

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Network Entertainment Inc. v. Canada (Attorney General)*,
2025 BCCA 359

Date: 20251022
Dockets: CA21544; CA21545;
CA42479; CA45933

Between:

Network Entertainment Inc.

Applicant

And

**Attorney General of Canada, Minister of Justice,
Attorney General of British Columbia,
Glen Sebastian Burns, Atif Ahmad Rafay,
Darin Andrew Randle, and Garry Taylor Handlen**

Respondents

Before: The Honourable Madam Justice DeWitt-Van Oosten
(In Chambers)

Representative for the Applicant,
Network Entertainment Inc.:

J. Barbisan

Counsel for the Respondents, the
Attorney General of Canada and
Minister of Justice:

J.I. Katz
S.C. Hauer

Counsel for the Respondent, the
Attorney General of British Columbia:

S.E. Elliott, K.C.

No one appearing for the Respondents,
Glen Sebastian Burns, Atif Ahmad Rafay,
Darin Andrew Randle, and Garry Taylor
Handlen

Place and Date of Hearing:

Vancouver, British Columbia
September 23, 2025

Place and Date of Judgment:

Vancouver, British Columbia
October 22, 2025

Summary:

This is an application for access to video evidence and transcripts in four appeal files. The applicant intends to use the material in a docuseries. HELD: Access granted on the terms and conditions set forth in a consent order. These terms include protecting the identity of undercover police officers and other individuals who appeared or were mentioned in the evidence.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

[1] This Court’s *Record and Courtroom Access Policy* (10 October 2024) (the “Access Policy”), recognizes a right of public access to court records. Access is presumed because of the open court principle. However, before access is granted, the presumptive entitlement is balanced with relevant and competing public interests: *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 30.

[2] Under the Access Policy, “restrictions on access [will be] justified where serious risks to privacy or other important interests such as the proper administration of justice, outweigh a presumptive right of access”. Even so, any such restrictions must “minimally impair the presumptive right of access”: s. 1.1. This approach is consistent with *Sherman Estate*, in which the Supreme Court of Canada held that limiting the open court principle is only justified where: (1) court openness poses a serious risk to an important public interest; (2) limitations are necessary to prevent that serious risk because reasonably alternative measures will not suffice; and (3) as a matter of proportionality, the benefits of a limiting order outweigh its negative effects: at para. 37. See also *Canadian Broadcasting Corp. v. Manitoba*, 2023 SCC 27 at para. 8.

[3] The applicant, Network Entertainment Inc. (“Network”), seeks access to court records in four appeal files. In accordance with s. 1.7 of the Access Policy, Network’s representative, John Barbisan, has submitted a Court Records Request Form in appeal files CA42479 (Darin Andrew Randle); CA45933 (Garry Taylor Handlen); CA21544 (Glen Sebastian Burns); and CA21545 (Atif Ahmad Rafay).

Each of these files contains video exhibits and related transcripts that Mr. Barbisan seeks to review and duplicate for use in a streaming docuseries.

[4] The appellate proceedings in *Randle, Handlen, Burns and Rafay* have completed. However, as explained in *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33:

[6] ... after [an appellate] court loses jurisdiction over the merits, it generally retains the authority to supervise access to the record of its own proceedings. Even after the formal judgment on the merits is filed, this ongoing authority allows the court to ensure compliance with the constitutionally-protected open court principle and the protection of other important public interests against which it must be weighed. Indeed, it is critical to upholding the responsibility all courts have to manage their records in accordance with the *Canadian Charter of Rights and Freedoms* [Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11] and the proper administration of justice. ...

[Emphasis added.]

Background

Court records request

[5] Network’s request for access was initially managed by the Court’s Registrar (on behalf of the Chief Justice) and legal counsel. Consistent with the process outlined in the Access Policy, the Registrar and legal counsel sought the “input of the parties to the appeal[s] to provide their positions on the request”: s. 1.7. (See also *R. v. Moazami*, 2020 BCCA 350 at para. 32.) Contact was made with the relevant public authorities and some or all the lawyers who represented the named appellants when their appeal files were active.

[6] The Attorney General of Canada, Minister of Justice (Department of Justice Canada), and the Attorney General of British Columbia (collectively, the “Attorneys”), responded. In a commendably co-ordinated effort to address all four files, the Attorneys have indicated their consent to accessing and duplicating the sought-after records on certain terms and conditions. In co-operation with Mr. Barbisan, they have drafted a proposed consent order that is consistent with the order imposed in *Global BC, a Division of Canwest Media Inc. v. British Columbia*, 2010 BCCA 169, a

case in which media representatives sought access to the same type of records that are at issue here. See also *R. v. Black*, 2006 BCSC 2040.

[7] The lawyers who represented the individual appellants when their matters were before this Court (or at least some of them) also responded, indicating generally that they were no longer retained by the appellants and did not have instructions to engage with the request for access.

[8] As a result, the Registrar referred Network’s request to case management for further consideration and direction where necessary.

[9] As the assigned case management judge, I directed that notice of the access request be provided to the individual appellants. Those efforts were undertaken by Mr. Barbisan with the assistance of the Attorneys. Based on the material before me, including material in affidavit form, I am satisfied that:

- Reasonable efforts have been made to notify Darin Andrew Randle of the request for access. However, his current whereabouts are unknown. Efforts to notify Mr. Randle at his last known address have proved unsuccessful.
- Garry Taylor Handlen is presently incarcerated and received notice of the request for access through his institutional parole officer in August 2025. The notice advised of a hearing to address the access request (September 9, 2025) and invited submissions. Mr. Handlen has not responded to the notice, which attached a copy of the proposed consent order, including a term that if access is granted, Mr. Barbisan may use the records for “broadcast, publication, or transmission of their contents”.
- Glen Sebastian Burns and Atif Ahmad Rafay are also incarcerated. They both received notice of the request for access in August 2025, as well as a copy of the proposed consent order with reference to “broadcast” and “publication”. Only Mr. Rafay responded. A lawyer representing Mr. Rafay advised that Mr. Rafay objects to the access request. However, he does

not wish to appear in this Court or make “further submissions” in that regard. He has not filed any documentation in support of his opposition.

Reason for the request

[10] Mr. Barbisan is a film producer with Network, a Vancouver-based media firm. He is developing a docuseries about the use of an undercover police investigative technique commonly known as “Mr. Big”. The *Randle*, *Handlen*, *Burns*, and *Rafay* investigations involved Mr. Big operations. Related video recordings and transcripts form part of the appeal files. Mr. Barbisan seeks access to that material for purposes of the docuseries. As I understand it, the docuseries may be shown on a major streaming platform if Network is able to secure an agreement to that effect. In developing the docuseries, Mr. Barbisan is working with a retired officer of the Vancouver Police Department who was involved in one or more of the four files.

[11] Depending on the outcome of Network’s request, Mr. Barbisan may seek access to additional appeal files (appreciating that these are individualized inquiries). I understand he has made similar requests for access to court records in Alberta. I do not know the status or outcome of those requests.

Proposed consent order

[12] The proposed consent order includes a term stipulating that once it receives a duplicate of the relevant videotapes and transcripts, Network must:

... cause the Duplicates to be altered so as to protect absolutely the identity of the RCMP officers and any other individuals mentioned in the tapes to the satisfaction of the RCMP ...

Upon carrying out the alterations, the Applicant shall forward the Duplicates as altered to counsel from the RCMP and for the Crown, who shall within six weeks notify the Applicant of any concerns they may have as to the sufficiency of such alterations to protect the identities of the said individuals;

...

Until counsel have agreed, or this Court has ruled, on the adequacy of the measures taken to protect the identity of the RCMP officers and the other individuals mentioned in the tape, the Applicant shall not make use of the Duplicates in any way ...

...

[Emphasis added.]

[13] As I interpret the first of these excerpted terms, the alterations made by Network and Mr. Barbisan must protect absolutely against disclosing the identity of any RCMP officers who appear or are mentioned in the videotapes and transcripts, as well as any other individuals mentioned in the videotapes for whom the RCMP have reasonable grounds to believe disclosure of their identity would carry a serious risk to physical safety or human dignity.

[14] According to the proposed order, Network will be free to make use of the altered duplicates, including for broadcast and publication, only once all parties to the order have approved of the alterations. At that point, Mr. Barbisan must destroy any unaltered duplicates or copies of unaltered duplicates.

Analysis

[15] *Global BC* involved court records like the ones at issue here. In that case, the media sought access to videotape and transcript evidence arising from a Mr. Big operation. In granting access, a majority of this Court held that the publication ban imposed to protect the names and identities of the undercover officers at trial should remain in place; however, the fact that “the media would not be disclosing anything new in terms of operational methods” other than what had openly been disclosed at trial, “attenuate[d] the possible detriment to police efficacy”: at paras. 71, 75. Accordingly, it was not “necessary to deny access to the two exhibits in order to prevent any serious risk to the proper administration of justice”: at para. 78.

[16] There is nothing before me to substantively distinguish Network’s request for access from the one granted in *Global BC*, which is presumably why the Attorneys have indicated their consent. The parties have not identified any safety or other public interest issues relevant to publication of the videotapes or transcripts that are not adequately addressed through the proposed terms of the order, that require the Court’s consideration in the balancing exercise, or stand as a potential impediment to access. As I understand it, published reasons for judgment exist in relation to all four appeal files and many of the details surrounding these cases have been in the

public domain for a considerable period. Implementation of the proposed order must respect, of course, any existing publication or disclosure bans attached to the files.

[17] Mr. Rafay objects to access, but in doing so, he has elected to not advance submissions specific to the *Sherman Estate* criteria for limiting access or otherwise. Neither Mr. Rafay nor the other appellants who received notice of Mr. Barbisan's request have met the onus for justifying limitations beyond the already-contemplated steps to protect certain identities as approved of by the RCMP.

[18] In the circumstances, it is appropriate to endorse the consent order with the recommended terms and conditions.

[19] Before completing this discussion, I wish to comment on the process that has led to this point.

[20] There is no formal application before me. Rather, Mr. Barbisan appropriately used the Court Records Request Form to initiate the process, which the Access Policy describes as necessary "because the Court recognizes that criminal court records may contain information the disclosure of which is harmful to innocent parties": s. 1.7. The matter was referred to case management to address logistical issues arising from the request. Given those issues, the Registrar considered it appropriate to refer the request to a justice. The outstanding issues included notifying appropriate parties to provide them with an opportunity to identify and make submissions on the harm(s) that might flow from access. Most access requests are likely amenable to informal resolution by the Registrar, acting as a delegate to the Chief Justice. However, when that process proves unworkable, a referral is appropriate. Notwithstanding the presumption in favour of access, applicants should expect that inquiries will be made of affected parties before their request for access is determined. As *Sherman Estate* acknowledges, "exceptional circumstances do arise where competing interests justify a restriction on the open court principle": at para. 3.

[21] The extent of the inquiries considered necessary will depend on the circumstances. The most effective way to identify the existence of “competing interests” is to ensure that reasonable efforts are undertaken to notify affected parties and provide them with an opportunity to respond. This is especially so if the access request contemplates not only access, but further distribution or publication of the record. If one or more affected parties respond and assert a serious risk to physical safety or human dignity (*Sherman Estate* at paras. 4, 7), a formal application in support of limiting the open court principle and supporting affidavit evidence may be necessary given the presumption of openness. The case management judge has authority to determine the access issue and it need not proceed before a division: *R. v. B.L.*, 2024 BCCA 108 at paras. 33, 35, 50.

[22] Finally, Network’s request for access has been made to this Court, rather than the British Columbia Supreme Court, where the video evidence and related transcripts were initially tendered. I see no legal or practical impediment to a justice of this Court deciding the access request given that these same items now form part of a record on appeal. However, there may be cases in which a party’s opposition to accessing certain records asserts competing public interests that are better suited for consideration by the court of first instance, in the context of the entirety of that court’s record. Or there may be a certain order or some other form of legal impediment in the lower court that must be addressed by that court before full access can be granted (such as a sealing order). See e.g., *GEA Refrigeration Canada Inc. v. Chang*, 2020 BCCA 361 at paras. 179–191, leave to SCC ref’d, [2021] S.C.C.A. No. 102.

[23] Accordingly, nothing said here should be understood to preclude the Registrar or a justice from declining to consider an access request on the basis that the applicant seeks access to records held by more than one court and the request is better advanced in the other forum. If that is the position asserted by a party to the request, that party should be prepared to provide principled justification as to why the request should be addressed elsewhere. Whether access is granted and by whom necessarily requires a contextually informed case-by-case assessment.

Disposition

[24] For the reasons provided, and with the consent of the Attorneys, I grant the request for access to the records sought by Network on the terms and conditions set out in the draft consent order provided to me (attached as Appendix A).

[25] The precise records at issue must be identified in the order with reference to their exhibit numbers as marked at the relevant trial or extradition proceedings. If the parties cannot agree on which records properly fall subject to the order, or the terms of the order as interpreted in these reasons prove unworkable, they may return to case management for direction.

“The Honourable Madam Justice DeWitt-Van Oosten”

Appendix A

IT IS ORDERED that the Applicant is granted access on the following terms:

- (a) The Applicant will apply to have the videotapes and transcripts duplicated by or through the Registry, at the Applicant's cost;
- (b) The duplicate videotapes and transcripts (the "Duplicates") may then be provided by the Registry to the Applicant on condition that he will cause the Duplicates to be altered so as to protect absolutely the identity of the RCMP officers and any other individuals mentioned in the tapes to the satisfaction of the RCMP. The Applicant shall not release the Duplicates to any person except as necessary to carry out such alterations and shall not publish or make use of them in any way;
- (c) Upon carrying out the alterations, the Applicant shall forward the Duplicates as altered to counsel for the RCMP and for the Crown, who shall within six weeks notify the Applicant of any concerns they may have as to the sufficiency of such alterations to protect the identities of the said individuals;
- (d) The Applicant shall use their best efforts to address any such concerns and shall again provide the Duplicates they propose to use to counsel for the RCMP and the Crown, who shall respond within four weeks of their receipt of same;
- (e) If the parties are unable to agree on the sufficiency of the alterations, the matter shall be referred to this Court. Until this Court has ruled on the matter, the Applicant shall not make any use whatsoever of the Duplicates;
- (f) Until counsel have agreed, or this Court has ruled, on the adequacy of the measures taken to protect the identity of the RCMP officers and the other individuals mentioned in the tape, the Applicant shall not make use of the Duplicates in any way; and
- (g) Once all parties have approved in writing the Applicant's proposed alterations, the Applicant may make use of the altered Duplicates, including for broadcast, publication, or transmission of their contents, and the Applicant shall destroy all the unaltered Duplicates and any copies thereof, which remain subject to the publication ban except for the limited purposes outlined in this order.