

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Surrey Creep Catcher v. McArthur*,
2017 BCSC 2501

Date: 20171205
Docket: S177950
Registry: Vancouver

In the Matter of *Judicial Review Procedure Act*, R.S.B.C. 1996, c 241

Between:

Surrey Creep Catcher

Petitioner

And

Drew McArthur, Acting Information and Privacy Commissioner and *et al.*

Respondents

Before: The Honourable Madam Justice Gerow

Oral Reasons for Judgment

In Chambers

Counsel for the Information and Privacy
Commissioner of British Columbia:

C. Boies Parker
D.W. Wu

Appearing on behalf of the Petitioner:

R. Laforge

Counsel for the Respondent:

C. Jones

Place and Date of Hearing:

Vancouver, B.C.
December 5, 2017

Place and Date of Ruling:

Vancouver, B.C.
December 5, 2017

[1] **THE COURT:** The respondent, the Information and Privacy Commissioner of British Columbia, applies for the following orders:

- 1) an order directing the petitioner and Ryan Laforge to comply with the order issued by the Commissioner on July 24, 2017;
- 2) an order directing Ryan Laforge on behalf of the petitioner to report on the petitioner's compliance with the order to the Commissioner on or before December 15, 2017;
- 3) an order amending the respondent Drew McArthur "Acting Information and Privacy Commissioner" to "Information and Privacy Commissioner of British Columbia" in the style of proceeding.

[2] These are the reasons on the application. I reserve to edit these reasons by adding to or subtracting from them, including adding citations, but the result will not change.

[3] The petitioner is an organization that purports to protect children by finding and confronting potential pedophiles or child predators by having members pose as underage children to meet potential "creeps" online. An arrangement is made to meet someone who responds, often in a public place, where members of the petitioner confront the individual and video record the encounter. The petitioner then posts the video online.

[4] The Commissioner received complaints from two individuals who were subjected to the petitioner's scheme. Both filed complaints to the Commissioner which resulted in the order in issue. The order made by the Commissioner requires that the petitioner to remove the postings from the internet and destroy all the records of its online communications and video recordings of the two complainants. As well the order requires that the petitioner inform the Commissioner's office that the orders have been complied with.

[5] Ryan Laforge is apparently the leader of the petitioner organization and has brought a petition on behalf of the petitioner seeking judicial review of the order made by the commissioner on July 24, 2017. The judicial review was not served within 30 days of the order being made and has not apparently been served on one of the complainants.

[6] Mr. Laforge attended in court and opposes the Commissioner's application. He takes the position that neither he nor the petitioner will comply with the order of the Commissioner to take down the postings pending a determination of the judicial review and destroy the records of the online communications with the complainants and the copies of the video recordings of the petitioner's members' encounters with them.

[7] There is evidence that the petitioner has repeatedly refused to comply with the Commissioner's order pending judicial review.

[8] The applicant relies on the inherent jurisdiction of the court and s. 10 of the *Judicial Procedure Act*, R.S.B.C.1996, c. 241. The applicant takes the position that the stay provided for in the *Personal Information Protection Act*, S.B.C. 2003, c. 63, does not apply as the petitioner did not serve the judicial review within 30 days.

[9] Section 10 of the *Judicial Review Procedure Act* provides:

On an application for judicial review the Court may make an interim order it considers appropriate until the final determination of the application.

[10] Section 53 of the *Personal Information Protection Act* provides:

53 (1) Not later than 30 days after being given a copy of an order of the commissioner, the organization concerned must comply with the order unless an application for judicial review of the order is brought before that period ends.

(2) If an application for judicial review is brought before the end of the period referred to in subsection (1), the order of the commissioner is stayed from the date the application is brought until a court orders otherwise.

[11] The petitioner did not bring an application for judicial review of the order within 30 days, and therefore the order was not stayed by virtue of s. 53 of the *Personal Information Protection Act*, and is presumed valid until quashed on judicial review.

[12] As stated earlier, Mr. Laforge at this hearing advised that the petitioner will not comply with the Commissioner's orders pending judicial review.

[13] In my view, it is appropriate in the circumstances to make an order that the petitioner comply with the Commissioner's order, with the exception of the requirement to destroy the material, pending judicial review. The evidence before the court is that the ongoing postings are causing significant harm to the complainants. There is no evidence of any harm being caused to the petitioner or Mr. Laforge if the postings were removed from the internet pending judicial review.

[14] I appreciate Mr. Laforge's position that the material should not be destroyed pending judicial review. However, I am of the view that the remainder of the order should be complied with.

[15] Accordingly, I am making an order directing the petitioner and Mr. Laforge to comply with the Commissioner's order P17-03 with the exception of destroying the records. In other words, I am making an order directing the petitioner and Mr. Laforge to comply with paragraphs 65 c) to h) and 67 c) to g) of the Commissioner's Order P17-03 dated July 24, 2017, pending further order of the court. Mr. Laforge report will be required to report, on behalf of petitioner, about the petitioner's compliance with the order to the Commissioner's office on or before December 15, 2017.

[16] As well I am making an order amending the respondent Drew McArthur from "Acting Information and Privacy Commissioner" to "Acting Information and Privacy Commissioner of British Columbia" in the style of proceedings.

[17] I will dispense approval on behalf of the petitioner of the form of order. Mr. Laforge will be served with a copy of the order.

“Gerow, J.”



No. S177950
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE JUDICIAL REVIEW PROCEDURE ACT

R.S.B.C. 1996, c. 241

BETWEEN:

SURREY CREEP CATCHER

PETITIONER

AND:

INFORMATION AND PRIVACY COMMISSIONER OF BRITISH COLUMBIA,
Steven Erb and Garrett whose last name is unknown at this time.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE or A JUDGE OF THE COURT

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) 13-December-2017
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ON THE APPLICATION of the respondent, the Information and Privacy Commissioner of British Columbia, without notice, without a hearing and on reading the materials filed by David W. Wu, counsel for the respondent, the Information and Privacy Commissioner of British Columbia;

THIS COURT ORDERS THAT:

1. The order made in this proceeding on December 5, 2017 be amended by adding “and 2 of the Order and shall comply with paragraph 65(c) through (g) and paragraph 67(c) through (f) of the Order.” to the end of paragraph 1 of the order.

**Digitally signed by
Tindale, J**

By the Court.

Registrar

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of lawyer for the Respondent, Information and Privacy Commissioner of British Columbia

David W. Wu