range E1 during the search of Mr. Nguyen's cell and the handheld video-camera footage of that search, the CCTV footage of the disciplinary hearing room on the day of the search, and the document setting out the disciplinary charges faced by Mr. Nguyen as a result of the contraband items found during the search.
- [31] Affidavits filed by Eliza Phillis, Arvin Basran, and Ken Bush, all employees at Surrey Pretrial Services Centre, establish that no tape recorder was found or seized.
- [32] Mr. Wiwchar now contends that Surrey Pretrial Services Centre has engaged in a coverup and misconduct by lying about not having seized a tape recorder and the alleged recordings and destroyed the recording after seizing them. Accordingly, he seeks to include this in his omnibus abuse of process application. Mr. Wiwchar says that CO Basran told him at the time of the search that a tape recorder was seized and he heard Mr. Wiwchar's voice. CO Basran's affidavit unequivocally establishes the contrary.
- [33] The evidence on this application establishes the following: insofar as the CCTV footage from outside Mr. Nguyen's cell, Range E1, and from the disciplinary hearing room, both from October 25, 2022, that footage no longer exists, having been overwritten after 30 days. Only records that had been requested to be preserved before the 30-day overwrite period will be preserved. Accordingly, there is no CCTV footage to order produced.
- [34] Ms. Phillis's affidavit outlines the investigation into the allegation that Mr. Nguyen had a tape recorder as part of the contraband seized and the discovery that reference to a tape recorder as part of the contraband was an inadvertent error. She explained the process as follows:
6. On February 21, 2023, Tyrel Nguyen asked me during my rounds of his unit to clarify the record with respect to contraband found in his cell in October 2022. I reviewed the information in SPSC databases relating to that incident and spoke with the Correctional Supervisor who was the coordinator for Mr. Nguyen's disciplinary hearing. The information I learned is set out in the paragraphs below.
 7. On October 25, 2022, Correctional Officers ("CO"s) searched Mr. Nguyen's cell and found contraband, which resulted in charges against him under the CAR. COs used a handheld video recorder to tape the cell search, and afterward they took photographs of all the contraband items found in Mr. Nguyen's cell. COs also prepared an Incident Report, a Frisk Report, and Notice of Alleged Breach, which listed the items found in Mr. Nguyen's cell. I

have reviewed these documents and they do not list a tape recorder. I have watched the video and it does not depict a tape recorder being found.

8. I was able to locate the camera that took the photographs of the contraband items found in Mr. Nguyen's cell. The photographs had not been deleted from the camera. When I uploaded them, I saw the time stamps when the photographs were taken. The last photograph in the series was of the tape recorder. It was taken approximately 45 minutes after the last contraband photograph was taken. The photograph of the tape recorder is attached to my affidavit as Exhibit "A".
 9. On October 25, 2022, acting ADW Baljinder Dhaliwal sent the photographs of the contraband items found in Mr. Nguyen's cell by email to Deputy Warden Jasbir Natt. I have reviewed that email and the photographs attached. The photographs included the image of the tape recorder, but the tape recorder was not listed in the contents of the email where ADW Dhaliwal lists the items found in Mr. Nguyen's cell
 10. At a hearing of Mr. Nguyen's charges under the CAR held on November 15, 2022, the photographs of the contraband items found in his cell were shown. Included with these photographs, was the photograph of a tape recorder at Exhibit "A". During the disciplinary hearing, the adjudicator reviewed the evidence and described the photographs of the contraband, including the tape recorder. The Record of Disciplinary Hearing Decision - Adjournment is a summary of the adjourned hearing prepared by the adjudicator. He lists a tape recorder among the contraband items found in Mr. Nguyen's cell.
 11. On February 21, 2023 and March 1, 2023, I spoke with Correctional Supervisor Fass who was the disciplinary hearing coordinator on November 15, 2022 when Mr. Nguyen's hearing took place. Mr. Fass stated that he was able to confirm with the charging officer, CO Basran, that the tape recorder was not included among the contraband items found in Mr. Nguyen's cell. The allegation against Mr. Nguyen relating to the contraband was withdrawn due to the photograph of the tape recorder being inadvertently included with the evidence.
 12. On October 19, 2023, I spoke with CO Basran to confirm what Correctional Supervisor Fass told me in February and March 2023. CO Basran told me that he remembers the incident and his recollection is that no tape recorder was found in Mr. Nguyen's cell.
 13. Based on my review of the evidence, it is clear to me that the tape recorder should not have been attributed to Mr. Nguyen, as it was not found in his cell. SPSC staff erred by including the photograph of the tape recorder in the evidence shown at the hearing, leading to it appearing on the Record of Disciplinary Hearing Decision - Adjournment. I believe the photograph of the tape recorder was taken for an unrelated purpose, and the photograph was inadvertently included when the photographs of the contraband items were downloaded from the camera.
- [35] Mr. Bush's affidavit confirms the only references to a tape recorder being mentioned in relation to the October 25, 2022, search of Mr. Nguyen's cell are in:

- the photographs attached to an email about the search (however, the email made no reference to a tape recorder being found in the search);
- the adjournment of Mr. Nguyen's disciplinary hearing on November 15, 2022; and,
- Ms. Phillis's letter to Mr. Nguyen explaining the error with respect to the photograph of the tape recorder being included in the photo pack of the contraband items seized from his cell.

[36] Mr. Bush further confirms there is no mention of or image of a tape recorder or recordings in the Notice of Alleged Breach. Mr. Bush goes on to depose:

9. Consistent with the content of Affidavit #1 of E. Phillis, I can confirm that there is no mention or image of a tape recorder or recordings in the Notice of Alleged Breach issued to Mr. Nguyen immediately after the search of his cell (which lists the contraband items found in his cell), the witness statements, or the handheld video recording.
10. Since no tape recorder or tape recordings were seized from Mr. Nguyen's cell and they are not in BC Corrections' possession, I can confirm that there are no persons who have or could have accessed the tape recordings, and there are no disciplinary or investigative materials related to the creation or seizure of the tape recordings.

[37] Finally, CO Basran deposed in his affidavit that he did not seize a tape recorder when he searched Mr. Nguyen's cell. And, that he did not list a tape recorder or recordings in either the Incident Report or the Notice of Alleged Breach, documents that he completed immediately after the search was conducted.

[38] In short, the evidence establishes, and I find, that no tape recorder was found or seized from Mr. Nguyen's cell and so Surrey Pretrial Services Centre has no knowledge of any recordings and has taken no steps to destroy said recordings or otherwise engage in a coverup. I accept that neither the handheld video camera footage with respect to the search nor the disciplinary charge documents, the incident reports, nor any other materials depict or list a tape recorder being found in or seized from Mr. Nguyen's cell. A photograph of a tape recorder was taken approximately 45 minutes after the last photograph of contraband items from Mr. Nguyen's cell were taken. This photograph was mistakenly included in the photograph package submitted for the disciplinary hearing.

[39] I accept and find as a fact that the inclusion of this photograph of the tape recorder was inadvertent and that it does not relate to the search of Mr. Nguyen's cell. More specifically, it was not part of the contraband found in Mr. Nguyen's cell and indeed no such device was part of the contraband seized from Mr. Nguyen's cell.

Analysis

[40] I approach the analysis from two perspectives.

- [41] First, if the recordings existed, would they be admissible at Mr. Wiwchar's behest at trial? In short, no. Possible exculpatory statements are not admissible because they are prior consistent statements. As the Ontario Court of Appeal observed in *R. v. Bagherzadeh*, 2023 ONCA 706:
- [25] Prior consistent statements of a witness, including the accused, are generally inadmissible because they are seen to lack probative value and to be self-serving: *R. v. Stirling*, 2008 SCC 10, [2008] 1 S.C.R. 272, at para. 5; *R. v. Edgar* (2000), 2000 CanLII 5162 (ON CA), 142 C.C.C. (3d) 401 (Ont. C.A.), at para. 33. When adduced for the truth of their contents, they also constitute hearsay: *R. v. Dinardo*, 2008 SCC 24, [2008] 1 SCR 788, at para. 36. The rule's primary concern is that evidence may be manufactured by witnesses through mere repetition of a consistently false story: David Watt, *Watt's Manual of Criminal Evidence* (Toronto: Thomson Reuters, 2022), at para. 19.08.
- [26] However, there are several exceptions to this general exclusionary rule. For example: a prior consistent statement may be admissible to rebut an allegation of recent fabrication; as an excited utterance made as part of the *res gestae*; as evidence of the physical, mental or emotional state of the declarant; and other specific reasons [2]: S. Lederman, A. Bryant and M. Fuerst, Sopinka, Lederman & Bryant: *The Law of Evidence in Canada*, 6th ed. (Toronto: LexisNexis, 2022), at paras. 7.5-7.6. When prior consistent statements are admitted under one of these exceptions, their permitted use by a trier-of-fact is usually restricted and tailored to the specific rationale underlying the applicable exception.
- [42] The Supreme Court of Canada has also addressed this point in *R. v. Simpson*, 1988 CanLII 89 (SCC) at para. 24:
24. As a general rule, the statements of an accused person made outside court--subject to a finding of voluntariness where the statement is made to one in authority--are receivable in evidence against him but not for him. This rule is based on the sound proposition that an accused person should not be free to make an unsworn statement and compel its admission into evidence through other witnesses and thus put his defence before the jury without being put on oath and being subjected, as well, to cross-examination. It is, however, not an inflexible rule, and in proper circumstances such statements may be admissible; for example, where they are relevant to show the state of mind of an accused at a given time or to rebut the suggestion of recent fabrication of a defence. The first exception has been recognized in the authorities and in the text writings. In *Phipson on Evidence* (13th ed. 1982), para. 7-34, the following appears:

Whenever the physical condition, emotions, opinions and state of mind of a person are material to be proved, his statements indicative thereof made at or about the time in question may be given in evidence. In the case of physical condition or emotions, if they were the natural language of the affection, whether of body or mind, they furnish original and satisfactory evidence of its existence, and the question whether they were real or feigned is for the jury to determine.

In the English case of *R. v. Willis* (1959), 44 Cr. App. R. 32, at p. 37, Parker L.C.J. put it in these terms:

...provided the evidence as to his state of mind and conduct is relevant, it matters not whether it was in regard to the conduct at the time of the commission of the offence or, as here, at a subsequent time to explain his answers to the police and his conduct when charged.

As noted above, Seaton J.A. found it impossible to believe that the "vulgar drunk" revealed in the second statement could have made the precise statement earlier taken. The weight which the jury might give to the first statement could be affected if they heard the second, and the significance of the lies in the first statement might be greatly diminished upon a consideration of the state of mind revealed in the second.

- [43] Mr. Wiwchar's purpose for obtaining the recordings, if they existed, would be to attempt to adduce information of a self-serving nature, and so Mr. Wiwchar has failed to establish that the records sought, if they existed, are likely relevant. If they existed, and I have found they do not, they would be inadmissible.
- [44] From the second perspective, I ask: are the other materials likely relevant to supporting an abuse of process argument? In short, no. I agree with the respondent that this facet of Mr. Wiwchar's O'Connor application is nothing more than a fanciful fishing expedition to search for evidence to prove unsubstantiated and unsupportable allegations of wrongdoing. Indeed, the evidence adduced on this application is to the contrary. There were no recordings or tape recorder seized from Mr. Nguyen's cell when it was searched. The tape recorder included in the photo package for the disciplinary hearing was not part of the contraband seized, and so Mr. Wiwchar's application for production amounts to, at best, a speculative and fanciful request and, as mentioned, a fishing expedition.
- [45] Trial judges and case management judges must vigorously exercise their duties and role as gatekeepers and prevent speculative, fanciful, disruptive, unmeritorious, obstructive, and time-consuming requests for production: *Hayer* at para. 53; *Gubbins* at para. 26; *O'Connor* at para. 24; *McNeil* at para. 29.
- [46] Having reviewed the materials filed and heard and considered the comprehensive submissions of Mr. Wiwchar and counsel, I agree with counsel for BC Corrections and Crown counsel that this application is purely speculative and does not satisfy the likely relevance threshold established in *O'Connor* as developed in the jurisprudence that has considered and applied it since.
- [47] Accordingly, Mr. Wiwchar's application for disclosure will not proceed to a Stage 2 hearing. Mr. Wiwchar has not established that the records sought are likely relevant. Application 193, as well as Applications 226 and 228 filed in support of Application 193, are all dismissed.
- [48] This concludes my ruling.

"Ker 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/24/21/2024BCSC2155.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-wiwchar-2024-bcsc-2155>

Prepared on 29 October 2026 · Esheria