

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Moser*, 2025 NSPC 51

**Date:** 20250923

**Docket:** 8733227

**Registry:** Dartmouth

**Between:**

His Majesty the King

v.

Bryan Moser

**Restriction on Publication:** [s. 486.4 \*Criminal Code\*](#) – Any information that could identify the complainant shall not be published in any document or transmitted in any way.

**Judge:** The Honourable Judge Timothy Daley

**Heard:** May 26, 2025, in Dartmouth, Nova Scotia

**Decision:** September 23, 2025

**Charge:** Section 271 of the *Criminal Code*, RSC 1985, c C-46

**Counsel:** Michael Blanchard, for the Crown  
Steven Degen, for the Accused

### **Order restricting publication — sexual offences**

486.4 Subject to subsection (2), the presiding judge or justice may make an order

- (1) directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of
  - (a) any of the following offences:
    - (i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or
    - (ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or
  - (b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

### **Mandatory order on application**

- (2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall
  - (a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and
  - (b) on application made by the victim, the prosecutor or any such witness, make the order.

### **Victim under 18 — other offences**

- (2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

### **Mandatory order on application**

- (2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

- (a) as soon as feasible, inform the victim of their right to make an application for the order; and
- (b) on application of the victim or the prosecutor, make the order.

...

**Limitation**

- (4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

**By the Court:**

**Introduction**

[1] This is the decision arising from a *voir dire* in this matter. Specifically, the Crown is seeking to introduce evidence of alleged Snapchat communications, which it believes to be relevant to the charge before the court of sexual assault. The Crown says that there is sufficient evidence establishing an evidentiary link between the affidavit provided by the record keeper of these communications and the records provided to the police investigating the matter.

[2] The Defence takes the contrary position and says that there is insufficient evidentiary link for the records to be admitted.

[3] The *voir dire* is necessary because the Snapchat communications sought to be introduced by the Crown are allegedly between the Complainant and the Accused which the Crown maintains will support its position that the Accused committed sexual assault on the Complainant.

[4] Introduction of this snapshot data is sought pursuant to the *Canada Evidence Act* (“the *Act*”).

[5] The first step required is that the Crown established the authenticity of the electronic documents pursuant to section 31.1 of the *Act* as set out below:

**31.1 Authentication of electronic documents**

Any person seeking to admit an electronic document as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic document is that which it is purported to be.

[6] If authenticity is established, proof of the record as a business record is sought by the Crown pursuant to sections 30 (1) and 30 (4) of the *Act*, the relevant portions of which are set out below:

**30(1) Business records to be admitted in evidence**

Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding on production of the record.

...

**30(4) Where record kept in form requiring explanation**

Where production of any record or of a copy of any record described in subsection (1) ... would not convey to the court the information contained in the record by reason of its having been kept in a form that requires explanation, a transcript of the explanation of the record or copy prepared by a person qualified to make the explanation is admissible in evidence under this section in the same manner as if it were the original of the record if it is accompanied by a document that sets out the person's qualifications to make the explanation, attests to the accuracy of the explanation, and is

- (a) an affidavit of that person sworn before a commissioner or other person authorized to take affidavits...

[7] As the Crown notes, the threshold for authentication of electronic documents is not onerous. As outlined in the decision of *R v Hirsch*, 2017 SKCA 14:

[18] I am not persuaded by Mr. Hirsch's arguments on authentication and the related issue of authorship. In my assessment, s. 31.1 of the Canada Evidence Act is a codification of the common law rule of evidence authentication. The provision merely requires the party seeking to adduce an electronic document into evidence to prove that the electronic document is what it purports to be. This may be done through direct or circumstantial evidence: The Honourable Justice David Watt, *Watt's Manual of Criminal Evidence*, 2016 (Toronto: Thomson Reuters, 2016) at 104 [Watt's Manual]. Quite simply, to authenticate an electronic document, counsel could present it to a witness for identification and, presumably, the witness would articulate some basis for authenticating it as what it purported to be (see: *Pfizer Canada Inc. v Teva Canada Limited*, 2016 FCA 161 at para 93, 400 DLR (4th) 723). That is, while authentication is required, it is not an onerous requirement. In Watt's Manual, the author notes at 1115:

The burden of proving authenticity of an electronic document is on the person who seeks its admission. The standard of proof required is the introduction of evidence capable of supporting a finding that the electronic document is as it claims to be. In essence, the threshold is met and admissibility achieved by the introduction of some evidence of authenticity.

As this suggests, the integrity (or reliability) of the electronic document is not open to attack at the authentication stage of the inquiry. Those questions are to be resolved under s. 31.2 of the Canada Evidence Act—i.e., the best evidence rule, as it relates to electronic documents....

[8] In this matter, there were two affidavits introduced by the Crown from Snapchat which form the heart of the dispute. I find that neither is relevant to the question of authenticity. To put another way, there is other evidence to establish authenticity as contemplated under the Act.

[9] This evidence includes:

1. The records request by the police was sent to a specific email address for Snap Inc. which deals with requests from law enforcement.
2. A screenshot from the portal used by Constable Chartrand was exhibited.

3. The records themselves, which were sent prior to and separate from the affidavits aforementioned, refer to the specific user account requested "mikewilliam4962".

[10] I find that this provides a sufficient ground to determine that there is some evidence of the authenticity of the records and this is sufficient to meet the test under the Act. In doing so, I find this circumstance to be similar to that considered in *R. v. Rashid*, 2021 ONSC 3443 where the court held at paragraph 50:

[50] In my view, even without reliance on the affidavits from Facebook, the Crown met the low threshold for proving authenticity and the best evidence rule for electronic documents based upon Detective Hodges' evidence alone... Detective Hodges testified that the documents came from a secure Facebook internet portal in response to a production order that he sent to Facebook. On them was printed "Facebook Business Records". Thus, this evidence can support a finding that the electronic documents were what they purported to be: Facebook documents. In addition, relying on the presumption found in s. 31.3(a), the police officer's testimony could support a finding that at the material time, Facebook's computer system was operating properly. Put simply, in the absence of evidence to the contrary, the fact that the system in place for obtaining the Facebook documents operated as it was supposed to was evidence that could support the finding of the integrity of the Facebook electronic documents computer system.

[11] The real issue in this *voir dire* is whether the Snapchat records can be introduced under the *Act*. To do so, the Crown is relying upon sections 30 and 31.1 of the *Act* as noted previously.

[12] At this point, it is necessary to review the affidavits from Snapchat filed in the matter. I begin by first noting again that the actual records were sent prior to and separate from the two affidavits in question. They have been received by the police as a zip file with an identifier "mikewilliam4962" and an Internal Reference

Number 243575076. The central question is whether the affidavits, filed later, are sufficient to connect with this zip file document to be admissible in this matter.

[13] The first affidavit is from Heidi Galore in which she purports to confirm the records as follows:

Attached is a true and correct copy of 1 ZIP file(s) of data associated with the Snapchat identifier(s) mikewilliam4962, with Internal Reference No. 243575076 ("Document") produced in response to a Canadian Production Order for documents dated Sept 11, 2023.

[14] The second affidavit is from Pamela Germany who states:

Attached is a true and correct copy of 1 ZIP file(s) of data associated with Snapchat identifier(s) mikewilliam4962, with Internal Reference No. 243575076 ("Document") produced in response to your request dated Sept 11, 2023.

[15] Both affidavits state at paragraph 4 as follows:

The attached document is a record made and maintained by Snap Inc.

[16] Neither affidavit attaches the referenced ZIP file.

[17] To have these records admitted under the *Act*, an affidavit is required under section 30 (4). Therefore, the affidavit is central to the question of admissibility.

The Crown argues that there is sufficient information in the affidavit to allow for the court to make a connection between the records sought to be introduced and the affidavit itself. Yet the record is not attached to the affidavit as would be expected in the normal course, leaving the court to decide whether to draw any inference as

to what record is intended to be introduced under the affidavit, and whether that is acceptable at law.

[18] I find that the record is not admissible under the *Act*. Affidavits are a substitute for *viva voce* evidence where appropriate and permitted under the *Act* or the law generally. The use of affidavits is intended to simplify the evidentiary process and to maintain efficiency within trials, while also maintaining the integrity of the evidence purported to be given in the affidavit. Because of this important role affidavits play in substitution for *viva voce* evidence, they must be considered very carefully and within a narrow range to be accepted by a court.

[19] The Crown relies on the decision in *Rashid, supra* in support of its position. In that case the Crown sought admission of account information from Facebook for four or five different user accounts information, relying on four affidavits to verify the content of those records. Yet each of those affidavits did not attach the records in question for any of the accounts.

[20] That court found that all such evidence was inadmissible as the court could not determine which records were being referred to in which affidavit. This confusion was compounded by the fact that some accounts share the same names, and some were identified only by numbers.

[21] In this matter the Crown draws a distinction saying that here there is a clear line of evidence between the ZIP file provided to the police earlier and both affidavits of the Snapchat representatives in the matter. The Snapchat identifier of mikewilliam4962 and the Internal Reference Number 243575076 match those provided in the affidavits.

[22] I agree that there is a line of evidence here. The question is whether either of the affiants, in providing their evidence, ever reviewed it to their own satisfaction that the ZIP file referred to was in fact the one sent earlier. Had they attached a copy of the ZIP file to either of their affidavits, that would likely resolve the matter. Yet there is nothing in either affidavit that confirms that either Ms. Galore or Ms. Germany reviewed the ZIP files or drew any connection between their affidavit evidence and the file sent prior to the Crown.

[23] As is noted in the decision of *R. v. Wilson*, 2024 NSSC 118:

[40] Let us remember first principles: a document brought before the Court must be authenticated. There has to be evidence which satisfies the Court that the document “is what it purports to be”. In a very basic sense, where one purports to possess a copy of an original, there must be evidence that that document is, in fact, a copy of that original.

[41] As an example, the Canada Evidence Act provides the evidence that is required to support the contention that a document is, in fact, an accurate copy of an original, in circumstances where that Act applies. Section 30 of the Canada Evidence Act refers to copies of “business records”, and requires evidence from the person who copied the records, to the effect that the copy is “authentic”. Section 29 refers to bank records; similarly, it requires evidence that the copies are “true” copies.

[24] The ZIP file is therefore inadmissible.

Timothy G. Daley, JPC