

File No. 06-08133

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IN THE ONTARIO COURT OF JUSTICE

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HER MAJESTY THE QUEEN

AGAINST

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DEREK DUNLOP  
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HEARD BEFORE THE HONOURABLE MR. JUSTICE P. WRIGHT

ON TUESDAY, FEBRUARY 7, 2008 AT NEWMARKET

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P R O C E E D I N G S

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**APPEARANCES:**

**COUNSEL FOR THE CROWN:**  
**COUNSEL FOR THE ACCUSED:**

**MR. J. ST. MICHAEL**  
**MR. S. SAGER**

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In-Ch.      Cr.-Ex.      Re-Ex

WITNESS

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E X H I B I T S

EXHIBIT NUMBER

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Transcript ordered.....

Transcript completed.....

Counsel notified.....

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R. v. DUNLOP  
TUESDAY,  
FEBRUARY 7, 2008

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**MR. ST. MICHAEL:** Good morning Your Honour, what I might start with Your Honour, counsel is here on an adult matter Derek Dunlop lines one to three on the adult docket.

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**MR. SAGER:** Good morning Your Honour, for Madam Reporter the name is Sager S-A-G-E-R first initial S. and I appear this morning primarily for an application to be removed. January 9th Your Honour you gave me directions that you wanted me to file an application with respect to removal - which has been done. I didn't know literally up until last night whether I was going to be on this or off of this so my friend has been served, Mr. Dunlop has been served, Madam Clerk has received a copy of this this morning. Basically as a result of an e-mail and conversation with Mr. Dunlop, he has elected to represent himself in this matter. At the moment, he may retain new counsel but at the moment he wants to speak to this himself, which he may have a valid reason. As you know, we had a lengthy judicial pre-trial on this matter, it was over two days which you presided over and it was very detailed and certain results came out of that. Further discussion with the Crown, I formed an opinion that Mr. Dunlop should take a certain course of action. He doesn't agree with that course of action in part because he felt that he didn't have the entire disclosure himself to review which is unusual I know but he did not

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have the whole disclosure. Primarily he had all of the photographs from the accident scene but he didn't have the whole disclosure which is quite lengthy. He now has that disclosure, my office has photocopied the entire thing and sent it off and - but as a result of my opinions and how I feel this matter should be dealt with now, I really wouldn't be in a position to continue anyways so the best thing for Mr. Dunlop if he needs another opinion, would be hire new counsel to take another look at this with fresh eyes but I have taken a great deal of time reviewing this case, spent alot of time dealing with the Crown and of course being before yourself on two separate occasions. Like I can't see my mind changing and my opinion changing as to what direction he should take in this matter so I wouldn't be very much use to him from this point forward anyways. So based on that I would request that this application be accepted and an order be made for my removal.

**THE COURT:** Mr. Dunlop you are present are you?

**MR. DUNLOP:** Yes I am.

**THE COURT:** You have heard what Mr. Sager has had to say?

**MR. DUNLOP:** Yes.

**THE COURT:** Do you agree with what he has said?

**MR. DUNLOP:** In part with most of it yes.

**THE COURT:** Well what is it that you don't agree with?

**COURT REPORTER:** Excuse me Your Honour if I could

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ask that the person come forward.

**THE COURT:** What is it that Mr. Sager has said that you don't agree with?

**MR. DUNLOP:** Well I - his reference to what he said about - just our kind of the way we have agreed to disagree I guess in relation to you know...

**THE COURT:** Did you send him an e-mail for instance indicating that you no longer wanted him to represent you?

**MR. DUNLOP:** After he advised me that that is what he would require prior to the Court date on January 9th.

**THE COURT:** Is this issue about fees or is this issue about the circumstances of the matter in which this case is being conducted? Which is it?

**MR. DUNLOP:** It is not about fees.

**THE COURT:** That's fine, that's all I need to know, I don't need to know any more. Were it an issue of fees it would be a different course of action that I might consider here. It isn't so my question sir to you again is did you send Mr. Dunlop (sic) an e-mail indicating that you no longer wanted him to represent you?

**MR. DUNLOP:** Yes I did after he advised me that if that was - after we had had numerous discussions prior to...

**THE COURT:** I am not asking you to reveal the solicitor/client discussions - I am not asking you to reveal any of that because it is none of my business. I just want to be sure that I have

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it clear that you did send an e-mail to Mr. Sager indicating that you no longer wanted him to represent you and it wasn't a matter in regard to fees is that correct?

**MR. DUNLOP:** That is correct.

**THE COURT:** When Mr. Sager did you receive that e-mail?

**MR. SAGER:** February second.

**THE COURT:** May I see the information please? Mr. St. Michael this matter arose as result of an occurrence alleged to have taken place on the 22nd of October 2006?

**MR. ST. MICHAEL:** That's right, I noticed that.

**THE COURT:** Which means that this matter is now dated by some sixteen months. The matter has been the subject of extensive pre-trial discussion and I am sure your office is aware of that since Mr. Sager is conversing with members of your staff with a view towards a resolution. On the eve of the completion of that, Mr. Sager indicated that he had received an e-mail from his client advising that his client no longer wanted him to represent him. I asked Mr. Sager to formalize the application which he made orally in Court to be removed as counsel of record and to require that Mr. Dunlop be here because I was not satisfied that the circumstances of the application, in view of the history of this case, accorded with the rules of the practice, by which this Court conducts business. I am not a stickler on rules but I was in this case for all

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of the obvious reasons. Mr. Sager has brought an application in accordance with the rules, he has served his client in your office, his client is present and you have heard the exchange I have had with Mr. Dunlop and the representations Mr. Sager has made. What is the Crown's position with respect to Mr. Sager's application to be removed as counsel of record?

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**MR. ST. MICHAEL:** Well certainly Your Honour I wouldn't be in a position to oppose it, I have no basis to do that I can simply say that this matter, as you pointed out is some sixteen months old and needs to get either resolved or to trial as soon as possible.

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**THE COURT:** You may recall Mr. Sager that when this matter was last before the Court, that among the steps that I had requested, apart from formalizing your application to be removed as counsel of record, was to make efforts to encourage Mr. Dunlop to retain other counsel and have that counsel present because I was going to set a date today.

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**MR. ST. MICHAEL:** We spoke about that but at the time Mr. Dunlop was quite insistent he was going to represent himself.

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**THE COURT:** Then what we are going to do today before actually I make the order removing you as counsel of record, is to attend at the trial coordinator's with Mr. Dunlop and perhaps Mr. St. Michael maybe able to provide the leave dates of the officer. We are going to set a date for

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5 trial today. It can be either one or two days  
whichever your advice, and if Mr. Dunlop wishes  
to retain counsel between now and the date that  
is set, you can do so provided of course you  
10 retain counsel that is ready, willing and able  
and available to proceed on those trial dates or  
otherwise take other proceedings. I will seize  
myself with this matter for management purposes  
until the trial date is actually determined, set,  
15 confirmed and we are ready to proceed so what I  
would like you to do is get that date if you  
would please and there will be a note attached to  
the information that if there are any motions  
brought in relation to these proceedings, prior  
to the trial date, I would hear those motions,  
whether it be for a continuation, extension,  
20 adjournment or other proceedings. This matter is  
going to proceed.

**MR. SAGER:** My question Your Honour is once we  
have set this trial date, my friend and I, are  
you going to grant the order?

**THE COURT:** Yes.

**MR. SAGER:** Thank you.

25 **THE COURT:** The order will be granted but I want  
you to discharge those judicial responsibilities  
as I have indicated when this matter was last  
before the Court. I want the matters to be  
completed today on the basis that we have a date,  
30 Mr. Dunlop has in mind the date for his trial,  
and this matter can proceed to the next  
management level. Sixteen months is too long.



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**MR. SAGER:** Did you want me to return with those dates?

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**THE COURT:** Yes please. Once that has been formalized and placed on the record, and I have had my comments with Mr. Dunlop about the fact that he is proceeding on his own as he has elected to do - then I will grant the order to remove you as counsel of record. Thank you. Mr. Sager just before you leave, it occurs to me that in the circumstances, the Crown here had actually proceeded by indictment or the charges are indictable by their nature so implicit in the date setting is a requirement that this Court knows whether this matter is going to be proceeding by preliminary inquiry or a trial on that return date. Thank you.

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R E C E S S

U P O N R E S U M I N G

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**MR. SAGER:** Pursuant to your instructions Your Honour, I attended with the trial coordinator and she has set November 17 and 18 104 Court before Justice Minard of course that is subject to change.

**THE COURT:** What would be occurring on that date?

**MR. SAGER:** That is a date set for trial.

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**MR. ST. MICHAEL:** Wondering if the accused should be put to his election at this point Your Honour?

**THE COURT:** I think he should. I am going to ask

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you Mr. Sager to assist the defendant in relation to this matter if it is going to be a trial. The Crown has not yet elected its method of proceeding and I thought I should mention that to you Mr. St. Michael.

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**MR. ST. MICHAEL:** Crown is proceeding by indictment.

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**THE COURT:** Madam Clerk if you would endorse on the information that the Crown is proceeding by indictment in the circumstances I would ask he be arraigned and the elections that are available to the defendant. Please listen carefully Mr. Dunlop.

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**COURTROOM CLERK:** Derek James Dunlop upon these charges you have the option to elect to be tried by a Provincial Court Judge without a jury and without having had a preliminary inquiry or you may elect to be tried by a Judge without a jury or you may elect to be tried by a Court composed of a Judge and jury. If you do not elect now you are deemed to have elected to be tried by a Court composed of a Judge and jury. If you elect to be tried by a Judge without a jury or by a Court composed of a Judge and jury or if you are deemed to have elected to be tried by a Court composed of a Judge and jury you will have a preliminary inquiry. Only if you or the prosecutor requests one. How do you elect to be tried?

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**MR. DUNLOP:** Can I propose to the Court that they consider that I seek independent legal advice before making a decision in relation to that?

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**THE COURT:** Yes you may.

**MR. DUNLOP:** That is what I propose.

**THE COURT:** Mr. St. Michael?

**MR. SAGER:** Your Honour for the record I have made a suggestion to Mr. Dunlop.

**THE COURT:** Mr. St. Michael?

**MR. ST. MICHAEL:** As long as we can come back in very very - within a very short delay for that purpose.

**THE COURT:** How much time do you require to be able to receive that advice in terms of your election as to your mode of trial? Mr. Dunlop?

**MR. DUNLOP:** A month.

**THE COURT:** What I am going to do is adjourn the proceedings for purposes of allowing you to seek independent legal advise with regard to your election as to your mode of trial and that will be to the sixth of March 2008 at 9:30 in Courtroom 105. Secondly I am going to adjourn the proceedings as well to November 17th 9:30 a.m. in Courtroom 104 continuing November 18th 9:30 in Courtroom 104 and I am going to mark that preliminary inquiry slash trial. One way or the other these matters will proceed on those two dates. Do you understand that Mr. Dunlop?

**MR. DUNLOP:** I understand that.

**THE COURT:** And that will be with or without counsel. If you intend to retain counsel, then I urge that you do so now and ensure that you retain counsel that is ready and able to proceed on those two dates. This matter will proceed on

5 those two dates whether you have counsel or not.  
I will be ordering a transcript of the  
proceedings taken place today, from my Reporter.  
The transcript of those proceedings will be  
10 attached to the information to provide guidance  
to the Judge who will be dealing with this matter  
on the 17th and 18th of November. Given that you  
have indicated thought Mr. Sager who is still  
your counsel, and I have not yet removed him that  
you intend to proceed on your own, the purpose  
15 for the adjournment today to the sixth of March  
is simply to allow you the opportunity to elect  
your mode of trial. That is the basis on which  
that adjournment is granted but otherwise these  
proceedings will take place on the 17th and 18th  
of November. Do you understand that?

20 **MR. DUNLOP:** I understand.

**THE COURT:** Thank you. Mr. St. Michael in view  
of Mr. Dunlop's request to have independent legal  
counsel assist him with respect to the election  
as to his mode of trial and the adjournment for  
that strict purpose only to the sixth of March,  
25 do you have any qualified position with regard to  
Mr. Sager's request to be removed as counsel of  
record?

30 **MR. ST. MICHAEL:** My only concern would be that  
something goes off the rails between now and the  
sixth of March. I would like that, if possible  
request that that application be adjourned to the  
same date.

**THE COURT:** Mr. Sager?

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**MR. SAGER:** Mr. Dunlop is going to obtain independent legal advise and/or...

**THE COURT:** With respect to his election?

**MR. SAGER:** Yes or obtain new counsel during that period of time. I don't think it would be fair for me to have to remain on and simply to come back while he chooses which mode of trial he wants to take.

**THE COURT:** I have seen these situations go sideways and as you say, go off the rails. We have already had a change in the process here this morning initially the representation where Mr. Dunlop is going to be representing himself now. After speaking with you he has requested an interim date for the sixth of March to receive independent legal advice with respect to his election and I am inclined not to grant the application that you have made at this time. I am not going to dismiss it but I will adjourn it - your application to be removed as counsel of record will be adjourned to March sixth 2008 at 9;30 a.m. in Courtroom 105 to be spoken to and I will consider the matter at that time.

**MR. SAGER:** Which Court are we in Your Honour?

**THE COURT:** 105. I have indicated on the endorsement to the notice of application that Mr. Sager has filed following - Mr. Sager appeared for the defendant, Mr. Dunlop appearing in person, Mr. St. Michael for the Crown, application to remove Mr. Sager as counsel adjourned to March 6th 2008 9:30 Courtroom 105 to



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be spoken to. Otherwise Mr. Dunlop I want you to understand that once you leave this Courtroom today, your hearing, whether it be by preliminary hearing or trial will commence at 9:30 a.m. on November 17th 2008 and it will continue at 9:30 on November 19th (sic) 104 until such time until it is completed. Do you understand that?

**MR. DUNLOP:** Yes.

**THE COURT:** Thank you.

**MR. SAGER:** Thank Your Honour.

**THE COURT:** I will be seized with this matter for purposes of management and it will return to my Court on the sixth of March.

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5 THIS IS TO CERTIFY THAT the  
foregoing is a true and accurate  
transcription of the record made  
by sound recording apparatus, to  
the best of my skill and ability.

10 *W. Campbell*  
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Wendy Campbell, Certified Court Reporter

15 Photostatic copies of this transcript are not certified and have  
not been paid for unless they bear the original signature of W.  
Campbell, and accordingly are in direct violation of Ontario  
Regulations 587/91, Courts of Justice Act, January 1, 1990

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FORM 2  
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I.....Wendy Campbell....., certify  
(name of authorized person)

that this document is a true and accurate transcript of the

recording of.....*Rv. Dunlop*.....in the  
(case name)

.....*Prov.*.....held at  
(name of Court)

.....Newmarket .....taken from Recording No.  
(Court address)

.....*100*....., which has been certified in Form 1.

.....*Aug 26/03*.....  
Date

.....*W Campbell*.....  
Signature