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R. v. Kitoko, 2025 ONCJ 655

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ONTARIO COURT OF JUSTICE

CITATION: *R. v. Kitoko*, 2025 ONCJ 655
DATE: 2025·12 18
COURT FILE No.: Guelph 998-25-46100913;988-25-46101363

2025 ONCJ 655 (CanLII)

B E T W E E N :

HIS MAJESTY THE KING

— AND —

Valentine KITOKO

Before Justice of the Peace M A Cuthbertson
Heard on 20 November 2025
Application for Access to Digital Court Recordings
Reasons for Judgment released on 18 December 2025

S. DiMartino ..... counsel for the Crown
No one appeared for the defendant

JUSTICE OF THE PEACE CUTHBERTSON:

[1] The defendant Valentine Kitoko's matters were before me in the Guelph case management court on 3 June, 5 August and 12 August 2025. Subsequently, I received three separate applications, all filed together, for Access to Digital Court Recordings for those appearances. Due to concerns flowing from the appearances, I ordered a hearing to determine whether access to the digital recordings should be granted.

[2] At the hearing, which was not attended by the defendant, Crown counsel argued that access should not be granted. I agreed and issued an order denying production of the requested audio recordings.

[3] My reasons for making this Order follow.

OBSERVATIONS FROM PRIOR APPEARANCES

[4] At the earlier appearances, the individual addressing the court initially re-

fused to provide a name, identifying themselves only as “Authorized Agent for Valentine Kitoko.” When advised that a name was required for the record, they insisted I had no right to request it. Ultimately, they stated they were Valentine Kitoko, but then reverted to claiming they were only an Authorized Agent. This raised concerns about whether the defendant was properly before the court and whether jurisdiction was being challenged.

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THE APPLICATIONS FOR ACCESS TO DIGITAL COURT RECORDINGS

[5] On September 26, 2025, I received three standard application forms by email from a Court Services Division representative. These are Exhibits 1, 2 and 3.

[6] Each application contained the following information:

(a) Under the Ordering Party Information section, the box for Litigant/Accused was ticked off and the Name was written as KITOKO, VALENTINE.

(b) An email address was provided which was “<p.rep_801291@hotmail.com>”. In emails sent to the Court Services Division (see Exhibit 4) the email address appeared as “Private Agent <p.rep_801291@ hotmail.com>”. I noted that this email address did not contain any part of Valentine Kitoko’s name. I note that many people use similar no-name email addresses.

[7] The second page of the application contains an Undertaking to the Court for Access to Digital Recordings with the following information:

(a) In section A, the tick box for Litigant/Applicant (party to the proceeding) was checked.

(b) Section C (All Applicants Must Complete and Read this Section) has two subsections.

-In subsection 1, the name ‘Valentine Kitoko’ appears. Subsection 1(a) states ‘The digital recording is being provided to me for the sole purpose of:’. The tick box is checked for ‘preparation in connection with the legal proceedings with respect to this case [Note: Only a litigant, accused, prosecutor of record may use the digital recording for this purpose]’.

-Subsection 1(b) is a prohibition against any other use without judicial authorization.

-Subsections 2(a) to (i) contains the conditions of agreement by the applicant to ensure no improper use of the digital recording.

(c) At the bottom of the Undertaking is a space for the applicant’s Signature and Date.

[8] It is section C of the Undertaking that binds the applicant to only using the digital recordings for appropriate court approved reasons.

THE LAW

[9] The principle of open courts is fundamental. While there is no specific caselaw on the issue which I am dealing with in this decision, there is an abundance of caselaw involving media access to court proceedings. The following excerpts from Supreme Court of Canada decisions set out the openness principle:

> "[In] any truly democratic society, the courts are expected to be open, and information is expected to be available to the public."
>
> Named Person v. Vancouver Sun, 2007 SCC 43

> "Openness not only guarantees the integrity of the judicial system, but also makes it possible for the public to obtain information, and to express opinions and criticisms, regarding the administration of justice."
>
> CBC v. Canada (AG), 2011 SCC 2

> "Accordingly, there is a strong presumption in favour of open courts. It is understood that this allows for public scrutiny which can be the source of inconvenience and even embarrassment to those who feel that their engagement in the justice system brings intrusion into their private lives. But this discomfort is not, as a general matter, enough to overturn the strong presumption that the public can attend hearings and that court files can be consulted and reported upon by the free press."
>
> Sherman Estate v. Donovan, 2021 SCC 25

[10] However, the presumption in favour of openness is not absolute. Courts retain supervisory authority over their records and may restrict access where necessary to protect the administration of justice or prevent improper use. In the Supreme Court of Canada's decision in *CBC v. Canada (AG), 2011 SCC 3*, the Court held:

> [12] Access to exhibits is a corollary to the open court principle. In the absence of an applicable statutory provision, it is up to the trial judge to decide how exhibits can be used so as to ensure that the trial is orderly. This rule has been well established in our law for a very long time. . As long ago as in *Attorney General of Nova Scotia v. MacIntyre, 1982 CanLII 14 (SCC), [1982] 1 S.C.R. 175, at p. 189*, Dickson J. (as he then was) wrote:
>
> > Undoubtedly every court has a supervisory and protecting power over its own records. Access can be denied when the ends of justice would be subverted by disclosure or the judicial documents might be used for an improper purpose.

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> (See also P. Béliveau and M. Vauclair, Traité général de preuve et de procédure pénales (15th ed. 2008), at pp. 499-500; R. v. Canadian Broadcasting Corporation, 2010 ONCA 726 (CanLII); Société Radio-Canada v. Bérubé, 2005 CanLII 12468 (QC CS), [2005] R.J.Q. 1183 (Sup. Ct.); R. v. Giroux, 2005 CanLII 12396 (Sup. Ct.).)

[13] The analytical approach developed in Dagenais and Mentuck applies to all discretionary decisions that affect the openness of proceedings. In *Vancouver Sun (Re), 2004 SCC 43, [2004] 2 S.C.R. 332,* Iacobucci and Arbour JJ. wrote the following:

> While the [Dagenais/Mentuck] test was developed in the context of publication bans, it is equally applicable to all discretionary actions by a trial judge to limit freedom of expression by the press during judicial proceedings. Discretion must be exercised in accordance with the Charter, whether it arises under the common law, as is the case with a publication ban (Dagenais, supra; Mentuck, supra); is authorized by statute, for example under s. 486(1) of the Criminal Code which allows the exclusion of the public from judicial proceedings in certain circumstances (Canadian Broadcasting Corp. v. New Brunswick (Attorney General), supra, at para. 69); or under rules of court, for example, a confidentiality order (Sierra Club of Canada v. Canada (Minister of Finance), [2002] 2 S.C.R. 522, 2002 SCC 41). The burden of displacing the general rule of openness lies on the party making the application: Canadian Broadcasting Corp. v. New Brunswick (Attorney General), at para. 71. [para. 31]
>
> (See also Toronto Star Newspapers Ltd. v. Ontario, 2005 SCC 41, [2005] 2 S.C.R. 188, at para. 7; Named Person v. Vancouver Sun, 2007 SCC 43, [2007] 3 S.C.R. 253, at para. 35; Toronto Star Newspapers Ltd. v. Canada, 2010 SCC 21, [2010] 1 S.C.R. 721, at paras. 15-16; R. v. Canadian Broadcasting Corporation, at para. 21.)

[14] Thus, there is no need to determine whether the facts in the case at bar are analogous to those in Dagenais or Mentuck. The findings that the activity in issue is protected by s. 2(b) of the Charter and that the order was within the discretion of Lévesque J. will suffice. The issue must accordingly be resolved by applying the test from Dagenais and Mentuck. Requiring the judge to apply this test does not mean that it is necessary to conduct a lengthy or elaborate review of the evidence, although all the relevant facts must be considered. Nor is there anything new about trial judges being responsible for establishing conditions for access to exhibits. Judges have always been required, in exercising their discretion, to balance factors that might seem to point in opposite directions. With this in mind, the factors listed in Vickery remain relevant, but they must be considered in light of the framework developed in Dagenais and Mentuck

ANALYSIS

[11] The Dagenais/Mentuck test requires consideration of:

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a) Whether denial of access is necessary to prevent a serious risk to the proper administration of justice and whether reasonable alternative measures would not mitigate that risk, and

b) Whether the benefits of denial outweigh the adverse effects on the rights and interests of the parties and the public, including freedom of expression effects on the right to free expression and the right a fair and public trial.

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[12] Exhibit 4 is a series of emails between Court Services Division Recording Management and the 'Private Agent' email address described above. Seemingly, they are written on behalf of Valentine Kitoko but are written in the third person. None have a signature that would further identify the author of the email.

[13] In the 7 October 2025 email (see Exhibit 4), at my direction, a hearing was to be scheduled for 29 or 30 October on this matter. That email was responded to once again by 'Private Agent' and stated, in the third person, that Valentine Kitoko would not appear for the hearing.

[14] Having been away for 3 weeks, I was not aware of the refusal for the 29 or 30 October date until I made enquiries about it. On 5 November 2025, at my direction, another email (see Exhibit 5) was sent by the Trial Coordinator's Office of Court Services Division to the Private Agent's usual email address stating that a hearing would be held with or without the applicant on 20 November 2025. Despite having been specifically addressed to 'Dear Ms Kitoko' in the body of the email, no response was received.

[15] It was my hope that the applicant would attend the hearing, provide proof of identity via government issued documentation and sign the Undertaking in my presence. Unfortunately, the applicant did not attend on 20 November 2025.

[16] At the hearing, the Crown expressed concern, which I share, that digital recordings can be altered using modern technology, including artificial intelligence tools capable of creating highly convincing 'deep fakes'. Such alterations could simulate judicial officers' voices and fabricate statements never made, posing a serious risk to the integrity of the administration of justice.

[17] Ms DiMartino submitted that the relationship between 'A.A.' and the applicant, Valentine Kitoko was unclear. She was concerned that the Undertaking provided was insufficient to bind the applicant to its conditions. As a result, she was of the view that the digital recordings may be subject to misuse, including on social media.

DECISION

[18] The only safeguard against misuse is the Undertaking signed by the applicant. Here, the signature 'A.A.' does not match the defendant's name. Combined with my prior observations, the use of 'Private Agent' in emails, the third-person

references to the defendant, and the refusal to attend the hearing and provide identification, I am not satisfied that the defendant personally applied for access or would be bound by the Undertaking's conditions.

[19] Given these concerns, I find that denying access to the digital recordings is necessary to prevent a serious risk of misuse. The benefits of denial outweigh any adverse effects on openness or the rights and interests of the parties and the public.

[20] As an alternative, I directed Court Services Division to advise the applicant that they may obtain a certified transcript of the proceedings. Transcripts, particularly in secure formats such as PDF, are far less susceptible to alteration. This approach respects the open court principle while minimizing the risk of misuse.

[21] An email conveying this option and enclosing my denial order was sent on 25 November 2025 by the Guelph Supervisor of Court Operations.

Released: 18 December 2025

Signed: "Justice of the Peace M A Cuthbertson"

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