NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Cox*, 2025 NSCA 70

Date: 20251003
Docket: CAC 541120
Registry: Halifax

Between:

Kaz H. Cox

Appellant

v.

His Majesty the King

Respondent

Judge:	Farrar, J.A.
Motion Heard:	October 2, 2025, in Halifax, Nova Scotia in Chambers
Written Decision:	October 3, 2025
Held:	Motion dismissed
Counsel:	Kaz H. Cox, appellant on his own behalf Timothy O'Leary, for the respondent

Decision:

Background

[1] On January 4, 2021, Kaz Cox was charged on a 2 count indictment with intimidation of a justice system participant contrary to section 423.1(1)(b) of the *Criminal Code of Canada.*

[2] His trial originally proceeded before Provincial Court Judge Rickcola Brinton. Unfortunately, after the trial commenced and before there was a verdict, Judge Brinton went on an indefinite leave and did not return. As a result, pursuant to section 669.2(3) of the *Criminal Code*, the trial was continued before Provincial Court Judge Bronwyn Duffy.

[3] On February 25, 2025, in an oral decision, Judge Duffy convicted Mr. Cox of one count on the indictment. He was acquitted on the other.

[4] On March 3, 2025, Mr. Cox appealed his conviction to this Court.

[5] Mr. Cox is self-represented and on September 12, 2025, as required by *Rule* 91.15(5), the Crown filed the Appeal Book. The Appeal Book does not include the proceedings before Judge Brinton.

[6] On September 18, 2025, Mr. Cox filed a motion to have the Crown include the 22 days of trial and appearances before Judge Brinton in the Appeal Book. His position was, even though a different judge took over the proceedings, the testimony and appearances in the proceedings before Judge Brinton are relevant to this appeal.

[7] The Crown opposed Mr. Cox's motion. It argued the proceedings were not in evidence before Judge Duffy. Therefore, they should not be included in the Appeal Book pursuant to Rule 90.15(2).

[8] For the reasons that follow I would dismiss the motion.

Analysis

[9] Section 669.2 (with the removal of unnecessary wording) provides as follows

> (1) Subject this section, where an accused or a defendant is being tried by

> (a) a provincial court judge,
>
> (b) …
>
> …and the provincial court judge… is for any reason unable to continue, the proceedings may be continued before another … provincial court judge… who has jurisdiction to try the accused or defendant
>
> …
>
> (2) If no adjudication made – Subject to subsections (4) and (5), if the trial was commenced but no adjudication was made or verdict rendered, … the provincial court judge… before whom the proceedings are continued shall, without further election by an accused, commence the trial again as if no evidence on the meris has been taken.

[10] In *R. v. J.D.*, 2022 SCC 15, the Supreme Court of Canada considered the admission of evidence from the original trial when a case is continued under section 669.2(3). In that case, like the present case, the original judge was not able to continue with the trial. He was replaced under Section 669.2. At the time the trial was discontinued, one of a number of sexual assault complainants, C.D., had given evidence.

[11] At the continued trial, both the Crown and J.D.'s counsel agreed the transcript of C.D.'s testimony could be admitted as evidence on the merits.[1]

[12] J.D. was convicted. He appealed to the Quebec Court of Appeal.

[13] The only issue before the Quebec Court of Appeal was whether the trial judge erred in allowing the testimony of C.D. to be used as evidence in the new trial. J.D. argued it resulted in an unfair trial. The Quebec Court of Appeal agreed. It found the trial judge erred in admitting the testimony and ordered a new trial.

[14] The Crown appealed to the Supreme Court of Canada. The issue before the Supreme Court was the interpretation of section 669.2 of the *Criminal Code*.

[15] Although *J.D.* involves evidence that was admitted at the second trial, it addresses the circumstances where evidence from the previous proceeding may be admitted at the second trial:

> [25] This section, which is included in Part XX of the *Criminal Code*, is found in a division entitled "Jurisdiction". This means that s. 669.2(3) does not preclude

[1] *R. v. J.D.*, para. 9.

> the application of the usual rules with respect to the presentation of evidence: it concerns *jurisdiction*, not evidence.
>
> [26] At the outset of the second trial, both the prosecution and the defence are free to proceed as they see fit as regards the presentation of their evidence. The parties may take the conventional approach, the one based on the view that "[t]he law has ... favoured the evidence of witnesses who give evidence in court because they can be observed" (*R. v. Youvarajah*, 2013 SCC 41, [2013] 2 S.C.R. 720, at para. 19). But the parties may also elect — usually without having to justify their decision — to proceed by filing transcripts of prior testimony. Indeed, the Court of Appeal recognized this in saying that [translation] "the accused may consent to the filing of evidence that was adduced before the first judge" (para. 33; see also *Gauthier*, at para. 57; *R. v. A.A.*, 2012 ONSC 3270, at paras. 77-78 (CanLII)).

[16] The parties have control over their own evidence and are free to introduce the previous trial transcript if they wanted it to be evidence at the second trial. Again, this point is made by the court in *J.D.*:

> [29] In sum, this statutory interpretation exercise shows how straightforward the provision is. The only function of s. 669.2(3) is to require a judge sitting alone to commence the trial again. Once the judge has done so, the parties have control over the presentation of their own evidence. Therefore, for the transcript of testimony given at the first trial to be admitted in the second trial as evidence on the merits, all that is needed is that the transcript be duly filed and that the parties consent to its being filed (*Matheson v. The Queen*, 1981 CanLII 202 (SCC), [1981] 2 S.C.R. 214, at pp. 217-18).

[17] In this case, Mr. Cox is seeking to have the evidence of the first trial included in the Appeal Book for the purposes of his appeal. Neither Mr. Cox nor the Crown entered any of the testimony or other evidence from the first trial into evidence at the trial before Judge Duffy. In order for evidence from the first trial to be included in the Appeal Book, it would have had to have been introduced before Judge Duffy. Its introduction would have been subject to the rules of evidence. No evidence from the first trial was introduced at the second trial. It did not form part of Judge Duffy's considerations and should not be included in the Appeal Book under *Rule* 91.15(2).

[18] For these reasons, the motion to have the Crown produce the transcripts of the proceeding before Judge Rickcola Brinton and include them in the Appeal Book is denied.

Farrar, J.A.