

IN THE PROVINCIAL COURT OF NEW BRUNSWICK

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF AN ONGOING CRIMINAL INVESTIGATION

Citation: Saint John Police Force v. Canadian Broadcasting Corporation Et al, 2013 NBPC 20

Date: October 25, 2013

IN THE MATTER OF AN APPLICATION FOR RELEASE OF DOCUMENTS
PURSUANT TO SECTION 487.3(4) OF THE CRIMINAL CODE OF CANADA AND
AMENDMENTS THERETO

BETWEEN:

SAINT JOHN POLICE FORCE
Applicant

- and -

THE CANADIAN BROADCASTING CORPORATION
Interested Party

- and -

BRUNSWICK NEWS (TELEGRAPH JOURNAL)
Interested Party

- and -

Dennis Oland
Interested Party

- and -

Lisa Oland, Mary Beth Watt and the
Estate of Richard H. Oland
Interested Parties

COUNSEL:

John Henheffer
Patrick Wilbur For the Applicant

David Coles, Q.C. For the CBC and
Brunswick News

Gary Miller, Q.C. For Dennis Oland

William Teed, Q.C. For Lisa Oland,
Mary Beth Watt and
the Estate of
Richard H. Oland

DECISION ON APPLICATION

JACKSON, C.P.C.J.

Background:

[1] During the course of an investigation into the death of Richard Oland, the Applicant sought and received Search Warrants, General Warrants, and Production Orders; all of which were issued by Judge William J. McCarroll between July and November 2011. Sealing Orders were granted in respect of each of the documents.

[2] Following a hearing, seven of the nine Sealing Orders were ordered to be varied, and redacted copies of the various Informations to Obtain, Warrants and Production Orders, and Reports to a Judge were ordered to be released to the public.

[3] On September 7, 2012, the Applicant sought and received a General Warrant and a Production Order; both issued by Judge McCarroll. A further Production Order was sought by the Applicant and issued by Judge McCarroll on October 2, 2012. At the time of issuance of each document, a Sealing Order was made pursuant to section 487.3(1) of the ***Criminal Code of Canada***.

[4] Counsel for the Canadian Broadcasting Corporation and Brunswick News (collectively referred to as "the Media") requested that the Sealing Orders of September 7 and October 2, 2012 be varied.

[5] On April 11, 2013, Judge Henrik G. Tønning ordered that the Applicant provide to Dennis Oland, Lisa Oland, Mary Beth Watt and the Estate of Richard H. Oland (collectively "the Olands") "copies of the presently sealed documents in the form the Applicant would intend to seek to be released". The Order further provided for provision of the same material to counsel for the Media. Copies of the sealed materials were delivered to both the Olands and the Media subject to a restriction as to dissemination and publication.

[6] The parties were unable to agree upon the extent of the redaction necessary, so the Applicant by way of Notice of Application requested an order varying the terms and conditions of the Sealing Orders made by Judge McCarroll. This application came on for hearing before me on September 5, 2013, at which time all parties were heard.

Position of the Parties

[7] The Applicant asks for an order granting "the partial release of the sealed materials with redactions similar to those ordered by Chief Provincial Court Judge R. Leslie Jackson released October 5, 2012 and by Mr. Justice William Grant, released April 21, 2013 or such similar redaction which will have the same force and effect". Its position is that the redactions it proposes are similar to those which I ordered in respect of the other seven warrants, and should be accepted.

[8] The Olands agree with the position of the Applicant and are content with the proposed redactions.

[9] The Media position is "that the proposed redactions are overly broad and well beyond that which was envisioned by Your Honour's order". Specifically, the Media objects to any redactions pertaining to the involvement of third parties and says that any redactions on the basis of "Hallmark Evidence" must be limited to the type of evidence I referred to in sub paragraph 24[D] of my decision of September 28, 2012.

[10] The parties agree that those parts of the three Informations to Obtain (ITO) which dealt with what has been referred to as "the Log Book" need not be released. That is, paragraph 50 in the ITO in respect of the General Warrant, paragraph 57 in the ITO in respect of the Production Order of September 7, 2012 and paragraph 58 of the ITO in respect of the October 2, 2012 Production Order. Therefore, those paragraphs have been redacted in their entirety.

[11] One issue between the parties has been the redaction of specific times, particularly as it relates to comings and goings from 52 Canterbury Street in Saint John (the scene of the crime) late in the day on July 6, 2011. The Applicant contends that this is hallmark evidence, while the Media says it is not and that there is no basis for redacting it.

[12] In this case, the exact time of death is not publicly known and it is indeed specifically detailed information that only the killer or killers, or perhaps some forensic experts or certain of the lead investigators would know. I have allowed the redaction of times in relation to the goings on at 52 Canterbury Street on the evening in July and in relation to evidence as to the arrival and departure of the admitted prime suspect, Dennis Oland on the evening of July 6, 2011. This does not extend, however, to the third party evidence of the lady referred to in paragraph 59 of the General Warrant ITO, who saw "unusual activity" on the Renforth Wharf.

[13] The Applicant has also redacted large portions of those paragraphs which deal with forensic testing of items seized following judicial authorization, on the basis that it is hallmark evidence and would compromise the investigation if released. The rationale most often proffered for redacting hallmark evidence is that it is necessary to prevent false confessions or must remain secret so that important evidence is not tampered with or destroyed. Given the facts of this case relating to the results of forensic tests, I fail to understand how such information becomes hallmark evidence. The police have both the items seized and the results, so there is little probability of tampering and the results are what they are; they

speak for themselves. For that reason, the redactions as to the results of DNA testing have been removed.

[14] Similarly, I find the redactions as to the items seized at Dennis Oland's home overly broad. Mr. Oland, the police's admitted prime suspect, knows what was taken from his home, thus I fail to see how the release of this information could prejudice or impair the ongoing investigation. Indeed, no evidence was presented at the hearing specifying either the prejudice or impairment sought to be avoided. Therefore, I have removed those redactions.

[15] I am similarly of the view that the redactions to the Production Order of September 7, 2012 are overly broad. While there might have been a concern at the time of the application for that Order that the requested items might disappear, that is not the case now. It appears from the Report to a Judge that the police have the items sought in their possession, so how could the release of the information as to what they were looking for compromise the investigation? There is simply no proof of the suggested compromise, merely a vague assertion of the same, which is insufficient to justify the redaction.

[16] Therefore, in respect of both Production Orders, that is the Order of September 7 and October 2, 2012, I have removed the redactions as to the name of the subject of the orders and as to the items sought. In respect of the October 2, 2012 Production

Order, I have redacted the account, or loan numbers, as well as information relating to balances, specific information as to the amount of payments in accordance with the provisions of paragraph 42[C] of my Decision of September 28, 2012.

[17] Copies of the redacted Warrant, Production Orders and ancillary documents are attached to this decision. The aforesaid documents may be shared by the counsel for the Olands and by counsel for the Media for the purposes of obtaining instruction, but may not be published, distributed, or the contents of the same, revealed until 9:30 A.M. on October 25, 2013, at which time this decision and the annexed documents will be available to the public.

R. Leslie Jackson, C.P.C.J.N.B