

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

against

RITCHIE SINCLAIR

P R O C E E D I N G S

BEFORE THE HONOURABLE MR. JUSTICE F. CLEMENTS
AT TORONTO, ONTARIO, ON MARCH 8, 2012

APPEARANCES:

M. Callaghan, Esq.

Counsel for the Crown

M. Strathman, Esq.

Counsel for the accused

ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

<u>WITNESSES</u>	<u>Exam In- Chief</u>	<u>Cr- Exam</u>	<u>Re- Exam</u>
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E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>PUT IN ON PAGE</u>
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TRANSCRIPT ORDERED:	Apr. 13/12
TRANSCRIPT COMPLETED:	May 4/12
ORDERING PARTY NOTIFIED:	May 4/12

THE COURT: Okay, and this is Mr. Sinclair, is it?

MR. STRATHMAN: It is, Your Honour.

MR. CALLAGHAN: Perhaps I can give you a little bit of background that might put things into context, a little bit.

This matter is set for trial the 12th and 13th of March, in front of -- sorry, in 508 court. On Saturday, this past Saturday --

THE COURT: I'm sorry, what dates are the trial dates?

MR. STRATHMAN: Monday, Tuesday of next week.

THE COURT: Yes, thank you.

MR. CALLAGHAN: So, Your Honour, on Monday, I understand, Detective Eustace (ph) received a phone call from the complainant, and material witness in this matter, on the criminal harassment. Mr. McLeod, who is 81 years old, saying,

"I might have to have heart surgery. I'm going in on Monday to check things out. I won't be able to come to the trial."

Detective Eustace asked him to keep him up to date as to what was going on with his personal health.

He hadn't heard anything back. Detective Eustace called today, spoke -- couldn't get a hold of Mr. McLeod, spoke with his daughter, who is also on the Crown's witness list. It

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would appear he went to the doctors, and he requires open heart surgery, which is not yet scheduled, that is not -- that he is currently living with family members because he can't -- who don't have stairs, because he can't negotiate the stairs currently in his own building.

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I tried to find out a little bit more information in terms of, well, why can't he come to court then if we have an elevator. The daughter has not called back. The police -- the reason why I'm even bringing this application, so it doesn't -- you know, it's -- the gentleman is 81, and has a heart condition that he is indicating his health is preventing him from attending court next week.

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What I wanted to be able to tell Your Honour was, well, when can he attend, because if this is a situation that is going to be long-standing, and surgery could be months down the road, I am live to the 11(b) concerns that would inherently arise in this circumstance.

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I understand Mr. Strathman, his client has some real concerns that this may not be true, and there is no proof that the Crown has to tender to the court. The submissions I make is the information I'm conveying from

Detective Eustace, who is in the building, he is just dealing in another courtroom at this time.

I indicated that I would put that information to the court, and the police indicated they would seek an adjournment on that basis. I don't know if I have a lot of great information to assist Your Honour with in determining whether or not it's appropriate to make it.

THE COURT: Well, I'm wondering, given that the trial -- I appreciate you bringing it forward because of the problems we have here when we have matters like this set for a day or longer, and then on the trial date they collapse, and everybody is inconvenienced, but this seems to me to be one of those situations where maybe we should wait until the trial date to see what the status of this complainant is, and if, at that time, it becomes apparent, due to health reasons, that he can't attend, well the matter is obviously going to go over.

MR. CALLAGHAN: I'm not going to vociferously disagree with Your Honour. I think that, in fairness, the police served Mr. Sinclair directly. I think they didn't realize Mr. Strathman was counsel for him.

THE COURT: Right.

MR. CALLAGHAN: So Mr. Strathman didn't find out until we found out, called him and said,

"F.Y.I., your client has been served on this."

5 THE COURT: Yes, I mean if it's a serious health problem, then it should be responded to in an appropriate fashion, and it seems to me, unfortunately, if there is a trial date, and he has a serious health problem, it may have to go over. That's the end of it. I mean who is going to stand in the way of open heart surgery?

10 MR. STRATHMAN: If I can just make a few submissions, Your Honour.

THE COURT: Yes.

15 MR. STRATHMAN: I found out about this motion before the Crown did.

THE COURT: Yes.

20 MR. STRATHMAN: My client called me and advised me Monday morning that police had served a notice of adjournment on his roommate, and for Monday, returnable the same day.

THE COURT: As the trial?

MR. STRATHMAN: No, no, no, as this past Monday.

THE COURT: Oh, okay.

25 MR. STRATHMAN: They tried to bring it into court without notice to the Crown this past Monday. And when I heard this, I said,

"Well, I can't be there, but I will send a note to Duty Counsel."

30 Ms. Krigas, from my friend's office, was kind enough to call me back afterwards and said

5 that although Justice Greene was here, I think, on Monday, was concerned, she adjourned the motion to the trial date. I said,

"Well, that means there is going to be two people preparing the trial for Monday? Isn't it better to address this beforehand?"

10 And so I suggested that they put it on the list for today so that we could have the issue decided before Monday.

15 And unfortunately on the motion, I prepared a brief of exhibits, and the complainant is committing a -- well, first of all, I will say when I heard that Detective Eustace was serving my client, I called him on Monday and left a message for him, and said,

20 "Can we get a copy of a doctor's letter?"

And I spoke to Detective Eustace on Tuesday, and I said,

25 "Well, can we get a doctor's letter? We understand -- we believe that Mr. McLeod is committing another fraud on the court."

30 And Mr. Sinclair is the target of two separate lawsuits -- just for today's purposes, I will just say that one is brought by a Mr. Otavnik (ph) against Mr. Sinclair, and one is brought by Mr. McLeod against Mr.

Sinclair. One is in the Small Claims Court, one is in the Superior Court.

Mr. McLeod purported to testify on behalf of Mr. Otavnik as independent expert because the subject matter of the two separate lawsuits is Mr. Sinclair is alleging that both Mr. Otavnik and Mr. McLeod are selling forged Norval Morrisseau paintings.

So the subject of the lawsuits; Otavnik is suing him, Mr. Sinclair, and McLeod is suing Mr. Sinclair, both over the same issue, the allegations that they are possessing and selling forged paintings.

Mr. McLeod purports to testify as an independent witness, and states, at Tab 1 in his statement to the police in this case,

"Referring to the Otavnik v. Sinclair case, I have no interest in the case, other than being called as a witness."

It's a complete lie. He has it, because he's litigating the very same issue against my client. So the whole basis of this allegation -- his statement to the police is a lie. And he says,

"And it's acknowledged in the police material, in the disclosure..."

THE COURT: What do you want me to do though today?

MR. STRATHMAN: Well, there is no basis for

5 this application. If the Crown wants to bring a new application on Monday, they can do that. I'm asking Your Honour --

10 THE COURT: Well, whether or not the Crown brings an application on Monday by filing a document tomorrow, or on Monday morning, as a result of information that he received from the officer in charge, and is prepared to get in the witness box on Monday morning and testify as to what he knows about the circumstances of the missing witness, then the trial Judge is going to be in a better position than I am at that point to decide what should happen.

15 MR. STRATHMAN: Well, Detective Eustace is here. I had indicated I would prefer him called as a witness. I don't know why he's not being called as a witness. Your Honour has the option of either marking that book as an exhibit --

20 THE COURT: Yes, but I'm in the middle of a busy plea court, and everybody wants me to start reading this material, and try to make an assessment of this that is halfway intelligent, you know, when am I going to do it, over the lunch hour, or I come back at 25 4:30 this afternoon, after we finish our list and do it? Well, this all may be true. He may be lying through his teeth, I don't know. You know, it sounds to me like there is a problem here. It sounds to me as if Mr. Mr. McLeod may be potentially in harm's way

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because of his medical condition, I don't know, but if it's a question of, well, you don't want to prepare for this and then have it adjourned on Monday, I appreciate that. I understand that, but I would, you know, again, thinking out loud, in terms of the 11(b) analysis in these things, when people set these things for trial, they are ready for trial. That's what I understand now, based on what counsel tell me since Lahiry came down.

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MR. STRATHMAN: Well, if we just mark that booklet as an exhibit on the Crown application for --

THE COURT: I don't have a Crown application.

MR. STRATHMAN: There's a one-page application.

MR. CALLAGHAN: Is it not attached to the Information?

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CLERK OF THE COURT: I just have (inaudible).

MR. STRATHMAN: All right, then simply bring it back on Monday.

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MR. CALLAGHAN: And I can indicate I am -- obviously I'm going to convey to the officer in charge that I would like some medical information, whether it be his daughter brings the information in, or a letter sent from the doctor, I think I have enough concerns that I think that something should be provided.

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THE COURT: Well, I mean is there any -- would a pre-trial help? I mean is this

something, you know, given what Mr. Strathman is saying about this matter, is this, Mr. Callaghan, something that maybe--

MR. CALLAGHAN: I've looked through the--

THE COURT: --you should be--

MR. CALLAGHAN: --materials --

THE COURT: --looking into as to whether or not this matter should be proceeding altogether, but I --

MR. CALLAGHAN: Well, I mean I did actually turn my mind to that. I think what the situation is, is that Mr. Otavnik was charged criminally. Mr. Sinclair was the key witness. Mr. Sinclair is now charged criminally with Mr. McLeod being the key witness. Mr. McLeod has testified for Mr. Otavnik on civil proceedings, and it's one of the things where, from the Crown's perspective, I don't know what to believe either. There is evidence that would meet a U.S.A. v. Sheppard test if it comes out as in the Crown brief. It's really difficult, in my --

THE COURT: But you don't know what's going on with your witness?

MR. CALLAGHAN: I don't. Just the information --

THE COURT: Can you find out by tomorrow?

MR. CALLAGHAN: I'm going to do my very best.

THE COURT: And can you have the officer in charge here tomorrow to give evidence?

MR. CALLAGHAN: Can I get back to the court

on it? The only reason I'm asking that, Your Honour, is he's, I think, in another courtroom now--

THE COURT: Right.

MR. CALLAGHAN: --and I'm just not sure what his schedule is.

THE COURT: And I will put it on my list for tomorrow, and we will deal with it tomorrow.

MR. CALLAGHAN: Okay.

MR. STRATHMAN: Again, I'm just -- if the letter is not available, or there is some -- then we are just going to be adjourning it until Monday, I take it?

THE COURT: Well, somebody has brought an application here. The Crown has brought an application.

MR. STRATHMAN: And I agreed to get it into court --

THE COURT: And, you know, I'm not sure what the application is, other than to seek an adjournment of this trial date based upon some idea that the principal witness may be ill.

MR. CALLAGHAN: That's correct, Your Honour, and that's information that has been provided--

THE COURT: Right.

MR. CALLAGHAN: --not only from the principal witness, but his daughter, who is also a witness at the --

THE COURT: It seems to me that if there is any legitimacy to this claim, it should be

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fairly easy to determine.

MR. STRATHMAN: There's two legitimate --

THE COURT: The police officer goes to the hospital with a subpoena today and gets the medical records for tomorrow or have a conversation with the doctors about what he needs. I mean --

MR. CALLAGHAN: I agree there is a number of ways that that can be done.

THE COURT: So that we know whether or not this is a legitimate application, in terms of this particular witness's health. That would seem to me to be a starting point. If that can't be confirmed, then I guess we are faced with the prospect of, on Monday, you know, he's not going to show up, and still claim that he is ill and unable to testify, and somebody is going to have to deal with it, unless I deal with it tomorrow.

MR. CALLAGHAN: Well, I think I would have some information. I'm going to ask Detective Eustace to make -- he has been in contact today with Mr. McLeod's daughter, and I think certain things can be requested today from her, and I should have some more information for tomorrow, and we can have it traversed in front of --

THE COURT: Is that of any assistance to you, Mr. Strathman?

MR. STRATHMAN: I know that I'm scheduled at 10:00 o'clock in set date at 361 University Avenue, and then at 2:00 o'clock I have a

proceed matter at 361 University Avenue.

THE COURT: So do you have any time in between?

MR. STRATHMAN: Well, I can come here perhaps for 11:30.

THE COURT: I'm prepared to do that if you could, otherwise I will put it right over until Monday.

MR. CALLAGHAN: I will be here.

MR. STRATHMAN: Tomorrow it is, I guess.

THE COURT: Okay, the Ritchie Sinclair matter will be remanded to March the 9th, 2012, in courtroom 504, to be traversed to the court I'm sitting in. And attach Mr. Strathman's material.

MR. STRATHMAN: Thank you.

THE COURT: Thank you.

MR. CALLAGHAN: And I will leave this court and I will have a conversation with Detective Eustace, Your Honour.

THE COURT: Okay, thank you.
