# IN THE SUPREME COURT OF BRITISH COLUMBIA

| | |
|---|---|
| Citation: | *Lover-Peace v. Moosavi,* 2024 BCSC 899 |



Date: 20240418
Docket: S240369
Registry: Vancouver

Between:

**Dr Rose Lover-Peace**

Plaintiff

And

**Dr Mandana Moosavi**

Defendant

Before: The Honourable Justice A. Ross

## Oral Reasons for Judgment

In Chambers

| | |
|---|---|
| The Plaintiff/Applicant, appearing in person: | R. Lover-Peace |
| Counsel for the Defendant/Respondent: | J.D. Antifaev |
| Counsel for the Attendee/Respondent, Attorney General of British Columbia: | L.F. de Lima |
| Place and Date of Trial/Hearing: | Vancouver, B.C. April 18, 2024 |
| Place and Date of Judgment: | Vancouver, B.C. April 18, 2024 |

[1] **THE COURT:** I am providing these reasons orally for the sake of efficiency and expediency. Should any party request a written transcript of these reasons, I reserve the right to edit them for grammar and syntax. The result will not change.

[2] In this civil action, the plaintiff brings an application seeking disclosure from a third party (non-party), the Provincial Prosecution Service as represented by the Attorney General (the "Crown"). The plaintiff's notice of application seeks a number of categories of documents which I outline below.

[3] The issue for me to decide is whether the plaintiff is entitled to production of those documents from the Crown.

## Background Facts

[4] At some point in or before January 2022, the defendant Dr. Moosavi made a complaint to police that she had reasonable grounds to believe that the plaintiff, then named Dr. Emotions Universe, would cause her personal injury. That complaint, I understand, was as a result of events in January and October 2021.

[5] On January 12, 2022, an information was sworn against the plaintiff pursuant to s. 810(1)(a) of the *Criminal Code*, R.S.C. 1985, c. C-46. Section 810 provides for sureties to keep the peace. That section is commonly referred to as the "peace bond" section of the *Criminal Code*.

[6] On February 28, 2022, the North Vancouver Crown provided the Crown *Stinchcombe* disclosure to the then-accused (here, the plaintiff) and his legal counsel. On May 30, 2022, the North Vancouver Crown provided supplemental Crown disclosure (Disclosure #2) to the plaintiff and his legal counsel. On July 8, 2022, the North Vancouver Crown provided further supplemental Crown disclosure (Disclosure #3) to the plaintiff and his counsel.

[7] As the matter proceeded toward trial on July 15, 2022, Crown counsel directed a stay of proceedings terminating the prosecution.

[8] The plaintiff commenced this action in the Victoria Registry on August 24, 2023. Since that time, the matter has been transferred to the Vancouver Registry.

[9] In the notice of civil claim, which, I note, is 77 pages long, the plaintiff seeks damages for malicious prosecution. I note that in this action, the plaintiff only sues Dr. Moosavi.

[10] I am informed by the plaintiff that he has commenced a second action against the Burnaby RCMP relating to his treatment while in custody on this charge.

[11] As to this civil action, there is no dispute between the parties that the four elements that the plaintiff must establish in a malicious prosecution action are described by the court in *Wood v. Kennedy*, 1998 CanLII 14927 (O.N.S.C.) at para. 50:

> [50] The test for malicious prosecution was stated as follows by Lamer J. in *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at 192-3, 60 D.L.R. (4th) 609:
>
> > There are four necessary elements which must be proved for a plaintiff to succeed in an action for malicious prosecution:
> >
> > > (a) the proceedings must have been initiated by the defendant;
> > >
> > > (b) the proceedings must have terminated in favour of the plaintiff,
> > >
> > > (c) the absence of reasonable and probable cause;
> > >
> > > (d) malice, or a primary purpose other than that of carrying the law into effect.

[12] Of importance to this application, in her response to civil claim, the defendant pleads that the second element of the required test is not satisfied. The defendant asserts that the s. 810 prosecution was stayed because the plaintiff agreed not to contact Dr. Moosavi. Hence, the defendant pleads that the proceeding was not terminated in favour of the plaintiff.

[13] The plaintiff disputes this assertion. The defendant says that he will need to prove a point at trial: The plaintiff needs to prove that the decision of the Crown to terminate the prosecution was a unilateral decision of the Crown and not made

based upon an agreement with the plaintiff. He needs to establish that fact in order to establish that the prosecution was resolved in his favour.

[14] Hence, in this application, the plaintiff submits that the notes of Crown counsel, including any communication with his former criminal defence counsel, are relevant and should be disclosed.

[15] In the notice of application, the plaintiff seeks disclosure of seven categories of documents. I find it efficient to deal with those separate categories one by one, first outlining the category of documents and then indicating the plaintiff's and then the Crown position on those documents. I refer to the Crown's position because the defendant in this action does not really mount an opposition to this application. It is really the Crown that opposes.

[16] The first category of documents is described as follows in the notice of application:

> 1. A certified copy of the "Crown Counsel Particulars" that were provided to the lawyer of (Universe, Emotions #69399) to prepare for his defence and trial.

[17] The plaintiff says that he has the first tranche of disclosure from the Crown, but he does not have the second or the third supplemental disclosures. Although it is not in evidence, the plaintiff informed the court that his criminal defence counsel has declined to produce the Disclosure #2 and Disclosure #3 because the prosecution is at an end.

[18] The Crown's position is quite simple: the plaintiff has the documents.

[19] In my opinion, the Crown's position is unassailable. In my opinion, the Crown cannot be compelled in this civil action to produce documents that it has already produced in the criminal prosecution. I do not know why the plaintiff has not obtained these documents from his criminal defence counsel, but he has a clear obligation to do so before applying to the Crown. In my opinion, these documents are in the

possession or control of the plaintiff, and the plaintiff is not entitled to request these documents from the non-party Crown.

[20] The second category of documents is:

> 2. A certified copy of all types of correspondence (emails, phone calls, faxes, meetings in person, etc.) that was made between Crown counsel and the lawyer of “Emotions Universe” in the period between February 19, 2022, and July 15, 2022.

[21] The plaintiff says he needs these documents to show that there was no agreement before the stay of prosecution was entered.

[22] The Crown position is the same as it was for Category Number 1; in other words, the plaintiff has these documents, which are in the possession of his own lawyer. On this, I again agree with the Crown's position.

[23] Moving to Category Number 3, the plaintiff seeks:

> 3. A certified copy of all types of correspondence (emails, phone calls, faxes, meetings in person, etc.) that was made between the Crown counsel and "Mandana Moosavi" in the period between October 24, 2021, and July 15, 2022, including the meeting in person made on July 12, 2022.

[24] The plaintiff says that he needs these documents for the same reasons noted above.

[25] The Crown position is that this correspondence, if it exists, is in the possession of the defendant Moosavi, and the plaintiff has a clear obligation to obtain those documents from her. I agree with that position.

[26] To the extent that any notes that the Crown may have made during conversations with the defendant, Dr. Moosavi, I accept the Crown's position that those fall within the purview of Crown prosecutorial discretionary privilege. They are not produceable.

[27] Category 4 seeks:

> 4. A certified copy of all types of correspondence (emails, phone calls, faxes, meetings in person, etc.) that was made between Crown counsel and “North Vancouver RCMP” in the period between October 24, 2021, and July 15, 2022.

[28] The plaintiff submits that these correspondence and notes would be relevant to the current action.

[29] The Crown's position is threefold:

a) First, if the meetings with the RCMP were part of the investigation, then any such information has been disclosed in the *Stinchcombe* disclosure;

b) Second, if the discussion happened after the investigation, then it was irrelevant to the plaintiff's action against the defendant;

c) Third, any further documents that may be sought by the plaintiff may be protected by solicitor-client privilege.

[30] I agree with the Crown's position on this category of documents. They are not producible in this application.

[31] The fifth category is described as:

> 5. A certified copy of the decision of the Crown (stay of proceedings) that was made on the July 15, 2022 trial.

[32] During submissions, the plaintiff indicated that he has a copy of the court document indicating that the s. 810 proceeding had been stayed. That is a stamp on a court document indicating “SOP” or stay of proceedings.

[33] It is not the obligation of the Crown to give certified copies of court documents to civil litigants. The plaintiff is not entitled to have the Crown produce either the stay of proceeding document or a certified copy of it.

[34] Moving to Category Number 6. The plaintiff seeks:

> 6. A certified copy of the audio CD of the hearing of the trial of July 15, 2022.

[35] During the plaintiff's submission before me, he quoted from the audio of that proceeding, and he quoted from it in his notice of application. It is clear that he has a copy of the audio of that day in court. Again, it is not Crown counsel's job to certify audio court proceedings.

[36] The plaintiff is not entitled to Document Number 6 or Category Number 6.

[37] Category Number 7 is:

> 7. A certified copy of all the “Video Tapes CDs” relating to the matter of the file (Universe, Emotions #69399) in the period between February 19, 2022, and July 15, 2022.

[38] I understand from the plaintiff that what is meant by this paragraph relates to video of the time when he was incarcerated by the Burnaby RCMP. I understand that that was a period of three days during which the plaintiff says he was held in terrible circumstances. The plaintiff seeks the videos from those cells.

[39] I note that, according to the plaintiff's submission, his criminal defence lawyer is in possession of those videos.

[40] In response, the Crown notes the following problems with this aspect of the application:

a) First, as noted above, the plaintiff has also sued the Burnaby RCMP in a separate action claiming negligence; in that respect, it is clearly the Burnaby RCMP that is the party that has an obligation to produce this video;

b) Second, since the plaintiff concedes that his criminal defence counsel has a copy of the video of the cells, he is in possession or control of those documents.

[41] I accept the submissions of the Crown, and I decline to order production by the Crown of any videos of the plaintiff in the Burnaby RCMP cells.

[42] I note that in my discussion above, I have only mentioned prosecutorial discretion in respect of one of the categories. If I should be wrong on any of my reasoning for dismissing the plaintiff's application with respect to the other categories of documents, I accept, as an alternate position, the Crown’s position that any documents that lead to the exercise of prosecutorial discretion would be privileged and not producible by the Crown. In that respect, I accept the guidance from: *Krieger v. Law Society of Alberta*, 2002 SCC 65 at paras. 40–46.

[43] For all the reasons described above, the plaintiff's application is dismissed. The Crown does not seek costs. Mr. Antifaev, do you have a position?

[44] CNSL J. ANTIFAEV: Not seeking costs.

[45] THE COURT: Neither of the respondents is seeking costs, and none shall be awarded.

“A. Ross J.”