

SUPREME COURT OF NOVA SCOTIA

Citation: *International Royalty Corporation v. Newmont Canada Corporation*,
2025 NSSC 361

Date: 20251113

Docket: Hfx No. 508374

Registry: Halifax

Between:

International Royalty Corporation, a body corporate

Plaintiff

v.

Newmont Canada Corporation, a body corporate,
Newmont Corporation, a body corporate, and
Newmont Canada FN Holdings ULC, a body corporate

Defendants

DECISION

Judge: The Honourable Justice James L. Chipman

Heard: November 13, 2025, in Halifax, Nova Scotia

Written Decision: November 14, 2025

Counsel: Glynnis Hawe, Gordon Capern, Gavin Giles, K.C. and Sanghyun Park, for the Plaintiff/Respondent
Nasha Nijhawan, Caitlin Ohama-Darcus, Peter Roberts, for the Defendants/Applicants

By the Court (Orally):**INTRODUCTION**

[1] In early May of this year I was assigned to be the Case Management Judge (CMJ) and convened an initial Case Management Meeting (CMM) on May 16, 2025.

[2] The background to this litigation was summarized by Justice Gatchalian in *International Royalty Corporation v. Newmont Canada Corporation*, 2024 NSSC 160 at paras. 1 – 6:

1 The Plaintiff, International Royalty Corporation ("IRC"), is an investor in mineral royalties. The Defendants are Newmont Canada Corporation, Newmont Corporation and Newmont Canada FN Holdings ULC (collectively, "Newmont"). Newmont is a gold mining company. IRC and Newmont are parties to a Royalty Agreement. Under the Royalty Agreement, IRC has the right to a percentage of revenue, less certain costs, from gold production at the Holt Mine in the Timmins Mining District in northeastern Ontario (the "Royalty"). The Royalty is payable by Newmont, even though Newmont no longer owns the Holt Mine and receives no revenue from it.

2 Newmont purchased the Holt Mine from Barrick Gold Corporation in 2004. As partial consideration, Newmont granted Barrick Gold the Royalty. Barrick Gold sold the Royalty to IRC in 2008. Newmont sold the Holt Mine to St. Andrew Goldfields Ltd. in 2006. When Newmont sold the mine, it failed to properly transfer its obligation to pay the Royalty to St. Andrew: see *St. Andrew Goldfields Ltd. v. Newmont Canada Limited*, 2009 CanLII 40549 (ONSC), upheld 2011 ONCA 377.

3 St. Andrew and its successor, Kirkland Lake, operated the Holt Mine from 2001 to 2020, and Newmont paid the Royalty to IRC during that time, totaling US \$117 million.

4 In April of 2020, the mine ceased operations temporarily due to the Covid-19 pandemic. In August of 2020, Newmont entered into an agreement with Kirkland Lake, pursuant to which Newmont paid Kirkland Lake \$75 million for an option to acquire the mineral rights at the Holt Mine that are covered by the Royalty (the "Strategic Alliance Agreement"). Under the Strategic Alliance Agreement, Newmont's option may only be exercised if Kirkland Lake forms the intention to restart operations of the Holt Mine in a manner that would generate further payment obligations for Newmont under the Royalty Agreement and Kirkland Lake does not agree to assume entirely Newmont's obligations under the Royalty Agreement.

5 The mine has not restarted operations.

6 In this action, IRC alleges that Newmont, by entering into the Strategic Alliance Agreement:

1. engaged in oppressive conduct contrary to s.5 of the *Third Schedule of the Companies Act*, R.S.N.S. 1989, c.81, and
2. breached its duty of good faith contractual performance by seeking to evade its contractual duties, engaging in conduct that has the effect of defeating IRC's rights under the agreement, and by taking steps to nullify the contractual objectives and to undermine the core of the contractual bargain between the parties.

[3] Today I heard oral argument with respect to Newmont's motion to adjourn discoveries of their two witnesses scheduled to begin in less than a month's time. In advance of the oral submissions I received on November 7th (filed November 10th) Newmont's Notice of Motion, affidavit of Molly Ring (sworn November 7th), brief and authorities. Also filed on November 10th I received IRC's brief, authorities and affidavit of Ren Bucholz sworn November 10th. The affiants were not cross-examined.

[4] During the second CMM on June 3, 2025 I learned that the parties anticipated providing a consent order for the discovery of witnesses "likely to take place in December 2025."

[5] A third CMM was scheduled for July 24th; however, during that morning I received a letter from IRC counsel advising that the parties were of the view that the CMM was no longer necessary. Accordingly, the CMM was cancelled. In Ms. Howe's letter she indicated, among other things, as follows:

I attach the agreed-upon form of Consent Order regarding scheduling of examinations for discovery, which is being circulated for signature and which the parties intend to forward to the Court for review and issuance.

...

IRC and Newmont continue to address the disclosure issues between them. Again, while we are hopeful no motion will be required on September 12, 2025, the parties have also agreed to briefing in accordance with the Rules should the motion proceed.

- a. Moving party/parties' Notice of Motion, supporting Affidavit(s), Brief and Authorities by August 27, 2025;
- b. Responding party/parties' supporting Affidavit(s), Brief and Authorities and Brief by September 5, 2025; and
- c. Reply materials (if any) by September 10, 2025.

The parties propose having the next Case Management Conference on September 12, 2025, whether a Motion hearing proceeds or not.

...

[6] On August 6th, the Court received the consent order. Owing to vacation it was issued and provided to the parties on September 5th. The consent order provided that “discovery examinations of the witnesses listed below shall proceed in Denver, Colorado, on the dates noted:

WITNESS	DATE
William Heissenbuttel	December 9, 2025
Tony Jensen	December 11, 2025
Blake Rhodes	December 15, 2025
Randy Engel	December 16, 2025

”

[7] The third CMM occurred on September 12, 2025 at which time the Court was advised that the parties did not “anticipate needing a further CMC in 2025.” The September 12th CMC minutes also confirmed:

2. Update regarding IRC’s document production.

- IRC has agreed to produce any additional documents in response to the request at row #11 from Newmont’s Motion brief by September 30, 2025. Following September 30, 2025, the parties will contact the Court if it is necessary to reschedule Newmont’s Motion for production.

3. Update regarding upcoming examinations for discovery.

- Consistent with the Consent Order filed on September 5, 2025, examinations for discovery are scheduled to proceed in Denver, Colorado, over four days between December 9 and 16, 2025.
- It has not yet been determined whether Kirkland Lake will participate in any way at the December discoveries.

4. Demand for further particulars.

- On September 9, 2025, Newmont delivered a Demand for Particulars to IRC. If a Motion is required in relation to that Demand, the parties will advise the Court through Ms. Lewis.

[8] Issues arose between the parties such that a fourth CMM was convened on November 5th. During this CMM today's date was provided for Newmont's motion.

ISSUE

[9] The sole issue on this motion is whether I should exercise my discretion to vary the consent order and postpone the discoveries of Newmont's former officers.

POSITIONS OF THE PARTIES

Newmont

[10] In their brief the moving party summarize their position as follows:

12. At this stage, two issues have arisen which make proceeding with the scheduled discoveries in December 2025 unreasonable and potentially prejudicial.

a. IRC's productions have not been completely delivered, and Newmont has not yet had the opportunity to review those documents which were delivered on November 5, 2025; and

b. Newmont is engaged in a second round of substantive document collection and review which it expects will result in production of a supplemental affidavit disclosing documents containing a significant volume of materials.

13. On October 31, 2025, Newmont sought IRC's consent to postpone discoveries until these production issues could be resolved. This motion is necessary because IRC will not consent to postpone discoveries, and Newmont requires relief from the consent order agreed to before these production issues arose.

14. Newmont is prepared to work diligently to complete review and disclose its own supplemental productions, and to produce its witnesses for discovery examinations as early as late January 2026, subject to the availability to IRC and its counsel. In any event, Newmont expects that all discoveries can be completed no later than April 30, 2026.

[11] Today Newmont counsel added that they would be prepared to present their two witnesses for discovery in Denver on January 22 and 23, 2026.

IRC

[12] As for IRC, they submit:

10. The Court should decline Newmont's request to vary the Consent Order to adjourn the December discoveries to a date in April 2026. Newmont has not

provided any evidence of prejudice it or its witnesses will experience if the discoveries proceed as scheduled. Newmont should not be permitted to benefit from its own delay in preparing its case. The fact that more than two years after first exchanging documents Newmont decided to request documents from IRC that have tenuous relevance, documents which it has had in hand more than a month before the examinations, does not justify an adjournment. More significantly, Newmont's failure to identify documents among its own records that it asserts are relevant to its defence of the intent of the SAA is unexplained in its materials. The issue has been central to the litigation from the start, Newmont has had multiple opportunities to disclose those documents. Instead, it ignored years of previous requests and argument by IRC and waited until the eve of discoveries to develop its own case.

11. Newmont argues that if discoveries are not adjourned, it "may" cause increased costs and delay. This is purely speculative and does not outweigh the evidence IRC has tendered regarding the costs it has already incurred, and the delay that is guaranteed if the Court grants Newmont's motion.

12. IRC respectfully requests that the Court dismiss Newmont's motion and declines to exercise its discretion to vary the Consent Order.

[13] Today IRC advised that, if required, IRC counsel would make themselves available for discoveries of the two Newmont witnesses on January 22 and 23, 2026 in Denver.

GOVERNING LAW

[14] The consent order is an interlocutory procedural order, and the decision to vary the order is therefor a discretionary one. In deciding this matter I am mindful of Rules 1, 18 and 78.

[15] The Court's inherent jurisdiction to amend orders is reflected in Rule 78.08, which allows a judge to make certain amendments even after a final order has been issued. The Rule allows a judge to correct a clerical mistake or an error, amend an order to provide for something which should have been adjudicated on but was not, extend deadlines, or set deadlines. The Rule also provides that a motion to amend must be brought before the judge who granted the order, unless a judge directs otherwise.

[16] This issue of setting aside such orders was considered by the Nova Scotia Court of Appeal in *Gates Estate v. Pirate's Lure Beverage Room*, 2004 NSCA 36. *Gates* involved a consent order requiring the plaintiff to produce documents within 30 days, failing which their action would be dismissed. The plaintiffs failed to make

those productions and brought a motion to set aside the consent order. The motion was dismissed at first instance but allowed on appeal to the Nova Scotia Court of Appeal.

[17] The Court of Appeal held that the court had inherent jurisdiction to set aside interlocutory procedural consent orders on a discretionary basis. The objective on this discretion should be “to do justice between the parties”, which demands a review of the evidence to determine the relative prejudice to the parties.

[18] In *Gates*, the consent order was set aside by the Court of Appeal because the prejudice to the plaintiff was clear; she had not instructed her counsel to agree to the order, the documents were outside of her control, she had not intentionally flouted it, and, most significantly, if the order were not set aside, her action would be dismissed. The only prejudice to the defendant was a brief delay.

ANALYSIS AND DISPOSITION

[19] Having regard to the Civil Procedure Rules and as confirmed by our Court of Appeal, I have the discretion to allow or disallow the motion to adjourn the upcoming discoveries of Newmont’s witnesses. In coming to my decision, I have considered the detailed uncontested affidavits, briefs, authorities and oral argument. I have also brought to bear my experience as CMJ, having had the benefit of four CMMs.

[20] I am alive to the fact that the examinations scheduled for next month were agreed to about six months ago. Having said this, I realize that there was a potential “escape hatch.” As Mr. Capern noted in his June 11th email to Newmont counsel, when speaking of the (then) proposed order, “...which of course would be subject to change on agreement of the parties acting reasonably or a further court order.” Nevertheless, having reviewed the entirety of the submissions I am not satisfied that it would do justice between the parties or be reasonable to postpone these out of country discoveries scheduled to begin on December 9th. I say this having regard to the efficient administration of justice and given the context I have gained as CMJ. Further, the balance of prejudice favours preservation of the dates established in the consent order.

[21] With respect to Newmont’s argument that they have not had an opportunity to review IRC’s November 5th productions, I note that this material was requested more than two years after the parties’ original discoveries and over four years into the litigation. Further, during the September 12th CMM the only update regarding

the December discoveries was with respect to “it has not yet been determined whether Kirkland Lake will participate in any way at the December discoveries.” I note that September 12th was less than three months before the Denver discoveries were set to begin. To the extent Newmont had issues at that time, they were obviously not at the level to warrant bringing them to the Court’s attention. Indeed, to the contrary, the Court was advised that the examinations were on track and that the parties did not expect a further CMC this year.

[22] While I recognize that Newmont may not have exhaustive production, I am of the view that in the context of this massive litigation that the production issues they have raised are not enough to warrant cancelation of the examinations and re-scheduling them to a date in approximately two to four months time.

[23] In any event, having listened to the oral submissions I am of the understanding that Newmont’s main concern centers on availing their representatives next month when they have yet to produce all of their documents. Having considered all of the submissions and materials, my response to this concern is to exercise my discretion to order Newmont to make best efforts to produce their remaining documents on or before November 28, 2025.

[24] With respect to competing prejudices, I am cognizant of what Ren Bucholz has deposed to at paras. 49 and 50 of his affidavit. As for Molly Ring’s affidavit, I appreciate the concerns set forth under the headings of “IRC’s Supplemental Production” and “Newmont pleadings amendment”; however, I am not convinced that the possible prejudice to Newmont rises to a level such that the discoveries ought to be adjourned. Rather, to the extent that some production issues may remain outstanding over the course of the next few weeks, and to the extent that this potential production may pertain to the discoveries of these four men, I am of the view that there are other potential available avenues to deal with any possible problems. For example, undertakings, interrogatories, demands for particulars and updating (potentially video) discoveries spring to mind. I should add that none of these options necessarily rule out the prospect of any one, and up to all of these witnesses being re-discovered in person on a future date.

[25] In the result I dismiss the motion with \$2,000.00 costs to IRC. I invite IRC counsel to prepare an order – consented to as to form – reflective of this decision.

Chipman, J.

