

Citation: Bain v. Rodrigue  
2004 BCPC 0259

Date: 20040722  
File No: 0315452  
Registry: North Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA  
CIVIL DIVISION

BETWEEN:

STEVEN BAIN

CLAIMANT

AND:

WADE RODRIGUE

DEFENDANT

REASONS FOR JUDGMENT  
OF THE  
HONOURABLE JUDGE J. GEDYE

Appearing in person:

Counsel for the Defendant:

Place of Hearing:

Date of Hearing:

Date of Judgment:

S. Bain  
T. Pettit  
North Vancouver, B.C.  
April 1, 2004  
July 22, 2004

[1] The defendant has applied for disclosure of a list of documents in preparation of this civil claim. The claimant is suing for lost wages, child support payments and damages for personal injuries received as a result of an incident on September 6, 2001 involving the defendant. The claimant agreed to disclosure of much of the material requested but opposed disclosure of his criminal record arguing it was private information and irrelevant to the civil claim. The defendant argued the criminal record is necessary to support his assertions that the claimant has a propensity to lie, harass police and steal, and that those propensities are relevant to issues at trial.

[2] The Canadian Police Information Centre [CPIC] is an entity organized by the Royal Canadian Mounted Police [RCMP] for information gathering and dissemination to and from police agencies across Canada. A CPIC record, often referred to as a criminal record, is divided into a record of convictions and a record of arrests, often with additional commentary about use of violence or weapons. In criminal proceedings only the record of convictions is admissible. It is not unusual for both Crown and defence counsel to complain of inaccuracies and incomplete information in the record of adjudicated proceedings, but at the most that is the extent of what will be considered in this application. A record of arrests or complaints with comments are matters that have not been tested in the courts and do not have the reliability necessary to be considered admissible in any proceedings.

[3] The defendant was an off-duty Vancouver police officer at the time of the incident which occurred in North Vancouver where the local RCMP were called. The RCMP provided the defendant with some personal information about Mr. Bain, presumably from a CPIC record which was readily available with an on-site computer or from dispatch, while at the scene. Mr. Bain argued the

information that was disclosed was incorrect, prejudicial and of no relevance.

[4] The RCMP, as a "government institution" and then as a corollary CPIC records, is subject to the Access to Information Act and the Privacy Act. Section 3 of the Privacy Act defines "personal information", in part, as "information relating to the ... criminal ... history of the individual...". Section 5 of the same Act requires that personal information be collected directly from an individual "wherever possible" unless compliance might "result in the collection of inaccurate information; or defeat the purpose or prejudice the use for which the information is collected". Section 6(2) of the Privacy Act requires that "a government institution shall take all reasonable steps to ensure that personal information ...is as accurate, up-to-date and complete as possible".

[5] Section 7 of the Privacy Act requires that "personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except

- a) for the purpose for which the information was ... compiled ... or for a use consistent with that purpose; or
- b) for a purpose for which the information may be disclosed ... under subsection 8(2).

[6] Section 8(2)( c) provides the following exception:

"...for the purpose of complying with a subpoena or warrant issued or order made by a court ... with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;"

[7] The defendant seeks an Order of this Court for access to the records under section 8(2)( c).

[8] With respect to the rules of the Provincial Court relating to the production of information, the defendant argued that Section 2 of the Small Claims Act provides the necessary jurisdiction. That section states:

- (1) The purpose of this Act and the rules is to allow people who bring claims to the Provincial Court to have them resolved and to have enforcement proceedings concluded in a just, speedy, inexpensive and simple manner.
- (2) Subject to this Act and the rules, in conducting a hearing the Provincial Court may make any order or give any direction it thinks necessary to achieve the purpose of this Act and the rules.

[9] Further, section 16 of the Small Claims Act provides that:

- (1) The Provincial Court may admit as evidence in a proceeding under this Act or the rules any oral or written testimony, record or other thing that the court considers is credible or trustworthy and is relevant to the matter being heard, even though the testimony, record or other thing is not admissible as evidence in any other court under the laws of evidence.

And subsection (6) states that "a judge may make any of the following orders after a hearing

- (o) any other order that a judge has the power to make....

[10] Rule 7(14), concerning proceedings at settlement conferences, states that a judge may...

- (f) order a party to produce any information at the settlement conference or anything as evidence at trial;
- (g) order a party to (i) give another party copies of documents and records by a set date;
- (l) make any other order for the just, speedy and inexpensive resolution of the claim.

[11] Thus a Provincial Court Judge has the jurisdiction to order production of documents that the Court considers "credible, trustworthy and ... relevant to the matter being heard".

[12] The issue then becomes one of relevance. The defendant argued the CPIC record is necessary to help prove the claimant has a propensity to steal and that he is a "professional thief" to the extent that his claim for lost wages is inflated. A criminal record will provide little useful information concerning the extent of the claimant's nefarious activities, if any. Rather, a claim for lost wages will rest or fall with medical records and records of employment for the time prior to the incident alone, with one exception. If the accused was in custody during a time under consideration, a CPIC record might show such a fact.

[13] In his pleadings the defendant said he interpreted the claimant's running during the incident in question as his fleeing a theft

and argued that a criminal record, if it contained convictions for theft, would support that interpretation. I cannot accept the logic of that argument. The claimant was unknown to the defendant at the time and although the defendant interpreted the accused's running for one reason there were other possible interpretations. In addition, a criminal record of past convictions would do nothing to help establish the accuracy of the defendant's interpretation. Indeed the accuracy of that interpretation is irrelevant to the matters in issue. One issue at trial will more likely be, given the defendant's interpretation and assuming it was reasonable in the particular circumstances, were the actions that followed reasonable or not.

[14] Further, the defendant indicated his evidence will be that he told the claimant several times that he was a police officer and demanded that the claimant stop, but the claimant kept running. After the defendant caused the claimant to stop, and there are differences in the evidence of how that occurred, there was a struggle where the defendant repeated he was a police officer and the claimant fought with him and tried to get away. The defendant believes there may be convictions for resisting arrest, assault of police officers or escape which would show a propensity to react in a certain way to police officers.

[15] The defendant also argued that the claimant has a propensity to lie and a propensity to harass police officers with frivolous claims. If there were a conviction for perjury there might be an argument for the former but there is nothing in a criminal record that would assist in establishing a propensity to harass officers.

[16] Any argument concerning propensity is one that will have to be decided by the trial judge. However, in criminal proceedings a criminal record cannot be used to establish propensity to commit similar offences. There are strict limitations on the use of criminal records in criminal matters which may or may not be the same in civil matters.

[17] However, even with restrictions, Section 12 of the Canada Evidence Act provides that:

(1) A witness may be questioned as to whether the witness has been convicted of any offence....

(1.1) If the witness either denies the fact or refuses to answer, the opposite party may prove the conviction.

(2) A conviction may be proved by producing

(a) a certificate containing the substance and effect only... of the indictment and conviction....

[18] It is common place in a criminal matter to have a criminal record produced but it is unusual for a party in a civil trial to request such a record and there does not appear to be caselaw on point. However unusual, my conclusion is that such a record is compellable and a Provincial Court Judge has the jurisdiction to order production. I am making that Order. However, it will be the decision of the trial judge if the evidence contained in the record is admissible, what use can be made of the contents of the record if it is admitted and what weight if any can be attached to it. The defendant may only receive a record of convictions not arrests or commentary. The defendant will be responsible for any fees required by the RCMP for production of that record. And the defendant may not disseminate or in any way cause to be disseminated the information contained in the records received by him to any person or for any reason other than his defence of this civil claim.

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The Honourable J. Gedye, P.C.J.