



# Supreme Court of Canada

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## Summary

**36855**

### **Police Complaint Commissioner of British Columbia, et al. v. Abbotsford Police Department, et al.**

**(British Columbia) (Civil) (By Leave)**

**(Publication ban in case) (Sealing order)**

### **Keywords**

Police - Appeals.

### **Summary**

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(PUBLICATION BAN IN CASE) (SEALING ORDER)

Police – Informer privilege – Appeals – Whether the circle of police informer privilege includes police officers involved in the enforcement of the law through the investigation and adjudication of complaints of police misconduct concerning the handling and payment of informants – If not, whether this Court should recognize a new exception to the rule of informer privilege in the context of police misconduct investigations and proceedings – Given the absence of a mechanism for interlocutory criminal appeals in criminal proceedings, whether courts should take an expansive view of “civil proceedings” within the criminal context where the issues engaged are divorced from criminal culpability.

Constable A.B. is a member of the Respondent, Abbotsford Police Department (“APD”). He was arrested and charged in May 2013 with several criminal offences including breach of trust and wilful obstruction of justice. In July, 2013 he was also charged by way of direct indictment with ten counts including counselling the commission of an offence. When the Chief Constable of the APD became aware of the allegations against Cst. A.B., he requested that the Vancouver Police Department (“VPD”) conduct an external criminal investigation as well as an audit of the APD’s informer payment process. In the course of the investigation, the VPD obtained two authorizations to intercept private communications and APD office copies of search warrants and Informations to Obtain (“ITO’s”).

In May 2013, the APD requested the Applicant, Police Complaints Commissioner (“PCC”) to undertake an investigation into Cst. A.B.’s conduct under the Police Act. In August 2013, the PCC directed the New Westminster Police Department (“NWPD”) to look into the allegations concerning Cst. A.B. In October 2013, the investigating officer (of the NWPD) applied in the R. v. A.B. proceeding to the Supreme Court of British Columbia for access to materials in the possession of the VPD. The court granted the order (“2013 order”), specifying that the requested materials were to be delivered personally by a VPD officer to the external discipline authority (“DA”) and were not to be disclosed or distributed by him to anyone other than police officers within the Professional Standards Section (“PSS”) of the NWPD who were involved in the investigation of Cst. A.B. under the Police Act or to staff or legal counsel assisting the DA or PSS investigators. A further order was granted ordering that the PSS investigators receive draft ITOs from the VPD as well as copies and drafts of sealed ITOs from the

APD that had been obtained by the VPD in the summer of 2013. In June 2014, the investigating officer applied for a second order which was granted on consent. The order directed the investigating officer and the PSS investigators to examine progress reports prepared under the Police Act to determine which documents could disclose or reveal, or tend to disclose or reveal the identity of, or compromise the safety or security of a police informant or confidential source. Documents satisfying these criteria were ordered not to be disclosed to the PCC.

Upon application by the PCC for access to materials in the possession of the NWPDP, the chambers judge declined to give directions with respect to the procedure to be followed on application to unseal original ITOs which remain subject to sealing orders until it was determined either that no informant's identity is at issue or that any confidential informants whose identity could be compromised by access to the ITOs, and the Crown, had waived the privilege. The chambers judge thus ordered that the materials comprising the criminal investigation that had led to the charges against Cst. A.B. be returned to the VPD to be reviewed and if necessary, redacted to prevent the disclosure of the identity of any confidential informant. He also ordered that all other material obtained by the PSS investigator that might reveal the identity of an informant be sealed and held in a sealed state until further order of the court. The Court of Appeal quashed the appeal as the order made by the chambers judge was criminal and no appeal to the Court of Appeal was available. In the alternative, or in the event that the court was wrong concerning jurisdiction, the Court of Appeal went on to consider the merits of the appeal and would have dismissed the appeal.

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