

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Emms, 2012 SCC 74, [2012] 3 S.C.R. 810 | **Date:** 20121221  **Docket:** 34087 |

**Between:**

**James Peter Emms**

Appellant

and

**Her Majesty the Queen**

Respondent

- and -

**Canadian Civil Liberties Association, British Columbia Civil Liberties**

**Association, Ontario Crown Attorneys’ Association, Information and**

**Privacy Commissioner of Ontario, David Asper Centre for Constitutional**

**Rights and Criminal Lawyers’ Association**

Interveners

**Coram:** McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

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| **Reasons for Judgment:**  (paras. 1 to 51) | Moldaver J. (McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell and Karakatsanis JJ. concurring) |

R. *v.* Emms, 2012 SCC 74, [2012] 3 S.C.R. 810

James Peter Emms Appellant

v.

Her Majesty The Queen Respondent

and

Canadian Civil Liberties Association, British Columbia

Civil Liberties Association, Ontario Crown Attorneys’

Association, Information and Privacy Commissioner

of Ontario, David Asper Centre for Constitutional

Rights and Criminal Lawyers’ Association Interveners

**Indexed as: R. *v.* Emms**

2012 SCC 74

File No.: 34087.

2012:  March 14 and 15; 2012:  December 21.

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

on appeal from the court of appeal for ontario

*Criminal law — Jurors — Selection — Appellant convicted of fraud — Prior to jury selection, Crown requesting that police conduct criminal record checks of prospective jurors and also provide comments on whether any prospective jurors were “disreputable persons” — None of the information received in response by Crown disclosed to defence — Whether it was appropriate to seek such information — Whether there should have been disclosure of same — Whether there is a reasonable possibility that such conduct affected trial fairness or gave rise to an appearance of unfairness, such that a miscarriage of justice occurred.*

In 2008, following a trial in Barrie, Ontario, E was convicted of three counts of fraud. His appeal from conviction alleged as one of the grounds of appeal that there had been improper jury vetting by the Crown Attorney’s office in conjunction with the police. Prior to the jury selection in E’s trial, the Crown Attorney’s office had requested that the police conduct inquiries as to whether potential jurors had a criminal record or whether they were otherwise “disreputable persons” who would be undesirable as jurors. Information obtained from these checks was provided to Crown counsel, who used it when exercising peremptory challenges. The information was not disclosed to the defence, despite a practice memorandum distributed to Crown offices in Ontario in 2006 directing that any jury vetting carried out by the police was to be restricted to criminal record checks and that any information obtained was to be disclosed to the defence. In dismissing E’s appeal, the Court of Appeal found that the Crown had failed to meet its disclosure obligations, but concluded that there was no reasonable possibility that the non‑disclosure had any impact on the partiality of the jury or on the verdict. The court was satisfied that the selection process had not compromised the overall fairness of the trial. It also held that the conduct of the Crown and the police did not impact on the appearance of fairness of the trial and therefore had not occasioned a miscarriage of justice.

*Held*: The appeal should be dismissed.

The principles governing the propriety of jury vetting and the use of police databases to check the criminal antecedents of prospective jurors have been canvassed in *R. v. Yumnu*, 2012 SCC 73, [2012] 3 S.C.R. 828. They apply equally to the present appeal. The Crown was entitled to have the police check the antecedents of prospective jurors for ineligibility and challenge for cause purposes. It was not entitled to have the police go further and use their databases to determine if a prospective juror was, or might be, a person of disreputable character, but, if information of that nature came to light during a valid criminal record search, it was to be brought to the Crown’s attention. If the Crown considered it to be relevant to the jury selection process, it was obliged to disclose the information to the defence.

With respect to trial fairness, as stated in *Yumnu*, persons seeking a new trial must establish, at a minimum, that: (1) the Crown failed to disclose information relevant to the selection process that it was obliged to disclose; and (2) had the requisite disclosure been made, there is a reasonable possibility that the jury would have been differently constituted. In the case at bar, although the Crown failed to disclose information that was relevant to the defence in the selection process, E has failed to show that there is a reasonable possibility that the jury would have been differently composed had the Crown met its disclosure obligations.

With respect to appearance of unfairness, this case is more troublesome than *Yumnu* because at the time of E’s trial, all Crown offices across the Province of Ontario had received the practice memorandum on criminal record checks and disclosure. However, while the conduct of the police and the Crown was in some respects improper and should not be repeated, there is no basis for concluding that they conspired to obtain a favourable jury. What occurred did not constitute a serious interference with the administration of justice, nor was it so offensive to the community’s sense of fair play and decency that the proceedings should be set aside as a miscarriage of justice.

**Cases Cited**

**Applied:** *R. v. Yumnu*, 2012 SCC 73, [2012] 3 S.C.R. 777; **distinguished:** *R. v. Latimer*, [1997] 1 S.C.R. 217.

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C‑46, s. 638(1)(*c*).

**Authors Cited**

Canadian Bar Association. *Code of Professional Conduct*. Ottawa: The Association, 2009 (online: http://www.cba.org).

Law Society of Upper Canada. *Rules of Professional Conduct*, updated April 26, 2012 (online: http://www.lsuc.on.ca).

Ontario. Information and Privacy Commissioner. *Excessive Background Checks Conducted on Prospective Jurors: A Special Investigation Report*. Toronto: The Commissioner, 2009.

APPEAL from a judgment of the Ontario Court of Appeal (Rosenberg, Blair and Juriansz JJ.A.), 2010 ONCA 817, 104 O.R. (3d) 201, 264 C.C.C. (3d) 402, 81 C.R. (6th) 267, 272 O.A.C. 248, [2010] O.J. No. 5195 (QL), 2010 CarswellOnt 9069, upholding the accused’s conviction on three counts of fraud. Appeal dismissed.

*Mark C. Halfyard* and *Daniel Brown*, for the appellant.

*Michal Fairburn*, *Deborah Krick*, *John S. McInnes* and *Susan Magotiaux*, for the respondent.

*Frank Addario*, for the intervener the Canadian Civil Liberties Association.

*Nader R. Hasan* and *Gerald Chan,* for the intervener the British Columbia Civil Liberties Association.

*Paul J. J. Cavalluzzo* and *Shaun O’Brien*, for the intervener the Ontario Crown Attorneys’ Association.

*William S. Challis* and *Stephen McCammon*, for the intervener the Information and Privacy Commissioner of Ontario.

*Cheryl Milne* and *Lisa Austin*, for the intervener the David Asper Centre for Constitutional Rights.

*Anthony Moustacalis* and *Peter Thorning*, for the intervener the Criminal Lawyers’ Association.

The judgment of the Court was delivered by

Moldaver J. —

I. Introduction

1. On October 8, 2008, following a 10-day trial in the Ontario Superior Court of Justice before Salmers J. and a jury, the appellant, James Emms, was convicted of one count of fraud over $5,000 and two counts of fraud under $5,000. His appeal from conviction was argued before the Ontario Court of Appeal (Rosenberg, Blair and Juriansz JJ.A.) on June 28 and 29, 2010. The appellant raised one ground of appeal relating to an evidentiary ruling and a second ground alleging improper jury vetting by the Crown Attorney’s office in Barrie, Ontario in conjunction with various police forces in the Judicial District of Simcoe County.
2. On December 3, 2010, Rosenberg J.A., writing for the court, released detailed reasons for judgment dismissing the appeal (2010 ONCA 817, 104 O.R. (3d) 201).
3. The appellant now appeals to this Court, solely in respect of the jury vetting issue. In brief, he complains that the vetting of potential jurors by the Crown and the police subverted the jury selection process and resulted in a jury that, if not favourable to the Crown, might well have been differently composed had he known of the practice and been advised of the information obtained from it. Second, he submits that even if his fair trial rights were not compromised, the conduct of the Crown and the police amounted to a gross interference with the administration of justice and resulted in a miscarriage of justice requiring a new trial.
4. The appellant’s appeal was heard together with the appeals of Mr. Yumnu, Mr. Cardoso and Mr. Duong (*R. v. Yumnu*,2012 SCC 73, [2012] 3 S.C.R. 777 (the “*Yumnu* appeals”)). All four appeals emanate from the same jurisdiction and they raise common issues.
5. The principles governing the propriety of jury vetting and the use of police databases to check the criminal antecedents of prospective jurors have been canvassed in the *Yumnu* appeals. They apply equally to the present appeal. What separates this appeal from the *Yumnu* appeals is the facts. Specifically, the facts in this appeal are more favourable to the defence — and that makes this appeal more challenging for the Crown and more difficult to defend. In the end, while I believe that this case is closer to the line than the *Yumnu* appeals, I am not persuaded that the appellant was deprived of his right to a fair trial. Nor am I satisfied that the conduct of the Crown and the police, though improper in some respects, can be said to have crossed the line and occasioned a miscarriage of justice. Accordingly, I would dismiss the appeal.

II. Background

1. The facts surrounding the jury vetting issue were presented to the Court of Appeal by way of an Agreed Statement of Facts. Various documents were appended to the Agreed Statement of Facts, including memoranda from the Ministry of the Attorney General of Ontario on background juror checks, questionnaires completed by several Crown Attorneys in the Barrie Crown’s office, information about prospective jurors on a marked-up jury panel list used by the trial Crown during the selection process and evidence concerning the various databases available to the police.
2. Jury selection in the appellant’s trial was scheduled to begin on September 22, 2008. On September 4, 2008, someone in the Court Services Division of the Ontario Ministry of the Attorney General provided the Barrie Crown’s office with a copy of the jury panel list for the week of September 22. On September 10, an administrative assistant in the Crown Attorney’s office sent copies of the jury list to five local Ontario Provincial Police detachments and the Midland Police Service. Accompanying each list was a memorandum dated September 10, requesting the police to provide the Crown with the same information the Crown’s office had sought in the *Yumnu* appeals some four years earlier. Among other things, the memorandum included the following request:

Please check the attached jury panel list, for the persons listed in your locality, and advise if any of them have criminal records. We are not able to provide dates of birth.

It would also be helpful if comments could be made concerning any disreputable persons we would not want as a juror. All we can ask is that you do your best considering the lack of information available to us.

1. Upon receiving the memorandum and the jury panel list, checks were carried out by the various police detachments using databases available only to the police. These databases — mainly the Canadian Police Information Centre (“CPIC”) and Niche RMS — revealed the criminal records of prospective jurors, as well as other matters such as outstanding warrants, court orders, charges, police contacts, and investigations relating to individuals and locations.
2. Information obtained from these checks was sent to the Crown Attorney’s office in Barrie and turned over to the Crown with carriage of the trial. As Rosenberg J.A. noted, at para. 39, the information in question was of limited value. For the most part, it consisted of notations such as “OK”, “negative”, or “possible”. Crown counsel took the words “OK” and “negative” to mean that the prospective juror had no prior criminal record. She took the word “possible” to mean that the prospective juror might have a criminal record.
3. In several instances, the notations suggested that the individual might have had some involvement with the criminal law, even though no convictions had been recorded. For example, beside one prospective juror, the words “CNI [Criminal Name Index] 1995 Drugs no convictions” appeared.
4. None of the information obtained by the police and forwarded to the Crown was disclosed to the defence, either directly, or indirectly as had occurred in the *Yumnu* appeals. By the time the jury vetting was carried out in this case, all Crown offices across the province of Ontario had received a Practice Memorandum dated March 31, 2006 (PM [2005] No. 17), directing that criminal record checks, if done, and any concrete information provided by police to the Crown suggesting that an individual may not be impartial should be disclosed to the defence. The same memorandum made it clear that apart from criminal record checks, Crown counsel were not to ask the police “to undertake an investigation into the list of jurors”, nor were they to “request police to conduct out-of-court investigations into private aspects of potential jurors’ lives”.
5. As is apparent, the March 31, 2006 Practice Memorandum was not followed in this case. Disclosure of relevant information was not made to the defence and the September 10, 2008 memorandum from the Crown’s office invited the police to go beyond criminal record checks and use their databases to provide “comments . . . concerning any disreputable persons we would not want as a juror”. I will have more to say about this in due course.
6. During the jury selection process, Crown counsel used the information she had received from the police when exercising the 12 peremptory challenges she had available to her. Of the prospective jurors on the Crown’s master list who were shown as possibly having criminal antecedents, only four were called forward during the peremptory challenge phase of the selection process. Of those four, the Crown challenged two peremptorily and the defence challenged the other two (juror roll nos. 5679 and 2818).
7. Given her pattern of challenging prospective jurors with possible criminal records, it is likely that Crown counsel would have challenged all four of the prospective jurors had defence counsel not challenged two of them. In other words, the Crown probably gained two challenges by reason of its failure to make disclosure to the defence. Conversely, the defence likely lost two challenges.
8. As the record shows, at the completion of the selection process, the Crown had one challenge remaining. But if the Crown had been required to use two challenges to remove the two prospective jurors the defence had challenged, it would have been one challenge over its allotted limit, and would not have been able to challenge prospective juror roll no. 2586 — the last prospective juror challenged by the Crown before the jury was completed.

III. Findings of the Court of Appeal: The Effect of Non-Disclosure on Trial Fairness

1. The Court of Appeal accepted that the Crown had failed to meet its disclosure obligations. Information showing that a potential juror may have had some prior criminal history should have been turned over to the defence.
2. That said, the court concluded that there was “no reasonable possibility that the non-disclosure had any impact on the partiality of the jury” (para. 49). The court further found that there was “n[o] reasonable possibility that the non-disclosure had any impact on the verdict since, one way or another, jurors 5679 and 2818 [the two prospective jurors with possible criminal antecedents whom the defence had challenged] were not going to be on that jury” (para. 50).
3. In my view, both findings were available to the court and I see no basis for interfering with them. In arriving at the second finding, the court noted that at the end of the jury selection process, because defence counsel still had two peremptory challenges remaining, the fact that defence counsel “may have ‘wasted’ two challenges did not impact on the kind of jury he wanted to try the case” (para. 50). I cannot say that the court was wrong in coming to that conclusion.
4. The more problematic issue is the one I mentioned earlier. It hinges on the appellant’s submission that if the Crown had been required to use up two challenges on the two prospective jurors the defence challenged, it would have had no challenges left for juror roll no. 2586, the last prospective juror actually challenged by the Crown. This was important, according to the appellant, because juror roll no. 2586 was a senior bankruptcy analyst and official receiver who, because of his background and training, would have appreciated the appellant’s defence that while he may have committed a civil wrong, he was not guilty of criminal fraud.
5. The Court of Appeal considered the appellant’s argument in relation to juror roll no. 2586 and rejected it for two reasons.
6. First, the court questioned the logic of the appellant’s reason for wanting juror roll no. 2586 on the jury and found it “hardly . . . likely” (para. 52) that a bankruptcy analyst and official receiver would have been helpful to his cause. Second, the court concluded that “in any event, to suggest that the overall fairness of the trial process was impacted in those circumstances descends from the reasonably possible to mere speculation” (para. 52). Ultimately, considering how the jury selection process had unfolded, the court was satisfied that there was no “actual impact on the jury selection” (para. 53). Accordingly, it rejected the appellant’s submission that the selection process had compromised the overall fairness of the trial.

IV. Analysis: The Effect of Non-Disclosure on Trial Fairness

1. Applying the test set out in the *Yumnu* appeals, it is apparent that the first step is satisfied: the Crown failed to disclose information that was relevant to the defence in the selection process. However, the appellant has failed to show that there is a reasonable possibility that the jury would have been differently composed had the Crown met its disclosure obligations.
2. In so concluding, I recognize that whenever one attempts to put the pieces together after the event, there is bound to be a certain amount of speculation as to what might (or might not) have occurred had the aggrieved party been given the information to which it was entitled.
3. That said, in the instant case, I cannot accept the appellant’s premise that if the Crown had been required to challenge the two prospective jurors (roll nos. 5679 and 2818) whom the defence challenged, it would have had no challenges left for juror roll no. 2586 — the bankruptcy analyst and official receiver. On the contrary, I am satisfied on balance that the Crown would not have been left in that position.
4. In exercising its peremptory challenges, the Crown challenged seven prospective jurors who had the notation “OK” beside their names. I consider that important. It provides context against which to measure the appellant’s submission that the Crown would have had no challenges left for juror roll no. 2586.
5. Had the Crown been forced to use two of its challenges on juror roll nos. 5679 and 2818, I believe it would have been more cautious in challenging the seven prospective jurors who were shown as being “OK” and thus record-free. Refraining from challenging even one of those prospective jurors would have left the Crown with the remaining challenge it needed to remove juror roll no. 2586 — and I am satisfied that the Crown would have followed that course. I base that finding on the record and legitimate inferences that can be drawn from it.
6. On the appellant’s scenario, the Crown would have used up all of its challenges before the twelfth juror had been selected, thereby leaving the defence with four free challenges and the opportunity to effectively hand-pick the twelfth juror.
7. That is unrealistic. The Crown was obviously keeping track of the peremptory challenges it was using. It had one challenge remaining at the conclusion of the jury selection process. I do not put that down to coincidence but to planning — the same planning that would have occurred had the Crown been required to use up two of its challenges on juror roll nos. 5679 and 2818. The Crown was not about to leave itself in the position of giving free reign to the defence to select the twelfth juror — nor did it have to. It could and, in my view, would have refrained from challenging at least one of the prospective jurors noted as “OK” to avoid that situation.
8. Accordingly, the appellant has failed to show that there is a reasonable possibility that the jury would have been differently composed had the Crown complied with its disclosure obligations.
9. That brings me to the second issue in this appeal, namely, whether the conduct of the Crown and the police, which was improper in some respects, can be said to have crossed the line and occasioned a miscarriage of justice.

V. Findings of the Court of Appeal: Appearance of Unfairness

1. In considering whether the conduct of the Crown and the police occasioned a miscarriage of justice, the Court of Appeal considered the following five allegations of wrongdoing raised by the appellant: “. . . the non-disclosure, the violations of the *Juries Act* and provincial privacy legislation, misuse of police databases and the wording of the [September 10, 2008] memo from the Crown Attorney” (para. 54).
2. Before addressing these matters, the court considered certain contextual elements, one being the process of having prospective jurors self-report on their criminal record status.
3. In a report prepared by the Information and Privacy Commissioner of Ontario following an investigation into the jury vetting practices of the Barrie Crown’s office and other Crown offices, the Commissioner found that the process of self-reporting by prospective jurors was “seriously flawed” (see *Excessive Background Checks Conducted on Prospective Jurors: A Special Investigation Report* (2009), at p. 141).
4. In that report, at p. 127, the Commissioner determined that while it was acceptable for the police to disclose to Crown counsel criminal record information going to a prospective juror’s eligibility, it was a breach of provincial privacy legislation to provide other personal information relating to a prospective juror.
5. The Court of Appeal further noted that under the rules of professional conduct prepared by the Law Society of Upper Canada and the Canadian Bar Association, inquiries made by the parties for the purpose of exercising a challenge for cause, including investigations about criminal records under s. 638(1)(*c*) of the *Criminal Code*, R.S.C. 1985, c. C-46, were not prohibited (see Law Society of Upper Canada, *Rules of Professional Conduct* (online), Rule 4.05(1) to (3) and associated commentary; Canadian Bar Association, *Code of Professional Conduct* (online), Rule 21, note 9). If pertinent information was obtained, it was to be disclosed to the other side.
6. Finally, the court considered the two prospective jurors whom the defence had “unnecessarily” challenged and pointed out that the Crown could have brought their possible criminal antecedents to the attention of the trial judge. The trial judge could then have made inquiries and excused the prospective jurors on the basis of ineligibility or other reasonable cause, if warranted.
7. Having identified these contextual matters, the court turned its attention to the alleged wrongdoings.
8. Commencing with non-disclosure, the court acknowledged that the Crown had failed to meet its disclosure obligations. But in deciding whether a miscarriage of justice had occurred, the court reiterated its finding that the breach did not have a discernible impact on the composition of the jury.
9. As for the alleged breaches of provincial privacy legislation, the court found that they “add[ed] nothing to the miscarriage of justice claim” (para. 59). Any rights infringed were those of the potential jurors, not the appellant. The rights of prospective jurors had been investigated by the Information and Privacy Commissioner and recommendations had been made to better protect the privacy interests of prospective jurors. According to the court, that was “the appropriate remedy” (para. 59). It would be “excessive” to grant the appellant a remedy for breaches committed against potential jurors.
10. The court next considered the misuse of police databases and the memorandum from the Crown Attorney asking for “comments . . . concerning any disreputable persons we would not want as a juror”. Of the various allegations of wrongdoing alleged by the appellant, the court found these two aspects to be “most troubling”:

This use of police resources and attempt to align the Crown with the police is inconsistent with Crown counsel’s obligation to ensure that the accused receives a fair trial. [para. 60]

1. Despite this concern, the court felt that “what occurred must be put in context” (para. 60). Most of the information received from the police related to criminal record information. In the two instances where the information went beyond that, one of the prospective jurors was not called forward in the jury selection process; the other was challenged by the defence, so there was “no way of knowing how Crown counsel would have used the information” — which, in any event, “did not impact on the appearance of fairness of the trial” (para. 60).
2. In the end, the court refused to give effect to the appellant’s submission that the conduct of the Crown and the police had occasioned a miscarriage of justice. At para. 61, the court stated:

The collection and disclosure of this information was a misuse of the police databases and should not have occurred. It would appear to be a product of the Crown Attorney’s letter, which was improperly worded. But, did this process so taint the administration of justice that a verdict reached by a properly constituted jury be set aside? In my view, that would be a disproportionate reaction. The conduct of the police service and the Crown Attorney’s office is not the kind of egregious misconduct that brings the administration of justice into disrepute or would lead reasonable people to believe that the appearance of justice had been undermined.

VI. Analysis: Appearance of Unfairness

1. This case is more troublesome than the *Yumnu* appeals because by the time of the appellant’s trial, all Crown offices across the province of Ontario had received the March 31, 2006 Practice Memorandum to which I have referred. That memorandum made it clear that any jury vetting carried out by the police was to be restricted to “criminal record checks” and that “any concrete information provided by police to the Crown suggesting that an individual may not be impartial” was to be disclosed to the defence.
2. The record is silent as to why that memorandum was not complied with. Whatever the reason, it is apparent that the Barrie Crown Attorney’s Office simply continued to carry on the practice it had been following for some years. That is unacceptable — but I do not put it down to malevolence or intentional wrongdoing. While disconcerting, the evidence falls well short of establishing that the police and the Crown conspired to obtain a jury favourable to their cause.
3. At bottom, the Crown wanted to be aware of prospective jurors who either had a criminal record or who, because of prior involvement with the authorities, might have difficulty remaining neutral and approaching the case with an open mind. While the Crown and the police may have gone about it in the wrong way, the law as to what they could and could not do and how far they could go in checking out the criminal antecedents of potential jurors was anything but clear. Certainly, the rules of professional conduct prepared by the Law Society of Upper Canada and the Canadian Bar Association contemplated inquiries that went beyond mere criminal record checks and included information that could form the basis of a challenge for cause.
4. The situation in *R. v. Latimer*, [1997] 1 S.C.R. 217, where the police actually sought out potential jurors and provided them with a questionnaire designed to obtain their views on a number of issues, is a stark example of the kind of conduct that the authorities knew, or should have known, is off-limits and completely unacceptable.
5. But short of situations like that, there was a good deal of grey, not just on the Crown side of the ledger but the defence side as well, as to the nature and extent of background checking that could lawfully be carried out and the type of information that must be disclosed, short of cases involving obvious partiality.
6. In the present case, as explained in the *Yumnu* appeals, the Crown was entitled to have the police check the antecedents of prospective jurors for ineligibility purposes and challenge for cause purposes under s. 638(1)(*c*) of the *Criminal Code*. It was not entitled to have the police go further and use their databases to determine if a prospective juror was, or might be, a person of disreputable character. By the same token, if, by chance, information of that nature were to come to light during a valid criminal record search, it would be proper to bring it to the Crown’s attention. If the Crown considered it to be relevant to the jury selection process, it would be obliged to disclose the information to the defence.
7. In sum, there is no basis for concluding that the Crown and the police conspired to obtain a jury favourable to their cause. Nor can it be said that the errors they made in carrying out the process — going beyond criminal record checks and failing to disclose information of discreditable conduct not resulting in a criminal conviction — were so obvious and so clearly wrong that they knew, or should have known, better. What occurred here is a far cry from the conduct at issue in *Latimer* — conduct which was manifestly inappropriate and which this Court condemned as “a flagrant abuse of process and interference with the administration of justice” (para. 43).
8. In the end, while the conduct of the police and the Crown was in some respects improper and should not be repeated, I am not persuaded that what occurred here constituted a serious interference with the administration of justice, nor was it so offensive to the community’s sense of fair play and decency that the proceedings should be set aside as a miscarriage of justice.

VII. Conclusion

1. The appellant had a fair trial and I am not persuaded that the conduct of the Crown and the police crossed the line and occasioned a miscarriage of justice. Accordingly, I would dismiss the appeal.

*Appeal* *dismissed.*

Solicitors for the appellant:  Rusonik, O’Connor, Robbins, Ross, Gorham & Angelini, Toronto; Daniel Brown Law Office, Toronto.

Solicitor for the respondent:  Attorney General of Ontario, Toronto.

Solicitors for the intervener the Canadian Civil Liberties Association:  Addario Law Group, Toronto.

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