

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 J. MOORE
AT TORONTO, ONTARIO, ON MARCH 12, 2012

APPEARANCES:

M. Gharabaway	Counsel for the Crown
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

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MS. GHARABAWAY: I understand that the Sinclair matter is being held down. I did speak with Mr. Callaghan just before 10:30. He had another matter to speak to in, I believe courtroom 510. I haven't seen him re-attend, but I understand that he's just getting some further information from the officer in charge that was requested by counsel.

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THE COURT: Is the officer in charge in court?

MR. STRATHMAN: No, not on that --

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MS. GHARABAWAY: No, not on that matter. That's the officer in charge on my matter.

THE COURT: Okay, thanks.

MR. STRATHMAN: Your average day in College Park, Your Honour.

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THE COURT: Do you have to get to another court?

MR. STRATHMAN: No, I have two days set aside for this matter. So, anyway, I'm sure Mr. Callaghan will get her --

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MS. GHARABAWAY: If I may, Your Honour, and I only know very -- some very brief information about the matter. I understand on the last occasion there was some issue with the complainant who was ill, and in the hospital, and counsel was requesting some documentation to support that, and I believe that is what my colleague, Mr. Callaghan, is waiting for. I believe the officers are attending at the hospital to get that information.

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5 THE COURT: Okay, but, in any event, it's not -- regardless of what happens to it, it's not proceeding?

MS. GHARABAWAY: No, that's my understanding.

THE COURT: Okay, and we have been given a matter to do?

MS. GHARABAWAY: That's my understanding, Your Honour.

10 THE COURT: Okay, so we will just hold yours down.

MR. STRATHMAN: Thank you.

15 REPORTER'S NOTE: At this point, other unrelated matters are spoken to.

R E C E S S

20 UPON RESUMING:

THE COURT: Good afternoon.

MR. CALLAGHAN: Good afternoon, Your Honour. It's Callaghan, initial M., for the record. I'm here to address the Sinclair matter.

THE COURT: Yes.

25 MR. STRATHMAN: Mr. Sinclair is just sitting in the body of the court for now, Your Honour.

THE COURT: Okay, that's fine.

30 MR. CALLAGHAN: Your Honour, this is a matter, there was an application for adjournment that was brought, and we were in

5 front of your brother Justice Clements last week. The Crown had information that the necessary witness, the complainant on the matter, who is 81, was having a medical procedure done at Sunnybrook Hospital today, and that was the basis for the Crown seeking the adjournment.

10 I understand my friend has some concerns that may or may not be truthful, and the Crown was trying to get some confirmation today that he's really at Sunnybrook Hospital.

15 So Justice Clements felt it was appropriate that, look, it's a couple days away, see what information you can get, and let the trial Judge determine it on Monday, being today.

20 I asked the officer in charge, Detective Eustace (ph) to make attempts to confirm this gentleman's attendance at Sunnybrook Hospital. A Police Constable has been dispatched to Sunnybrook Hospital to see if they can locate him there, or get information to confirm or not the medical appointment at Sunnybrook, so that there is an evidentiary foundation for the adjournment. So that's where we are at with Sinclair.

30 I got confirmation from the Sergeant at 53 Division that that Police Officer is currently at Sunnybrook, and was going to

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call him back in 10 minutes. What the Sergeant asked me, and I'm going to ask the court, of whether or not we could deal with the issue of the adjournment application after lunch. He will have the information one way or another, I anticipate, by that time.

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So that's what I have been doing -- trying to find out this morning, Your Honour, in terms of what information we have to confirm it, and the officer in charge is -- I didn't have a number. The officer that was dispatched, I don't have a number. So finally I was able to get a hold of somebody who now has all those numbers, and is on it. That's where we are at.

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And then whatever the court does on the application for adjournment, I can live with that.

THE COURT: Okay, so the trade-off, if we leave it until this aft is that if you have no information --

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MR. CALLAGHAN: Well, the difficulty is, I have no reason, as the Crown, to believe he is being disingenuous with his medical appointment. He is 81 years old, a heart procedure. All of that doesn't seem out of the realm of possibility. It seems reasonable. And often, when people have the flu, or something like that, I don't get

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independent confirmation. Now, I don't want to be unfair to my friend. He has concerns that he has expressed already, and I don't want to speak for him, that there may be -- this may not be truthful, or that there may be some inaccuracy with the information. So that's why we are trying to get the more unusual step of confirmation that, in fact, this procedure is happening.

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THE COURT: Mr. Strathman, what is your position?

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MR. STRATHMAN: Well, if Your Honour is going to adjourn until 2:15 to be spoken -- to have the motion heard, I will save my submissions until then. It's just the complainant in this case is committing a fraud on the court with his allegation, and in -- the defence position is that that's what demands some proof, other than his word.

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The officer prepared this motion without notice to the Crown, and when I heard about it on Monday I called the officer. I didn't speak to him, left a message for him to see if he could get medical confirmation or documentation.

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And again, I had that conversation with him Tuesday, or Wednesday of last week to ask him about the doctor's letter, and, again, here we are still on Monday and we still don't have that information.

5 I filed a response, a Book of Exhibits, with respect to the defence position on the application, but -- so there is -- I will try and make it as brief as possible this afternoon.

THE COURT: All right, does your client want to come back this aft, or --

10 MR. STRATHMAN: Well, he would like to have it dealt with now, but...

THE COURT: All right, 2:15 then.

MR. STRATHMAN: Thank you, Your Honour.

15 REPORTER'S NOTE: At this point, other unrelated matters are spoken to.

L U N C H E O N R E C E S S

UPON RESUMING:

20 MR. CALLAGHAN: Good afternoon, Your Honour. I am happy to report that I do have some information. Police Constable Urbass (ph) was detached to Sunnybrook Hospital. I should give you a little bit of background. I do it more for the purpose of the record.

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30 Earlier in the week, Detective Eustace was asked to get more specifics for the Crown's application for adjournment, and Detective Eustace spoke with Mr. McLeod, who is the complainant in the matter, and he provided a number of appointments that he had at

Sunnybrook Hospital, including today.

5 I won't repeat everything that was said at that time, but there was some concern by my friend that that may be inaccurate.

10 So after speaking, His Honour Justice Clements suggested that perhaps the police could check it out if there was real concerns, so there would be an evidentiary basis for the adjournment.

15 I asked Detective Eustace to do so. He dispatched Police Constable Urbass to the hospital. She was able to determine that there was no appointment for him today. She had his name and date of birth, and they knew who he was, but indicated there was no appointment today.

20 I understand that his daughter was contacted, and she indicated,

"Well, he's still not feeling well enough to come to court."

25 The information that the police had was directly from Mr. McLeod that there was an appointment today.

30 Given that what I submitted to the court would appear not to be accurate on the Crown's application for adjournment, I'm

abandoning that application.

5 What I am going to ask is that the accused be arraigned, and I don't intend to call any evidence.

THE COURT: Okay --

10 MR. STRATHMAN: I have a very brief comment, but I'm going to save that until after the evidence.

THE COURT: Okay. If the defendant can be arraigned then, please.

15 THE COURT: Ritchie Sinclair, you stand charged on or about the period of September 3rd, in the year 2010 and December 18th, in the year 2010, in the City of Toronto, in the Toronto Region, knowing that Joseph McLeod is harassed, did repeatedly communicate directly or indirectly with Joseph McLeod, thereby causing Joseph McLeod to reasonably, in all the circumstances, fear for his safety, contrary to the Criminal Code.

How does the Crown elect to proceed?

MR. CALLAGHAN: Summarily.

25 CLERK OF THE COURT: And how do you plead to the charge, sir; guilty or not guilty?

THE ACCUSED: Not guilty.

CLERK OF THE COURT: Thank you.

30 MR. CALLAGHAN: I can indicate, for the reasons that I have previously stated on the record, Your Honour, the Crown won't be calling any evidence.

THE COURT: So the Crown calling no evidence, Mr. Sinclair, the charge that you are facing is dismissed.

THE ACCUSED: Thank you, Your Honour.

THE COURT: Okay, so any release you were on is vacated as of now.

THE ACCUSED: Thank you, Your Honour.

MR. STRATHMAN: If I can just indicate for the record, it's the defence position that Mr. McLeod committed a fraud on the police, and on the courts, and unfortunately it has finally been dealt with at this time.

THE COURT: Okay.

MR. STRATHMAN: Thank you, Your Honour.

THE COURT: Thanks, Mr. Strathman.

MR. CALLAGHAN: Thank you, and I do apologize for keeping everyone waiting earlier today, Your Honour. It just took a little bit of time to get the required information.

THE COURT: Yes, thank you.

MR. STRATHMAN: I thank my friend.
