

SUPREME COURT OF YUKON

Citation: *Joannou v. Canada (Attorney General)*,
2018 YKSC 43

Date: 20180827
S.C. No.: 18-A0071
Registry: Whitehorse

BETWEEN:

ASHLEY JOANNOU

PETITIONER

AND

ATTORNEY GENERAL OF CANADA

RESPONDENT

Before Mr. Justice J.Z. Vertes (by telephone)

Appearances:

Meagan Hannam

Leo Lane

Richard S. Fowler

Counsel for the Petitioner

Counsel for the Public Prosecution Service of Canada

Counsel for Tamara Goepfel

REASONS FOR JUDGMENT

[1] VERTES J. (Oral): This is an application brought on an urgent basis to quash a subpoena issued to Ashley Joannou, the editor of the *Yukon News*. The subpoena was issued by the Crown, requiring Ms. Joannou to appear as a witness at the trial of Tamara Goepfel. Ms. Goepfel is charged with three offences under the Yukon *Elections Act*, R.S.Y. 2002, c. 63. That trial is set to start in the Territorial Court later today. Due to these circumstances, my reasons here will necessarily be brief.

[2] The charges arise from alleged activities relating to proxy voting in the territorial election held on November 7, 2016. The charges were laid in February 2017 and this subpoena was issued by a justice of the peace on August 7, 2018. The subject matter

for which the Crown wants Ms. Joannou to testify is a news story she wrote, and published by the *Yukon News* on October 28, 2016, entitled "Liberal candidate defends use of proxy votes by homeless residents". The story relates statements by Ms. Goeppel and others regarding solicitation of proxies. Crown counsel wants Ms. Joannou to verify the statements attributed to Ms. Goeppel in this article. There is no suggestion that anything said to Ms. Joannou was done so on a confidential basis; nor is there any suggestion that there may be anything else by way of notes or recordings that may be pertinent.

[3] Section 698 of the *Criminal Code* states that a subpoena may be issued where a person is likely to give material evidence. The scope of the subpoena power was explained by the British Columbia Court of Appeal in *R. v. Blais*, 2008 BCCA 389, at paras. 21 to 23, that is to say, the party seeking the subpoena must establish that it is probable that the witness is able to provide evidence material to the issues, evidence that tends to prove or disprove a fact at issue.

[4] Here, there is no evidence that the issuing justice of the peace took any steps to satisfy himself or herself that the witness would likely give material evidence. Crown counsel stated that there is no evidence as to what the justice of the peace was told about the materiality of the evidence. That is true but, again, the onus is on the party seeking the subpoena to establish that the discretionary power of s. 698 was exercised in a judicial manner.

[5] Here, there is also no evidence that the justice of the peace considered or was even asked to consider the special circumstances of the media and the necessity to

balance the competing societal interests of freedom of the press and the need to investigate and prosecute crimes.

[6] There is also no evidence that the justice of the peace was made aware of whether there were alternative sources open to the Crown. Here, Crown counsel says that he is not aware of any other means to adduce the evidence, short of admissions by the accused. However, the story itself indicates that several others are aware of the circumstances related in the story and Crown counsel said he has a number of other witnesses available to testify as to the circumstances.

[7] It seems to me that these reasons alone are sufficient to set aside the subpoena. However, and furthermore, I am not satisfied that the evidence is material. The statements reported are, by and large, statements of opinion by Ms. Goepfel and statements as to general comments made by others, not fact. The evidence sought, seems to me, does not prove or disprove a fact. I am not satisfied that the testimony of Ms. Joannou is necessary for the Crown's case and it would not be reasonable to issue the subpoena under these circumstances.

[8] The application is granted and the subpoena is quashed.

VERTES J.