



PROVINCIAL COURT OF NOVA SCOTIA SAYS “NO CONSTITUTIONAL RIGHT OF THE MEDIA TO THE BEST IMAGES”

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PRECIS: In *Hyde (Re)* [2009 NSPC 34] the Provincial Court of Nova Scotia dismissed the application by the Canadian Broadcasting Corporation (CBC) for access to the surveillance video evidence.

This matter arises from an Inquiry under the *Fatality Investigations Act*, S.N.S. 2001, c. 31 into the death of prisoner Howard Hyde, who died while he was in the custody of the provincial correctional service. In the matter of *Hyde (Re)* [2009 NSPC 34] the Canadian Broadcasting Corporation applied for an Order to copy the video surveillance exhibits presented at the Inquiry for broadcast purposes. The video CBC was interested in came from the Halifax Regional Police Service (HRPS) and the Central Nova Scotia Correctional Facility (CNSCF). This footage, stored on DVD’s, showed police officers *taser*ing and struggling with Mr. Hyde. This video played in the courtroom on a large flat-screen television, and was captured by the cameras live streaming the Inquiry proceedings. Were also filmed by the same cameras witnesses commenting on the video while it was being viewed. Media outlets, including CBC, had access to these images from the live streaming. CBC nevertheless alleged that this video was of poor quality and, thus, unsuited to broadcast.

The Broadcast Corporation therefore requested the authorisation to duplicate the highly newsworthy video in order to provide the public with superior quality footage. According to CBC, this would enhance the audience’s actual understanding of the proceedings. Indeed, CBC submitted that the Order should be granted for the sake of “open justice”: it would “enable the Corporation to properly discharge its constitutional right to report on the Inquiry”; it would result in “a better public access to the proceedings”.

In support of these pretensions, the Applicant cited the Supreme Court of Canada in *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, where the highest Canadian Court held that “it is only through the press that most individuals can really learn of

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what is transpiring in the courts.” In other words, CBC contended that its mission of public information being of crucial importance, it was entitled to the use of the best visuals possible. Justice Anne S. Derrick denied the application primarily because to decide otherwise would have completely undermined a decision she rendered previously (*Hyde Re*, [2009] N.S.J. No 308), a decision by which she prohibited the direct downloading of the video surveillance evidence to the internet. The Judge spoke these words:

I am unable to see how CBC’s request to duplicate the video surveillance DVD’s for broadcast and posting it to its website is any different from what I have already prohibited. My decision prohibiting the direct downloading of the surveillance video evidence to the internet would be rendered meaningless if CBC was able to copy the DVD’s and post them to its website. This would, in effect, be a direct downloading to the internet, albeit on the website of a responsible media institution. The fact that the downloading would be to the CBC webpage would not eliminate any of the concerns I articulated in my earlier decision.

Addressing the right to “good visuals” alleged by CBC, the Court set the record straight by stating that “there is no constitutional right of the media to the clearest images, what might also be termed, the best ‘visuals’”. According to Justice Derrick, the media, despite the unquestionable importance of the role they play in society, are not entitled to the same quality of image as is available to the Inquiry. The Judge found the video as was of sufficient quality to permit CBC to fulfill its mandate effectively. Furthermore, the process of live streaming rendered the matters discussed in the Inquiry even more intelligible to the public, as it provided the audience with the testimonies of the witnesses heard in relation to the video surveillance evidence. This meant additional explanations on the images seen, and, therefore, better general understanding of their judicial implications. The Court, in deciding as it did, also put forward the fact that the downloading by CBC of the video surveillance evidence to its website would expose this video to an “unlimited potential for manipulation on the internet.”

For these reasons, the Judge refused to interpret the media’s right to cover Inquiries in a way that would mean that they should have access to the best visual images they can obtain.



