

[Transcript] Suspicion | The Billionaire Murders: The hunt for the killers of Honey and Barry Sherman / Wannabe lawyer: The secret handshake and other tips to unseal Sherman secrets (bonus episode)

Canada's top court has delivered its ruling in a case brought forward by the Toronto Star in an attempt to unseal estate files related to Barry and Honey Sherman.

Kevin, set the scene for us.

Well, I'm in my Toyota Highlander. It's a nice day in June 2021.

I'm parked on a side street near one of Toronto's courthouses, listening to an off-the-record telephone briefing by a lawyer with Canada's Supreme Court in Ottawa.

It's about a case I started and argued myself at two levels of court before my lawyer at the Toronto Star, Iris Fisher of the Blake's firm, took over. This decision that we've waited years for, it's going to be released at 9.45 a.m.

Now, this is one of the challenges in court to unseal information for the Sherman case.

What's this one about?

Actually, I think it might be best if in this instance we hear my lawyer, the Star's lawyer, Iris Fisher, explain how it started. Iris Fisher?

Here's how she began her argument in front of seven Supreme Court judges.

Good morning. I'm counsel to the respondents Kevin Donovan and Toronto Star newspapers.

This case began with Kevin Donovan, the chief investigative reporter for the Toronto Star, going to the Superior Court in Toronto and making a routine request.

He asked to see some court files.

Mr. Donovan was investigating police conduct and two murders that had shocked Toronto and the country. Those of Barry and Honey Sherman, well known, Toronto philanthropists, active in the community, and in Barry's case, the founder and majority owner of generic pharmaceutical giant Apotex. In asking for the court files related to the Sherman's estates, Mr. Donovan was engaged in a staple of news gathering, accessing Canada's open courts. And it is this common place yet fundamentally important access to court files that this court should preserve in this case.

Because if it were up to the appellants, access to courts would look very different.

So fast forward almost a year from that hearing, you're in your car, the judgment's about to be handed down. What's at stake? First of all, the Sherman family has spent hundreds of thousands, actually, I think millions of dollars in legal fees fighting to keep the Sherman estate documents sealed. Papers that reveal who got what when Barry and Honey died. These documents, we're talking about

these estate documents, they're presumptively public in the Canadian court system. But this case, it's about a lot more than the Sherman estate. I saw it as a test of our open court system. It's really what stops us from having a star chamber. The star chamber is that 15th century English court known for secrecy and protection of the rich and powerful. There's this old saying, sunshine is the best disinfectant. No matter who you are or what kind of case, that's important.

Now these seven judges at the Supreme Court of Canada, they have a choice. They can reaffirm the longstanding principle of open courts in Canada or establish a precedent that goes the other way.

A darker way, in my opinion. From a personal point of view, what does this mean? If we win, it's a huge sigh of relief. If we lose, the way I'm thinking that day, it goes on my tombstone.

Kevin Donovan, the reporter who closed the courts in Canada. Were you nervous? I gotta tell you, Raju, I've been under fire by 50 caliber guns and mortar rounds in Afghanistan and Kuwait and Iraq.

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I was a lot more nervous about this. After more than three years of reporting extensively on one of the most high-profile murder mysteries in Toronto history, the mystery of who killed Honey and Barry Sherman, Toronto Star investigative reporter Kevin Donovan is thrilled. The Supreme

Court of Canada has ruled that documents pertaining to the estate of the billionaire couple found hanging from a railing next to the pool in their York Mills mansion must be unsealed.

From the Toronto Star, I'm Kevin Donovan. And this is The Billionaire Murders, the hunt for the killers of Honey and Barry Sherman.

Over the next few weeks, we're presenting several behind-the-scenes episodes with content we think will further your understanding of this story. Our main series continues in April. Today, wannabe lawyer. I know you're going to tell us about Barry and Honey's estate in upcoming episodes of The Billionaire Murders. I'm joined today by my producer, Raju Mudar. Can you tell us a little bit about fighting these legal battles? Sure. I mean, look, I'm not a lawyer. My father actually wanted me to be one, and he died when I was still in university, so he never saw my career path. Journalism is my calling, but I'm really fascinated with the law. It has the power, if used wisely, to correct wrongs. But the law can also be used to keep things secret, and I really think that's wrong. When the Sherman case started, I just wanted to see what records I could get from court. But it seemed like everything with the name Sherman was sealed, his estate files, and the search warrants filed by police. Now, the star, like all big newspapers these days, is having financial struggles. We simply can't afford to pay tens of thousands of dollars to outside counsel to fight every good fight. Bert Bruzer, my mentor and lawyer back then, he called me into his office and encouraged me to do it myself, both for the estate files and for thousands of pages of criminal search warrants. Okay, let's talk about the estate battle first. That was in what, Superior Court? What was the first step? Well, I walk into Justice Sean Dunphy's court in Toronto. I made sure I wore a nice suit. Justice Dunphy, he's the judge

who originally sealed all the Sherman estate files upon request of their lawyers. So there's me on one side of this large courtroom, and there's six Sherman lawyers on the other side. I was struck by how lawyers belong to an exclusive club. So as a non-lawyer, and Bert helped me with

this, I did my best to be extra deferential. Things like Justice Dunphy, your honor, with permission of the court. I see it kind of like having a secret handshake, and it works surprisingly well. I did all the preparation myself, pulled precedents from a legal database, assembled my written materials at a staples. There's no recording of that hearing, and if there was, the rules would prevent me from playing it. But here's how Sherman lawyer, Chantel Shea, described the Sherman position when they eventually got to Supreme Court. A hearing that was live streamed. In one document, she said that if the names of the beneficiaries and the estate trustees got out, they would face violence and kidnapping.

Very and Honey Sherman were found brutally murdered in their Toronto home in December of 2017. The crimes against them remain unsolved and unexplained. The central issue to be resolved on this appeal is whether the privacy and safety interests of the beneficiaries and trustees of the Sherman's estates outweigh the public's interest in accessing materials relating to the

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private testamentary affairs of the Sherman's. Now after both sides presented their arguments, it seemed to me Justice Dunphy was on our side. He seemed to indicate that in his remarks, and I had a sense walking out that day that we'd won. I was pretty excited. But when his judgment came out a couple of days later, we had lost. He placed a two-year ceiling order on the files. So what did you do? Did you appeal? Yeah, we felt we had no choice. Once there's a decision out there like that, it could be used to seal records in other cases. And I didn't want Ontario heading down the road to a star chamber. The funny thing was, Justice Dunphy, during the hearing, he talked about that concept in open court. And he said, it's really important that courts are transparent, because you don't want people to think, and he actually said this, that judges are being bribed. Okay, so the court of appeal was next? Yes. Now this is the big leagues. Three judges of Ontario's highest court. Beautiful, lovely oak-paneled courtroom. Judges staring down from a raised bench. They're all in their robes, of course. I was really terrified of screwing up. I wore a nicer suit that day. My focus was on how the Sherman side had provided literally no evidence that anyone was in danger of violence or kidnapping. But they'd filed this affidavit from a mysterious unnamed person saying that they were in danger, but they wouldn't tell the court who the person was.

That was sealed. I knew it wasn't a cop. That much I was able to show in court that day. So that made me wonder, why were the cops not helping the Shermans out? Why didn't the cops file an affidavit saying that this information should be sealed? Starting to get a picture that maybe the police in the Sherman family aren't in lockstep. So other than the financial part of the estate, wasn't there the concern that the names of the Sherman's adult children would get out? And I guess maybe the names of the executors of the estate? Exactly. And so this is where, from my point of view, their case just broke down. I'd reported in the Toronto Star that the four kids, Lauren, Jonathan, Alexandra, and Kailin, were the beneficiaries, and they were to share Barry's billions equally. And I'd reported that the estate trustees were Jonathan, Barry's friend, Jack K, Alexandra's husband, Brad Krochek, and Barry's money advisor, Alex Glassenberg. We put their names in the paper. It was out there in the public domain and nobody was the worse for it. It felt like the Shermans were fighting because they could afford to fight. Did the judges have any comments about the violence and kidnapping concerns? They did. And it was one of the two moments when I, in Ontario Court of Appeal, started to feel good about my chances. Of course, I thought I'd won the other one too, so you can imagine, but I'm always hopeful. During the hearing, the Sherman senior lawyer, Tim Juden, at one point, he stands up in front of these three veteran top, top judges, and he says that the Shermans basically deserve a special treatment because the murders were particularly heinous. So one of the judges peers down at Juden over his glasses and says, you know what, Mr. Juden, your problem here is we see a lot of heinous crimes in this court. The other moment was when one of the judges told me at a break where to get a coffee in the lawyer's lounge. I took that as a good sign. We'll be right back. The Toronto Star is the leader in coverage on the Sherman case. For over five years, we've worked tirelessly to uncover new facts, established sources, and follow up on leads. To read exclusive articles and get early access to future podcast episodes,

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become a star subscriber at thestar.com forward slash subscribe. Use promo code podcast to save 10% on an annual subscription. So what happened when the court of appeal ruled?

We won, and it was a strong ruling in our favour, and I think the Sherman should have given up there, but they kept fighting. They appealed to the final court in Canada, the Supreme Court, and now the stakes are really high. If the highest court makes a ruling, it's going to resonate across the country, and the Toronto Star, we can't afford to lose. It's too important. We retain Iris Fisher of Blake's. Blake's is the star's longtime law firm, and Iris's fought a lot of big cases that have helped make things public.

Blake, late Toronto star owner John Hondrick, he decided that despite our financial struggles, this was of such importance that he authorized the legal fees. Both sides present in Ottawa. It's during the pandemic, all sorts of rules around that, which we all remember, but then nothing from the court. We end up waiting eight months for the Supreme Court to deliver its ruling. But looking back at that hearing, one of the remarks of one of the justices gave me hope. The Court of Star Chamber met in secret. It was abolished.

Okay, so that brings us back to where we were. The Supreme Court's about to rule, you're in your car outside the courthouse, so did you just like walk in and pick up the file?

Well, that's how I wanted it to work, and I tried. It turns out that the Euro Cup soccer competition had just started. And as I went up to the court clerk, I could see that this court clerk and everybody else in this office was fixated on the current match. They all had iPads, and they really weren't paying any attention to me. Once they finally did, I said, you know, I want to find the Sherman file, and clerk goes away, comes back a half an hour later, and he hands me this tiny little file. And I can tell it's only got three or four pages in it. I open the file, and it's actually my request to appeal from two years before. So I say, look, come on, we've got to try and find this file. It's really important. And I have a literal court order to see them from Canada's highest court. I won't bore you with the Kafkaesque nightmare

that I ascended into. But at 5 p.m., a court clerk appeared with these two massive boxes of documents just jammed with sealed documents. The other media I know was buzzing about, but I got him to take me into a closed courtroom, and he sat there watching the Euro Cup while I opened every file and made notes and went back to the Toronto Star and wrote the story for the front page. I know in our main episodes, you're gonna dig into what you found. But while you were doing this, you also had another court battle on the criminal side? Yeah, this is a legal battle I'm doing that is far from over. It deals with police documents filed in court and supportive requests for search warrants and production orders. This is so that the police can search homes, computers, phones, bank records. To do that, and it's a good thing, they need permission from a judge. They can't just go grab the stuff. In the case of the Shermans, Justice Leslie Pringle of the Ontario Court has dealt with all of these warrant requests. Here's Hank Izinga. He's the head of Toronto Homicide at one of the press conferences dealing with the Sherman case, and he's just describing in general what they're doing and how they're using these search warrants. To date, investigators have obtained 38 judicial authorizations, which have resulted in the searches of residential and commercial properties, electronic devices, and the production of 73 individual records. 150 items have been submitted

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to the Center of Forensic Sciences for tests. 243 witnesses have been interviewed. Four terabytes of security video has been obtained. 205 tips have been provided directly to the police from the 343 tips have been provided so far to the police via the private investigative. 701 investigative actions have been assigned. So the information relating to what the inspector said, that's all filed in court. Yes. To date, there are 3,300 search warrant pages. They're filled with, well, first of all, they're just documents. They're big bound documents, but they're filled with police theories, statements of witnesses. When they say witnesses, it's not somebody who necessarily saw a crime. A witness would be an interview with a family member or a colleague of Barry or Honey Sherman. All of these statements are there and they're all under these headings. What I've been trying to do for the past five years is convince Justice Pringle that if I'm going to scrutinize the police investigation, which I've shown her has not been great, I and the public need access to those pages. How's it been going so far? Well, better as the months and years go by, I'd say about half has been unsealed. I go before Justice Pringle roughly every six months and for those of our listeners who see our ongoing coverage on the Sherman case and the Toronto Star, this will explain why every six months you'll see a flurry of Sherman stories. That's because if I've been successful in that six month period, a bunch more information has been unsealed. It's a bit of a cat and mouse game and though I'm not a lawyer, Justice Pringle has allowed me, in fact, it was her idea that every six months I could cross examine the lone full-time homicide detective on the case. His name is Detective Constable Yim. I've had Detective Yim on the witness stand for days and days. His position in the Toronto police position, everything should be sealed. My position, I want it all made public. Can you give us an example of one of the victories along the way?

Probably the best example relates to the witness statements of four individuals. After one hearing, Justice Pringle agreed to unseal statements of a whole bunch of people, but not these four people. I'm looking at PDF pages that are using the PDF program that allows you to black out sections and I'd say there's about 20 pages that are blacked out and the way the pages are set up, I can tell there's four people who've been interviewed. At the same time that these are sealed, Justice Pringle has unsealed the statement of Honey's sister Mary, but the other ones are sealed. So I'm thinking, hang on a second, what's going on? Okay, take us through that. So I'm looking at this, it's a 300 page document and I see Aunt Mary, Honey's sister, I see her statement, it's at the end of these 20 blacked out pages. And then there's the statement of Brad Krochek who is married to the Sherman daughter Alexandra. So at the start of this 20 page section that I'm really interested in, the blacked out section, one word has been unsealed and ultimately this was the police undoing in this case. Above the 20 pages that are blacked out, it says family and it's underlined, then all the blacked out pages. So on the witness stand, I said Detective Constable Yim, and I remind him, you know, you're under oath so you have to be truthful. Now Detective Yim, he's a super nice young officer, quite junior, but he plays a big role in this case because he's in charge of all these documents. So I look at this stuff that's being unsealed and I say, who's Mary Shekman? Oh, he says that's Honey's sister. Would you consider her family? Yes, he says. And then I say, what about this guy Brad Krochek, the son-in-law, would you consider him family? I can see he knows where I'm going with this.

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And Peter Scrutton who's the crown attorney who is basically representing the police who I've come to know pretty well, I can see he knows where I'm going with this. So the detective says, yes, Mary and Brad, they're family members. And I said, and am I looking at their statements? Yes, you are. And I said, hang on a second. There's this heading that says family, like interviews with family. I say, I think that's the four Sherman children. Long pause. I said, why can't you unseal them? And he says, well, to unseal them would identify persons of interest and harm our case. So now I move in for the attack. I'm getting pretty excited here. I say, are you saying that these four people who I believe are the children are persons of interest, which I know by this point, a person of interest is one rung below a suspect. Long pause from the detective. What he eventually tells me is that, well, I'm not saying they're persons of interest, but the things that they say would identify persons of interest. And I'm thinking he's saying, well, they must be pointing fingers at others. And I get into later in the podcast, everybody's pointing fingers at this point that they're interviewed. So I point out to him that there's big portions of Mary and Brad statements are unsealed, except the names of the people that they're implicating, why not unseal the kids statements? What happens next? Okay, so there's a court recess of about an hour. Detective Yem confers with the crown attorney, Peter Scrotten. And then we come back. There's some discussion in open court. And a ruling is made by Justice Pringle. She's going to unseal most of those statements of the Sherman children. And that led to some very interesting stories. I never find out or haven't found out yet who they're pointing the finger at, although I have a pretty good idea. But one of the stories I get out of this is from this unsealed statement that Jonathan Sherman, the son, has been telling the police that there are people out there who have a grudge against his father. So my fight continues. I want eventually to get all 3,300 pages unsealed. How long will this go on until I get everything? I've said in open court that I'm nowhere near retirement and I'm going to keep at this. I'd say about half of the revelations people will hear in our podcast series comes from this process. The other half comes from my interviews. But we're moving into a new phase of this court battle. Justice Pringle, who I have a tremendous amount of respect for, although she doesn't agree with everything I say, she's retiring this month. A new judge is going to preside over the case. That new judge will be the one deciding what search warrants to authorize. And if the police have met the test, he'll authorize more search warrants. This new judge is also going to decide if I get to see more of those pages. Should be interesting. Well, it's been a fascinating journey so far, Kevin, and I'm sure we'll look forward to see what happens next. Thanks, Reggie.

Next time on The Billionaire Murders, police meet Mr. Risky Business.

The Billionaire Murders, the hunt for the killers of Honey and Barry Sherman, is written and narrated by me, Kevin Donovan. It was produced by Sean Pattenden, Raju Mudar, Alexis Green, and JP Fozo. Additional production from Brian Bradley and Crawford Blair. Look out for my book, The Billionaire Murders, and coming later this year, The Crave Documentary, by the same name.