

Citation: ☼

Date: ☼  
File No: 56156-1  
Registry: North Vancouver

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**

Re:  
In the Matter of a Production Order issued pursuant to  
Section 487.012 of the *Criminal Code*

And Re:  
An Application for Exemption Pursuant to Section 487.015 of the *Criminal Code*

And Re:  
In the matter of an Order for Production of Records of  
the Workers Compensation Board doing business as WorkSafeBC

**REASONS ON APPLICATION  
OF THE  
HONOURABLE JUDGE J. C. CHALLENGER**

---

Counsel for the Applicant, Worker's Compensation Board:	S. Mark Powers
Counsel for the Respondent, B.C. Society for the Prevention of Cruelty to Animals:	Christopher Rhone
Place of Hearing:	North Vancouver, B.C.
Date of Hearing:	February 4, 2011
Date of Reasons:	February 14, 2011

[1] The Worker's Compensation Board is the subject of a Production Order for documents issued on January 31<sup>st</sup>, 2011 by a Judicial Justice of the Peace pursuant to S. 487.012 of the **Criminal Code**. The application before me is for exemption from that Order pursuant to S. 487.015.

[2] The offence alleged is stated by title as "Causing Unnecessary Suffering" contrary to S. 446 (1) (a) of the **Criminal Code**. However, that section sets out an offence of causing damage or injury in transport or abandonment or neglect. The offence of Causing Unnecessary Suffering is set out in Section 445.1. No issue was taken by either party with respect to the wrong section number being set out in the Application or Order and I will proceed on the basis that the offence contemplated by all is that of Causing Unnecessary Suffering as set out in S. 445.1.

[3] The events under investigation arose on April 21<sup>st</sup> and 23<sup>rd</sup> of 2011 in Pemberton at which time and place it is alleged some 100 sled dogs were killed in an inhumane or cruel manner. There is no issue that the information provided to the Judicial Justice of the Peace constitutes reasonable and probable grounds to support the issuance of the Production Order.

---

[4] The Workers Compensation Board does business as WorksafeBC. It is an independent statutory agency. Its existence is the result of a compromise between workers and employers whereby workers gave up their right to sue their employers or other workers for injuries on the job and in return employers funded a not-fault insurance system.

[5] The Society for the Prevention of Cruelty to Animals is also a creature of statute under the *Prevention of Cruelty to Animals Act* and is tasked, inter alia, with investigating offences involving the care and treatment of domestic and other animals. Their investigators may turn the fruits of their investigations to Provincial Crown Counsel for prosecution.

[6] The Board objects to having to comply with the Order on the basis that the interests of society in protecting the privacy of workers who make application for benefits outweighs the interests of society in the investigation of the alleged offence. The Board relies on Section 95 (1) of the *Workers Compensation Act* which states:

Officers of the Board and persons authorized to make examinations or inquiries under this Part must not divulge or allow to be divulged, except in the performance of their duties or under the authority of the Board, information obtained by them or which has come to their knowledge in making or in connection with an examination or inquiry under this Part.

[7] The worker, who says he was instructed to carry out the cull of the sled dog herd by his employer, made a claim for benefits from the Board. The worker's claim was originally denied and so a review was taken resulting in benefits being granted. The Review Decision references evidence given by the worker and the employer. In submissions before me, Counsel for the Board indicated that information relating to any witnesses known to the Board would also be contained in the records sought.

[8] The Society conceded that medical or other health information and administrative documents held by the Board are not being sought as they would not advance the investigation. They are seeking information in relation to the dog cull itself including any statements of the worker, statements of the employer and statements of any witnesses.

[9] The Board cited *Daigneault v. Qually* [1985] B.C.J. NO. 207, a decision of our Supreme Court as a leading authority on the issue of disclosure of confidential Board documents.

[10] At paragraph 7 the Court determined that despite S. 95, there is no absolute privilege with respect to such documents. The Court went on to say;

“... confidentiality is to be decided “by a balancing of the interest of the public in having all cases properly tried and the sometimes competing public interest in protecting communications which arise in circumstances of confidentiality.”

[11] The Board argued that workers would be discouraged from making applications for benefits if they know that the information they disclose may be provided to other agencies or the police who are investigating offences relating to that worker's conduct in the course of their employment. However, workers are entitled to receive and to continue to receive benefits even if their conduct leading up to any injury also forms the basis for a criminal or other offence. As such, I find that disclosure does not present any particular prejudice to their ability to receive benefits.

[12] The Board also argued that their duty to protect confidentiality is even higher in circumstances where disclosure could lead to a worker facing criminal jeopardy. It remains to be seen whether any of the statements of the worker could be admissible in a criminal proceeding. At this stage the Court is asked to release documents to assist in an investigation and not to rule on whether those documents are admissible to prove the guilt of a worker in any subsequent proceeding.

[13] Counsel for the Board also argued that *Daigneault* (supra) should be distinguished as that matter involved a worker bringing an action for injuries sustained in a matter unrelated to their employment and the records were requested to defend that claim. In my view, the test of whether confidentiality should be protected does not turn on the role of the worker in any proceedings or litigation.

[14] Here, the Court must weight the public interest in having the offence alleged in this matter investigated and potentially tried against the interests of workers in maintaining confidentiality over the information they supply to make a claim for benefits. In my view, the public interest in having this potential criminal offence investigated outweighs the public interest in maintaining confidentiality over the information provided by the worker involved.

[15] I grant the Board's application for exemption in part. In reaching this conclusion I have of course considered that the Society has quite fairly conceded that the Production Order as framed is overly broad in its terms. They are required to release any information in relation to the dog cull itself including any statements of the worker, statements of the employer and statements of any witnesses.

---

[16] The Society takes the position that Counsel for the Board may be permitted to identify and redact, if required, the Board's documents and that it is not necessary for the Court to become involved in identifying or editing any relevant documents for disclosure.

[17] I also grant leave to the parties to address the Court with any issues which may arise in the course of determining relevance or redaction of contents. As there is no

procedure set out to govern such an application for directions I will provide that it may be done upon 7 days written notice at a time agreeable to both parties and the Court.



---

The Honourable Judge J.C. Challenger  
Provincial Court of British Columbia