

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***R. v. Pickton***,
2007 BCSC 78

Date: 20070116
Docket: X065319-62
Registry: New Westminster

Between:

REGINA

Respondent

And

ROBERT WILLIAM PICKTON

Applicant

Before: The Honourable Mr. Justice Williams

Ruling Re: Media Application to Access and Publish Exhibits #1

Counsel for the Canadian Broadcasting Corp.,
Canadian Press, CTV Television Inc., a division
of Bell Globemedia, Global Television, a division
of Canwest Media Works Inc., The Province, a
division of Canwest Media Works Publications
Inc., CKNW Radio, a division of Corus
Entertainment Inc., CityTV, a division of CHUM
Limited and The Globe and Mail, a division of Bell
Globemedia Inc.

D. Burnett
P. Brackstone

Counsel for the Crown

J. Ahern

Counsel for the Accused

P. Ritchie, QC
P. McGowan

Counsel for the RCMP

J. Hayes

Date and Place of Trial/Hearing:

January 10, 2007
New Westminster, B.C.

Nature of the Application

[1] The various media organizations identified on the first page of this Ruling (“the media”) apply for two Orders. The first is for access to exhibits entered at Mr. Pickton’s trial subject to a proposed protocol.

[2] Mr. Pickton’s trial is set to start on January 22, 2007. In the interests of expediency, I will address the first issue in this Ruling so that there is sufficient time for the mechanics of the process to be put into place in advance of the start of the trial. The second matter will be dealt with in a separate Ruling to follow.

Discussion

[3] Mr. Burnett, for the media, submits that it would be advantageous to both the Court and the media to set in place a system to facilitate the orderly access to exhibits without the necessity of bringing an application each time access was sought. He has proposed a protocol that would see every exhibit that is admitted into evidence designated as “unlimited access”, “view only access” or “no access” at the time that it is tendered. The party tendering an exhibit with either of the first two designations would provide a designated court representative with a media copy which would be made available in accordance with the designation. In the event of an application by a member of the media to alter a designation, the Crown and defence would be served with an application returnable on a day when the Court was sitting without the jury.

[4] Mr. Ahern, while endorsing the principle of an exhibit access protocol, expresses concern about the practical implications of the one proposed by

Mr. Burnett. He says that given the number of exhibits, the voluminous nature of many of them, the need to edit the media's copies to ensure that the privacy interests of third parties are protected, and the financial cost of producing the extra copies, the suggested protocol imposes an enormous burden on counsel who will already be occupied with the conduct of the trial. Mr. Ahern advances an alternate protocol, one that is, in essence, request-driven. A member of the media seeking access to a particular exhibit would indicate that interest in writing. The Crown and defence would endorse the expression of interest with their view of the appropriate designation for the exhibit. The Court would then review the expression of interest and assign it to the appropriate category. Mr. Ahern proposes that the categories be "no access or access with conditions", "unrestricted access", "no publication or publication with conditions" and "unrestricted publication".

[5] Mr. Ritchie, for the defence, shares the concerns expressed by Mr. Ahern and strongly endorses his approach. The RCMP's interests are not engaged by the protocol.

[6] In his reply and after hearing Mr. Ahern's proposal, Mr. Burnett acknowledged that there may be many exhibits that the media do not wish to access and accepted that a request-driven approach was reasonable. However, he submitted that the categories proposed by the Crown were too complex.

[7] For the reasons expressed by Mr. Ahern, I share the view that the process of determining whether and to what extent access should be granted to a particular exhibit should be initiated by a request from a member of the accredited media.

Counsel for both the Crown and the defence already face a daunting challenge in conducting a case of this magnitude. They should not be distracted from that responsibility by having to consider the access designation for each exhibit they tender when access to many of them may not ultimately be sought.

[8] Set out below is what I consider a sensible and practical protocol.

[9] A member of the accredited media seeking access to an exhibit will initiate the process by indicating that interest in writing. There was some discussion during submissions whether that document should be a draft order. In my view, that would complicate things unnecessarily since it would require the participation of media counsel each time access was sought. Instead, a form similar to that which is appended to this Ruling as Appendix A will be made available in the Registry. The originator of the request for access will complete the form and return it to the Registry. Court staff will make copies of the form and provide them to both the Crown and the defence through the court clerk. At the first practical opportunity, each will endorse its copy of the form with its view of the appropriate designation for the exhibit. The designations will be as follows:

- a. unlimited access – accredited media may view, copy and publish the exhibit;
- b. view-only access – accredited media may view but not copy or publish the exhibit;
- c. conditional access – accredited media may view the exhibit but copying and publication of the exhibit may be subject to specified conditions; and
- d. no access – the exhibit is not available for viewing, copying or publication.

[10] Where a designation other than “unlimited access” is sought, the reason should be briefly indicated. Where conditions on access are requested, those should also be stated.

[11] The Crown and the defence will return their copies of the form to the court clerk. Once I am in receipt of both, I will determine the access designation and announce it in Court at the next opportunity. Where the Crown and the defence are not agreed on the appropriate designation of an exhibit, I do not anticipate that I will decide the designation on the basis of the brief positions indicated on the form. Rather, the matter will have to be addressed at a time when the Court is sitting without the jury. Nevertheless, the endorsed forms will be of assistance in permitting me to have a sense of their respective positions in advance of hearing whatever further submissions are necessary.

[12] Should a member of the accredited media wish to apply to change the designation of any exhibit, he or she shall serve the Crown and the defence with an application returnable on a day when the Court is sitting without the jury, subject to the scheduling direction of the Court.

[13] A list of the exhibits with their access designations will be posted outside the courtroom.

[14] Responsibility for accommodating the media requests will fall to court registry staff. They will do their best, but it must be appreciated that they are very busy with the many tasks and obligations that this trial imposes on them. Dealing with the viewing and copying of exhibits is important, but it will have to take its place in the

priority of other court-related duties, and members of the media must be prepared to exercise patience and understanding.

[15] I am hopeful that this procedure will prove to be effective and efficient. In the event that problems arise or there are improvements to be made, I will, of course, consider modifying this protocol upon application being brought.

“J. Williams, J.”
The Honourable Mr. Justice J. Williams