

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***R. v. Pickton***,  
2006 BCSC 1829

Date: 20061208  
Docket: X065319  
Registry: New Westminster

**REGINA**

**v.**

**ROBERT WILLIAM PICKTON**

Before: The Honourable Mr. Justice Williams

## **Ruling #2 Re: Publication Ban With Respect to Jurors and the Jury Selection Proceedings**

Counsel for the Media

D. Burnett

Counsel for the Crown

J. Ahern

Counsel for the Accused

P. Ritchie, QC

Date and Place of Trial/Hearing:

December 7, 2006  
New Westminster, B.C.

[1] This ruling is further to **R. v. Pickton**, 2006 BCSC 1800, which set out certain publication restrictions with respect to the identity of jurors and the jury selection process. In that ruling, I made the following order:

[4] In light of the foregoing, I order the following restrictions on publication:

- a. There shall be no publication or broadcast in any medium, including the Internet, of the identity of any juror or any information that could disclose their identity.
- b. There shall be no publication of the substance of the jury selection proceedings during the phase that commences on December 11, 2006 and continues until 12 jurors and two alternate jurors have been selected. Without limiting the generality of the foregoing, there shall be no publication of the comments of the Court, the submissions of counsel, the questions put to the jurors, and the jurors' responses to those questions. This ban on publication does not apply to a general description of the proceedings consistent with the ruling regarding the jury selection procedure, **R. v. Pickton**, 2006 BCSC 1799. It also does not apply to the number of persons called and processed on each day, and the number of jurors selected on each day.

[5] For the purposes of this order, "juror" means any person who has been summonsed and appears as a member of the jury panel in the present proceedings. For greater clarity, this definition includes those persons who are selected from the jury panel to serve as jurors or alternate jurors in this trial.

[2] This order was made on the Court's own motion. As no notice had been provided to the media or to the parties, I indicated at the conclusion of the ruling that I was releasing it in sufficient time that those affected by it could appear to make submissions if they were minded to do so.

[3] On December 7, Mr. Burnett appeared on behalf of a number of media organizations to make submissions with respect to the publication ban ordered. The thrust of his submissions was that the ban was unprecedented and unnecessary, or, at a minimum, overbroad. Counsel for both the Crown and Mr. Pickton also appeared. They supported the order but suggested ways in which its scope could be narrowed to accommodate some of the concerns raised by Mr. Burnett.

[4] Having considered the submissions of the parties, I have decided to vary my order. However, I first wish to address media counsel's submission that the steps that were taken to protect the privacy of the jurors in this case were unprecedented. To the extent that may be so, the intensity of the media focus on this trial can be described in the same way, unprecedented. To my observation, the appetite of the media to cover any possible dimension or angle to this story is fierce. By way of example, the Courthouse has fielded telephone calls from one of Mr. Burnett's clients seeking to arrange an on-air interview with me. The requests were quite properly declined. I do not raise this to be critical of the media persons who made these requests. However, to my mind, it is representative of the ardency with which all aspects of this trial are being pursued, and demonstrates that there is legitimate reason to be concerned that members of the jury might also be the target of such investigative ingenuity and determination.

[5] I turn now to my ruling of December 4, 2006. Paragraph 4(a) ordered that "there shall be no publication or broadcast in any medium, including the Internet, of the identity of any juror or any information that could disclose their identity."

Paragraph 5 of that ruling defined “juror” for the purposes of the order. Those paragraphs are no longer in effect, and the ban on publication with respect to the identities of jurors and prospective jurors is now as follows:

**a. Prospective Jurors**

Other than film or photographic images, there shall be no publication or broadcast in any medium, including the Internet, of the identity of any prospective juror in this case or any information that could disclose their identity.

For greater clarity, visual images of prospective jurors in this case may be published and broadcast, and those images may visually identify the prospective jurors.

This ban on publication will expire with respect to those persons who are not selected as jurors or alternate jurors for this trial at the point that 12 jurors and two alternate jurors are selected, without further order of this Court.

Once a prospective juror becomes either a juror or alternate juror, the provisions set out below will apply.

**b. Jurors**

There shall be no publication or broadcast in any medium, including the Internet, of the identity of any juror or any information that could disclose their identity. Unlike the ban with respect to prospective jurors, this ban applies to film or photographic images.

The ban on publication with respect to jurors remains in place indefinitely, and, in any event, until the jury is discharged. At that point, the Court will hear any application that may be brought to relieve the ban.

**c. Alternate Jurors**

There shall be no publication or broadcast in any medium, including the Internet, of the identity of any alternate juror or any information that could disclose their identity. Unlike the ban with respect to prospective jurors, this ban applies to film or photographic images.

The ban on publication with respect to alternate jurors remains in place from the time that the alternate juror is selected until the

commencement of the trial and the discharge of that person. At that point, it expires without further order of this Court.

In the event that an alternate juror becomes a member of the jury, the publication ban for that person shall be the same as for a juror.

[6] Paragraph 4(b) of the earlier ruling ordered a ban on the publication of the substance of the jury selection proceedings during the phase commencing on December 11, 2006. It permits the publication of some general information about the process but prohibits the publication of details. The ban expires once 12 jurors and two alternate jurors have been selected. This part of my order remains in place and will not be varied.

[7] Mr. Burnett submits that this ban is not necessary to protect the process, since it would likely be ineffective in preventing any prospective juror who might wish to tailor answers to achieve some particular purpose, whether to be selected or to be excused, from doing so. He further submits that it is not necessary to protect juror privacy since the identity ban addresses that concern.

[8] I imposed this ban because it is my intention that the jury selection process, including the canvassing of prospective jurors under s. 632 of the **Criminal Code** to determine who should be excused and the challenge for cause proceedings, be conducted in such a way that only the prospective juror being screened and the two triers sitting on the challenge for cause will be in the courtroom. The other prospective jurors will be in another room and will not be privy to the events that are taking place. This is a common procedure that is used in order to increase the likelihood that the screening process will operate with maximum integrity. Although

there is no absolute way of ensuring that answers are unrehearsed and are not tailored to achieve a specific outcome, this approach is conducive of that result. These measures would be rendered ineffective if the media were to report the proceedings in detail, and the prospective jurors were to learn of that information through the evening news or the morning paper.

[9] Additionally, although it is of relatively minor significance to the matter, it can be expected that many of the prospective jurors will disclose personal information in the course of the process. The ban is consistent with the reasonable protection of that privacy interest.

[10] This ban on publication was imposed for a limited period of time, so as to minimally encroach upon the right of the media to report the events of the trial. It is reasonable to expect that the jury selection process will take only a few days, so the duration of the ban is likely to be brief. Furthermore, the ban explicitly permits the publication of general information about the proceedings in question.

[11] Accordingly, when all of these factors are taken into account, it is my view that the publication ban with respect to the substance of the jury selection proceedings during the phase commencing on December 11 is necessary in the interests of the proper administration of justice, and that its salutary effects outweigh the deleterious effects on the rights and interests of the parties and the public. This aspect of the earlier order will remain in place.

“J. Williams, J.”  
The Honourable Mr. Justice J. Williams