

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1075459 B.C. Ltd v. Prince George (City)*,  
2025 BCSC 932

Date: 20250501  
Docket: L2463281  
Registry: Prince George

Between:

**1075459 B.C. Ltd. and Encore Promotions Inc.**

Plaintiffs

And

**City of Prince George and John Doe,  
Four Star Communications Inc.  
and Commonwealth Campus Corporation**

Defendants

Before: The Honourable Justice Kirchner

## Oral Reasons for Judgment

In Chambers

Counsel for Plaintiff:

R.J. Stewart, K.C.

Counsel for Defendant, City of Prince  
George:

A. Staunton

Counsel for Defendant, Four Star  
Communications Inc.:

J. Bank  
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Place and Date of Hearing:

Prince George, B.C.  
April 29, 2025

Place and Date of Judgment:

Prince George, B.C.  
May 1, 2025

[1] **THE COURT:** The plaintiffs apply for an order compelling the defendant, Four Star Communications Inc., to produce a server containing recorded telephone conversations, subject to some conditions that include undertakings of confidentiality and non-disclosure aimed at protecting Four Star's privacy interests. The plaintiffs are seeking to locate files relating to a single phone call made to the defendant City of Prince George's 311 line on August 21, 2023. Four Star, supported by Prince George, opposes the application, arguing it has produced the records that the plaintiffs seek and the plaintiffs have not otherwise met the high bar for an order that a hard drive be produced for expert analysis.

[2] For the reasons that follow, I would dismiss the plaintiffs' application.

### **Background**

[3] By way of background, on August 22, 2023, a vacant building located at 422 Dominion Street in Prince George was destroyed by an explosion, apparently related to a natural gas leak at the building. The explosion damaged the neighbouring property in which the plaintiffs operated a business, causing an ongoing disruption to that business pending repairs.

[4] At 6:20 a.m. on August 21, 2023, the day before the explosion, Victoria McGivern, who works for the Parks Department at the City of Prince George as a gardener and a labourer, called the City's 311 phone line exchange (the "6:20 a.m. phone call"). Outside of regular business hours, including at 6:20 a.m., that 311 exchange is operated by the Four Star through its subsidiary, Replay Message Centre. Ms. McGivern has deposed that the purpose of her call was to report a strong smell of natural gas and a hissing sound that appeared to be a gas leak at the Dominion Street property. She states in her affidavit that she reported this to the call operator and understood that the message would be passed on to the appropriate person at the City.

[5] The next day, Ms. McGivern was near the Dominion Street building in the course of her work and noted the very strong smell of natural gas and the hissing sound. She states in her affidavit that she was upset that the City had apparently not

dealt with her report from the previous day, and so this time she called Fortis BC to report the gas leak. The explosion happened while she was on the phone.

[6] The plaintiffs have sued Four Star, among others, for losses arising from the explosion and the resulting disruption to their business. As against Four Star, the plaintiffs allege that its call operator was negligent in failing to relay Ms. McGivern's report of the gas leak to the appropriate authority on August 21, 2023. In response, Four Star pleads that it received no call about a gas leak on that day and that the 6:20 a.m. phone call from Ms. McGivern that day was on a completely different subject-matter.

[7] On June 24, 2024, on the plaintiffs' application, Justice McDonald ordered that Four Star produce a digital copy of any recorded messages made on August 21, 2023 by Ms. McGivern at 6:20 a.m. using the 311 exchange. Two employees of Four Star, Kristine Bateman, who is the quality control officer, and Fred Orton, who is an accounting technician, were tasked with searching Four Star's servers for the recording of the call.

[8] After some difficulty in restarting a decommissioned server, Ms. Bateman and Mr. Orton were able to locate the folder containing 311 calls. By manually searching through the folders by date, they located a single phone call to the 311 line on August 21, 2023 at 6:20 a.m. They downloaded and listened to the .wav files that captured this call. In recording on those files:

- a) the caller identified herself as Ms. McGivern, an employee of the City of Prince George Parks Department.
- b) The caller's phone number was identified, that being Ms. McGivern's number.
- c) The caller wished to be dispatched to the City's Bylaw Department as she reported there were fires and "an awfully rowdy bunch" at the City's Civic Plaza.

- d) The call centre agent offered to put in a request to the City's Bylaw Department as that department was off shift until 8:30 that morning. The caller indicated she was aware that bylaw staff are off shift and noted that usually there is a radio in their truck. The call centre agent agreed to send an email to the Bylaw Department, to which the caller responded, "that would be ideal".
- e) The call concludes with no discussion of a gas leak.

[9] Out of an abundance of caution, Ms. Bateman and Mr. Orton also searched the electronic folders for the previous and subsequent days from August 19 through to 23, 2023. From this they learned that:

- a) the only call from Ms. McGivern in that time period was the one they located from 6:20 a.m. on August 21;
- b) this was the only call from anyone to the 311 line on August 21; and
- c) there were no other calls in this time range where a caller reported a gas leak.

[10] Pursuant to Justice McDonald's order, Mr. Orton sent the .wav files by email to counsel for the plaintiffs on August 29, 2024. Shortly after that, on the same day, counsel replied stating: "These files do not match the August 21, 2023 two-minute call made to the 311 exchange at 6:20 a.m. Please explain." Mr. Orton replied the following day stating: "These are the only files we were able to recover from that date that deal with the City of P.G."

[11] Ms. McGivern listened to the audio recording and acknowledges that it appears to be a recording of a call that she made to the 311 line, but she states it is not the call she made on August 21, 2023. She said the call about the people at the Civic Plaza was made on an earlier date.

[12] The plaintiffs wish to have Four Star's server professionally searched by a certified digital forensic examiner to look for any files, including deleted files,

connected with Ms. McGivern's 6:20 a.m. Phone Call. They argue that given that the server had been decommissioned and that files had potentially, but innocently, been deleted from the server, it is necessary to have a professional examiner assess the server to see if files relating to the call that Ms. McGivern recalls making can be recovered or otherwise located.

[13] Four Star opposes the application. It argues it has produced the files of the 6:20 a.m. phone call and states these files show Ms. McGivern has not correctly remembered that call. They argue the server contains massive amounts of information that is completely unrelated to this case, including calls made to other Four Star clients, which include law firms. Thus, it argues, it is likely that some of this information may be highly sensitive for those other clients. Four Star further argues that the plaintiffs have not established a legal basis for producing the server to search for files relating to this single 6:20 a.m. phone call.

### **Legal Principles**

[14] For the purposes of document production under the *Supreme Court Civil Rules*, the server of a hard drive may be regarded as a document itself or as a receptacle for documents like an electronic filing cabinet that contains many thousands of documents, some of which might be producible in a lawsuit. Whether it is considered as a document itself or an electronic filing cabinet depends on the nature of the case and the relevance of the server or the hard drive to an issue in the litigation: *Chadwick v. Canada (Attorney General)*, 2008 BCSC 851 at paras. 17-21.

[15] Thus, for example, in *Bishop (litigation Guardian of) v. Minichiello*, 2009 BCSC 358, the defendant in a personal injury action sought production of a computer hard drive for the purpose of tracking the plaintiff's digital footprint using Facebook between the hours of 11:00 p.m. and 5:00 a.m. The defendant's theory was that the plaintiff's fatigue stemmed not from accident injuries but from a lack of sleep due to late-night Facebook use. The content of any Facebook use was not relevant to the inquiry and nor was the content of any electronic documents the plaintiff may have created. The relevance was in documenting the hours that the

plaintiff was on Facebook, which could only be done by analyzing the hard drive. Thus, the hard drive was itself regarded as a relevant document and the court ordered that it be produced on certain terms.

[16] By contrast, in *Desgagne v. Yuen*, 2006 BCSC 955, another personal injury case, a hard drive was regarded as a filing cabinet rather than a document. There, the defendants sought production of the plaintiff's hard drive because it believed it may contain letters the plaintiff wrote to friends describing her condition. The plaintiff's counsel had examined the hard drive and produced documents from it found to be relevant. Evidently, the defendant was not satisfied with this and, as Justice Myers put it, wanted to "search through the hard drive, as if it were a filing cabinet, and ... make their own assessment as to what is relevant and what is not". Justice Myers denied the application stating at para. 20:

... A request to be able to search a party's filing cabinets in the hopes that there might be found a document in which an admission against interest is made would clearly not be allowed. Its digital equivalent should also not be allowed.

[17] In *Sonepar Canada Inc. v. Thompson*, 2016 BCSC 1195, Justice Pearlman summarized the law on what must be established in seeking an order for production of a hard drive when it is categorized as a digital filing cabinet rather than a document itself. His summary at para. 46 includes the following:

In exceptional circumstances where there is evidence that a party is intentionally deleting relevant and material information, or is otherwise deliberately thwarting the discovery process, the court may order the production of the entire hard drive for inspection by an expert. There must be strong evidence, rather than mere speculation, that one party is not disclosing or is deleting relevant information in order to justify such an order: [...].

On an application for production of electronic records from a computer hard drive, the court must balance the objective of proper disclosure with the targeted party's privacy rights: [...]

To that, I would add that there may be circumstances where it will be appropriate to depart from the general rule, for example, where there is evidence that the producing party has deliberately destroyed records or is likely to interfere with or thwart the production of relevant information.

[18] In *Chadwick*, however, Myers J. observed that the filing cabinet analogy only goes so far. In particular, where document production requires the search for and recovery of files that have been deleted from a hard drive, expert assistance is typically required. In that case it was established that highly relevant documents had been deleted from a hard drive in the plaintiffs' possession. Counsel for the plaintiffs retained an expert to search the hard drive and recover relevant deleted documents, which were then produced. However, counsel refused to provide the technical information on how the hard drive had been searched. Because of that Myers J. ordered that the hard drive be produced to an independent expert for analysis. He stated at para. 24:

The real issue here is that the defendants cannot verify the quality or the thoroughness of the hard drive search because Mr. Camp has not provided them with the necessary information. Mr. Camp can only rely on the advice of Mr. Kojima that the hard drive analysis was done using the appropriate methodology; he did not presume to have the technical expertise to effectively supervise that exercise. Therefore, the defendants cannot rely on the obligation of counsel to ensure that all relevant documents are listed. The defendants are left with having to accept as a matter of blind faith that Mr. Kojima retrieved all relevant documents. That takes on a particular edge in this case because the former owner of the hard drive, Mr. Honour, is deceased. This is not a case where the owner of the hard drive can be examined for discovery as to the location of documents or discrepancies in the document list.

### **Analysis**

[19] In the present case, unlike *Chadwick*, Four Star has provided a detailed explanation of the methodology used to search the hard drives. Both Ms. Bateman and Mr. Orton have sworn affidavits describing their methodology. Significant in their descriptions is that they searched the electronic folder by day and found the files containing the 6:20 a.m. phone call. Ms. Bateman explains this in her affidavit as follows:

9. Fred and I were able to restart the Recordings Server after five to seven attempts. Once it was restarted, we were able to find the recordings for the McGivern Phone Call by manually searching the Recordings Server. We first went to the folder marked by the City's unique client number (3236). Within that folder, we searched the folders by day, and then searched the recordings for their unique time stamps indicating when each .wav recording was created.

9. We found a call to the City's 311 line, which came to Replay on August 21, 2023 at 6:20 a.m.

[Emphasis added]

That is the file that Four Star then produced.

[20] There is no question of Ms. McGivern potentially making any other phone calls to 311 that day. Her evidence is that she made a single call to 311 at 6:20 a.m. on August 21, 2023. She has produced a screenshot of her cellphone call records showing a call to 311 at 6:20 a.m. on August 21, 2023, and that record shows no other 311 calls that day. The files located and produced by Ms. Bateman and Mr. Orton on Four Star's behalf is the record of that call. It may well be that files have been deleted from the server but this takes nothing away from the fact that files relating to the 6:20 a.m. phone call were found and produced. There is no need to have a technician to try to recover deleted files relating to the 6:20 a.m. phone call because those files were found. This clearly distinguishes this case from *Chadwick*.

[21] The files that were found and produced show that Ms. McGivern is mistaken in her recollection of the content of the 6:20 a.m. call.

[22] This conclusion is supported by an internal note of the 6:20 a.m. phone call that Four Star was able to locate and produce. This note was taken by Desmond Galandie, who was employed by Replay Message Centre (Four Star's subsidiary) as a call operator. He Ms. McGivern's 6:20 a.m. phone call. Mr. Galandie has no independent recollection of that call, but in his affidavit he spoke to his practice in taking such calls and verified that he made the internal note of the call that has now been produced.

[23] He explains his practice as follows in his affidavit:

7. When a 3-11 call comes into the City outside of regular hours, it is directed to Replay. At Replay, the call agent's screen will indicate the call is coming into the City's 3-11 line. The call can be answered from one of three available phone lines.

8. Upon answering a call, I first inquire what the caller's concern is, to determine which of the City's departments the call relates to. [...] Each City

department has a separate sub-account for Replay to dispatch calls and messages to.

9. After the caller indicates their issue, determining which City department should be advised, I will switch to the appropriate City sub-account.

10. Once in the correct City sub-account, I take internal notes from the call, to record: (i) the caller's name; (ii) the caller's phone number; (iii) the location that the call relates to; and (iv) the reason for the call (the "Internal Notes").

11. I save the Internal Notes to Replay's system and review them for grammatical errors. I then email them to the appropriate City email address to inform them of the caller's issue. From 11:00 pm to 7:00 am, messages go to the City's main 311 email address.

12. The City provides Replay with a list of City emails to send Internal Notes to. At any given time these City email addresses are determined solely by the City and communicated to Replay.

13. Once I email the Internal Notes to the appropriate City email address, that is the extent of my involvement. The Internal Notes are saved onto Replay's system, but I am unsure for how long.

[24] Ms. Bateman and Mr. Orton each depose that they were able to locate the internal notes for August 21 on the server and that note is exhibited in Mr. Galandie's affidavit who verifies that it is his internal note from this call. It is in an email format, dated Monday, August 21, 2023 at 6:23 a.m., and sent to 311. The subject line is "BYLAWS - LOGGED CN". The message itself has what appears to be an automatically generated time and date stamp and contains other information entered by Mr. Galandie. It reads:

TIME/DATE STAMP:08-21-2023 06:20A DEZ

CALLERS NAME: VICTORIA MCGIBBON

PHONE: 250-649-[\*\*\*\*]

LOCATION: CIVIC PLAZA

REASON FOR CALL: SHE WORKS IN THE PARKS DIVISION FOR THE CITY, SAYS THERE IS A FEW DIFFERENT FIRES GOING AS WELL THE PEOPLE THERE ARE "A ROWDY BUNCH THIS MORNING" HOPING YOU CAN CALL HER BACK ASAP. THANKS.

[25] This internal note, and the date and timestamp it contains, is overwhelming evidence to support the conclusion that the .wav files produced by Four Star are the correct recordings of Ms. McGivern's 6:20 a.m. phone call.

[26] I am satisfied from this that Four Star has produced the electronic files for the 6:20 a.m. phone call, as ordered by Justice McDonald, and that Ms. McGivern's recollection of the contents of that call is incorrect. There is nothing more to be searched on this server and thus no reason to order that it be produced.

[27] I have no doubt that Ms. McGivern is sincere in giving her evidence and in her recollection of the call, but I find that recollection is mistaken. I reach that conclusion not by preferring the affidavit of one person over another, but rather from Ms. Bateman and Mr. Orton's detailed descriptions of their methodology in searching the server, the content of the files they found, and the corroborating evidence of Mr. Galandie's contemporaneous internal note of that call.

[28] A factual dispute arising from that affidavit evidence can be resolved with reference to other evidence, such as documents or undisputed facts: *Cory v. Cory*, 2016 BCCA 409, para. 10. That is what I have done here. But even if I am wrong in that conclusion, I find the plaintiffs have quite clearly not met the evidentiary bar described in *Sonepar* or *Chadwick* to obtain production of the hard drive.

[29] The plaintiffs argue that the object of the *Supreme Court Civil Rules* and the efficient use of valuable court time favour ordering disclosure of the server. They assert that a digital forensic examination of the server will establish with certainty whether or not a file exists of the phone call Ms. McGivern recalls making. With that certainty, the plaintiffs say they can determine whether to proceed with their claims against Four Star and Prince George. If no further files are found on the server, it is likely those claims will not proceed. But in the absence of certainty, counsel for the plaintiffs suggest it will be necessary to go to trial on the strength of Ms. McGivern's recollection. Thus, it is argued, the digital forensic examination could save considerable court time.

[30] I do not accept the submission for three reasons.

- a) First, in civil litigation we operate on the standard of balance of probabilities, not proof beyond a reasonable doubt, let alone absolute certainties. The

- evidence here clearly meets and exceeds the civil standard of proof in showing that the file that has been produced is the recording of the 6:20 a.m. phone call, and that Ms. McGivern's recollection of that call is not correct.
- b) Second, the natural attraction of absolute certainty could readily be offered as a justification to forensically search any number of hard drives in cases where a party subjectively doubts that the full production of relevant documents from that hard drive has been made. However, this approach would disregard the privacy interests that the jurisprudence on this subject seeks to balance in restricting orders to produce hard drives to exceptional circumstances.
- c) Finally, the object of the *Supreme Court Civil Rules* is not advanced by widening the scope for digital forensic searches of an opposing party's hard drives or servers in civil litigation. If such orders are routinely made, the time and expense of document production will undoubtedly rise, more court time will be taken up with applications to produce hard drives, and more resources of litigants will be expended on those applications and on the expert costs of digital forensic examiners.

[31] Thus, while court time might be saved in *this* case, granting the order the plaintiffs seek will undermine the object of the *Rules* in many cases to follow.

[32] For those reasons, I dismiss the plaintiffs' application with costs to Four Star in any event of the cause.

“Kirchner J.”