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Lawyer not required to produce alleged will drafting file: further production denied (*Nouini v. Pizzi*)

By Stephen Thiele

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

Stephen Thiele
Partner
416.865.6651
sthiele@grllp.com

Although the [*Rules of Civil Procedure*](#) require parties to produce relevant documents in a proceeding, a court can refuse a request for further productions if it is disproportionate or where a party's conduct in seeking the further productions is tactical.

In *Nouini v. Pizzi*, 2025 ONSC 6759 (decision not reported on CanLII), the moving party sought further productions following cross-examinations. The moving party also alleged that the respondents had breached their undertakings and sought to appeal the dismissal of a prior refusals motion.

In this case, the parties were embroiled in estate litigation about the validity of a will executed by the deceased in 2020. The moving party contended that this will had been procured by undue influence and that the deceased had lacked testamentary capacity when the will was executed.

On October 24, 2023, the court ordered the production of:

- 1) Financial, banking, and tax record relating to the deceased;
- 2) Medical records and files relating to the deceased; and
- 3) All lawyer records, notes and files relating to the deceased's testamentary planning and to the transfers of five specified properties.

This order resulted in the production of over 4,000 medical records, 700 pages of financial records, and the will drafting file of a non-party lawyer.

At the cross-examinations, numerous undertakings were given and several questions were refused. A motion in connection with these refusals was dismissed on the grounds that many of the questions were irrelevant or were framed so widely as to be overbroad, while others had been answered.

At a case conference, the moving party indicated that he wanted to appeal the dismissal of the refusals motion and that he would be bringing a production motion for:

- 1) The deceased's OHIP records;
- 2) The deceased's iCloud records; and
- 3) The 2022 will drafting file for the deceased from the non-party lawyer.

However, the non-party lawyer did not draft a will for the deceased in 2022. Furthermore, the moving party failed to serve a Notice of Appeal in connection with the dismissal of the refusals motion in a timely manner.

The respondents and the lawyers for the non-party lawyer argued that there were significant procedural problems with the appeal and that it should be considered to have been abandoned.

With respect to the production motion, the respondents and the lawyers for the non-party lawyer submitted that the moving party's conduct was designed to increase costs and cause delay. They alleged that the moving party did not comply with court directions, attempted to expand hearings beyond the scope of what the court had permitted, and delivered materials late.

The court agreed that the moving party engaged in tactical delay and that his conduct in connection with the appeal showed disrespect to the respondents and the court.

The court stated that it was not in the interests of justice to hear the appeal because the moving party's material had been filed late. Accordingly, the appeal was deemed abandoned for failure to file the Notice of Appeal in accordance with the [Rules of Civil Procedure](#).

With respect to the OHIP records, the court noted that 4000 pages of medical records had been produced, and that there was nothing in the record to explain why the records now being sought had not been sought earlier in

the proceedings. In addition, the court found that nothing in the court record supported a suspicion that the alleged undisclosed OHIP records would contain anything new.

With respect to the iCloud records, the moving party argued that these were producible under the prior October 24, 2023 order, which expressly provided that the parties were entitled to compel productions of "any and all records regarding the assets, liabilities, income, loans, gifts and expenses related to the deceased prior to death or while under attorneyship...from any financial advisor, corporation, bank, trust company, insurance company, accountant, or other authority in possession, power or control of such records..."

Apple had refused to produce the iCloud records to the moving party and the respondents disagreed with the moving party that these records fell within the scope of the court's order.

The court agreed with the respondents. The court's previous order for the production of financial records could not be read to include an order for production of the iCloud records.

Lastly, the court denied the moving party's request for the non-party lawyer's 2022 will file. The court accepted that the non-party lawyer did not prepare a draft will for the deceased in 2022 and that the document at issue, which had been produced in the court record, related to an *inter vivos* transfer to one of the respondents. Accordingly, there was no basis for the non-party lawyer to produce anything further.

Other productions sought by the moving party, related to an iPad and a phone, were also denied because, among other reasons, further inspection would be disproportionate.



In [Seepa v. Seepa, 2017 ONSC 5368](#), the court stated that “[a] court should be very reluctant to consign estates and beneficiaries to intrusive, expansive, expensive, slow, standard form fishing expeditions that do not seem to be planned to achieve the goals of civil justice for the parties.”

The court concluded that the moving party’s approach was undesirable in the circumstances, and would jeopardize the date that had been set for hearing the case on its merits.

In the result, the respondents were presumptively entitled to costs against the moving party. Given the conduct of the moving party, the court ordered that the respondents and the lawyers for the non-party were entitled to their costs on a substantial indemnity scale.

Representation by Gardiner Roberts LLP

In this case, the non-party lawyer was represented by Deanna Miller, a senior associate in the dispute resolution group of Gardiner Roberts LLP.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** in our dispute resolution group at 416.865.6651 or via email at sthiele@grllp.com.

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