

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. James*, 2006 NSCA 57

Date: 20060511

Docket: CAC 206002

CAC 206003

Registry: Halifax

Between:

Wayne A. James and Neil W. Smith

Appellants

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Thomas Cromwell

Appeal Heard: April 6, 2006

Subject: Disclosure and production for a criminal appeal - **Witness Protection Program Act**, S.C. 1996, c. 15, as am. -

Summary: Smith, who had been convicted of first degree murder and conspiracy to commit murder, appealed his convictions and applied for disclosure and production of material related to a civil action pending in the Federal Court. The Federal Court action involved Derry, an important Crown witness at Smith's trial, and the RCMP, who administer the witness protection program in which Derry had been enrolled. Derry had been a participant in the killing and had become a police agent and a paid informant. He had been granted immunity from prosecution. The Federal Court file was subject to a broad confidentiality order.

Issues:

1. How is this material potentially relevant to the appeal?
2. Does the Federal Court confidentiality order prevent this

- Court from making any disclosure order in this case?
3. If so, should this Court express any view about the order it would make but for the confidentiality order?
 4. If so:
 - (a) What legal principles would this Court apply to the disclosure or production of this material?
 - (b) Is the material in relation to the action which is in the possession of the RCMP or its legal counsel subject to disclosure?
 - (c) If not, what threshold for production would apply and has it been met?

Result:

Application dismissed. It would be improper for the Court to order disclosure or production in the face of the Federal Court order. The applicant would have to apply to the Federal Court to vary that order. However, as it might be of some assistance to do so, the Court of Appeal expressed some tentative views as to whether it would order disclosure or production but for the Federal Court order.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 18 pages.