

CANADA / JUDGMENT

United States v. Federuik

2025 BCSC 2175

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2025 BCSC 2175 United States v. Federuik

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

United States v. Federuik,

2025 BCSC 2175

Date: 20251104

Docket: 35732

Registry: Vancouver

In the Matter of the Extradition Act,

S.C. 1999, c. 18 as amended

and

In the Matter of The Attorney General of Canada

on Behalf of the United States of America

Requesting State/Respondent

and

Thomas Michael Federuik

Person Sought/Applicant

Before: The Honourable Justice Bantourakis

Ruling on Defence Application for Disclosure

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Place and Dates of Application:

Vancouver, B.C.

September 4 and 5, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 4, 2025

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- [1] Thomas Michael Federuik is wanted in the United States on drug related charges. It is alleged that from around April 2017 until late February 2018, Mr. Federuik and another individual, Paul Nicholls, imported and distributed controlled substances into the United States that led to the deaths of two U.S. Naval officers. The United States of America (the "requesting state") has requested Mr. Federuik's extradition.
- [2] A significant amount of the evidence summarized in the record of the case ("ROC") and supplemental record of the case ("Supplemental ROC") was gathered in Canada. Mr. Federuik now applies for disclosure regarding Canadian-gathered evidence that the requesting state relies on in seeking his committal for extradition. He says this disclosure is necessary to properly scrutinize the admissibility of that evidence, in accordance with s. 32(2) of the Extradition Act, S.C. 1999, c. 18. The disclosure Mr. Federuik seeks is in addition to a lengthy information to obtain a Canadian search warrant ("ITO") that has already been provided to him voluntarily.

Background

- 1) The Record of the Case and Supplemental Record of the Case
- [3] The ROC and Supplemental ROC summarize investigations of Mr. Federuik in both the United States and Canada. Mr. Federuik was living in Canada at the time of the offences, which allegedly involved him and his co-accused, Mr. Nicholls, sending packages of controlled substances from Canada to the United States by mail. According to the ROC, the investigations started separately and unbeknownst to the officials in the other jurisdiction. What follows is a summary of some of the salient aspects of the ROC and Supplementary ROC; it is not comprehensive.

The U.S. Investigation

- [4] Insofar as the U.S. investigation is concerned, in October 2017, two U.S. Navy Sailors were found dead in the same Georgia residence, a few days apart. Both were found to have died as the result of the toxic effects of fentanyl analogues and a synthetic opioid.
- [5] In that residence, among other things, investigators found white powdery substances and a photo taken in the residence appears to show a nasal spray bottle on the couch near where one of the sailor's bodies was found. Searches of devices belonging to the deceased sailors suggested one of them had used bitcoin to purchase fentanyl online for delivery to the Georgia residence and the other had conducted internet searches relating to fentanyl, fentanyl nasal spray, and bitcoin.

- [6] Subsequent inquiries revealed that eight international packages had been delivered to the Georgia residence between April and October 2017, four of which originated in Canada. The last two packages delivered before the sailors' deaths were shipped from an address associated with "East Van ECO Tours", 2422a Main Street, Vancouver, British Columbia. A package labeled with a return address for "East Van ECO Tours" was found in the Georgia residence.
- [7] On January 17, 2018, U.S. authorities learned through a database inquiry that the RCMP was conducting an online Dark Web investigation related to shipments of fentanyl from the "East Van ECO Tours" address. On January 28, 2018, U.S. authorities and the RCMP began cooperating in parallel investigations.

The RCMP Investigation

- [8] The RCMP investigation I have just mentioned began in November 2017, when the RCMP's Online Undercover Operations Unit identified "Canada1" as a Dark Web vendor selling fentanyl and other illicit substances to buyers in Canada and other countries.
- [9] From November 15, 2017 to December 7, 2017, RCMP completed four online undercover purchases of oxycodone from Canada1. The packages received as a result of those purchases all had the same return address of 2422a Main Street in Vancouver, and three of the four identified the sender as "East Van ECO Tours" (the sender's name was obscured on the remaining package).
- [10] On December 7, 2017, an official with the Canada Border Services Agency (CBSA) informed the RCMP of a project being undertaken by the CBSA to intercept packages containing illicit substances. In the context of that project, several packages had been seized, including packages shipped by "East Van ECO Tours".
- [11] A few days later, on December 11, 2017, a member of the RCMP submitted a s. 107(5)(a) Customs Act, R.S.C. 1985 c. 1 (2nd Supp.) request to the CBSA. As a result of that request, the RCMP received records and reports concerning Canada1, Mr. Federuik and Mr. Nicholls.
- [12] The records and reports revealed that the CBSA had investigated Mr. Federuik in 2016 and 2017. Among other things, they detailed observations made by a CBSA official of Mr. Federuik mailing packages in November 2017, as well as the seizure and search of what were believed to be some of those packages, which were labeled with a return address for "East Van ECO Tours" and which contained cyclopropyl fentanyl in nasal spray bottles. The reports also addressed the seizure and search of a package from Budapest, Hungary destined for "Bridge City Consulting LLP". The package was found to contain a synthetic opioid powder. The RCMP obtained publicly available documents linking Mr. Federuik to Bridge City Consulting LLP.

- [13] The RCMP conducted numerous surveillance operations involving Mr. Federuik, including in early and late January 2018. On January 28, 2018, as I have mentioned, U.S. authorities and the RCMP began cooperating in parallel investigations.
- [14] On February 14 and 15, 2018, RCMP officers completed three more online undercover purchases from Canada1, by navigating to the vendor page for Canada1 on a Dark Web marketplace and completing purchases for items listed there for sale.
- [15] On February 15, 2018, a member of the RCMP saw Mr. Federuik mailing packages at a post-office in North Vancouver. Canada Post Inspectors intercepted those packages pursuant to s. 41(1)(c) of the Canada Post Corporation Act, R.S.C. 1985, c. C-10 and handed them over to the RCMP for processing. Each was labeled with a sending address of "East Van ECO Tours" at 2422a Main St. in Vancouver. The packages were ultimately found to contain various analogues and derivatives of fentanyl. The packages included packages associated with the three online undercover RCMP purchases, which contained cyclopropyl fentanyl in nasal spray bottles.
- [16] On February 20, 2018, RCMP officers executed a search warrant on Mr. Federuik's residence. Various items were seized, including: powder and liquid later confirmed to be fentanyl or an analogue of fentanyl, packaging and shipping material, and information linked to certain of the RCMP undercover purchases from Canada1. Also seized were Canada Post receipts with tracking numbers matching packages from "East Van ECO Tours" delivered to the Georgia residence where the two U.S. navy sailors had been found dead.
- [17] Mr. Federuik was arrested and gave a statement to police in which it is alleged he acknowledged that his area of the house included areas where police had seized items of note and in which, among other things, he appeared to acknowledge that the moniker Canada1 referred to him.
- 2) The Extradition Process to Date
- [18] Mr. Federuik's extradition was initially sought by way of a process initiated in 2022. However, on February 1, 2024, he was discharged. The basis for that discharge is detailed in the Court of Appeal's recent decision in *United States of America v. Federuik*, 2025 BCCA 306.
- [19] The current process was initiated immediately after that discharge. The Minister of Justice has issued an authority to proceed pursuant to s. 15 of the Extradition Act and the matter has now moved on to the committal phase of the extradition process: see e.g. *M.M. v. United States of America*, 2015 SCC 62 at paras. 22-23. It is in this context that Mr. Federuik brings the present disclosure application.
- [20] In addition to the ROC and Supplementary ROC, Mr. Federuik has received the ITO that underpinned the search warrant that was executed on his home. This additional disclosure regarding Canadian-gathered evidence was provided to him voluntarily, without court order.

Legal Principles Governing Disclosure to Determine the Admissibility of Canadian-gathered Evidence

- [21] Though extradition proceedings are quasi-criminal in nature, they do not import the same procedural requirements and protections as domestic prosecutions. This is because extradition proceedings are fundamentally different in kind. Their nature and purpose are different, as are the interests at stake, and the extradition judge's screening function is comparatively modest: see e.g. *United States of America v. Fraser*, 2017 BCCA 136 at paras. 51-52; see also *M.M.* at paras. 36.
- [22] Among other things, this means that there is no entitlement to Stinchcombe-type disclosure in an extradition hearing: *United States of America v. Dynar*, [1997] 2 SCR 462 at paras. 127-146. Instead, the person sought is generally entitled to receive only the materials relied upon by the requesting state in establishing its prima facie case: see e.g. *Dynar*, at para. 132; *United States v. Meng*, 2019 BCSC 2137 at para. 36. Disclosure in the committal phase is thus typically provided by way of the record of the case produced in accordance with s. 33 of the Extradition Act. The record of the containts contains a summary of the evidence available to the extradition partner for use in the prosecution, and serves as the evidentiary basis for the extradition case itself.
- [23] That said, in specific situations, additional disclosure may be ordered. For example, if the person sought requests disclosure to establish either a Charter breach that is properly justiciable at the extradition hearing or to establish that the requesting state's evidence is manifestly unreliable, disclosure may be ordered where the test in *R. v. Larosa* (2002), 166 C.C.C. (3d) 449 (Ont. C.A.) is met. That test requires, among other things, that there be an air of reality to the allegation in support of which the disclosure request is being made.
- [24] Many of the reported cases deal with this category of disclosure and, accordingly, apply the Larosa test. However, disclosure may also be ordered on a different basis, if the case involves Canadian-gathered evidence. In that situation, disclosure may be ordered where the requesting state's material does not disclose sufficient information to determine if Canadian-gathered evidence is admissible in the extradition hearing. This is the basis upon which Mr. Federuik applies for disclosure here. This basis for disclosure flows from the fact that s. 32 of the Extradition Act establishes different rules for the admission of evidence at an extradition hearing, depending on whether the evidence was gathered in Canada or in another jurisdiction
- [25] Foreign-gathered evidence that falls within a category enumerated in s. 32(1) of the Extradition Act is admissible, regardless of whether it complies with Canadian laws of evidence: *United States v. Lim*, 2023 BCCA 304 at para 47. Evidence gathered in Canada, on the other hand, "must satisfy the rules of evidence under Canadian law in order to be admitted": Extradition Act, s. 32(2).

- [26] Canadian rules respecting the admissibility of evidence include, for example, privilege, the expert opinion rule, and the rule against bad character evidence: *United States of America v. Anekwu*, 2009 SCC 41 at para. 25. Additionally, because those rules also necessarily include the Charter, "s. 32(2) must also be read as contemplating the potential exclusion of otherwise admissible evidence under s. 24(2) [] when it has been obtained in a manner that contravenes the Charter": *Anekwu* at para. 21. This does not mean that the requesting state has the onus to establish that Canadian-gathered evidence is justifiably before the Court. The onus of proving a Charter breach remains on the person who claims it: *Anekwu* at paras. 29.
- [27] The requirement for Canadian-gathered evidence to comply with the rules of evidence does not preclude presentation of such evidence in summary or abridged form as contemplated in s. 33 of the Extradition Act; s. 32(2) and 33 of the Act should be read harmoniously and in a manner that accords with general principles of extradition law: *Anekwu* at paras. 19-20. However, "the record of the case should contain sufficient information to enable the person sought and the extradition judge to ascertain whether any item of evidence has been gathered in Canada and, when that is the case, some information should also be provided on how it was obtained.": *Anekwu* at para. 29 [emphasis added].
- [28] In *Fraser*, the Court of Appeal explained that "[t]his must be read as requiring the requesting state to provide sufficient information to allow the judge to determine whether the evidence is admissible according to Canadian rules of evidence" meaning that "the evidence must comply in substance with Canadian law": *Fraser* at para. 58.
- [29] The extradition judge may, in appropriate cases, order disclosure or the attendance of any witness. "For example, this may be appropriate if it is unclear whether the evidence substantively conforms with the rules of evidence []": *Anekwu* at para. 31; *Fraser* at para. 59.
- [30] The central issue in *Fraser* was "the threshold that triggers a more thorough inquiry into how the Canadian evidence was obtained" such that an order for disclosure will be warranted: *Fraser* at para. 59. The Court concluded that the threshold was "lower than an air of reality and [] no higher than raising a question. Where the person sought shows a reasonable question or possibility that the Canadian-gathered evidence does not conform in substance with the rules of evidence, further evidence is required to determine admissibility under s. 32(2)": *Fraser* at para. 59 [emphasis added].
- [31] In *Fraser*, the case for extradition depended on wiretap evidence that was gathered in Canada pursuant to judicial authorizations. The persons sought applied for disclosure of the information that was before the judge who had issued the wiretap authorizations. They said disclosure was necessary because information in the ROC gave rise to a plausible inference that important wiretaps had been obtained without statutory preconditions having been met and were therefore invalid. The extradition judge dismissed the disclosure application, finding among other things that certain facts that would justify the issuance of the authorizations could be presumed.

- [32] The Court of Appeal found the extradition judge had erred. The persons sought had "argued not from the absence of evidence" but rather based on "facts in the ROC and the arrest warrant affidavit from which it could be plausibly inferred that the police did not yet have enough on Mr. Fraser and had not shown investigative necessity to support the wiretap authorization []": Fraser at para 69.
- [33] In those circumstances, the Court of Appeal held that the reasonable possibility or real question threshold had been met and some form of disclosure ought to have been ordered. "An application for disclosure founded on a complete absence of information may be a fishing expedition, but that is different from a positive assertion of facts", as the Court found it was dealing with in that case: Fraser at para. 69.
- [34] The Court concluded that "[w]here there is a real question about the admissibility of the Canadian-gathered evidence, the correct approach is to allow disclosure of further information to address the question, not to presume what that information might be and dismiss an application for disclosure on the basis of presumed facts.": Fraser at para. 70.
- [35] Where disclosure is required in order to undertake the necessary analysis pursuant to s. 32(2), "[n]o particular form of disclosure is required". Rather, the approach is flexible and allows the extradition judge to "balance the rights of the person sought against the need to ensure expeditious proceedings": Fraser at para. 59. Thus, additional information may be ordered to be produced, among other ways, through disclosure of documents or an invitation to the requesting state that it supplement the ROC with the necessary information: Fraser at paras. 59, 93.

Discussion

- [36] Mr. Federuik seeks extensive disclosure on the basis that the ROC and Supplemental ROC do not contain sufficient information to determine the admissibility of certain elements of the Canadian-gathered evidence in this case. In particular, he seeks notes, reports or communications of various police officers, border services officers and postal inspectors, which he submits will shed light on interceptions, searches and seizures that yielded evidence summarized and relied on in the ROC. He also seeks disclosure of specific categories of documents or information beyond those notes and reports, as set out in his notice of application.
- [37] Certain of Mr. Federuik's requests appeared at times to blur the line between disclosure to permit appropriate scrutiny of Canadian-gathered evidence under s. 32(2) of the Extradition Act, and disclosure in view of alleging a Charter breach, to which the air of reality test continues to apply: Anekwu at para. 29. However, Mr. Federuik's submissions were predicated on s. 32(2). Accordingly, I have approached the application on that basis. The question then is whether the requesting state has provided information sufficient to determine the admissibility of the Canadian-gathered evidence, on the principles discussed in Anekwu and Fraser.

[38] Based on Mr. Federuik's submissions at the hearing of the application, I understand that he is no longer asking the Court to separately address the disclosure sought in paragraphs one and ten of the notice of application; paragraph one remains relevant only insofar as it is engaged by the other more specific requests I will now address.

1) Request for disclosure regarding various interceptions, searches and seizures

[39] Mr. Federuik seeks a variety of disclosure regarding interceptions, searches and seizures described in the ROC, the results of which form part of the requesting state's extradition case. Under this rubric, I address Mr. Federuik's submissions that disclosure should be ordered because the ROC and Supplemental ROC do not contain sufficient information to determine whether the following Canadian-gathered evidence is admissible under s. 32(2) of the Extradition Act:

- a. evidence of the RCMP undercover purchases detailed in the ROC: ROC, paras. 21-34, 48-53 and 59-60;
- b. evidence obtained by the RCMP from the CBSA pursuant to s. 107(5)(a) of the Customs Act including evidence obtained by way of CBSA searches and seizures in the course of the CBSA's own investigation: ROC, paras. 36, 38 and 39;
- c. evidence obtained by the RCMP from a Canada Post Inspector pursuant to requests under the Privacy Act, R.S.C. 1985 c. P-21: ROC, paras. 44, 54; and
- d. evidence obtained after Canada Post Inspectors, relying on s. 41(1)(c) of the Canada Post Corporation Act, intercepted packages Mr. Federuik dropped off at a post office: ROC, para. 55.

Evidence of the Undercover Purchases

[40] Regarding the RCMP undercover purchases, Mr. Federuik submits that not every undercover purchase is a lawful purchase and that more information is required to shed light on the lawfulness of the RCMP undercover purchases outlined in the ROC.

[41] The ROC, however, provides relatively detailed information about the RCMP undercover purchases. It addresses how Canada1 was identified as a potential vendor of controlled substances, including through comparison of various Dark Web merchant profiles, the use of online marketplaces, and the manner in which undercover officers communicated with Canada1. It outlines substances offered for sale and agreed to be purchased, including amount, cost and payment method, the dates upon which purchases were made, shipping information, confirmation of receipt and information concerning the contents of the packages in question.

[42] To borrow the language in Fraser, Mr. Federuik's submission is not grounded in any real question or plausible inference arising from the ROC, but instead on the general proposition that undercover purchases may not always be lawful. In my view, the ROC provides

information permitting scrutiny of this Canadian-gathered evidence pursuant to s. 32(2) and as required by Anekwu and Fraser. I would also add here that Mr. Federuik has already received additional disclosure regarding these undercover purchases, as detailed in the ITO that was voluntarily provided to him.

Evidence Obtained by the RCMP from the CBSA

- [43] In my view, the situation is somewhat more complicated insofar as the evidence obtained by the RCMP from the CBSA is concerned.
- [44] To begin, paragraph 39 of the ROC references the seizure by the CBSA of a package from Hungary destined for Bridge City Consulting LLP. The ROC is silent on the basis for that seizure, whether under statute or common law, or its circumstances. As Mr. Federuik notes, a warrantless seizure is presumptively unlawful. The seizure may well have been authorized by law, or it may not have been. The ROC as it currently stands does not permit the Court to make that assessment. That being so, further information must be provided: Fraser at para. 59.
- [45] I have reached a similar conclusion regarding paragraph 38 of the ROC. That paragraph describes a seizure, pursuant to s. 110 of the Customs Act, of packages apparently mailed by Mr. Federuik and later found to contain fentanyl. Section 110 of the Customs Act confers a broad seizure power on CBSA officials where they have reasonable grounds to believe that the Customs Act or the associated regulations have been contravened.
- [46] Unlike paragraph 39, paragraph 38 of the ROC identifies the statutory basis for the warrantless search and seizure to a degree, though I note it does not specify which particular subsection of s. 110 was relied on. However, as Mr. Federuik points out, the ROC provides little information about what may have been known or believed prior to that seizure in order to inform the grounds under s. 110, other than that there had been an investigation of Mr. Federuik in 2016 and 2017. The seizure from Hungary had happened by then, but the ROC is silent on whether the CBSA had linked it to Mr. Federuik by that point.
- [47] Looking at paragraph 38 in context, I have concluded I would have to presume certain facts and information in order to determine the admissibility of the evidence it summarizes: Fraser at para. 70. In the circumstances, and keeping in mind that Fraser's real or reasonable question standard is not an exacting one, I have concluded that further information must be provided in order to allow scrutiny of the admissibility of this evidence as required by s. 32(2) of the Extradition Act and Anekwu.
- [48] Mr. Federuik says the notes and reports of officers involved in these searches and seizures should be disclosed and additionally that the s. 107(5)(a) Customs Act request and related reports through which the RCMP obtained this information should be ordered disclosed. In his submission the ROC does not set out facts sufficient for the Court to determine whether the requirements of that statutory provision were met either.

- [49] Section 107(5)(a) of the Customs Act allows an official to provide customs information to a peace officer having jurisdiction to investigate an alleged offence, "if that official believes on reasonable grounds that the information relates to the alleged offence and will be used in the investigation or prosecution of the alleged offence, solely for those purposes."
- [50] While the ROC does not contain an express statement of the grounds that underpinned the relevant CBSA official's decision to accede to the RCMP's s. 107(5)(a) Customs Act request, it does not suffer from the same deficiencies I have identified in relation to the s. 110 search in paragraph 38 of the ROC. The ROC contains information regarding matters known to the CBSA by the time of the s. 107(5)(a) request, including: the CBSA's investigation of Mr. Federuik over more than a year; that the CBSA had linked Mr. Federuik to "East Van ECO Tours"; and, among other things, that by the time of the RCMP's request the CBSA had conducted surveillance on Mr. Federuik and seized packages believed to have been sent by him which were found to contain fentanyl. Section 107(5)(a) requires that the information be transmitted to a peace officer with jurisdiction to investigate an alleged offence and that can also be assessed from the ROC as it stands.
- [51] Thus, I agree with the Attorney General that the ROC contains information permitting scrutiny of whether s. 107(5)(a) was properly engaged in this case, subject to my comments above regarding paragraphs 38 and 39 of the ROC. In so saying, I should not be taken as expressing any view as to admissibility. The only question before me at this time is whether there is sufficient information to determine admissibility in accordance with s. 32(2) and Anekwu.
- [52] The question then becomes what form of additional information or disclosure should be ordered to address the deficiencies in paragraphs 38 and 39 of the ROC. I am not persuaded the extensive disclosure Mr. Federuik seeks is necessary or warranted to ensure there is sufficient information to determine if the Canadian-gathered evidence referred to in paragraphs 38 and 39 of the ROC is admissible under s. 32(2) of the Act.
- [53] In the circumstances, the Attorney General is to obtain and disclose to Mr. Federuik any reports regarding the interceptions, searches and seizures described at paragraphs 38 and 39 of the ROC that were transmitted by the CBSA to the RCMP in response to the Customs Act s. 107(5)(a) request referred to at paragraph 36 of the ROC.
- [54] Additionally, the requesting state is invited to supplement the ROC with a summary of the information in support of the admissibility of the Canadian-gathered evidence in paragraphs 38 and 39 of the ROC, taking the Court's reasons in respect of those paragraphs of the ROC into account.

Evidence Obtained by the RCMP Pursuant To a Privacy Act Request

- [55] Mr. Federuik also seeks disclosure with regard to the Privacy Act requests referred to at paragraphs 44 and 54 of the ROC. Those paragraphs read:

Cst. Coon will further testify that although the packages sent on January 29, 2018 were not seized by RCMP, Cst. Coon made a Privacy Act request to Canada Post Inspector Amanda Yeung (CPI. Yeung), and received information with identified 14 packages sent by NICHOLLS. Several of these packages were associated to a sender identified as "4 Corners Services." Publicly available business registry documents for "4 Corners Services" identified FEDERUIK as the sole proprietor of that business, and listed NICHOLLS as the director.

[]

Cst. Coon is further expected to testify that, on February 18, 2018, he sent a privacy act request to CPI Yeung requesting information regarding packages mailed by FEDERUIK. On February 19, 2018, CPI Yeung provided information that twenty-eight packages were sent on February 15, 2018, with seventeen of those packages destined to the United States.

[56] Mr. Federuik points out, among other things, that the ROC does not specify which provision of the Privacy Act was relied on and does not provide a basis for assessing whether the disclosure accorded with statute. The Attorney General acknowledges this to a degree, but notes that the RCMP received only what it characterizes as limited and general information, such that the Privacy Act requests can be understood as simple requests for general information.

[57] I agree with Mr. Federuik that proceeding in the manner impressed upon me by the Attorney General would require the Court to presume facts contrary to the Court of Appeal's guidance in Fraser. To address this issue, the requesting state is invited to supplement the ROC with a summary that specifies which section of the Privacy Act the requests were made under, and the nature of the requests.

Evidence Obtained by the RCMP Following a Canada Post Interception

[58] The final interception, search and seizure with respect to which Mr. Federuik seeks additional disclosure under this heading is the one described at paragraph 55 of the ROC:

RCMP Cpl. Greg Miller (Cst. Miller) is expected to testify that, on February 15, 2018, the packages dropped off by FEDERUIK at Lynnmore Post Office were intercepted by CPI Yeung and CPI Grant Pearson (CPI Pearson) and provided to Cpl. Miller (Cpl. Miller) for processing. Cpl. Miller and Cst. Dan Hozjan (Cst. Hozjan) examined the packages. The same sending label was found on all 28 packages, showing a cartoon Orca whale and a wave in two shades of blue with the sending name "East Van Eco Tours" at 2422a Main St, Vancouver B.C. V3T3E2.

[59] The ensuing paragraphs in the ROC summarize the contents of the packages that were sent for testing and found to contain analogues of fentanyl.

- [60] Mr. Federuik's submissions on this aspect of the ROC focused on the fact that the ROC does not specify the statutory or common law authority relied upon for the Canada Post Inspector's interception and seizure of these packages. He seeks disclosure of that statutory or common law authority and any grounds or beliefs relied upon as justification, including officer notes. As I mentioned earlier, he has relied only on s. 32(2) as a basis for seeking this disclosure at this time.
- [61] The Supplemental ROC, clarifies that the packages were intercepted pursuant to s. 41(1)(c) of the Canada Post Corporation Act. At the relevant time, that section allowed the Corporation to open any mail, other than a letter, to determine in any particular case whether it was non-mailable matter. Since then, a decision of the Supreme Court of Newfoundland and Labrador (*R. v. Gorman*, 2022 NLSC 3) has found that provision unconstitutional and, in another case, the Provincial Court of British Columbia proceeded on that basis as well (*R. v. Norgan*, 2024 BCPC 187). The statute itself has since been amended to include a reasonable grounds requirement.
- [62] The legislation as it existed at the time provided a very broad power seizure without a reasonable grounds requirement. The ROC and Supplemental ROC provide information as to the statutory basis and certain circumstances of the seizure relevant to the engagement of that statutory provision as it was at the time. In the circumstances, and on the submissions made, I am satisfied that the ROC and Supplemental ROC provide information about how this Canadian-gathered evidence was obtained that is sufficient to permit scrutiny in accordance with *Anekwu*; Mr. Federuik has not raised a real question or possibility to the contrary. However, I emphasize again that nothing I say should be taken as expressing a view on the ultimate admissibility of this evidence. That is a question for another day.

2) Request for disclosure of name and overview of CBSA project

- [63] Next, Mr. Federuik requests disclosure of the name and an overview of the CBSA "project" referred to in paragraph 35 of the ROC. That paragraph reads:

CBSA IO Dennis MacDonald (IO MacDonald) is expected to testify to the following: He is a Canada Border Services Agency (CBSA) Intelligence Officer (IO). On December 7, 2017, he informed RCMP FSOC of a project being undertaken by CBSA to intercept packages containing illicit substances and to identify senders, receivers, and patterns. Several packages had been seized from the greater Vancouver area, including packages shipped by "East Van ECO tours."

- [64] The paragraphs that follow deal with the s. 107(5)(a) of the Customs Act request and CBSA seizures discussed a moment ago.

- [65] Mr. Federuik submitted at the hearing of this application that disclosure regarding the CBSA project is necessary because it will at least informally illustrate "who was calling the shots", alluding to what he says is the possibility that the RCMP might have been acting at the behest of the CBSA, and acting without lawful authority. He does not point to any aspect of the ROC that would tend to raise a question about whether this is what occurred.

- [66] Mr. Federuik's submission in this regard was not detailed and the basis upon which disclosure of this information might be ordered remains unclear in my view. The query as to "who was calling the shots", and notion that the RCMP might have been acting at the behest of the CBSA, is not only speculative, but inconsistent with the broader description of the RCMP investigation as contained in the ROC.
- [67] To employ the language used in *Fraser*, Mr. Federuik has not directed to the Court to any "facts [] from which it could be plausibly inferred" that the RCMP was improperly acting at the behest of the CBSA, nor has Mr. Federuik raised a real question regarding the admissibility of Canadian-gathered evidence that would warrant granting an order for disclosure as requested in paragraph 3 of the Notice of Application.
- 3) Request for disclosure regarding search warrant
- [68] In paragraph 6 of his Notice of Application, Mr. Federuik seeks disclosure of documents pertaining to the search warrant that was obtained for his residence. Though he initially sought disclosure of the warrant and ITO, those have since been provided to him voluntarily. All that remains in issue is his request for a copy of the report to a justice and any Criminal Code, R.S.C., 1985, c. C-46, s. 490 applications that were made.
- [69] Mr. Federuik points to caselaw dealing with s. 490 of the Criminal Code and notes that non-compliance with that provision has sometimes resulted in the inadmissibility of seized evidence: see e.g. *R. v. Gill*, 2024 BCCA 63. His counsel suggests that he is not personally aware of any s. 490 applications being made in respect of items seized during the search warrant execution at Mr. Federuik's residence, but no evidence was submitted in support of this application.
- [70] The parties' submissions on this point were cursory. On the submissions that have been made, this is an area in which it seems Mr. Federuik's request, though framed in terms of s. 32(2), may effectively be seeking disclosure in view of alleging a Charter breach, to which the *Larosa* test continues to apply.
- [71] Considering the sparsity of the record and submissions on this issue, I am not persuaded that the sought-after disclosure should be ordered at this time. Should this remain an issue, the parties are at liberty to bring the matter back before me, with more developed submissions.
- 4) Request for disclosure of Mr. Federuik's police statement
- [72] In paragraph 7 of his Notice of Application, Mr. Federuik seeks disclosure of a transcript and any recording of his police statement, which is referred to at paragraphs 79 and 80 of the ROC. As I mentioned earlier, upon his arrest in February 2018, Mr. Federuik gave a statement to police in which he made certain comments the requesting state now relies upon in the ROC.

- [73] Mr. Federuik says this disclosure is necessary in order to determine the admissibility of the portions of that statement summarized in the ROC, specifically in relation to whether (1) the statement was voluntary; and (2) whether he was duly warned and afforded his right to counsel in compliance with the Charter.
- [74] I am not persuaded that the latter provides a basis for additional disclosure considering paragraph 2 of the Supplementary ROC, which states:
- RCMP Cst. Clarire Rasmussen (Cst. Rasmussen) is expected to testify that, on February 20, 2018, immediately following FEDERUIK's arrest mentioned at paragraph 68 of the ROC, she provided the police caution to FEDERUIK. At that time FEDERUIK was read the arrest script and informed of the reason for his arrest and right to counsel. FEDERUIK requested an opportunity to speak with a lawyer and was transported to West Vancouver Police Station. There, Cst. Rasmussen contacted Legal Aid and placed FEDERUIK in a private room to speak with counsel. Following this consultation, FEDERUIK was transported to Surrey RCMP cells.
- [75] However, the voluntariness issue is different. Under the common law confessions rule, the Crown must prove beyond a reasonable doubt the voluntariness of a statement given to a person in authority in order for it to be admissible under Canadian rules of evidence: *R. v. Oickle*, 2000 SCC 38 at paras. 30-31, 68. That is, a statement captured by the rule is presumptively inadmissible unless voluntariness is proven beyond a reasonable doubt.
- [76] I agree with Mr. Federuik that the ROC does not include information sufficient to address the admissibility of the summarized portions of Mr. Federuik's police statement on this basis. In the circumstances, there will be an order for disclosure as requested in paragraph 7 of the Notice of Application.
- 5) Request for disclosure of whether any US investigators were in Canada as part of the investigation
- [77] In paragraph 8 of the Notice of Application, Mr. Federuik seeks disclosure of whether any U.S. Investigators were in Canada as part of the investigation referred to in the ROC and, if so, disclosure of details as to who, when and the investigative steps they participated in.
- [78] There is nothing in the ROC or Supplemental ROC that speaks to the presence of U.S. investigators in Canada. Mr. Federuik submitted among other things that a reasonable question arises in this regard because the investigation commenced in the United States and then the bulk of it moved to Canada.
- [79] However, this characterization is not consistent with the ROC, which speaks to investigations that commenced independently in the two countries, and to cooperation in parallel investigations at a later stage. The proposed basis for disclosure is speculative; Mr. Federuik has not raised a real question regarding the admissibility of evidence on this basis that would call for this category of disclosure.

- 6) Request for disclosure of whether there were any other judicial authorizations for any other search techniques
- [80] I have reached a similar conclusion with regard to the disclosure sought in paragraph 9 of the of the Notice Application, which seeks information on whether there were "any other judicial authorizations for any other search techniques" and related details and documentation. During submissions, Mr. Federuik mentioned production orders and general warrants, in general terms. He noted that police might seek to obtain a general warrant to permit covert opening of mail, for example. He suggested that if police had applied for these kinds of authorizations and been denied, and then nevertheless gone ahead with related searches or seizures, this would be problematic from an admissibility perspective.
- [81] It is useful to recall at this point that an extradition proceeding is not intended as a vehicle for disclosure, and that the jurisprudence canvassed above does not contemplate disclosure at large or based on ungrounded speculation.
- [82] In Fraser, the Court concluded that the appellants had demonstrated "a realistic possibility" that evidence obtained pursuant to judicially authorized wiretaps did not comply in substance with Canadian law, by showing "a reasonable inference that the authorization was inadequately supported": Fraser at para. 66. They had "argued not from the absence of evidence, but on the facts of the ROC and the arrest warrant affidavit, from which it could be plausibly inferred that the police did not yet have enough on Mr. Fraser and had not shown investigative necessity to support the wiretap authorization when it was issued": Fraser at paras. 66, 69. The details contained in the ROC were "sketchy", which was equally consistent with the reasonable possibility that the police were at an early stage of the investigation and did not have much information: Fraser at para. 66.
- [83] Mr. Federuik's request for disclosure regarding other judicial authorizations does not meet this standard and I am not satisfied that he has raised a real question as to the admissibility of Canadian-gathered evidence justifying such an order.

Conclusion

- [84] Mr. Federuik's application for disclosure predicated on s. 32(2) of the Extradition Act is granted only to the extent I have indicated above. If there are any issues arising, the parties may make arrangements through Supreme Court Scheduling to appear back before me.

"Bantourakis J."

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