



December 1, 2017

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BC Supreme Court stays charges against James Kyle Bacon

Victoria - The BC Prosecution Service (BCPS) announced today that charges against James Kyle Bacon sworn in connection with the "Surrey Six" homicides have been ordered stayed by the BC Supreme Court. Mr. Bacon had been charged with first degree murder and conspiracy to commit the murder of Corey Lal, one of six people who died on October 19, 2007 at the Balmoral Tower building in Surrey. In 2014, Cody Haevischer and Matthew Johnston were convicted of six counts of first degree murder and one count of conspiracy to commit murder in relation to this case. Both offenders are now serving life sentences with no chance of parole for 25 years.

In an abbreviated ruling released earlier today, the Court announced that an application for a stay of proceedings to terminate the prosecution brought by Mr. Bacon had been granted, and the two charges on the indictment have been judicially stayed. The decision was released by the court this morning, but the announcement of the result was delayed until the families of the victims could be notified of the decision. Those notifications are now complete and a copy of the abbreviated ruling is attached to this statement.

Mr. Bacon had been charged on a separate indictment from Mr. Haevischer and Mr. Johnston to allow the court to deal with applications that involved only Mr. Bacon. The nature of these various applications is referred to in the abbreviated ruling released by the Court and includes issues relating to solicitor client privilege, litigation privilege, informer privilege and public interest privilege. In the course of these proceedings, the Court took a number of significant procedural measures in order to protect both the various claims of privilege and the fair trial rights of Mr. Bacon. As a result much of the proceedings were conducted in closed court.

In its ruling, the Court concluded that the evidence adduced, the materials filed, and the reasons for entering the stay of proceedings must remain sealed:

"I am bound by the law as I have described it and accordingly am not at liberty to provide any further information about my rulings or the evidence and materials underlying them".

The BC Prosecution Service is carefully reviewing the Court's decision to determine whether to appeal and will make a further statement once its review is concluded.

In the meantime Mr. Bacon remains in custody on a separate charge of counselling the murder of an individual contrary to s. 464(a) of the *Criminal Code*. The trial in that matter is currently scheduled to begin on April 3, 2018. Mr. Bacon has not applied for bail on that charge. The Crown would be opposing his release.

In light of the ruling of the court on this matter and the pending decision of the BCPS whether to pursue an appeal the BCPS is unable to comment on the circumstances of the case, the current decision, or the evidence, facts, or materials underlying them.

Media Contact: Dan McLaughlin
Communications Counsel
Daniel.McLaughlin@gov.bc.ca
250.387.5169

To learn more about B.C.'s criminal justice system, visit the British Columbia Prosecution Service website at: gov.bc.ca/prosecutionservice or follow [@bcprosecution](https://twitter.com/bcprosecution) on Twitter.



IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Bacon*,
2017 BCSC 2207

Date: 20171201
Docket: 26150
Registry: Vancouver

Regina

v.

James Kyle Bacon

Before: The Honourable Madam Justice Ker

Abbreviated Ruling re Entry of Judicial Stay of Proceedings

Counsel for the Crown:

G. D. McKinnon, Q.C.
G. Baragar, Q.C.
K. Andani
L. Fillingham
L. Hemming
L. Pearce
M. Wolf

Counsel for the Accused:

K. Drolet
R. Enright
K. Eldred
R. Kearns

Counsel for the *Amici Curiae*:

A. Kapoor
L. Trevelyan
S. Harland-Logan
A. Mamikon

Place and Date of Judgment:

Vancouver, B.C.
December 1, 2017

[1] James Kyle Bacon is charged with first degree murder and conspiracy to commit murder of Corey Lal. The case is known as the “Surrey Six” homicides, so named in reference to the six victims of the homicides committed on October 19, 2007.

[2] Over the past three years, the Court has heard a number of pre-trial applications involving complex legal and factual issues, including that Mr. Bacon’s counsel had come into possession of privileged information that they cannot use in his defence which impacts upon Mr. Bacon’s fair trial rights. In part, this arose from the manner in which the police handled aspects of privileged and confidential information.

[3] The privileges engaged in the various pre-trial applications included: (i) solicitor-client privilege, (ii) litigation privilege, (iii) informer privilege, (iv) public interest privilege, and (v) witness protection.

[4] Solicitor-client privilege is regarded as a cornerstone of the effective administration of justice. The Supreme Court described the purpose and rationale of the privilege in these terms in *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 (at para. 26):

The solicitor-client privilege has been firmly entrenched for centuries. It recognizes that the justice system depends for its vitality on full, free and frank communication between those who need legal advice and those who are best able to provide it. Society has entrusted to lawyers the task of advancing their clients' cases with the skill and expertise available only to those who are trained in the law. They alone can discharge these duties effectively, but only if those who depend on them for counsel may consult with them in confidence. The resulting confidential relationship between solicitor and client is a necessary and essential condition of the effective administration of justice.

[5] Moreover, solicitor-client privilege attaches to legal advice communications between Crown counsel and the police: *R. v. Campbell*, [1999] 1 S.C.R. 565, (*sub nom. R. v. Shirose*) 133 C.C.C. (3d) 257; *R. v. Aitken*, 2008 BCSC 744; *R. v. Belcourt*, 2012 BCSC 234; *R. v. Cocks*, 2013 BCSC 736; and *R. v. Basi*, 2008 BCSC 1858.

[6] Litigation privilege is a common law rule that gives rise to an immunity from disclosure for documents and communications whose dominant purpose is preparation for litigation. This privilege has sometimes been confused with solicitor-client privilege, both at common law and in Quebec law. However, since *Blank*, it has been settled law that solicitor-client privilege and litigation privilege are distinct: the purpose of solicitor-client privilege is to protect a relationship, while that of litigation privilege is to ensure the efficacy of the adversarial process: *Lizotte v. Aviva Insurance Company of Canada*, 2016 SCC 52.

[7] Although litigation privilege is distinguishable from solicitor-client privilege, it is nevertheless a class privilege and gives rise to a presumption of inadmissibility for a class of communications, namely those whose dominant purpose is preparation for litigation. Thus, any document that meets the conditions for the application of litigation privilege will be protected by an immunity from disclosure unless the case is one to which one of the exceptions to that privilege applies: *Lizotte*.

[8] The privilege afforded to confidential informers is one of the most absolute, unqualified rights recognized at law. The privilege cannot be balanced against other interests relating to the administration of justice. The Crown and the Court have a positive obligation to protect it. The Court has no discretion with regard to the privilege; it must be protected in any way possible and to whatever extent is necessary to protect the identity and therefore the lives and safety of informers who provide the police with confidential information about crimes: *R. v. Leipert* [1997] 1 S.C.R. 281; *R. v. Basi*, 2009 SCC 52.

[9] Public interest privilege permits the Crown to withhold otherwise relevant material from an accused to protect a valid public interest: *R. v. Russell*, 2011 BCSC 1457 at para. 24. The safety of individuals, including witness protection, is an established subset of public interest privilege: *R. v. Taylor*, 2010 ONSC 5448 at para. 45; *R. v. Cook*, 2014 ONCA 170 at para. 19. Other recognized categories of public interest privilege include police investigative techniques and ongoing police investigations: *R. v. Trang*, 2002 ABQB 19 at para. 55.

[10] Public interest privilege is a case-by-case privilege: *Trang* at paras. 32-47; *Russell* at para. 24. The correct approach when considering a claim of public interest privilege was described by Molloy J. in *R. v. Thomas*, [1998] O.J. No. 1400 (H.C.J.) (at para. 10):

... A determination of public interest privilege requires the judge, as an exercise of discretion, to balance the competing interests, of the Crown and the accused. The judge must first decide whether the information sought is relevant to an issue in the proceedings. If the evidence is relevant, the judge may still refuse to compel disclosure if "the public interest in effective police investigation and the protection of those involved in, or who assist in such investigation, outweigh the legitimate interests of the accused in the disclosure of the techniques." *R. v. Richards* (1997), 34 O.R. (3d) 244 at 248-9 (C.A.); *R. v. Meuckon* (1990), 57 C.C.C. (3d) 193 at 200 (B.C.C.A.). Essentially, this involves a determination by the trial judge as to whether the non-disclosure of the information sought interferes with the right of the accused to make full answer and defence.

[11] In order to protect both the various claims of privilege advanced by the Crown and the fair trial rights of Mr. Bacon, the Court has had to take a number of significant procedural measures in this case. Because of the confidential nature of the information in question, much of the proceedings were conducted in closed court. Since Mr. Bacon's counsel were in possession of privileged information, they were permitted to attend certain *in camera* hearings: *R. v. X & Y*, 2012 BCSC 325. *Amici Curiae* were appointed to assist the Court by providing an adversarial context where the Court proceeded in the absence of the defence.

[12] Most applications were concerned with the disclosure, protection, and retrieval of privileged information. My full written rulings are under seal in order to protect the Crown's claims of privilege, which I have upheld.

[13] In the course of the proceedings I determined that Person X cannot be called by the Crown as a witness in the trial of this matter in order that Mr. Bacon's fair trial rights may be protected. The reasons for my order and its terms are the same as those issued by Madam Justice Wedge in *R. v. Haevischer*, 2013 BCSC 1526.

[14] During the course of this protracted litigation, I also heard an application for a stay of proceedings brought by Mr. Bacon. I have granted that application and

ordered that both counts on the Indictment against Mr. Bacon be stayed. In order to protect the Crown's claims of privilege, which I have upheld, the evidence adduced, the materials filed and my reasons for entering the stay of proceedings must remain sealed.

[15] I am bound by the law as I have described it and, accordingly, am not at liberty to provide any further information about my rulings or the evidence and materials underlying them.

A handwritten signature in black ink that reads "K.M. Ker, J." The signature is written in a cursive, slightly slanted style.

The Honourable Madam Justice K. M. Ker