IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pereira v. British Columbia (Attorney General),* 2023 BCSC 928

Date: 20230606
Docket: 36061
Registry: Terrace

Between:

Corinne Pereira

Applicant

And

Attorney General of British Columbia

Respondent

Restriction on publication: A publication ban has been issued pursuant to the inherent jurisdiction of the Supreme Court of British Columbia preventing the publication of information that could identify the individuals named in the Private Informations sworn by the applicant.

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

The Applicant, appearing in person:	C. Pereira
Counsel for the Respondent:	L. Ruzicka, K.C.
Place and Date of Hearing:	Terrace, B.C. April 21, 2023
Place and Date of Judgment:	Terrace, B.C. June 6, 2023

[1] The applicant, Corinne Pereira, seeks the extraordinary remedies of *certiorari* and *mandamus* to quash a decision of the respondent, the Attorney General of British Columbia ("AGBC"), who directed a stay of proceedings of a private information sworn by the applicant against a variety of individuals (the "Current Information").

[2] An earlier order made by Justice Tammen on August 9, 2022 imposed a publication ban on any information that could identify the individuals named in the private informations. The ban related to four, separate, private informations at issue in the proceeding before Tammen J., filed by the applicant: Provincial Court File Nos. 35654; 35655; 35657; and 35661 (the "Previous Informations"). The individuals named in the Current Information, which is the subject of this application, mirror those in the earlier proceedings before Tammen J.

[3] That history leading up to this proceeding is extensively referenced in his reasons indexed at 2022 BCSC 1619.

[4] In January and February 2022, the applicant swore the Prior Informations alleging, in total, over 60 criminal or quasi-criminal offences alleging contraventions of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 [*WCA*], the *Offence Act*, R.S.B.C. 1996, c. 338, and sections of the *Criminal Code*, R.S.C. 1985, c. C-46.

[5] All of the Prior Informations relate to a series of complaints arising out of the applicant's employment with her former employer through the years 2020 and 2021. Eventually, the applicant was terminated from her employment. The applicant then made a variety of allegations against the employer, the union that represented her during the grievance process, various individuals and, ultimately, the British Columbia Labour Relations Board.

[6] The Prior Informations were scheduled for a process hearing in the Provincial Court on May 19, 2022, but, on May 18, 2022, Crown counsel directed a stay of proceedings in respect of the Prior Informations.

[7] The applicant applied then, as she does now, for prerogative writs of *mandamus* and *certiorari*; the latter to quash the AGBC's decision and the former to compel reinstatement or reissuance of the Prior Informations.

[8] When the matter came before Tammen J., he dismissed her application noting the following:

> [12] The decision to direct a stay of proceedings is a core element of prosecutorial discretion. Such decisions are reviewable by the courts only for abuse of process. The burden of demonstrating an abuse of process rests with the moving party, on a balance of probabilities: (*Krieger v. Law Society of Alberta*, 2002 SCC 65, at paras. 32, 46–47 and 49.)
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> [13] In order to succeed on this application, Ms. Pereira must demonstrate that the decision to direct a stay of proceedings meets the abuse of process test or rises to the level of "flagrant impropriety" by the AG or counsel instructed on his behalf: (*Kreiger* at para. 49.)
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> [14] Flagrant impropriety can only be established by proof of misconduct bordering on corruption, violation of the law, bias against or for a particular individual, or offence: (*Kostuch v. Alberta (Attorney General)*, [1995] A.J. No. 866 at 451.)
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> [15] Ms. Pereira has not presented any evidence of misconduct or flagrant impropriety, arguing that she is in a classic Catch-22, since the Crown provides no reasons for its decision to direct a stay of proceedings. Therefore, the applicant is unable to point to evidence of impropriety or abuse of process. That submission is without merit. As noted in *R. v Nixon*, 2011 SCC 34, at para. 62, a bare allegation of abuse of process is never enough to trigger a review of prosecutorial discretion by the court. The moving party must meet an initial evidentiary threshold, justifying the court in looking behind the Crown decision.

[9] In short, Tammen J. concluded there was no absolute right to a process hearing for a private information and found that the applicant fell far short of establishing an abuse of process or that the actions of the AGBC, through its agent, rose to the level of "flagrant impropriety".

[10] In doing so, Tammen J. considered the applicant's allegation that Crown counsel with conduct of a criminal charge pending against her was the same Crown counsel who directed the stays of proceedings and whether that placed Crown counsel in a conflict of interest.

[11] The applicant appealed the decision of Tammen J. but, in the interim period, following her filing but before its disposition, swore the Current Information against some of the same parties/entities named in the Prior Informations under File No. 36554. In her description of the "new information" she informed Crown counsel "the charges are the same [as those informations sworn previously] but different".

[12] The applicant went on to advise Crown she had combined all of the individual charges on the Prior Informations into one to make it "easier for everyone to understand".

[13] On November 22, 2022, Deputy Regional Crown counsel, John Hempstead, directed a stay of proceedings on the Current Information.

[14] The Court of Appeal, in reasons indexed at *Pereira v. British Columbia (Attorney General)*, 2023 BCCA 31 [*Pereira CA*], dismissed the applicant's appeal from the order of Tammen J.

[15] The Court of Appeal also declined the appellants' application to adduce fresh evidence on the appeal; the fresh evidence being the December 15, 2022 decision of a review officer of WorkSafeBC (following judicial review of the initial decision), referring the matter back to the Board to issue an order against the employer for violation of s. 21(1)(a) of the *WCA* and to determine what steps were required to comply with the order (the "Review Decision").

[16] The applicant attempted to introduce that evidence at the appeal arguing it demonstrated her former employer's "guilt" and, thus, would have affected the charge assessment decision in relation to the Prior Informations stayed by the respondent, AGBC.

[17] The Court of Appeal dealt with the proposed 'new evidence' noting:

> [30] For the reasons that follow, I conclude that Ms. Pereira's proposed further evidence is not relevant to a decisive issue on her application, its admission could not reasonably be taken to have affected the result, and it would not be in the interests of justice to admit it.

> [31] Ms. Pereira's submission on the further evidence argument rests, at least in part, on two assumptions: (1) the proposed new evidence establishes that her complaints of workplace bullying and harassment have been substantiated, and (2) the fact they are substantiated is evidence that the individuals and entities named in the Private Informations committed criminal and/or regulatory offences. Neither assumption is correct. The Review Officer's decision addresses Ms. Pereira's complaint about the adequacy of the investigation, not the merits of her underlying complaints of workplace bullying and harassment. Furthermore, even if Ms. Pereira's underlying complaints were found to be substantiated, this would make no difference to the outcome of her application for *mandamus* and *certiorari*. The Crown is not obliged to initiate a criminal prosecution against every individual found to have engaged in workplace misconduct. A decision as to whether approve charges, or stay charges, is a matter of prosecutorial discretion.
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> [32] The same can be said of Ms. Pereira's assertion that the Review Officer's decision establishes Dexterra's "guilt" of criminal or regulatory offences. This assertion is also incorrect. The fact that Ms. Pereira has secured an administrative law remedy in relation to the employer's failure to investigate her complaint of workplace harassment and bullying does not establish that the employer or the Union, much less every LRB decision maker, is guilty of an offence. More to the point, it is for the Crown to make the charge assessment. Once again, a decision to approve charges, or to direct a stay of charges, falls directly within the core of prosecutorial discretion. An exercise of prosecutorial discretion is reviewable by the courts only on abuse of process grounds, and only where the applicant has established a threshold evidentiary case.
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> [33] Thus, the proposed new evidence has no bearing on the only factual question that the judge had to decide: whether Ms. Pereira met the evidentiary threshold to justify a review of the exercise of prosecutorial discretion to direct a stay of charges. Justice Gomery's decision, and the decision of the Review Officer that followed, is not evidence that the conduct of the Crown was an abuse of process.

[18] In this application, the applicant similarly relies upon the Review Decision as demonstrating abuse of process or flagrant impropriety in the decision to stay the Current Information.

[19] The stay of the Current Information was issued prior to release of the Review Decision. When the Review Decision was forwarded to Mr. Hempstead, he declined to change his decision to stay the most recent information.

[20] Here, before me, despite acknowledging the Current Information is substantially the same as the Prior Informations stayed by Crown, the applicant submits the circumstance of the review officer's finding (issued subsequent to the

stay being entered) is admissible and relevant on the hearing to determine whether *certiorari* and *mandamus* are warranted.

[21] In *Pereira CA*, the Court of Appeal made clear that the Court cannot inquire into the exercise of prosecutorial discretion, including a decision to direct the stay of an information absent an abuse of process: at paras. 51–52.

[22] The applicant now argues the failure of Mr. Hempstead to re-evaluate Crown's decision to stay the Current Information after performing no investigative steps and in the face of the Review Decision amounts to an abuse of process warranting judicial intervention.

[23] With respect, it is not.

[24] *Pereira CA* makes it clear that a bare allegation of abuse of process by an applicant is insufficient: at para. 52. The initial evidentiary burden on an applicant respects the presumption that prosecutorial discretion is exercised in good faith.

[25] The applicant's affidavit in support of her application raises no allegation against Mr. Hempstead of either bias or conflict of interest. At its highest and best, the applicant raises the question of whether Crown counsel worked on or communicated with other counsel within the Ministry of the Attorney General.

[26] During her submission, the applicant speculated as to improper motives as to the makeup of the three-member division of the Court of Appeal noting that Justice Griffin sat on both *Pereira CA* and her appeal of orders dismissing her petitions for judicial review as against orders made by the British Columbia Labor Relations Board indexed at *Pereira v. British Columbia (Labour Relations Board)*, 2023 BCCA 165.

[27] The applicant advised me she is seeking leave to appeal *Pereira CA* to the Supreme Court of Canada. No determination has been made whether leave will be granted.

[28] The circumstances before me are no different than those before Tammen J. whose dismissal of the application before him was affirmed in the Court of Appeal. The circumstances of the Review Decision were known to the Court of Appeal and were determined to have no probative value.

[29] I adopt the following excerpt from those reasons as being determinative here:

> Furthermore, even if Ms. Pereira's underlying complaints were found to be substantiated, this would make no difference to the outcome of her application for *mandamus* and *certiorari*. The Crown is not obliged to initiate a criminal prosecution against every individual found to have engaged in workplace misconduct. A decision as to whether approve charges, or stay charges, is a matter of prosecutorial discretion.

[30] Accordingly, the application by Ms. Pereira is dismissed.

"Harvey J."