

CANADA / JUDGMENT

R. v. Nowack

2025 ONCA 857

COURT

Court of Appeal for Ontario

DECIDED

10 December 2025

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R. v. Nowack Collection Decisions of the Court of Appeal Date 2025-12-10 Neutral citation 2025 ONCA 857 Docket numbers C67831, M56470 Judges Roberts, Lois B.; Thorburn, Julie; Madsen, Lene Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Nowack, 2025 ONCA 857 DATE: 20251210 DOCKET: M56470 (C67831) Roberts, Thorburn and Madsen J.J.A. BETWEEN His Majesty the King Respondent/Responding Party and Steven Nowack Appellant/Moving Party Paul Slansky and John Kingman Phillips, K.C., for the appellant/moving party David Friesen and Maria Anghelidis, for the respondent/responding party Heard: November 27, 2025 REASONS FOR DECISION

- [1] This motion for further information and disclosure from the responding party arises out of the moving party's appeal from 12 fraud convictions. The moving party seeks further non-privileged productions and information to assist in creating a fresh evidence record for use on his appeal to support his allegations of abuse of process.
- [2] The appeal is being closely case managed by Paciocco J.A. who has issued numerous directions, including with respect to this motion. In the Supplementary Directions of Case Management Judge dated October 20, 2025, Paciocco J.A. clarified that the issue of the privilege claimed by the Toronto Police Service ("TPS") over documents and information sought by the moving party would not be addressed on this motion. In his November 3, 2025 Direction, Paciocco J.A. further outlined the focus of this motion, as follows: A panel motion has been scheduled for November 27, 2025, for the resolution of outstanding issues relating to cross-examination and disclosure.
- The scheduled motion will proceed between the parties in the scheduled time, without the participation of the TPS and will not resolve any material third party disclosure obligations. That motion will address: o Any outstanding issues between the parties about the scope of the fresh evidence cross-examination; and o Whether the Crown is obliged to make Stinchcombe disclosure of any documentary information that has been requested but continues to be denied, whether as the result of non-disclosure or redaction.

- [3] The moving party submits that the responding party: 1) failed to disclose various relevant emails from the TPS and the Crown before and after trial, and 2) refused to answer relevant questions on the cross-examinations of the three affiants put forward by the responding party in response to the moving party's motion to admit fresh evidence. The moving party argues that the TPS and the Crown misled the Superior Court and this court regarding the deletion of relevant emails.
- [4] In para. 67 of the factum, the moving party seeks the following order, subject to the claims of privilege which will be dealt with at another time, if necessary:
- (1) To provide answers to questions on the 2025 disclosed emails regarding the edits and attachments;
 - (2) To disclose the attachments to the 2025 disclosed emails; and/or
 - (3) To disclose all emails to and from Crown Counsel Weinberg regarding the investigation of the moving party.
- [5] The responding party submits that all relevant non-privileged emails and attachments have been produced to the moving party; the redacted portions of the emails and the attachments have not been produced because of privilege; the moving party has had his requested opportunity to cross-examine the affiants; and the only questions refused on the cross-examinations related to privileged matters.
- [6] The assertion of TPS's privilege claim is a complete answer to this motion in that it covers the further disclosure and cross-examinations requested by the moving party. The transcripts from the cross-examinations of the affiants and the correspondence exchanged among counsel for the moving party, the Crown and TPS amply support the responding party's submissions that everything relevant has been produced and that the only productions or answers refused that related to the disclosed emails arose from the privilege claim, which is not an issue that is to be determined on this motion.
- [7] On March 11, 2024, this court denied the moving party's motion seeking further disclosure and cross-examination through the appointment of a commissioner, because there was no basis for the moving party's allegations of malfeasance against the TPS or the Crown. The misunderstanding of the process for the deletion of emails was simply an error and not the product of bad faith or deliberate intent to mislead the moving party or the court. As this court concluded: There is no basis, on this record, to suggest that the TPS, or the prosecuting Crown, was ever anything but honest and open about what they knew at the various times that they advised the trial judge that the emails had been deleted. It is simply the case that subsequent information demonstrated that the initial understanding of the TPS, and the prosecuting Crown, was both confused and erroneous. However, the appellant has failed to demonstrate any air of reality to his submission that this conduct could amount to an obstruction of justice or that it was undertaken in a manner that undermines the integrity of the administration of justice.

- [8] We see nothing in the remaining produced documents and answers on the cross-examinations that have occurred since March 11, 2024 that would alter the basis for this court's decision.
- [9] For these reasons, the motion is dismissed. As directed by Paciocco J.A., we are not dealing with the question of privilege. That question and the remedies, if any, flowing from its determination, will be decided on another day. "L.B. Roberts J.A." "Thorburn J.A." "L. Madsen J.A."

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