

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

DEREK DUNLOP

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P R O C E E D I N G S   A T   C O U R T

(To be Spoken To)

BEFORE THE HONOURABLE JUSTICE P. WRIGHT  
on Wednesday, August 13, 2008  
at NEWMARKET, Ontario.

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CHARGES:

s. 253(b) C.C. - Exceed 80 Milligrams  
s. 255(2) C.C. - Impaired, Bodily Harm

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APPEARANCES:

A. Ghosh

Counsel for the Crown

S. Wilson

Counsel for Mr. Dunlop

H. Herman

Counsel on behalf of Ms. Segal *Amicus Curiae*

1.

R. v. Derek Dunlop

WEDNESDAY, AUGUST 13, 2008

GHOSH: There are a number of lawyers in the body of the court here for this particular matter.

It's Derek Dunlop at 18 through to 20.

THE COURT: Yes?

MR. GHOSH: Mr. Herman is here on behalf of Ms. Segal who's been assisting as *Amicus*.

MR. HERMAN: Yes, good morning, Your Honour.

THE COURT: Good morning.

MR. HERMAN: I think I can address the matter first and that will take care of two other lawyers present on this matter. First of all, it appears that Mr. Dunlop now has counsel. He's applied for legal aid. Apparently he's been accepted.

MS. WILSON: That is my understanding. Good morning. It's Wilson, initial "S". I have spoken with Mr. Dunlop, met with him last night, received disclosure from him. I understand he does have a certificate and is simply waiting for a signature and I am prepared to accept that and represent him at this stage.

THE COURT: Thank you.

MR. HERMAN: So, Your Honour will recall that you appointed Ms. Segal *Amicus* in regards to this matter.

THE COURT: I did.

MR. HERMAN: And there is a - apparently Mr. Tait is present and another lawyer from the Attorney General's Office in order to, I suppose argue whether can Your Honour can fix a rate or whether it's up to them or whatever. Ms. Segal - oh, and Mr. Wisener's here on behalf of the C.L.A.,

Criminal Lawyer's Association, hypothetically to argue on her behalf. Ms. Segal didn't become involved in this matter in order find a client. She became involved because she saw an injustice occurring and was upset by that. She has instructed me to advise the court and all these other individuals she's not looking for compensation for what she's done, so we don't have to deal with the - Your Honour appointing her *Amicus* or have any arguments in regards to that.

THE COURT: Thank you, Mr. Herman. Mr. Tait?

MR. TAIT: Perhaps if I step in. Your Honour I was certainly made aware of this case a number of weeks ago and behalf of the Crown I'd like to thank Ms. Segal for stepping in in the highest traditions of the bar and addressing this case at a crucial juncture before Your Honour a number of weeks ago and I'm sure Mr. Herman will pass that message along to her and not seeking an account for her time and effort is certainly again, in the highest traditions of criminal bar. I'd just like to put that on the record this morning. Thank you, Your Honour.

THE COURT: Thank you, and likewise the court thanks Ms. Segal and yourself as well and indeed all of the individuals who are members of the bar for their assistance in this most unfortunate situation that visited itself upon Mr. Dunlop, who after all is the defendant in these proceedings. The witnesses and so forth who might have otherwise been involved, they still may be involved and the court, and each has played a

significant role in assisting the court and I can tell you that without that assistance matters would not be in the state they're in today. We would not be able to resolve matters and I thank each and every one of you for the roles that you've had to play. Thank you very much.

...OTHER MATTER DEALT WITH

MR. MOULL: Your Honour, returning to the Dunlop matter at 18 through to 20. Just procedurally, we're going to discuss what happens next.

MS. WILSON: Yes, Your Honour, obviously I - there's a fair amount of history to this as well as several applications Mr. Dunlop's brought before the court. I need some time to review the file, to speak with him, to seek further instructions and see where we go from here. I have had some conversations with Mr. Ghosh this morning and I'll obviously need to have further discussions with him as to what the procedure is going to be. If I can request please, an adjournment. I'm available the week of the 15<sup>th</sup> of September. That will give me a chance to review this matter, order some transcripts and see where we go.

THE COURT: Which court do you intend for this matter to return to?

MR. GHOSH: Does Your Honour have your schedule handy?

THE COURT: I do.

MR. GHOSH: It should be before Your Honour.

THE COURT: I won't be here on the 15<sup>th</sup> but I'm here on the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup>, and as a matter of

fact there are judicial pre-trials that I'm involved in on the 17<sup>th</sup> if that would be of assistance.

MR. GHOSH: My suggestion - it should be before Your Honour.

THE COURT: Give me a second.

MS. WILSON: Yes, the 17<sup>th</sup> is convenient and if it is in a pre-trial court perhaps that will make things easier rather than in a trial court.

THE COURT: Would 11:30 be satisfactory?

MS. WILSON: That's fine.

MR. GHOSH: It is, Your Honour. Now just in terms of how much time would be allotted if proceeding that day. It's going to be a very busy court. I'm going to suggest it just be scheduled to be spoken to and on that date, perhaps Ms. Wilson and I can have some further discussions and I'll be in discussions myself with Mr. Tait.

MS. WILSON: Yes, I imagine if the applications are proceeding they would need to be scheduled for a significant period of time, so I'm content with that.

THE COURT: That's fine. I put it for judicial pre-trial at 11:30 on September the 17<sup>th</sup>, 2008, here in courtroom 303. There's enough time to conduct a partial pre-trial or maybe even a more complete pre-trial or just to be spoken to, but it gives you some flexibility and I'm here. It seems to work as a convenient date for counsel, so that makes some sense and by then your retainer and disclosure will be in place. I can tell you Ms. Wilson that I have ordered transcripts for each

and every appearance of this gentleman because I have a role to play in this that goes beyond just the four corners of dealing with Mr. Dunlop and the only transcript that is presenting a problem right now is the transcript from January the 24<sup>th</sup>, 2007 in courtroom 200 and I'm told by Mary Ellen Dunn, tape management official from the Ministry that an agency reporter was in court that date, made no notes and apparently there are tapes that deal with that day but they've not been able to locate on those tapes through audit, the matter involving Mr. Dunlop. I'll simply read to you the note that I received. "There were four tapes worth of matters. I have tried while I'm on lock-up..." whatever that means "...working to listen to them all. I could not find the matter on the tapes however that doesn't mean that it wasn't spoken to. The agency reporter did not go from tape one to tape two on the monitor correctly. There are gaps in conversations between the two and the last tape is blank after counter number 150. The long and the short of it is this. I could not assign this to any other reporter to transcribe for you. I tried. I'm sorry. I know the way Mr. Sager presented himself on the record each time to you is important". So I have that email from you. That's the only matter that's missing and it appears that if it was in a 200 court, while everything that occurred in this matter is important, there are other times when there were appearances that were far more important and I don't see that as a determinative

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date necessarily in the larger scheme of things. Having said that, it's better to have as complete a record as we can but it seems as though that day may have been lost in history somehow or another. Otherwise I have all of the transcripts and I can certainly provide you with the names of the reporters that you can quickly obtain those transcripts. They're done so they're available.

MR. GHOSH: Excellent.

THE COURT: And same goes, Mr. Ghosh, for you as well of course.

MR. GHOSH: Yes.

THE COURT: But I got them for other reasons and I'll deal with that in a few moments.

MR. GHOSH: We understand. Thank you.

THE COURT: Thank you very much. Now, Mr. Dunlop is here. Would come forward please, sir? I understand that you were in the process of retaining or have retained Ms. Wilson to represent you in these matters. Is that correct?

MR. DUNLOP: Yes. That's correct.

THE COURT: And there's a certificate that's available to either be presented to her so that she can then be retained by you?

MR. DUNLOP: That is correct.

THE COURT: This matter is going to be adjourned to the 17<sup>th</sup> of September, 2008 at 11:30 a.m. in courtroom 303 for a judicial pre-trial. We may have a pre-trial that day. We may simply have the matter spoken to but the sooner matters are finalized with Ms. Wilson and she has everything that she needs, the more quickly she'll be up to

speed and able to represent your interests in this matter. Do you understand that, sir?

MR. DUNLOP: Yes, I do, sir.

THE COURT: All right, and I take it that you're content that Ms. Wilson act of course. Is that right?

MR. DUNLOP: Yes.

THE COURT: Thank you. All right, now the last matter that - there are two other matters to deal with. Mr. Wisener, you're here on behalf of the criminal lawyer's association.

MR. WISENER: Mr. McCormier (ph) is here from the civil office. I was here on behalf of the criminal lawyer's association. If there was going to be an issue regarding the remuneration we were going to speaking to about it. The issue is now moot so we're no longer involved and Mr. McCormier (ph) and I are going to depart. If we can be excused.

THE COURT: All right. Well, I think it was a very honourable gesture that Mr. Segal made through Mr. Herman and as Mr. Tait indicated, in the highest traditions of the bar and I thank you gentlemen as well for your attendance as well. The fact that this matter didn't proceed down that particular avenue is as you've said, Mr. Wisener, moot at this time, but nevertheless you made the time in your schedules to be here. I thank you. The court thanks you very much for your assistance and yes, I think you may leave at this time if you wish since it doesn't appear as though that matter



is going to proceed any further. But thank you again for your assistance.

MR. WISENER: Thank you kindly, Your Honour.

THE COURT: Mr. Tait as well, as always, sir. Thank you for your assistance.

MR. TAIT: Thank Your Honour and thanks to my colleagues at the criminal office, civil. Thanks, Your Honour.

...CROWN INTRODUCES OTHER MATTER

THE COURT: If you'll let me just finish with Mr. Dunlop's matter I think we're now near the finish line or close to it. Mr. Sager, your presence sir? I should tell you sir, that this matter is now going to be proceeding to a judicial pre-trial on September the 17<sup>th</sup>, 2008 at 11:30 in courtroom 303. I'm ordering that you be here on that occasion. I can tell you that at this stage I now have assembled all of the information which will be provided to the Law Society of Upper Canada in relation to your involvement in these proceedings and it will be for the Law Society of Upper Canada to determine what steps they will take with respect to your license application that's before them. My remarks and comments will be forwarded to the Law Society in regards to my thoughts on this matter and we'll leave it at that.

MR. SAGER: If I may speak, Your Honour?

THE COURT: Thank you.

MR. SAGER: I have spoken with the Law Society. They have assigned an investigator. I have already advised the investigator that I'm

withdrawing my application, so that's the first step that I'm taking with respect to this matter.

5 THE COURT: Thank you very much, sir. I'm still ordering you to be here on September the 17<sup>th</sup>. That may be the last attendance that will be required in the circumstances. I thank you for your attendance up to this point and for your remarks. And finally, Madam Reporter if you would  
10 prepare a transcript of today's proceedings as quickly as you possibly can? I don't know what the distribution will be. Certainly the court will require a copy. I expect Crown will require copy. I expect Ms. Wilson will require a copy. Are there any other persons? Mr. Sager, if you  
15 wish a copy - Mr. Sager leave?

MR. GHOSH: I think he left.

20 THE COURT: Well, we'll make an extra copy, Madam Reporter for Mr. Sager as well and if there are any other persons who have an interest in these proceedings they can speak to Madam Reporter about obtaining a copy. I've ordered the first copy so the copy rate will apply to anyone else who orders a copy - as a matter of fact what I'll do to make  
25 it clear, I'll order the initial copy and you can charge copy rates to the court for copies for everyone else. So there's no problem, there's no impediments for anyone to get copies of the transcripts.

30 MR. GHOSH: That's helpful, Your Honour. Thank you very much.

THE COURT: All right. Thank you.

MR. GHOSH: If I can take my leave then?

THE COURT: Yes. Thank you Mr. Ghosh. Thank you Ms. Wilson, Mr. Wisener, again on these matters. Thank you everyone else.

M A T T E R A D J O U R N E D

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FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

*Evidence Act*

I, we Barbara MacKenzie Mahler, certify that  
(Please print name of authorized person(s))

this document is a true and accurate transcript of the recording of Proceedings  
To be spoken to

R. v. Derek Dunlop in the Ontario Court of Justice  
(Case name) (Name of Court)

held at Newmarket, Ontario taken from Recording No.  
(Court address)

BMM4911-303-0276/2008, which has been certified in Form 1.

September 15, 2008  
(Date)

Barbara MacKenzie Mahler  
(Signature of authorized person(s))  
BARBARA MACKENZIE MAHLER