In the Court of Appeal of Alberta

Citation: Bagley v Calgary (Police Service), 2026 ABCA 336

Date: 20261022
Docket: 2501-0322AC
Registry: Calgary

2026 ABCA 336 (CanLII)

Between:

William A.N. Bagley

Appellant

- and -

Calgary Police Service, CST. Dan Rogers (#5155) and Chief CST. Mark Neufeld

Respondents

The Court:

The Honourable Acting Chief Justice Dawn Pentelechuk
The Honourable Justice Bernette Ho
The Honourable Justice William T. de Wit

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice M.R. Gaston
Dated the 27th day of October, 2025
Filed on the 27th day of October, 2025
(Docket: 2401 16047)

Memorandum of Judgment

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The Court:

[1] The appellant filed an Amended Statement of Claim against the respondents claiming damages for assault, battery and negligence. The respondents disclosed records to the appellant pursuant to their obligations under Part 5, Division 1 of the *Alberta Rules of Court*, Alta Reg 124/2010. The appellant, who is self-represented, posted excerpts of some of the disclosed records to social media. Specifically, the appellant posted some footage from an officer's body worn camera.

[2] Counsel for the respondents sent the appellant a letter citing rule 5.33 of the *Rules* and explaining that records disclosed in litigation are confidential and are subject to an implied undertaking they will not be used for collateral purposes. The respondents demanded the appellant take down the social media posts and provide confirmation this was done. The respondents repeated their request and ultimately filed an application to compel the appellant to take down the social media posts, to provide written confirmation when completed, and to refrain from posting information disclosed in the litigation in the future.

[3] During the hearing before the applications judge, the appellant submitted that rule 5.33 breached his section 2(b) rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. The applications judge explained that a court cannot declare an enactment to be inoperable or contrary to the Constitution unless notice is first given to the Attorney General of Canada and the Alberta Minister of Justice as required by section 24 of the *Judicature Act*, RSA 2000, c J-2. The matter was adjourned for a month to give the appellant an opportunity to give notice and scheduled to be heard in justice chambers given the nature of the relief sought by the appellant.

[4] Before the chambers judge on October 27, 2025, the appellant indicated he sent a letter to the Attorney General of Canada and Minister of Justice of Alberta but did not file affidavits of service establishing that the requisite notice was provided. The chambers judge asked the appellant if he had provided a copy of his application and a notice that he was bringing a *Charter* challenge to the legislation, namely, the restriction imposed by rule 5.33. The appellant indicated he notified Canada and Alberta of the respondents' stance and how that infringed section 2(b) of the *Charter*. The chambers judge explained to the appellant that he had to provide notice to the government that he was challenging the constitutionality of the legislation itself, not simply explain the respondents' position.

[5] The chambers judge concluded the constitutional challenge to rule 5.33 was not properly before her because the appellant had failed to provide the required notice. The chambers judge

also explained to the appellant that he could bring an application to vary the operation of rule 5.33 and suggested he may wish to seek legal advice.

[6] After hearing from the parties, the chambers judge granted an order confirming that information obtained under Part 5 of the *Rules* shall be treated as confidential and used only for the purpose of carrying out the action, and that the appellant shall not publish, repost or share information obtained under Part 5 except as reasonably necessary to carry on the action. The appellant was also directed to remove any social media posts that included information obtained in the course of the action and provide written confirmation of the same. Finally, the chambers judge awarded the respondents $150 in costs.

[7] In his factum, the appellant raises six grounds of appeal alleging that the chambers judge:

(a) misinterpreted and misapplied rule 5.33;

(b) erred by restricting the use and communication of relevant and probative evidence absent a proper legal basis;

(c) failed to properly balance probative value against any alleged prejudice;

(d) issued an order containing internal inconsistencies thereby undermining procedural certainty and fairness;

(e) relied on evidence prepared and sworn under the direct supervision of counsel for the respondents without addressing the reasonable apprehension of bias he asserts arises in the circumstances; and

(f) issued an order that unjustifiably infringed his freedom of expression under section 2(b) of the *Charter*.

[8] In his oral submissions before this Court, the appellant again raised *Charter* arguments and maintained the chambers judge issued an order that was overly broad, without consideration of prejudice to him, including how he uses social media to communicate with friends and family who provide him with support in relation to his lawsuit.

[9] The appellant has failed to establish any error by the chambers judge in granting the order under appeal.

[10] Rule 5.33 states that information and records disclosed by one litigant to another in various ways under Part 5, Division 1 of the *Rules* must be treated as confidential and only used for the

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purposes of carrying on the action the information and records were disclosed in, unless an exception applies. Rule 5.33 codifies the common law implied undertaking of confidentiality: *Simpson v Pawlowski*, 2024 ABCA 254 at paras 10-11. The basic rationale for the implied undertaking is that litigants are compelled to provide broad pre-trial discovery to facilitate a fair and efficient civil litigation process, so the recipient of records and information should not be allowed to use it for purposes that are not related to the litigation: *Juman v Doucette*, 2008 SCC 8 at paras 23-28. The undertaking is to the court and breaching the undertaking can have serious consequences: *Juman* at paras 27, 29.

[11] The chambers judge properly relied on the affidavit evidence before her to conclude that it was appropriate to issue the order under appeal as the appellant's social media posts were to the public at large. In granting the order, the chambers judge did not misinterpret or misapply rule 5.33, nor did she commit any errors in her consideration or treatment of the evidence. Regarding the appellant's suggestion that the chambers judge restricted the use of relevant and probative evidence, the appellant confirmed during the oral hearing that he was aware he could use the body worn camera footage to question the respondents for discovery, which he confirmed he had done, and that the footage could be used at trial. It is clear the chambers judge did not unduly restrict the appellant's ability to use records disclosed by the respondents under Part 5 of the *Rules*.

[12] While a different court file number appears on the second page of the order, we are not satisfied this typographical error constitutes an internal inconsistency undermining procedural certainty and fairness, as alleged by the appellant. All terms of the order under appeal are consistent with the substance of the transcripts filed in this proceeding.

[13] Regarding the appellant's desire to advance *Charter* arguments in relation to rule 5.33, he acknowledged that he did not file an affidavit of service before appearing before the chambers judge in October 2025. Ultimately, the chambers judge was not satisfied that service required by section 24 of the *Judicature Act* was completed. We conclude the chambers judge did not err when she declined to consider the constitutional challenge on this basis: *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at paras 99-101.

[14] The appellant again raised *Charter* arguments before us, asserting that the chambers judge's order was overly broad and limits his freedom of expression. He explained that he had re-served the notices required by section 24 of the *Judicature Act* and filed affidavits of service proving service was undertaken on November 20, 2025. However, service after the chambers hearing does not change the result of the within appeal. Moreover, as to the scope of the chambers judge's order, the terms of rule 5.33 apply unless otherwise ordered or agreed upon by the parties. The appellant advanced the within appeal rather than pursuing other steps to address his concerns

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regarding the breadth of the chambers judge's order and his freedom to communicate with his family and friends to seek their support regarding the litigation.

[15] Accordingly, the appeal is dismissed.

[16] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Appeal heard on October 13, 2026

Memorandum filed at Calgary, Alberta
this 22nd day of October, 2026

Pentelechuk A/C.J.A.

Ho J.A.

de Wit J.A.

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Appearances:

Appellant W. Bagley

L. Desbarats
for the Respondents

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