

CANADA / JUDGMENT

Schella v. Sabbagh et al

2000 BCSC 1481

COURT

Supreme Court of British Columbia

DECIDED

6 October 2000

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

Source record

2000 BCSC 1481

Citation: Schella v. Sabbagh et al Date:

20001006

2000 BCSC 1481 Docket:

B940471

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

YOLANDA SCHELLA

PLAINTIFF

AND:

YOUSSEF SABBAGH AND SANDRA ELSIE MARTIN

DEFENDANTS

REASONS FOR JUDGMENT

OF

MASTER DOOLAN

(IN CHAMBERS)

Counsel for the Plaintiff: R. Glen Boswall, Esq.

Counsel for the Defendants: S. Read, Esq.

Date and Place of Hearing: September 8, 2000

Vancouver, BC

[1] In their notice of motion dated April 6, 2000 the defendants seeks:

... an Order under Rule 26(11), that the Royal Canadian Mounted Police, North Vancouver Detachment, do produce to counsel for the Defendants the following documents:

1. Police file No. 1996 - 0013887;
2. Police file No. 1996 - 10966;
3. Police file No. 1996 - 0013520;
4. Police file No. 1997 - 0032753;
5. Police file No. 1999 - 0002744.

[2] Rule 26(11) governs such applications:

Where a document is in the possession or control of a person who is not a party, the court, on notice to the person and all other parties, may order production and inspection of the document or preparation of a certified copy that may be used instead of the original. . . .

- [3] I am told that the Royal Canadian Mounted Police (RCMP) have had notice of this application.
- [4] The first four files concern the RCMP's investigation into the conduct of one Behzad Siavashi, and possibly, and to a much lesser extent, the plaintiff in this action. Mr. Siavashi and the plaintiff were living together prior to or during the time period relevant to the investigations. The fifth file, 1999 - 0002744 relates to allegations of an assault on the plaintiff by her husband, Dirk Boon, in or about November 1998 and January 1999. Neither Mr. Siavashi nor Mr. Boon has been served with notice of this application. I understand that the second police file, 1996 - 10966, has been purged from the records of the RCMP and destroyed.
- [5] This action concerns claims by the plaintiff that she was injured in two motor vehicle accidents which occurred August 31, 1993 and February 15, 1996. The Insurance Corporation of British Columbia ("ICBC") has conceded liability in each case.
- [6] In his affidavit, Mr. Cave, solicitor for the applicant, deposes that in her pleadings the plaintiff claims she suffered physical and emotional problems, including:
- (a) Left posterior cerebral artery occlusion (stroke);
 - (b) Depression and anxiety (Dr. Donald Read);
 - (c) Various soft tissue injuries to the neck, back and elsewhere;
 - (d) Inner ear balance problems (Dr. Longridge).
- [7] Mr. Thomas Wagner, who is an officer with the Special Investigation Unit of ICBC, was assigned by Mr. Cave to investigate the RCMP records concerning the files in issue.
- [8] Paragraph 4 of Mr. Cave's affidavit is as follows:

4. THAT I have read the Affidavit of Tom Wagner, sworn the 13th day of April, 2000. It is my opinion as counsel for the Defendants that the information contained in the RCMP files, North Vancouver Detachment, may be relevant to the claims of emotional and physical injury advanced by the Plaintiff in these actions.
- [9] Mr. Wagner had had prior contact with the plaintiff arising out of an ICBC investigation concerning the alleged theft of a 1993 Volkswagen Corrado motor vehicle in 1996. The RCMP's investigations into this matter is the subject matter of File No. 1996 - 0013887. I was told that this vehicle was owned by the plaintiff and Mr. Siavashi. Mr. Wagner deposes that as a result of his investigations it was determined:
- (a) The said vehicle was purchased by the Plaintiff and Siavashi from Clarkdale Motors in February of 1996 and the Plaintiff was a co-signer for the unpaid balance of approximately \$22,300.00 plus finance charges.
 - (b) The cheque written by Siavashi at the time for the purchase of ICBC insurance coverage was a fraudulent cheque drawn on an account with no funds.
 - (c) As a consequence, the Plaintiff and Siavashi were denied coverage on the vehicle and effectively lost the value of the vehicle remaining in the amount of approximately \$27,000.00 including finance charges.
- [10] In this affidavit, Mr. Wagner goes on to depose that he interviewed the plaintiff on May 15, 1996 and states as follows:

Schella described for me, at length, details of the difficulties she had been experiencing with Mr. Siavashi, which included, not only the disappearance of the Corrado vehicle, and the fact that it was effectively uninsured, but further problems with Siavashi which included:

- (a) The co-signing by the Plaintiff of a furniture loan for approximately \$4,000.00 at The Brick furniture store, which furniture was then apparently taken by Siavashi.
- (b) Unauthorized use by Siavashi of cheques drawn on the Plaintiff's bank account.
- (c) Unauthorized purchases by Siavashi on the Plaintiff's Visa credit card.
- (d) Car rentals on the Plaintiff's credit card in excess of \$1,200.00.
- (e) Unauthorized use of the Plaintiff's Visa card for advertising in the "Buy & Sell".
- (f) Co-signing by the Plaintiff of a Cantel digital telephone for Siavashi and the incursion, as a result, of a significant telephone and call charges.

- [11] In paragraph 4 of his affidavit, Mr. Wagner gives us his unsupported opinion that the plaintiff may have participated in a fraud at the time credit was granted by Clarkdale Motors. He gives no background for this belief. Hearsay is admissible on interlocutory matters, providing the deponent discloses the source of the "hearsay" evidence. Mr. Wagner's statement cannot be classified as hearsay evidence, or in fact evidence of any kind. His comments are gratuitous and unsupported and are not considered on this application.
- [12] In his next paragraph, Mr. Wagner deposes that he observed that the plaintiff was "very emotionally upset and anxious by the frauds and other legal problems with Siavashi, including threats apparently made by him, and it was my estimation that she had been exposed at that time to potential losses of thousands of dollars."
- [13] It was subsequent to his investigations concerning the conduct of Siavashi and the alleged theft of the 1993 Volkswagen that Mr. Wagner was contacted by Mr. Cave. Mr. Cave advised he was counsel for ICBC with respect to the two accidents previously referred to. He was told that the plaintiff was advancing claims for personal injuries and for emotional and mental stress caused by the accidents. Mr. Wagner deposes that having earlier dealt with the plaintiff, he was aware she was under great emotional stress caused by financial losses she was undergoing.
- [14] In paragraph 7, Mr. Wagner goes on to depose that, as a result of discussions with Mr. Cave, he conducted investigations and learned that the RCMP, North Vancouver Detachment, had other files concerning the plaintiff. He describes these files, the same files that are the subject of this application, as follows:
- (a) File No. 1996 - 0013887. This file details the alleged auto theft incident in April of 1996, already referred to.
 - (b) File No. 1996 - 10966. This is a file apparently concerning other frauds committed by Siavashi on the Plaintiff.
 - (c) 1996 - 0013520. This file relates to "other criminal code" and apparently involves threats to the Plaintiff by Siavashi.
 - (d) 1997 - 0032753. This file apparently relates to credit card fraud committed by Siavashi on the Plaintiff.
 - (e) 1999 - 002744. This file apparently relates to assaults committed on the Plaintiff by her husband, Dirk Boon, apparently between November, 1998 and January of 1999. . . .
- [15] I will first deal with Files (a), (c) and (d), File (b) having been destroyed by the RCMP. In his affidavit, Mr. Wagner makes it clear that these files are concerned with the criminal, or alleged criminal conduct of Mr. Siavashi. I have concluded that, while the plaintiff's name appears in these files, she was far less the subject of the investigation than the victim of this individual's conduct.

[16] In a later affidavit sworn May 3, 2000, Mr. Wagner, in response to plaintiff's counsel requests he divulge the source of the information contained in paragraph 7 of his affidavit, has this to say:

. . . the information set out in paragraph 7 of my previous Affidavit came from my reading of the files referred to, which are in the office of the RCMP North Vancouver Detachment, and which files are referred to by number in the Affidavit. Simply put, I have read all the files in question.

[17] Mr. Wagner's opinion on the health of the plaintiff is referred to in paragraphs 5 and 6 of his affidavit sworn April 13, 2000. Nowhere in his material does Mr. Wagner depose that any of the first four files contain information concerning the plaintiff's emotional or physical problems. His opinions concerning her emotional difficulties derive solely from an interview with the plaintiff on May 15, 1996, and not from the contents of the first four files the defendants now seek.

[18] Mr. Boswall, counsel for the plaintiff, opposes this application. He notes that neither Siavashi nor Boon have had notice of this application for police files concerning their conduct, even though on May 16, 2000 I directed that these parties be given notice. On a re-reading of Rule 26(11), I am now satisfied that under that rule, notice is not required to be given to Siavashi and Boon. Under the rule, notice is to the person having possession or control of documents "and all other parties". The reference to "parties" cannot include individuals who are the subject of criminal investigations not associated with these accidents. The rule can only apply to parties who are named as such in the proceedings in which the application is made. As a consequence, failure to give notice to Messrs. Siavashi and Boon is not fatal to the application.

[19] The issue raised by plaintiff's counsel concerns the conduct of the RCMP in disclosing personal information to Mr. Wagner without first having given notice to the plaintiff, and presumably, to Siavashi and Boon. Neither the RCMP, the Lieutenant Governor in Council, the Justice Minister, nor the Dominion of Canada are parties to these proceedings. Nor have I heard that they have had notice that there will be raised on this application allegations concerning the bona fides of the actions of the RCMP in allowing a third party government agency, i.e., ICBC, through their agent, the investigator, Mr. Thomas Wagner, to view RCMP files without having first given notice to any person or party who is, or may be, the subject of the investigations, in this case, the plaintiff.

[20] In his affidavit sworn September 1, 2000, Mr. Cave makes reference to a facsimile received from Mr. Wagner, who in turn received it from the RCMP. This document, marked as Exhibit "B" to his affidavit is entitled "OPERATIONAL MANUAL, APPENDIX II-4-6, PAGE 1", followed by the heading "PRIVACY ACT DISCLOSURE - PROVINCIAL GOVERNMENT AGENCIES". It reads:

The Force may choose to disclose personal information, without consent, to the following agencies, and others not listed, providing the exemptions in s. 8(2) Privacy Act apply.

One of the agencies listed is:

I. Insurance Corporation of British Columbia

1. Claims Investigators/Adjusters

[21] Section 8(2) of the Privacy Act applies. Section 8 of the Privacy Act, in part, reads as follows:

8(1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

.....(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

(emphasis added)

[22] I have concluded that s. 8(2)(b) through (m) have no application to the issue before me. It is clear then that the RCMP cannot disclose personal information within its control without the consent, in this case, of the plaintiff, unless the disclosure is "for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;". The purpose for compiling the information would appear to be the possibility of laying charges against Mr. Siavashi arising out of his activities which are the subject matter of each of the first four files. The activities of Mr. Siavashi investigated include the possibility of auto theft, threats made by Siavashi to the plaintiff, credit card fraud committed by Siavashi on the plaintiff, and frauds committed on others, including ICBC.

[23] The prohibition against the release of personal information without the consent of the individual is permissible, providing the purpose for which the information is now sought is "consistent with that purpose", i.e., the original purpose for which the information was obtained or compiled.

[24] It is clear to me that the purposes for which this information was obtained by Mr. Wagner, through the courtesy of the North Vancouver RCMP, was to assist the defendants (ICBC) to defend against those claims advanced by the plaintiff concerning her injuries alleged to have been sustained in two motor vehicle accidents. This application to obtain copies of these same files is again for the narrow purpose of assisting the defendants in preparing their defence to the claims advanced by the plaintiff.

- [25] The applicant does not assert that the information to be found in the RCMP files concerns the two motor vehicle accidents or the issue of damages or injuries suffered by the plaintiff. Those investigations were clearly, on the applicants' own evidence for the purpose of investigating the conduct of Mr. Behzad Siavashi. While Mr. Wagner deposes, in his second affidavit, that he has read each of the RCMP files, nowhere does he say that the files indicate or make reference to her emotional and psychological condition. It is clear that his "opinion" of the plaintiff's emotional difficulties arising out of her relationship with Mr. Siavashi were formed during a personal interview with the plaintiff on May 15, 1996 when she described at length the difficulties she had experienced with Mr. Siavashi, including some financial problems.
- [26] The applicants have not made out a case for production of the first four RCMP files. There is no evidence before me that the use for which they intend to put these files is consistent with the original purpose "for which the information was obtained", which, as stated, was an investigation of the conduct of Mr. Siavashi and not the plaintiff. Nor can it be said the applicant requires the information in order to put it to a "use consistent with that purpose."
- [27] Without consideration of the Privacy Act and the RCMP Disclosure Manual, I would have reached the same conclusion on application of the law concerning production of documents in the possession or control of a third party. The leading case on production of documents is *Cie Financière du Pacifique v. Peruvian Guano Co.* (1882), 11 Q.B.D. 55 at 62-3 (C.A.):
- The courts seem to me to go farther than that and to go as far as the principle which I am about to lay down. It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contain information which may - not which must - either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put in the words "directly or indirectly", because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of enquiry, which may have either of those two consequences.
- [28] The law interprets the right to production of a document very generously. The applicant is not required to prove that the document will assist him, or must assist him directly or indirectly, and only that it may have that result. In this case, the applicants have failed to satisfy me that documents contained in the RCMP files are ones which "may" assist the defendants in defence of the plaintiff's claim, even on the issue of credibility.
- [29] The fifth police file, 1999 - 0002744 relates to the investigation of assaults committed, or alleged to have been committed, on the plaintiff by her husband, Dirk Boon, between November 1998 and January 1999. In his affidavit, Mr. Wagner describes some of the physical assaults and the injuries sustained by the plaintiff. He makes reference to photographs taken of her which evidence these injuries. According to his affidavit, the plaintiff was subject to many assaults by Mr. Boon, including being pushed into the bathtub,

resulting in injuries to her back, and being choked by her husband until she almost passed out. She was also thrown against the wall and punched in the jaw, which apparently caused her teeth to cut into her lip. In his affidavit sworn April 13, 2000, Mr. Cave deposes that some of the injuries the plaintiff alleges include soft tissue injuries to her neck, back and elsewhere, and an inner ear balance problem.

- [30] With respect to this file, and upon considering once again the RCMP Operational Manual, s. 8(2)(a) of the Privacy Act, I am satisfied that the purpose for which the information was obtained in the RCMP file included an investigation of injuries sustained by the plaintiff. The defendants assert a right to advance a strong defence against the plaintiff's claim of personal injury alleged to have been sustained in the motor vehicle accidents, particularly since some of the injuries alleged are not inconsistent with injuries she suffered at the hands of Mr. boon. The use to which this information will be used is consistent with the original purpose of the investigation.
- [31] The defendants are entitled to an order directing the RCMP to deliver to them copies of the documents containing the police file No. 1999 - 0002744. The cost of the reproduction of this file will be borne by the applicants. As success has been divided, albeit not equally, each party is to bear their own costs.

"Master Doolan"

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/00/14/s00-1481.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/schella-v-sabbagh-et-al-2000>

Prepared on 28 October 2026 · Esheria