

CANADA / JUDGMENT

Sander v. Khunga

2025 BCSC 1049

COURT

Supreme Court of British Columbia

DECIDED

6 June 2025

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2025 BCSC 1049 Sander v. Khunga IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sander v. Khunga, 2025 BCSC 1049 Date: 20250606 Docket: M237114 Registry: New Westminster Between: Taranpreet Kaur Sander Plaintiff And Dilraj Don Khunga and Harbind Kaur Khunga Defendants Before: Associate Judge Hughes Reasons for Judgment Counsel for Plaintiff: B. Yu The Application Respondent, appearing in person: M. Sandhu No further appearances Written Submissions of the Plaintiff: May 12, 2025 Place and Date of Hearing: New Westminster, B.C. May 8, 2025 Place and Date of Judgment: New Westminster, B.C. June 6, 2025

- [1] This personal injury action arises from what has been described as a "road rage" incident which occurred on May 10, 2019, during which the defendants' vehicle struck the plaintiff's vehicle. Credibility will be a significant issue at trial, as the parties have conflicting accounts of who was the aggressor. It is undisputed that, during the ensuing altercation, defendant Dilraj Don Khunga ("Mr. Khunga") pepper-sprayed the occupants of the plaintiff's vehicle. Mr. Khunga was charged with assault with a weapon, and he retained lawyer Mani Sandhu to defend him on the criminal charge. The criminal charge was subsequently dropped by the Crown.
- [2] By notice of application filed April 11, 2025, the plaintiff seeks production of Mr. Sandhu's "entire criminal file for Dilraj Khunga, minus any redactions for communications protected by solicitor-client privilege". Mr. Sandhu objects to the production of any part of his criminal file. Despite being represented by counsel in this action, neither defendant has filed a response to this application.
- [3] The application also sought an order compelling Mr. Sandhu to submit to a pre-trial examination of a witness pursuant to Rule 7-5, although the plaintiff chose not to proceed with that part of the application.
- [4] The plaintiff seeks disclosure of Mr. Sandhu's file on the basis that it may contain information as to the reason that the assault charge was dropped. This action is scheduled for a 9-day jury trial commencing February 17, 2026. The plaintiff's concern is that the jury may prefer Mr. Khunga's version of events by virtue of the fact that the Crown decided not to proceed with the assault charge.

- [5] Any statement made by Mr. Khunga to the police would be part of the police file. Plaintiff's counsel advised that the parties have consented to an order for production of records from the police, although those records have not yet been received.
- [6] Mr. Sandhu's objection to the order sought by the plaintiff is grounded in this court's decision in *R. v. Basi*, 2011 BCSC 314, which confirms that an implied undertaking attaches to disclosure material received by an accused pursuant to the Crown's obligations as set out in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.
- [7] The plaintiff argues that Mr. Sandhu's file would not only include the *Stinchcombe* disclosure, but may also contain producible material.
- [8] At the hearing, counsel advised that they could find no case authority in which a criminal defence lawyer's file was sought to be disclosed in a civil proceeding. Accordingly, I granted the parties leave to provide further written submissions. The plaintiff's submissions, which do not comply with Administrative Notice 19, were received on May 12, 2025. Mr. Sandhu did not provide any written submissions.
- [9] In her written submissions, the plaintiff further narrows the scope of materials she seeks from Mr. Sandhu to "any representations or statements made by Mr. Khunga to the Crown to persuade the Crown to drop the charges". The plaintiff no longer seeks any of the *Stinchcombe* disclosure, nor does she seek any communications between Mr. Sandhu and Mr. Khunga.
- [10] However, the plaintiff's narrowed application fails to recognize that representations or statements made in the context of negotiations between criminal defence counsel and the Crown are subject to settlement privilege: *R. v. Griffin*, 2009 ABQB 696 at paras. 55-65.
- [11] Accordingly, the plaintiff's application for production of Mr. Sandhu's criminal file regarding Mr. Khunga is dismissed. Any formal statement given by Mr. Khunga should be available to the plaintiff as part of the forthcoming police disclosure.
- [12] As a successful non-party respondent, Mr. Sandhu is entitled to his costs of this application. So as not to put Mr. Sandhu to the additional burden of attending a registrar's hearing to assess his costs, I summarily assess costs for this half-day contested hearing at \$600. Those costs are to be paid within 30 days from the date of these reasons. "Associate Judge Hughes"

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Prepared on 26 October 2026 · Esheria