

Citation: *R. v. Rutley*, 2012 YKTC 81

Date: 20120830  
Docket: 10-11451  
10-11451A  
10-11453  
10-11047  
11-11010  
11-11010A  
11-11015  
Registry: Dawson City  
Heard: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Honour Judge Ruddy

REGINA

v.

DARREN TROY RUTLEY

Appearances:

Jennifer Grandy  
Christine Badcock  
Darren Rutley

Counsel for the Crown  
Agent for Territorial Crown  
Appearing on his own behalf

**RULING ON APPLICATION FOR DISCLOSURE**

[1] RUDDY T.C.J. (Oral): The application reads that Mr. Rutley is seeking the DVD of Mr. McCormick's follow-up statement as well as medical records from both the Whitehorse General Hospital and, I believe, the Dawson City nursing station that relate to the treatment received by Mr. McCormick.

[2] I will deal first with the issue of the DVD as it relates to Mr. McCormick's statement. The Crown has indicated to me and filed an affidavit supporting their contention that all materials were disclosed to Mr. Rutley's then counsel, Ms. MacDiarmid, and they have information from her confirming that she then disclosed it or provided it to Mr. Rutley upon termination of her retainer. Mr. Rutley has indicated to me that he does not have it. While Crown has raised concerns about the utility of going down this road in terms of providing Mr. Rutley with access to that DVD, I am satisfied that the obligation with respect to disclosure of what is in the possession of the Crown is not dependent on Mr. Rutley being able to satisfy me as to what he is going to do with it. Now that relates to materials in the possession of the Crown.

[3] In this particular case, I am satisfied that it is appropriate for the Crown to make the DVD available to Mr. Rutley so that he can compare the DVD, and the recording on the DVD, with the transcribed statement he has in his possession, to ensure that it is accurate and complete. I am going to ask that the Crown, in conjunction with the RCMP and Whitehorse Correction Centre, work together to facilitate Mr. Rutley's access to that DVD for a reasonable period of time to allow him to compare the statement and the DVD. I am going to rule in your favour on that particular point.

[4] With respect to the medical records, as I indicated, Mr. Rutley is seeking medical records from Whitehorse General Hospital and the Dawson City Health Centre. I have been advised by the Crown that consents for release of medical information were signed by Mr. McCormick. Both have been filed as Exhibit 1 with respect to this application. Both indicate that Mr. McCormick provided his consent to Whitehorse General Hospital and to the Dawson City Health Centre for them to furnish any

information concerning the medical condition or any other personal services that he received from them.

[5] The Crown has indicated to me that all records that they received pursuant to these consents to release information were disclosed to Mr. Rutley. Mr. Rutley believes that there are additional records being held by both. He believes that there would be patient care records that should have been included.

[6] This application, the extent to which I can address it, really, in my view, is dependent upon a question of whether or not the Crown has met their disclosure obligation in this regard. Based on the information that has been provided to me, I am satisfied that the Crown has met its obligation to disclose, that obligation being that they disclose any information that is in their possession. I am satisfied they have disclosed what the hospital gave them.

[7] I will further indicate for the record that I am not, in fact, satisfied that there are more records in the hospital's possession, but for the purposes of this application, in my view, it is sufficient for me to find that the Crown has discharged its obligation by providing the materials from the hospital and the Dawson City Health Centre that are in its possession to Mr. Rutley.

[8] As I indicated earlier, this is not a third party record application in which I can bind the hospital to do anything. I believe Mr. Rutley has indicated that he may well be intending to file a third party record application, but I do want it clear for the record, Mr. Rutley, that if we are going down that road you are going to have to satisfy me that there is something there, and I am not, at this point, satisfied.

[9] I am going to rule against you as it relates to your request for disclosure of medical records because I am satisfied that you have been given everything the Crown has and that is the extent I can go on the application that is before me.

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RUDDY T.C.J