

SUPREME COURT OF CANADA



Case in Brief: *R. v. Brassington*

2018 SCC 37 | Judgment of July 20, 2018 | On appeal from the Court of Appeal for British Columbia

Police officers can't reveal information about confidential informers to anyone, including lawyers defending them for crimes, the Supreme Court has confirmed. The same rule applies to police as to everyone else: information can only be revealed if there is a risk that an innocent person will go to jail.

In 2011, four British Columbia RCMP officers were charged with breach of trust, fraud, and obstruction of justice relating to their conduct with a protected witness who was under their care in the "Surrey Six" gang murder case.

When the officers were charged with the crimes, they were told they couldn't tell anyone anything that might expose confidential informers. This included their lawyers. The officers said they wanted to talk about confidential informers with their lawyers to see if it would help defend themselves against the charges. The Crown pointed out that no confidential informers were involved in the acts the officers were charged with (the protected witness was not one). It said the information wasn't relevant to the officers' defence, and they shouldn't be allowed to share it.

This case involved a legal concept known as "privilege." Privilege protects certain kinds of information from being revealed. "Solicitor-client privilege" is a well-known type, and protects communications between a client and a lawyer. But there are other kinds. This case dealt with "informer privilege," which protects the identities of confidential informers who help police. Because it is in the public interest to encourage people to come forward to help police solve crimes, and because informers may be harmed if their identities are revealed, the protection is strong. Courts have said there is only one exception, known as "innocence at stake." This is when there is a real risk that an innocent person may go to jail, and s/he can't raise reasonable doubt about his or her guilt any other way.

The trial judge ruled for the officers. Appeals to the Court of Appeal on technical issues did not change the result.

Justice Rosalie Silberman Abella, writing for a unanimous Supreme Court, ruled for the Crown. She stressed the importance of informer privilege, noting the real danger to people and the justice system itself if sensitive information were revealed. She said police officers have special obligations because of the positions of trust that they hold. That includes protecting the identities of confidential informers. The only reason the accused in this case had information about confidential informers at all was because of their work as police officers. Other accused persons would never have the benefit of such information, so preventing the officers from sharing it did not disadvantage them. Police officers are entitled to the full protection of the law, and to be treated fairly, but they are not entitled to be treated better than other accused. Justice Abella said that, like other accused, police officers should not be allowed to share informer-privileged information with their lawyers unless they show they might be wrongfully convicted if they don't. The officers in this case never argued that they would be; they only said the information might be relevant to their defence.

This decision confirmed that the only time an exception will be made to informer privilege is when there is a danger someone will be wrongfully convicted of a crime. It made clear that solicitor-client privilege doesn't destroy informer privilege, and doesn't allow police officers to identify confidential informers to their lawyers.

NOTE: This Case in Brief was not published at the time of the decision due to a publication ban. It was published on May 8, 2019, after the publication ban was lifted.

For more information (case no. 37476):

- [Reasons for judgment](#)
- [Case information](#)
- [Webcast of hearing](#)

...cont'd

Breakdown of the decision:

- Unanimous: [Abella](#) J. ([Wagner](#) C.J. and [Moldaver](#), [Karakatsanis](#), [Gascon](#), [Côté](#), [Brown](#), [Rowe](#), and [Martin](#) JJ. in agreement)

Lower court rulings (not available online):

- Court of Appeal for British Columbia (appeal from order)
- Supreme Court of British Columbia (application for declaration, order)

Ce document est disponible en [français](#).

Cases in Brief are prepared by communications staff of the Supreme Court of Canada to help the public better understand Court decisions. They do not form part of the Court's reasons for judgment and are not for use in legal proceedings.