

CANADA / JUDGMENT

R. v. Wiwchar

2025 BCSC 2671

COURT

Supreme Court of British Columbia

DECIDED

27 August 2025

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

2025 BCSC 2671 R. v. Wiwchar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Wiwchar,

2025 BCSC 2671

Date: 20250827

Docket: 27393-A; 27393-225

Registry: Vancouver

Rex

v.

Dean Michael Wiwchar

Restriction on Publication: Pursuant to 486.31(1), 486.5(1), 631(6) & 648 C.C.C.

Inherent Jurisdiction

Before: The Honourable Madam Justice Ker

Oral Ruling on Voir Dire #8 (NOA #225) re: Reasonable Expectation of Privacy in Public Storage
Locker Information

Counsel for the Crown:

M.J. Sheardown

S.L. Dworkin

N. Grégoire

A. LaBar

The Accused, appearing on his own behalf:

D. Wiwchar

Counsel appearing as Amicus Curiae:

T.M. Arbogast, K.C.

K.A. Kirkpatrick

Place and Date of Hearing:

Vancouver, B.C.

August 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 27, 2025

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

Introduction

- [2] This ruling addresses a discrete issue that arose during an earlier voir dire that involved serial applications to challenge the sufficiency of various information to obtain ("ITO") affidavits sworn in support of general warrants and production orders obtained by the Vancouver Police Department ("VPD") in the nascent stages of its investigation into the January 17, 2012 homicide of Sandip Duhre. That investigation became known as Project Reality.
- [3] My ruling addressing excisions and additions to the three ITOs, as well as the sufficiency of two of the ITOs, is indexed at neutral citation 2025 BCSC 1029, the "ITO challenges ruling". That ruling is incorporated into this ruling without the need to repeat it.
- [4] Assessing the sufficiency of the April 11, 2012, ITO for a general warrant to search a locker at the Public Storage facility at 17555 64th Avenue in Surrey, B.C., once any excisions or additions to the ITO were made, has been held in abeyance pending resolution of a late-breaking reasonable expectation of privacy issue as noted at paras. 10, 156, and 157 of the ITO challenges ruling.

Background Facts

- [5] The reasonable expectation of privacy issue raised in this application arose from the fact that Det. Paul Dungey of the VPD attended at the Public Storage facility on or about April 5, 2012, to determine whether the accused, Dean Wiwchar, was then renting a storage locker at that location.
- [6] After Mr. Duhre's homicide, and by March 2, 2012, as the investigation started to develop, Mr. Wiwchar was designated as a person of interest to the Project Reality investigation. As of March 24, 2012, Mr. Wiwchar was the subject of 24-hour surveillance by the VPD Strike Force Surveillance Team.
- [7] On March 26, 2012, Mr. Wiwchar and his girlfriend were observed at 8:49 p.m. to attend an address in Surrey affiliated to the new owner of a Mazda MPV minivan that the police believed was the getaway vehicle for the shooter in the Duhre homicide. The shooting occurred in a restaurant at the Wall Centre Hotel in downtown Vancouver.
- [8] At 10:15 p.m. on March 26, 2012, Mr. Wiwchar was observed by the surveillance team to attend the Public Storage facility. The surveillance members tasked with following Mr. Wiwchar that evening observed him at the entry gate to the Public Storage facility, endeavouring to enter a code on the security access panel of the facility. He was unable to gain access to the facility and left.
- [9] The Public Storage facility is inaccessible to anyone after 8:45 p.m., even if they have an access code to gain entry during the open hours of the business.
- [10] On April 5, 2012, Det. Dungey, a member of the Project Reality investigative team, was assigned the task of attending the Public Storage facility to determine whether Dean Wiwchar currently rented a storage locker at that location.
- [11] Detective Dungey spoke with one of the employees at the Public Storage facility and learned the following pieces of information:
 - 1) Mr. Wiwchar rented a storage locker at the facility;
 - 2) the locker was rented in the name of Dean Wiwchar;
 - 3) Mr. Wiwchar started renting the locker on January 29, 2012, (approximately 12 days after the shooting of Mr. Duhre);
 - 4) the locker, number 3116, was located on the second floor of the facility and was a five-by-10-foot interior access locker;
 - 5) Mr. Wiwchar could only access the locker by using an entry code 7 days a week during business hours, so long as entry was sought prior to 8:45 p.m.;
 - 6) Locker 3116 had three keys and Mr. Wiwchar was in possession of all three of them;

- 7) the locker was alarmed which could only be deactivated when the correct access code was entered at the main gate before opening the locker; and
 - 8) to reach the second floor storage lockers, a person would use the elevator and was required to enter the access code to operate the elevator.
- [12] While he was at the storage facility, Det. Dungey went up to the second floor and confirmed the existence of Locker Number 3116. Photographs entered on the voir dire depict a row of storage lockers. All of them have opaque orange garage-style pull-down doors. The contents of the locker are not visible when the door is secured shut.
- [13] Further investigative steps were undertaken on April 9 and 10, 2012, in respect of the storage facility with the goal of conducting a covert entry of Locker Number 3116.
- [14] On April 11, 2012, Det. Lisa Wu, a member of the Project Reality investigation, swore ITOs in support of applications for a general warrant to conduct a covert search of Mr. Wiwchar's storage locker, to look for firearms and other items related to the Duhre homicide, and an assistance order, for employees of the facility to assist the police with that search. The Honourable Judge Senniw of the Provincial Court of British Columbia issued the general warrant and assistance order.
- [15] Detective Wu's ITO affidavit in support of the general warrant application outlined the basis for believing that Mr. Wiwchar had a storage locker at the facility:
144. I have read a Surveillance Report dated March 26, 2012 Afternoons and obtained, in part, the following information:
- a) The goals of surveillance were to monitor the activities of WIWCHAR;
 - ...
 - w) At 10:15 p.m. WIWCHAR went to Public Storage located at 17555 64th, Avenue, Surrey and attempted to enter a code into an access panel for the storage units but did not appear to gain access;
 - ...
187. On April 8, 2012 I read the Police Statement of Detective 72 Dungey and obtained, in part, the following information:
- a) On March 5, 2012 Detective 72 Dungey attended the Public Storage located at 17555 64th Avenue, Surrey ("Public Storage") [as referred to in paragraph 144. w)];
 - b) Detective 72 Dungey was able to determine that WIWCHAR currently rents a storage locker at Public Storage in the name Dean WIWCHAR;
 - c) WIWCHAR has rented this locker since January 29, 2012;
 - d) WIWCHAR's locker number is 3116 and it is located on the second floor;

- e) The size of locker number 3116 is 5 feet by 10 feet;
 - f) WIWCHAR can only access the locker by using an entry code during business hours and in any case, prior to 8:45 p.m. on any day;
 - g) There are 3 keys for locker number 3116 and WIWCHAR is in possession of all three;
 - h) Locker number 3116 has an alarm system which can only be deactivated when the correct entry code has been entered at the main gate prior to opening the locker;
 - i) Access to the second floor is by elevator and an access code is required to operate the elevator.
188. I read the Police Statement of Detective 72 Dungey forwarded to me on April 10, 2012 and obtained, in part, the following information:
- a) On April 9, 2012 Detective 72 Dungey attended the Public Storage facility at 17555 64th Avenue, Surrey with Constable Mike Arnott ("Constable Arnott") and Constable Mike Roberts ("Constable Roberts") who are both member of the RCMP Engineer Services;
 - b) Detective 72 Dungey walked through the Public Storage facility with Constable Arnott and Constable Roberts who examined the various security devices used at the facility;
 - c) On April 10, 2012 at 9:17 a.m. Detective 72 Dungey spoke to Constable Roberts who advised he had a high degree of certainty that the storage unit which belongs to WIWCHAR could be accessed by himself or other members of the RCMP Engineer Services and that WIWCHAR would be unaware that access had been gained;
 - d) At 1:30 p.m. Detective 72 Dungey attended the Public Storage facility at 17555 64th Avenue, Surrey and spoke to the District Manager, Ian Lai regarding the nature of the Warrant being applied for and the processes which would be carried out;
 - e) Ian Lai advised Detective 72 Dungey that upon receipt of an Assistance Order, he would provide Detective 72 Dungey with a code which would provide access to the storage areas of the facility and the ability to operate the elevators after 9:00 p.m.
- ...
197. I believe that Dean WIWCHAR is likely using Locker number 3116 at the Public Storage located at 17555 64th Avenue, Surrey to store evidence of his criminal activity because:
- a) storage of evidence in his residence, vehicle or elsewhere would risk exposure of his criminality;
 - b) a General Warrant executed on his safety deposit box at the Bank of Montreal located at #100 - 401 West Georgia Street, Vancouver revealed \$140,000 cash inside; however, no other evidence was found;

- c) Dean WIWCHAR is the renter of Locker number 3116 at the Public Storage [refer to paragraph 187.b)];
 - d) surveillance observed Dean WIWCHAR attend the Public Storage facility on March 26, 2012 at 10:15 p.m. and although he did not gain access, this was likely because there is no access after 8:45 p.m. and not because he did not have the access code [refer to paragraph 144.w)].
- [16] At about 11:10 p.m. on April 11, 2012, the police conducted a covert search of Mr. Wiwchar's locker. The police noted boxes of personal correspondence and what appeared to be equipment for packing canned drink items. In addition, they observed several boxes that contained magnetic business cards for a business called Mr. Frosty's Off Sales. I pause to note that a Mr. Frosty's Off Sales business card was found inside the Mazda MPV minivan that the Project Reality investigation believed was the getaway vehicle for the shooter in Mr. Duhre's homicide.
- [17] The additional piece of evidence to consider on this application is the Public Storage facility's privacy policy in effect in 2012. The policy includes three important sections germane to this application: the purpose section; the collection, use, and disclosure section; and the subsection on customers, suppliers, and other individuals:

1.0 PURPOSE

Canadian Mini-Warehouse Properties Limited ("CMP") maintains the principles of integrity and trust with respect to the privacy of personal information. As part of this commitment, CMP will use its reasonable efforts to protect the privacy of personal information collected from:

- Customers,
- Suppliers, and
- any other sources.

CMP will comply with the principles of the federal Personal Information Protection and Electronic Documents Act, the Personal Information Protection Act of British Columbia, the Personal Information Protection Act of Alberta, An Act respecting the protection of personal information in the private sector (Quebec), and any other personal information and data protection laws which may be applicable.

The purpose of this Privacy Policy (the "Policy") is to establish common rules to govern the collection, use and disclosure of personal information by CMP, in a manner that balances an individual's right to privacy with the need of CMP to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances, in accordance with applicable privacy laws and regulations.

...

4.0 COLLECTION, USE AND DISCLOSURE

CMP will obtain the informed consent of its customers, suppliers, employees and any other individuals from whom it may collect personal information, to its collection, use or disclosure of their personal information, unless collection, use or disclosure without consent is permitted or required by law.

"Informed consent" means that CMP will:

- Inform these individuals of the purposes for its collection, use and disclosure of their personal information, and
- Obtain their consent to collection, use and disclosure for these purposes, prior to, or at the time of, the collection of their information.

CMP will only collect, use and disclose the information necessary for its identified purposes. If CMP wishes to collect, use or disclose an individual's personal information for a new purpose, CMP will inform the individual of this new purpose and obtain his/her consent to this, except where such collection, use or disclosure without consent is permitted or required by law.

4.1 Customers, Suppliers and Other Individuals

CMP may collect, use and disclose personal information in respect of customers, suppliers, and other individuals who are not employees, from and to the persons and for the purposes set out below:

- (a) For the purpose of providing storage services and satisfying contractual obligations in respect of those services;
- (b) To banks, trust companies, credit unions and credit card companies for the purposes of authenticating account information and processing pre-authorized payments;
- (c) From and to collection agencies for the purposes of skip tracing and administering debt collection;
- (d) For the purpose of protecting and monitoring CMP's assets and properties, which includes, but is not limited to, using video surveillance at the entrances and exits to CMP's properties;
- (e) Such other collections and uses of personal information from such persons and for such purposes for which CMP may obtain consent from time to time; and
- (f) As otherwise required or permitted by law.

Issue and Positions of the Parties

- [18] The issue being determined on this ruling is whether Mr. Wiwchar had a reasonable expectation of privacy in the information that a Public Storage employee provided to Det. Dungey on April 5, 2012, when he attended at the location and asked whether Mr. Wiwchar rented a storage locker at the facility. The officer had no production order. The employee did not ask for one. Rather, the employee confirmed to the officer that Mr. Wiwchar had a storage locker in his name and had rented it starting January 29, 2012.
- [19] Mr. Wiwchar, assisted by Amicus, contends that he had a reasonable expectation of privacy in the information that the Public Storage employee disclosed to Det. Dungey. Accordingly, as the information was obtained without any prior warrant, Mr. Wiwchar submits that the disclosure constituted a warrantless search in violation of his s. 8 Charter rights.
- [20] The Crown contends that, while Mr. Wiwchar might have had a subjective expectation of privacy in the information disclosed, said expectation was not objectively reasonable. The Crown describes the information the officer obtained as "mundane information" that was not personal and, even if it was, it did not go to Mr. Wiwchar's biographical core. Rather, the Crown submits, it was predominantly information about the Public Storage facility's own records.

Governing Legal Principles

- [21] The governing legal principles are not in issue on this application. Rather, how they are applied to the circumstances of this case and the subject matter of the alleged "search" are where the parties differ.
- [22] Section 8 of the Charter provides:
- Everyone has the right to be secure against unreasonable search or seizure.
- [23] The main purpose of s. 8 is to protect the right to privacy from unjustified state intrusion.
- [24] Where there is no reasonable expectation of privacy in the subject matter of the state intrusion, there is no search for the purposes of s. 8: *R. v. Tessling*, 2004 SCC 67, at para. 18.
- [25] In *R. v. Campbell*, 2024 SCC 42, Justice Jamal, writing for himself and three others, outlined the balancing of competing interests engaged by s. 8 of the Charter:
- [38] A central preoccupation of this Court's s. 8 jurisprudence has been to balance the often competing aims of personal privacy and the public interest. This quest for balance reflects the constitutional imperative in s. 8 itself, which, expressed negatively, protects against an unreasonable search and seizure or, expressed positively, safeguards only a reasonable expectation of privacy (*Hunter*, at p. 159). In *Hunter*, Dickson J., as he then was, explained that s. 8 requires "an assessment . . . as to whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law

enforcement" (pp. 159-60). In Tessling, Binnie J. added that "[t]he community wants privacy but it also insists on protection. Safety, security and the suppression of crime are legitimate countervailing concerns" (para. 17; see also Plant, at pp. 291-92).

[Emphasis in original]

[26] The Supreme Court of Canada and appellate jurisprudence, interpreting the s. 8 principles, establish that the right to privacy is not absolute. Instead, it must be balanced against society's legitimate expectation and concern for protection from crime. The balancing of these competing interests is achieved by the qualifying clause: "reasonable". Reasonable expectations of privacy are what the constitution protects. Justice Binnie explained it this way in Tessling:

[17] At the same time, social and economic life creates competing demands. The community wants privacy but it also insists on protection. Safety, security and the suppression of crime are legitimate countervailing concerns. Thus s. 8 of the Charter accepts the validity of reasonable searches and seizures. A balance must be struck, as held in *Hunter v. Southam*, supra, at pp. 159-60, per Dickson J.:

... an assessment must be made as to whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement.

[18] The notion of the "balance" was also canvassed by Sopinka J. in advocating a "contextual approach" in *R. v. Plant*, [1993] 3 S.C.R. 281, at p. 293:

Consideration of such factors as the nature of the information itself, the nature of the relationship between the party releasing the information and the party claiming its confidentiality, the place where the information was obtained, the manner in which it was obtained and the seriousness of the crime being investigated allows for a balancing of the societal interests in protecting individual dignity, integrity and autonomy with effective law enforcement.

In the result the right to be free from examination by the state is subject to constitutionally permissible limitations. First, "not every form of examination conducted by the government will constitute a 'search' for constitutional purposes. On the contrary, only where those state examinations constitute an intrusion upon some reasonable privacy interest of individuals does the government action in question constitute a 'search' within the meaning of s. 8"; *Evans*, supra, at para. 11. It is only "[i]f the police activity invades a reasonable expectation of privacy, [that] the activity is a search"; *R. v. Wise*, [1992] 1 S.C.R. 527, at p. 533. Second, as the language of s. 8 implies, even those investigations that are "searches" are permissible if they are "reasonable". A search will not offend s. 8 if it is authorized by a reasonable law and carried out in a reasonable manner: *R. v. Caslake*, [1998] 1 S.C.R. 51; *R. v. Collins*, [1987] 1 S.C.R. 265.

[Emphasis in original]

- [27] In Campbell, at para. 39, Jamal J. succinctly summarized the four lines of inquiry engaged in the totality of the circumstances assessment that is applied to determine whether an accused has standing to challenge state action that may constitute a search.
- [28] In R. v. El-Azrak, 2023 ONCA 440, Associate Chief Justice of Ontario, Justice Fairburn, provided a succinct summary of the applicable legal principles that govern the reasonable expectation of privacy analysis, writing:
- [27] Section 8 of the Charter does not exist to protect that which people want to keep private, solely because they want to keep it private. Nor does it exist to hide things that are incriminating, solely because they are incriminating. Rather, s. 8 exists for one purpose and one purpose only: to extend constitutional protection against unreasonable state intrusions to those individuals who have a reasonable expectation of privacy over the subject matter of a search: R. v. Orlandis-Habsburgo, 2017 ONCA 649, 352 C.C.C. (3d) 525, at para. 37; R. v. Plant, 1993 CanLII 70 (SCC), [1993] 3 S.C.R. 281, at p. 292; R. v. Tessling, 2004 SCC 67, [2004] 3 S.C.R. 432, at paras. 17-18; and Hunter et al. v. Southam Inc., 1984 CanLII 33 (SCC), [1984] 2 S.C.R. 145, at pp. 159-60.
- [28] In determining any s. 8 issue, the court must start by considering whether s. 8 is even engaged, in the sense that there was a search or seizure within the meaning of s. 8 of the Charter. This turns on whether the accused has a reasonable expectation of privacy in relation to the subject matter of the search: R. v. Spencer, 2014 SCC 43, [2014] 2 S.C.R. 212, at para. 16. It is the accused's onus to establish a reasonable expectation of privacy, failing which, s. 8 protection is not extended. Conversely, success in establishing a reasonable expectation of privacy is what grants the accused standing to pursue the s. 8 claim.
- [29] Where the accused gets over this hurdle, barring some well-known exceptions, state intrusion into the accused's privacy interest will only be reasonable when it was authorized by law, the authorizing law was itself reasonable and the execution of the search was itself reasonable: R. v. Cole, 2012 SCC 53, [2012] 3 S.C.R. 34, at paras. 34-37; Spencer, at para. 68; and Tessling, at para. 18.
- [30] Three broad categories of privacy have emerged over time: territorial, personal and informational privacy. This case involves the latter, informational privacy, which in turn engages with three different concepts of privacy, namely, privacy as secrecy, privacy as control and privacy as anonymity: Spencer, at para. 38. Privacy as secrecy involves the ability to keep in confidence information that the individual wishes to be kept private. Privacy as control involves the ability to decide when, how and to what extent information about oneself will be shared. And privacy as anonymity involves the ability to act publicly while remaining anonymous: Spencer, at paras. 37-43.
- [31] Whatever the form of privacy at issue, and in this case it is informational privacy in its various iterations, determining whether someone has a reasonable expectation of privacy necessitates both a factual and a normative inquiry. The factual inquiry necessitates a command over all of the circumstances at work in the case: R. v. Edwards, 1996 CanLII 255

(SCC), [1996] 1 S.C.R. 128, at paras. 31, 45; R. v. Marakah, 2017 SCC 59, [2017] 2 S.C.R. 608, at para. 10; and R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579, at para. 26. The normative inquiry is broader in nature, with an eye to protecting that for which we ought to expect protection from a privacy perspective in a free and democratic society. In this sense, s. 8 does not simply focus on the here and now but also concerns itself with the long-term consequences of government action on society as a whole. Properly viewed through a normative lens, privacy interests will rise to constitutional status when those interests reflect the "aspirations and values" of the society in which we live: Orlandis-Habsburgo, at para. 41. See also: Tessling, at para. 42; Spencer, at para. 18; Patrick, at paras. 14-20; and R. v. Ward, 2012 ONCA 660, 112 O.R. (3d) 321, at paras. 60-74.

[32] The factors for consideration in determining whether there exists a reasonable expectation of privacy are well-known and grouped under four headings that allow for analytical convenience: Marakah, at paras. 10-11; Spencer, at paras. 16-18; and R. v. Mills, 2019 SCC 22, [2019] 2 S.C.R. 320, at para. 13. The test asks the following:

1. What is the subject matter of the search?
2. Does the accused have a direct interest in that subject matter?
3. Does the accused have a subjective expectation of privacy in the subject matter?
4. Would an expectation of privacy be objectively reasonable in the circumstances of the case?

[33] Only where the answer to the fourth question is "yes" does the claimant have standing to assert a s. 8 right: Marakah, at para. 12. If the court determines that the answer is "no", then the state action cannot violate s. 8. The answer here is no.

[29] The principled approach to s. 8 of the Charter requires a consideration of the totality of the circumstances, with particular emphasis on the existence of a subjective expectation of privacy and the objective reasonableness of the expectation: Tessling, at para. 19; Campbell, at para. 39.

[30] Three types of privacy interests protected by s. 8 of the Charter have been recognized by the Supreme Court:

- personal privacy protecting bodily integrity;
- territorial privacy implicating the places that a person may occupy; and
- informational privacy.

[31] Informational privacy has been defined as "the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others": Tessling, at para. 23, quoting A. F. Westin, *Privacy and Freedom* (1970), at p. 7.

- [32] Often, privacy interests may overlap. Here, for example, the privacy interest is essentially informational: Mr. Wiwchar's name and whether he rented a storage locker at the facility.
- [33] Mr. Wiwchar contends it also implicates his territorial privacy. Even though the police did not enter his storage locker at the time, the locker is where possible items of interest to their investigation might have been stored. In my view, it is informational privacy that is engaged most clearly in this case. Territorial privacy was not truly impacted by Det. Dungey's inquiry seeking confirmation as to whether Mr. Wiwchar was a person who rented a locker at the facility.
- [34] As Justice Binnie noted in *Tessling*, at para. 25, privacy is a protean concept, as it is something that easily takes different shapes or roles. Given the variability of privacy, the challenging point becomes where the reasonableness line is to be drawn. To that end, Justice Sopinka in *R. v. Plant*, [1993] 3 SCR 281, at p. 293, provided this explanation for the concept of informational privacy:

In fostering the underlying values of dignity, integrity and autonomy, it is fitting that s. 8 of the Charter should seek to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the lifestyle and personal choices of the individual.

[Emphasis added.]

See also *Tessling*, at para. 25.

- [35] This description of intimate details has not been interpreted as an exhaustive list: *Tessling*, at para. 26. As well, the reference to a biographical core of personal information does not mean that information that fails to satisfy that test is fair game for the police: *R. v. A.M.*, 2008 SCC 19, at para. 68.
- [36] Before turning to the analysis of the circumstances of this case, it is important to understand the legislative framework that is also engaged in this case. The Public Storage facility is a business in the private sector. The law protects privacy in such enterprises through the Personal Information Protection Act, S.B.C. 2003, c. 63 [PIPA].

- [37] Section 2 of PIPA outlines the purpose of the Act:

2 The purpose of this Act is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

- [38] Personal information is defined in s. 1 of PIPA:

"personal information" means information about an identifiable individual and includes employee personal information but does not include

- (a) contact information, or
- (b) work product information;

[39] Section 18 of PIPA enumerates a number of situations where an organization is authorized to disclose personal information to a third party without consent. For the purposes of this ruling, the potentially applicable provisions are:

18(1) An organization may only disclose personal information about an individual without the consent of the individual, if

...

- (c) it is reasonable to expect that the disclosure with the consent of the individual would compromise an investigation or proceeding and the disclosure is reasonable for purposes related to an investigation or a proceeding,

...

- (j) the disclosure is to a public body or a law enforcement agency in Canada, concerning an offence under the laws of Canada or a province, to assist in an investigation, or in the making of a decision to undertake an investigation,

- (i) to determine whether the offence has taken place, or

(ii) to prepare for the laying of a charge or the prosecution of the offence . . .

[40] In *R. v. Spencer*, 2014 SCC 43, at para. 65, Justice Cromwell, in examining s. 7 of Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 [PIPEDA], the federal counterpart to PIPA, noted that that the legislative authorization to disclose information pursuant to a police request will only be made where required or permitted by law.

[41] In *Spencer*, at paras. 62 to 65, Cromwell J. cautioned against using PIPEDA as a factor to weigh against the existence of a reasonable expectation of privacy because of the inherent circularity of reasoning involved. The same caution applies with respect to PIPA and its reading in conjunction with the privacy policy that the Public Storage facility had in place.

[42] While PIPA and Public Storage's privacy policy provide necessary background and context, they do not ultimately answer the question of whether there was a reasonable expectation of privacy engaged here, as their application depends on an understanding of what the police were lawfully entitled to do and that, in turn, depends on whether their alleged search violated s. 8 of the Charter. As Cromwell J. observed in *Spencer*, at para. 61:

[61] Shaw's collection, use, and disclosure of the personal information of its subscribers is subject to PIPEDA, which protects personal information held by organizations engaged in commercial activities from being disclosed without the knowledge or consent of the person

to whom the information relates: Sch. 1, clause 4.3. Section 7 contains several exceptions to this general rule and permits organizations to disclose personal information without consent. The exception relied on in this case is s. 7(3)(c.1)(ii). It permits disclosure to a government institution that has requested the disclosure for the purpose of law enforcement and has stated its "lawful authority" for the request. The provisions of PIPEDA are not of much help in determining whether there is a reasonable expectation of privacy in this case. They lead us in a circle.

See also *R. v. Alkhalil*, 2019 BCSC 1801, at para. 23, and *R. v. Ali, Boparai & Malonga-Massamba*, 2020 BCSC 1309, at para. 122.

Application of the Legal Principles in Other Cases

[43] To illustrate the situations in which s. 8 of the Charter has been applied, the parties referred me to several trial rulings and appellate rulings. The cases included:

- *R. v. Biring*, 2021 BCSC 2654
- *R. v. Biring*, 2022 BCSC 3
- *R. v. Alkhalil*, 2019 BCSC 1801 (the "Avis Ruling")
- *R. v. Alkhalil*, 2020 BCSC 206 (the "BMO Ruling")
- *R. v. Quinn*, 2006 BCCA 255
- *R. v. Baldovi*, 2016 MBQB 221
- *R. v. Devloo*, 2015 ABQB 345
- *R. v. Chehil*, 2009 NSCA 111
- *R. v. Ali, Bopari and Malonga-Massamba*, 2020 BCSC 1309
- *R. v. Merritt*, 2017 ONSC 366
- *R. v. Telfer & Crossman*, 2019 MBQB 12, aff'd 2021 MBCA 38
- *R. v. El-Azrak*, 2023 ONCA 440
- *R. v. Neumann*, 2023 ABCA 200

[44] Respectfully, I do not find it necessary to summarize each of these cases. Counsel have done that in their submissions, which they reviewed in oral argument. I have again reviewed these cases as I prepared this ruling. Most of the cases are simply illustrative of the application of the governing legal principles to the facts of those cases. With the exception of the Avis Ruling and the Biring rulings, the cases found no objectively reasonable expectation of privacy in names, addresses, cellphone numbers, flight information, or personal information connected with rental cars.

[45] The cases that I found to be closest to the application before me were the BMO Ruling, Baldovi, Ali, El-Azrak, and Neumann. I note that both the Avis Ruling and the BMO Ruling were issued by Madam Justice Maisonneville. The different results reached demonstrate the fact-specific nature of the inquiry that standing issues raise.

[46] With the foregoing principles in mind, I shall now turn to consider the application of the totality of the circumstances to the case at bar.

Analysis

[47] As outlined above, the jurisprudence mandates that applications under s. 8 of the Charter are determined in accordance with the totality of the circumstances test which involves four lines of inquiry:

- 1) What was the subject matter of the search;
 - 2) Did the claimant have a direct interest in the subject matter;
 - 3) Did the claimant have a subjective expectation of privacy in the subject matter; and
 - 4) If so, was the claimant's subjective expectation of privacy objectively reasonable?
1. What was the subject matter of the search?

[48] In *Spencer*, at para. 26, Cromwell J. emphasized that an important first step in any s. 8 inquiry is to properly identify the subject matter of the impugned search, stating:

[26] . . . While, in many cases, defining the subject matter of the search will be uncontroversial, in cases in which it is more difficult, the Court has taken a broad and functional approach to the question, examining the connection between the police investigative technique and the privacy interest at stake. The Court has looked at not only the nature of the precise information sought, but also at the nature of the information that it reveals.

[49] At para. 31, Justice Cromwell added that:

. . . the tendency of information sought to support inferences in relation to other personal information must be taken into account in characterizing the subject matter of the search.

[50] More recently in *El-Azrak*, A.C.J.O. Fairburn outlined the parameters of the approach to determining the subject matter of the search, writing:

[38] In determining the subject matter of the search, we apply a functional and holistic approach, one that derives from the actual circumstances of the case. Undoubtedly, this approach requires that we look beyond the actual information provided and ask whether, with that information in hand, something further is revealed about the individual to whom the information relates: *Spencer*, at paras. 26, 31 and 47; *R. v. Gomboc*, 2010 SCC 55, [2010] 3 S.C.R. 211, at paras. 14-15, 35-39. This requires consideration of not only the raw data that the state came to possess, but also the nature of the information that could be inferentially derived from that raw data: *Ward*, at para. 93; *Marakah*, at paras. 14-15; *Orlandis-Habsburgo*,

at para. 75; and Spencer, at para. 26.

...

- [43] The appellant contends that in calibrating the subject matter of the search, one must look not only to the raw data and the inferences that arise from that data, but also to the inferences that can arise from comparing that data with other investigative information. In this case, the appellant says that such information includes Mr. Imerovik's cell phone data. When comparing the Drug Usage Report with that cell data, the police were able to draw more private inferences, including about Mr. Imerovik's whereabouts on days that fentanyl was being dispensed. This "indirect information", the appellant argues, must also be included in the subject matter of the search.

...

- [48] The subject matter of a search cannot be, as the appellant suggests, retroactively characterized according to what the information reveals after it has been combined with other investigative facts. If that were the analytical approach to determining the subject matter of a search, it would not be a stretch to suggest that virtually all information obtained by the police would ultimately result in privacy claims.
- [49] The whole nature of a police investigation is to thread together investigative facts that eventually provide a window into what is undoubtedly private. Indeed, such investigative techniques would not be necessary could the picture be obtained from the outset. The subject matter of the search cannot be characterized based on what the police conclude at the end of their completed investigation; it must be considered solely from the perspective of what the raw data reveals and what, if any, inferences can be taken directly from that data.
- [50] Respectfully, were it otherwise, society's legitimate interest in privacy and being left alone, as balanced against society's legitimate interest in "[s]afety, security and the suppression of crime", would quickly become skewed: Tessling, at para. 17; Hunter, at pp. 159-60; and Edwards, at para. 30. Professor Steven Penney refers to this as the "privacy versus security" debate and calls it "a perpetually polarizing dialectic": Steven Penney, "The Digitization of Section 8 of the Charter: Reform or Revolution?" (2014) 67 S.C.L.R. (2d) 505, at p. 506.
- [51] The normative approach asks what a reasonable person would expect in a free and democratic society. That reasonable person undoubtedly has an interest in not only protecting privacy, but also in ensuring the effectiveness of law enforcement. If the subject matter of a search could be characterized by every inference that could be taken from the raw data, when placed against all other investigative facts, this would result in anything but effective and efficient investigations.
- [52] This is not even to mention the fact that investigations evolve over time and the inferences that can be derived from raw data can morph with the evolution of further investigative facts. The police must be able to determine at the time they come into possession of

information whether it is the subject of a reasonable expectation of privacy. If the subject matter of a search is constantly in flux and depends on the possibility that it may reveal important information after being combined with the results of other investigative steps - that may or may not be contemplated or even possible at the time of the original search - police cannot make informed decisions as to whether prior judicial authorization will be required. Such a procedure would be unworkable. Rather, the subject matter of the search must be fixed at the time of the search and the inferences that can be taken from the data must be ones that arise directly from that data.

- [51] In *El-Azrak*, a pharmacist had been convicted of trafficking in fentanyl and possession of fentanyl for the purpose of trafficking. She used her position as a pharmacist to dispense fentanyl patches that were then trafficked on the streets of an Ontario city. During the course of the investigation, the police obtained information about the accused from the Ontario College of Pharmacists (the "OCP"). They did so in the absence of any judicial authorization.
- [52] With the information obtained from the OCP, the police were able to use it as part of their grounds to obtain a search warrant for the pharmacist's home. The search resulted in the seizure of her cellphones. Those devices contained highly incriminating text messages.
- [53] On appeal, her counsel contended that the police ought to have had a warrant to obtain the information from the OCP. Appellant's counsel argued that the trial judge erred in the approach to assessing the subject matter of the search. The Ontario Court of Appeal rejected the wider framed approach on how to calibrate the subject matter of the search. In examining the subject matter of the search in *El-Azrak* - there a drug usage report, the appellant's phone number, email address, and home address - Fairburn A.C.J.O. described the raw data, clearly personal information, as largely "bland information" that did not lend itself to further inferences: at para. 39. The subject matter of the search was fixed to the time of the search and the inferences that could be drawn from the data, and that they must be ones that are directly drawn from the data.
- [54] Applying this approach to the data in the case at bar - the data being Mr. Wiwchar's name, his having a specific storage locker, and when he started renting the storage locker - simply confirms what the police believed about Mr. Wiwchar at the time of the inquiry, given their observations of him on March 26, 2012. Surveillance of him had placed him at the storage locker facility, trying to gain access into the premises by means of entering an access code. The attempt failed due to the hour of the attendance.
- [55] This is not a situation like the *Avis* Ruling where the police knew nothing about the identity of the person who rented the vehicle Mr. Wiwchar was observed driving in the Greater Toronto area.

- [56] Significantly, Mr. Wiwchar was not a complete unknown to the investigation at the time of Det. Dungey's attendance at the Public Storage facility on April 5, 2012. The investigation knew who he was, where he lived, where he banked, and had observed him trying to get into the storage facility after hours.
- [57] The subject matter of the search revealed nothing about what was in the storage locker. The fact that Mr. Wiwchar rented a storage locker and had done so in late January did not unlock any further information. It simply revealed that he had a storage locker. To that end, he was no different than thousands of residents of this province.
- [58] In the BMO Ruling, Mr. Wiwchar had challenged a production order obtained after the investigators had received confirmation from the Bank of Montreal ("BMO") that Mr. Wiwchar had accounts at BMO. The police had provided Mr. Wiwchar's name, date of birth, and address to a BMO corporate compliance officer. The police learned from that person that Mr. Wiwchar had accounts at the branch, but that any further information sought required a production order.
- [59] In distinguishing her earlier Avis Ruling, Maisonville J. concluded that the investigators' queries of the BMO employee were confirming that Mr. Wiwchar had accounts at the bank and clarification on the correct nomenclature for the documents the investigation would seek through a production order: see the BMO Ruling, at paras. 67 to 78.
- [60] Similar to the circumstances in both the BMO Ruling and the decision in Quinn, confirmation that the accused's name was linked to having a storage locker and when he started renting it did not reveal a biographical core of information. To paraphrase A.C.J.O. Fairburn, the inquiry simply confirmed Mr. Wiwchar had a storage locker.
- [61] And, similar to the circumstances in the BMO Ruling, Mr. Wiwchar was surveilled to the Public Storage facility and observed trying to gain access through inputting a code at the entry access gate. In Ali, Justice Ehrcke found that disclosure of the names of the accused on their boarding passes did not amount to disclosure of information of a core biographical or intimate nature.
- [62] Accordingly, the subject matter of the search in the case at bar was simply confirmation that Mr. Wiwchar had rented a storage locker at the Public Storage facility in question.
2. Did Mr. Wiwchar have a direct interest in the subject matter?
- [63] The second line of inquiry in the totality of the circumstances test is whether Mr. Wiwchar had a direct interest in the subject matter of the search. The Crown concedes that he did.
3. Did Mr. Wiwchar have a subjective expectation of privacy in the subject matter?
- [64] The third line of inquiry in the totality of the circumstances test is whether Mr. Wiwchar had a subjective expectation of privacy in the subject matter of the search. The Crown concedes that this line of inquiry does not erect a high hurdle for applicants to meet.

[65] In *El-Azrak*, at para. 60, A.C.J.O. Fairburn observed that:

[60] . . . While it was not always the case, today it takes little to cross the subjective expectation of privacy threshold. In appropriate circumstances, it can be inferred . . .

[66] In the circumstances of this case, it is reasonable to infer a subjective expectation of privacy.

4. Was the expectation of privacy objectively reasonable?

[67] The fourth line of inquiry in the totality of the circumstances test is at the heart of this s. 8 inquiry. Was Mr. Wiwchar's expectation of privacy objectively reasonable in the circumstances?

[68] In order to answer this question, the Supreme Court of Canada jurisprudence has enumerated a number of factors that may be usefully examined in determining whether an expectation of privacy was reasonable in all the circumstances. In *Tessling*, at para. 32, seven factors were enumerated by the court as informing this branch of the inquiry.

[69] In *Campbell*, at para. 53, Jamal J., noting that the list of factors is not an exhaustive or closed list, enumerated nine factors:

(i) whether the information would tend to reveal intimate or biographical details of the lifestyle and personal choices of the individual subject to the alleged search;

(ii) the place where the alleged search took place;

(iii) whether the subject matter of the alleged search was in public view;

(iv) whether the subject matter had been abandoned;

(v) whether the information was already in the hands of third parties, and if so, whether it was subject to an obligation of confidentiality;

(vi) whether the police technique was intrusive in relation to the privacy interest;

(vii) whether the individual was present at the time of the alleged search;

(viii) the possession, control, ownership, and historical use of the property or place said to have been searched; and

(ix) the ability to regulate access to the place of the search, including the right to admit or exclude others from the place (*Plant*, at p. 293; *Tessling*, at para. 32; *Edwards*, at para. 45).

[70] I will now examine the circumstances of this case through the *Campbell* factors lens.

(i) Did the information tend to reveal intimate or biographical details of the lifestyle and personal choices of Mr. Wiwchar?

- [71] This is sometimes referred to as the private nature of the subject matter. In this case, the information revealed no intimate or biographical details of the lifestyle and personal choices of Mr. Wiwchar. The information confirmed the police surveillance observations of Mr. Wiwchar's attendance at the facility at a time and in circumstances that could reasonably and logically support the inference that Mr. Wiwchar was trying to gain access to the facility to attend to a storage locker.
- [72] As Jamal J. noted in Campbell, at para. 55, the private nature of the subject matter is a critical factor in the analysis. There is little in the way of privacy concerns in the act of renting a storage locker at a publicly-accessible business where Mr. Wiwchar could be seen to attend, acquire a locker, and go in and out of the facility to attend at the storage locker.
- [73] I agree with the Crown's assessment that the information the police received was largely of a non-personal nature. It was simply confirmation that Mr. Wiwchar rented a storage locker and how long he had rented it. There were no intimate details concerning Mr. Wiwchar's life revealed from the fact that he rented a storage locker, and it reveals nothing about what, if anything, was inside the storage locker: El-Azrak, at paras. 56 and 85.
- [74] Accordingly, this factor militates against Mr. Wiwchar's privacy claim.

(ii) The place where the alleged search took place

- [75] The alleged search occurred at a business readily accessible to the public by way of attendance at the service desk counter. The officer's attendance did not intrude on Mr. Wiwchar's territorial privacy. No one went into the storage locker at that time. Detective Dungey's walk through the facility was with the permission of the business employees and the owners of the property. The contents of the locker were not viewed. Only the outer door of Mr. Wiwchar's locker was viewed. And so the observations occurred primarily in the public parts of the storage locker business - the front desk, and the outside of the storage locker space visible to anyone attending in the facility or the vicinity of Locker 3116. The observations did not involve any trespass on Mr. Wiwchar's property or rented space.
- [76] Accordingly, this factor militates against Mr. Wiwchar's privacy claim.

(iii) Whether the subject matter of the alleged search was in public view

- [77] This factor addresses whether the informational content was in public view. While not publicly displayed, the information confirming Mr. Wiwchar's rental of a storage locker was not necessarily obscured either, depending on who may have been at the service desk computer at any given time; for example, other customers. And, while Det. Dungey's walk through the facility would have been obscured from public view (that is the general public), it would not, necessarily, have been obscured from other employees or customers. In the end, I find this factor is neutral in the analysis.

(iv) Was the informational content, that is the subject matter, abandoned?

- [78] There is no evidence that Mr. Wiwchar abandoned anything in relation to the subject matter. The issue of whether seized material has been abandoned is a significant factor in the analysis for cases where an individual has thrown out a tissue or discarded a cigarette butt, a piece of gum, a drinking straw, or materials in the garbage. It has little relevance to the case at bar. Accordingly, this is a neutral factor in this application.
- (v) Was the information in the hands of third parties and was it subject to an obligation of confidentiality?
- [79] In the present case, the information - Mr. Wiwchar's name and when he commenced his rental of Locker Number 3116 - was in the hands of the Public Storage facility at the time it was disclosed to Det. Dungey. More importantly, the information about the storage locker assigned, the keys, and access codes is information emanating from the storage facility itself, not Mr. Wiwchar, and it is generic information applicable to all storage locker rentals, so it discloses no intimate or personal details intrinsic to Mr. Wiwchar. And, as the Manitoba Court of Appeal noted in *Telfer*, at para. 41, there is nothing inherently confidential in the commercial relationship between Mr. Wiwchar and the Public Storage facility.
- [80] Section 4 of the privacy policy of the facility contains a provision that appears to permit disclosure of a customer's personal information where it is permitted or required by law. When read with the provisions of PIPA reviewed earlier, being s. 18(1)(c) and (j), it is arguable that this authorizes the disclosure made in this case. However, as I noted previously in *R. v. Latimer*, 2020 BCSC 488, at paras. 113 and 114, this is not dispositive of a Charter challenge.
- [81] In the circumstances of this case, I find that this factor militates marginally against Mr. Wiwchar's privacy claim.
- (vi) Was the police technique intrusive in relation to the privacy interest?
- [82] The technique employed by the police in this case involved a verbal request as to whether Mr. Wiwchar rented a storage locker at the facility. They were seeking confirmation of their suspicion that he had, based on their observation of him attending the facility on March 26, 2012, and trying to gain access with an access code. Detective Dungey received confirmation that Mr. Wiwchar, in fact, rented a storage locker. The officer also received details as to the length of time the locker had been rented, the particular locker, the number of keys, who possessed them and how access was gained. The narrow focus of the inquiry, and the fairly generic nature of the information obtained, supports the conclusion that the police technique, really an information inquiry, was anything but intrusive. This factor militates against Mr. Wiwchar's privacy claim.
- (vii) Was Mr. Wiwchar present at the time of the alleged search?
- [83] Mr. Wiwchar was not present at the time of the alleged search. This factor is neutral in the analysis in this case.

(viii) The possession, control, ownership, and historical use of the property

- [84] Mr. Wiwchar certainly had no control over the physical layout of the facility as a whole, only his locker, but that is not what makes up the subject matter of the search in this instance. It was whether he had a storage locker.
- [85] This factor is more relevant in instances where the police actually enter a place; for example, going into a storage locker, a residence, or an outdoor shed on private property.
- [86] The place searched here was the records system of the Public Storage facility, something controlled by the facility, not Mr. Wiwchar. Certainly, there was a privacy policy in place, but it is arguable that PIPA and the privacy policy itself permitted the disclosure of Mr. Wiwchar's status as the renter of a storage locker in the circumstances. Thus, Mr. Wiwchar had no control over the release of his name and rental status in the circumstances. This factor militates against Mr. Wiwchar's privacy claim.

(ix) The ability to regulate access to the place of the search, including the right to admit or exclude others from the place

- [87] This factor is similar to the previous one. Mr. Wiwchar controlled who had access to the locker itself, but did not have the ability to regulate access to the Public Storage facility. That was up to the business. Mr. Wiwchar had control over who had access to his storage locker. No officer accessed the locker itself until after issuance of the general warrant which occurred after Det. Dungey's visit to the facility to obtain confirmation about Mr. Wiwchar's status as a renter of a storage locker.
- [88] Mr. Wiwchar contends that Det. Dungey and the VPD should have sought a production order to obtain information about his status with the Public Storage facility.
- [89] In *Neumann*, the Alberta Court of Appeal found that the police request of a hotel manager, seeking the name and cellphone number of the occupant of one of the hotel rooms, was for the purpose of seeking judicially authorized tracking and transmission data warrants. The court concluded in *Neumann* that the properly informed, reasonable, and objective observer would not find a person has an objectively reasonable right to privacy in their name and cellphone number, particularly where that information has been provided to the businesses that the police obtained the information from, being a hotel and a car dealership. And in *Neumann*, at para. 102, the court noted:
- [102] Other recent cases stand for the proposition that police do not need prior judicial authorization to obtain basic personal information from professional associations or businesses, including from a hotel and car company: *El-Azrak*, paras 6, 92; *R v Baldovi*, 2016 MBQB 221, paras 64, 65, 370 CRR (2d) 27, and *R v Telfer & Crossman*, 2019 MBQB 12, para 52, [2019] 6 WWR 514; upheld 2021 MBQA 38, paras 4, 64, [2021] 7 WWR 41. Likewise, there are many cases which have found there is no privacy interest in a telephone number, without more: see *R v South*, 2017 ONSC 6356, para 64; *R v Khan*, 2014 ONSC 5664, para 27; *R v Adan*, 2021 ONSC 7150, para 153.

- [90] At para. 104 of Neumann, the Alberta Court of Appeal concluded that, "The Charter does not require a warrant to obtain this very basic information necessary to obtain a warrant."
- [91] The same observations and conclusions are equally apposite to the circumstances of the current application. This factor militates against Mr. Wiwchar's privacy claim.

Conclusion

- [92] Applying the totality of the circumstances test, and considering the nine factors enumerated at para. 53 of Campbell, I am satisfied that there was no reasonable expectation of privacy in the information that Det. Dungey obtained in this case. His obtaining of that information without prior judicial authorization did not infringe Mr. Wiwchar's s. 8 Charter rights.
- [93] Accordingly, Mr. Wiwchar's application seeking a finding that his s. 8 rights were breached in this instance is dismissed. The information in paras. 187 and 188 of Det. Wu's April 11, 2012 ITO will not be excised.
- [94] That 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/25/26/2025BCSC2671.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-wiwchar-2025-bcsc-2671>

Prepared on 28 October 2026 · Esheria