

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

DEREK DUNLOP

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

BEFORE THE HONOURABLE JUSTICE P.J. WRIGHT,
ON JUNE 25, 2008,
AT NEWMARKET, ONTARIO.

CHARGES:

s. 253 (b) C.C. - Over 80 Mg.
s. 255(2) C.C. - Impaired, Bodily Harm

APPEARANCES:

P. Castiglione

Counsel for the Crown

M. Segal

Amicus Curiae for court and

Derek Dunlop

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R. v. Derek Dunlop

WEDNESDAY, JUNE 25, 2008

MS. CASTIGLIONE: First of all, Your Honour. Just at the outset, if we can address the number one to three, Derek Dunlop...

THE COURT: Yes.

MS. CASTIGLIONE: ...matter please?

THE COURT: Is Mr. Dunlop present? If he could be paged please?

...Derek Dunlop paged.

THE COURT: There appears to be no response. Is Mr. Sager present?

MR. SAGER: I am, Your Honour.

THE COURT: Good morning, Mr. Sager.

MR. SAGER: Good morning.

THE COURT: I was not in the courthouse yesterday, but I was presented this morning by my secretary with a letter which you have authored dated June the 15th, 2008, which is - well the pages aren't numbered. There appear to be four pages, is that correct?

MR. SAGER: That's correct, yes.

THE COURT: All right. Transcripts have been ordered with regard to all of these proceedings, Ms. Castiglione, and those transcripts were in the process of being compiled, and I don't know the state of completeness right at this moment, but I'd like to stand this matter down if I could, and I will check with my secretary to see precisely what the state of affairs are with regard to the transcripts. That's point number one. Point number two, Mr. Dunlop had received some preliminary advice from Ms. Marcy Segal who is a

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lawyer, and I have appointed her amicus curiae.
Mr. Dunlop is now present. Thank you, good
morning, Mr. Dunlop.

5 MS. CASTIGLIONE: Your Honour, if I can just - I
did get a - a fax from Ms. Segal yesterday
afternoon. Oh actually, well I received yesterday
afternoon indicating that she would delayed until
approximately ten thirty today due to matters in
another court.

10 THE COURT: That's fine. So we - we're going to
stand this matter down in any event until ten
thirty then we'll re-address it at that time.

MR. SAGER: Yeah, one of the requests Mr. Dunlop
made was that personal papers be returned to him.

15 THE COURT: Yes.

MR. SAGER: I have those here for him.

20 THE COURT: All right, well perhaps you can attend
to that then and deal with those - those issues and
speak with Ms. Segal to make sure that that matter
is tidied up and then we can deal with any of the
other outstanding matters that we're able to deal
with today at that time. Ms. Segal is expected
here at ten thirty. We'll recall the matter at or
around then. Thank you.

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MS. CASTIGLIONE: Well, Your Honour, I did see Ms.
Segal here, so I'm just wondering...

THE COURT: All right.

30 MS. CASTIGLIONE: ...if we wanted to address that.

...

THE COURT: All right, thank you. Do you want to
page Ms. Segal please?

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...Ms. Segal paged.

MS. SEGAL: Good morning, Your Honour.

THE COURT: Good morning, Ms. Segal.

MS. SEGAL: I apologize for being tardy, but I believe - I hope Your Honour received the letter...

THE COURT: I did.

MS. SEGAL: ...that I would be here at ten thirty.

THE COURT: Yes.

MS. SEGAL: And it was ten thirty-one.

THE COURT: Yes, thank you.

MS. SEGAL: And I was just talking to Mr. Dunlop outside for a moment - just completing my discussions, but I can certainly - I'm certainly prepared to address some of the issues right now. One of which as if I understand it is I received an email from Paul Tait yesterday that Crown law civil was taking the position that the issue of how much I am to be paid as amicus curiae is something that the Crown law office wishes to argue. Now I asked for the name of that Crown, so I could communication with that person, but Mr. Tait did not know. I'm going to guess the person that's about to stand up is from Crown law office. I took the liberty of speaking to Mr. Wisener who is the CLA rep in this - is it okay if Mr. Dunlop just sits down for a minute?

THE COURT: Sure.

MS. SEGAL: Just take a seat. I took the liberty of speaking to our rep from the CLA. Mr. Wisener forwarded me to Mr. Addario - Frank Addario, A-D-D-A-R-I-O who is the president of the Criminal Law Association. And he's quite familiar with the

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position Crown Law Office has taken. I can appreciate that this now is a sidetracking of what I believe are the real issues here and that all over Ontario there - there has been arguments by representatives of the CLA - all successfully that the rate is not the legal aid rate but in fact is the - the rate that Your Honour - I wasn't here on the last occasion as deemed as appropriate. It's also unseeingly for me as amicus curiae to even argue about what my rate should be because quite frankly and although I do appreciate Your Honour asking that or appointing me and deciding that the rate should be what I believe is appropriate as a lawyer. I'm not interested quite frankly in the money. I'm interested in the larger issue which I'm sure Your Honour appreciates - the fact that a paralegal would represent somebody on an indictable offence. I - I can tell you my frustration at my attempts to call the Law Society to ask that at least this be on record immediately and was told that letters would have to be sent, and I can't speak to someone in person which I find highly unsatisfactory considering what has transpired. The fact that Crown Law Office would - would want to argue about the fees quite frankly I find insulting. I'm not interested in the money. I don't mind how much time I have to be here as a member of the bar in the highest profession. * We are here as officers of the court to ensure the integrity, and so I'm not going to even entertain this issue. I know the CLA does wish to on principle and Mr. Wisener is going to need to argue

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it as the CLA rep. I don't have his dates right now if in fact that's going to happen. So at the outset, I'd like to say that this is not, and I would think that Crown Law Office would see this equally as an exceptionally important issue that the courts were put in this position and that for some reason the Law Society may or may not have known that this was happening but thankfully - I don't mean this upon myself but thankfully the decision is now at the forefront and Your Honour is taking it seriously. So that's that issue. In terms of amicus curiae, Your Honour. I don't mean to interject, but I'm just trying to cut to the chase because you have a busy courtroom, and I see Mr. Sager is present. I can advise you as amicus curiae that Mr. Dunlop has made an application to legal aid. I did not bring it with me. I apologize. I left it at home. It's due to me rushing, but the date is June 16, 2008. He's made application; he is waiting for a decision with respect to legal aid about hiring his own lawyer. I received I believe all of the disclosure last week. I've had some opportunity to review it because Mr. Dunlop lives out of jurisdiction and we were not able to meet late last night. I was just in the process of communicating to him what some of the disclosure indicates. I know Mr. Dunlop emailed Mr. Sager inquiring about the fees that were given to Mr. Sager, which I don't want to be part of because I don't think that's my role. And I did happen to review the email from Mr. Sager where he indicates to Mr. Dunlop, "You now have a

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lawyer. It's not appropriate for me to communicate with you any further." So that's - that's what happened from my end as amicus curiae and certainly Mr. Dunlop is taking this seriously in terms of attending at the legal aid office. I have the disclosure that I can actually give to him, and I thank Your Honour for the materials that I received I believe the next day in terms of what's on the information. Thank you.

THE COURT: All right. Just before you sit down Ms. Segal.

MS. SEGAL: Sure.

THE COURT: Mr. Sager has presented to the court under a letter dated June the 15th, 2008, received on June the 24th, 2008, a position with regard to his involvement in this matter copied to the Law Society of Upper Canada, and I confirmed with Mr. Sager today that that was in fact his letter and his signature, and I proposed that this letter be filed with the information. Do you agree?

MS. SEGAL: Yes, and I....

THE COURT: Does Crown counsel agree, Ms. Castiglione?

MS. CASTIGLIONE: Yes I - can I see that letter, Your Honour because....

MS. SEGAL: I don't believe either of us have a copy of that letter.

THE COURT: Okay, I'll make sure that you receive copies of it today if you wish.

MS. SEGAL: Thank you.

THE COURT: **The** second thing while you're considering **that** is that Mr. Dunlop who arrived a

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bit late as well indicated that - and I think Mr. Sager did as well, there were issues with regard to personal property if I might call it that without becoming specific of Mr. Dunlop's which was in Mr. Sager's possession. He had expressed an interest on the last occasion this matter was before the court of retrieving that property. Mr. Sager indicated that he had that property, and I suggested that perhaps what he could do was await your arrival to ensure that that property has in fact been transferred to Mr. Dunlop. In other words, that he has received whatever property again without putting too fine a point on it that Mr. Sager may have come into possession of that belonged to Mr. Dunlop, and that was another small side issue.

MS. SEGAL: Certainly.

THE COURT: But it was importance to Mr. Dunlop obviously, and I'd like to make sure that's been covered off.

MS. SEGAL: I'll facilitate that.

THE COURT: Thank you. Thirdly, I should indicate that transcripts have been ordered by the court of each and every proceeding - each and every date this matter proceeded before the court from the outset. Those transcripts are being marshalled now. I tried to locate my secretary during the brief hyedas we had a few moments ago. I was unable to do so. I think we have most but not yet all of the transcripts. The number of transcripts are considerable. This matter has been before the court for ~~some~~ considerable period of time. I

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assumed management of this matter about halfway through indicating from the outset because of the way in which it was proceeding, that I would not be the trial judge but that I would manage the case, and of course, intercepting those timelines was the indication by Mr. Sager that Mr. Dunlop wished to enter a plea of guilty and after a plea comprehension inquiry conducted by the court directly of Mr. Dunlop, that's precisely what occurred, and that's the state that we sit in now. I did vacate a prohibition order which was put into effect. This is an offence which libels the defendant to such an order but given the fact that the issues that have arisen are what they are and the status of Mr. Sager is what it is and that these charges are indictable by nature, I did not think it was appropriate that that prohibition order stand, and I vacated it. The plea remains on the record whether it will remain, whether it's imperilled, will be a matter which counsel will have to ultimately make a determination on. I don't see that as a big problem. I think it's more a question of determining whether or not the facts such as they are satisfy the ingredients of the offence and that the defendant was properly represented at some point in relation to it. It may be necessary, for instance, to - to strike the plea, and that was my thinking at some point, and either re-enter a plea after proper advice for trial. So all of the options are, of course, open. That plays quite a bit into what you've talked about in terms of the amount of time that's

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involved as amicus curiae, the fact that the defendant should retain counsel and the deep, deep concern that this court has of a deception which has taken place here. The public interest and the role that the Crown Attorney's office plays and the Attorney General plays and the administration of justice and in the promulgation of trial fairness. I'm not going to comment on what Ms. Segal has indicated because I'm not an advocate, I'm a judge, and I must remain impartial and unbiased, and I will. And I will consider and review all of the submissions that are made on each and every one of the points as I manage this matter to a successful conclusion. That this is an extraordinary and exceptional case which is highly problematic and which effects virtually every element of the administration of justice that I can think of. If there is any case that is deserving of intervention by the Attorney General to assist in correcting this matter, this is such a case. I practiced law for 27 years. I've been a judge now in my 6th year. I've never seen anything like this. I would think that all those who are in a position to do something to rectify the problem who have it within their power to do so would do so willingly, consensually and without objection - and anxiously. However, I will see how matters unfold through the course of submissions. Now in terms of timing - you should introduce yourself, I'm sorry.

MS. BLOM: Your Honour, it's Chantal (ph.) Blom. I'm from Crown law office civil. I am here as a result of a protocol that's been entered into

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between the Ministry and Legal Aid Ontario. The purpose of the protocol is to simply bring accountability to the funding of state funded counsel when that happens whether it be amicus or counsel appointed pursuant to Rowbotham order. Our understanding information that my office received was that amicus had been appointed last week, and we take absolutely no issue with that. It's within the court's discretion, and clearly I take no position but as you said, there - there's significant interests at stake here, and....

THE COURT: Public interest.

MS. BLOM: Public interest.

THE COURT: Thank you.

MS. BLOM: And so we take no issue with the appointment of amicus. We're simply here to speak to the rate that amicus should be compensated at, and it's the Crown's position that the proper rate is the rate that defence counsel are compensated under legal aid. I have a number of submissions to make on that point. This issue - the issue of the appointment of amicus and the setting of rates was considered by the Superior Court a few months ago, and there is a decision out of that court - the CLA was part of that hearing and made submissions on that and I was intending today to rely on that decision to guide the court in setting the rate for amicus in this matter. And my submissions will be limited to that issue.

THE COURT: Given the fact that Ms. Segal has indicated that she has spoken to Mr. Wisener who is the Criminal Lawyers Association's representative

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in this area and also to either directly or through Mr. Wisener to Mr. Addario who is the president of the Criminal Lawyers Association and that there may be an interest in making such submissions, would it be more appropriate that a date be selected for those submissions rather than hearing them in part now and in part later?

MS. BLOM: If you're prepared to hear submissions from CLA then I believe it makes sense to hear them all at once, but I'm in your hands with respect to that. I am prepared to make submissions today.

THE COURT: Yes, well thank you very much, and I appreciate your courtesy in indicating that. I think it would be more appropriate if there are going to be submissions made and a determination required that those who are involved in making submissions be present at the same time. It's not absolutely necessary but it is convenient and I think helpful. It avoids what could otherwise be a prolongation of the matter rather than an abbreviation of the matter. So we're back to an issue of timing.

MS. SEGAL: Could I - could I just - if I could have 15 minutes, and I appreciate that everyone waited for me. I was on at a Justice on Target Meeting at 2201 Finch this morning with the Honourable Chris Bentley as well as some others and that's why I was tardy, and I don't believe this date was picked according to my schedule, but I made myself available. If I could have 15 minutes though to complete my discussion with Mr. Dunlop, to speak briefly to Mr. Tait and to get the dates

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from Mr. Wisener, I could then re-attend in here...

THE COURT: All right.

MS. SEGAL: ...and we could select a date. In the meantime, I will ask Mr. Sager to wait until we're completed so that Your Honour and then the exchange will take place with Mr. Dunlop.

THE COURT: All right, that's fine. Does that seem sensible counsel? Thank you very much. Mr. Tait, good morning, sir.

MR. TAIT: Good morning.

MS. SEGAL: I'm going to read this letter and then pass it back to my friend though in the meantime.

THE COURT: Yes.

MS. SEGAL: Although, is it all right if I take the letter and photocopy it as I am a per diem Crown as well and come back and provide copies. Is that all right, Mr. Sager and Your Honour?

THE COURT: That's fine.

MS. SEGAL: Okay.

THE COURT: The document has been provided to the court by Mr. Sager, so that document now is the property of the court and how we'll deal with it through the process of time I suppose may become a matter of submissions. I'm not sure, but it's now certainly filed with the court. Yes.

MS. SEGAL: I'll return very briefly. Thank you.

THE COURT: All right, thank you very much. It's Ms. Bloom, is it?

MS. BLOM: Blom.

THE COURT: Blom.

MS. BLOM: B-L-O-M.

THE COURT: Okay, thank you. Good morning, Ms.

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Blom. You may probably would be taking part in that discussion I think.

MS. BLOM: Perhaps, yes.

THE COURT: All right thank you, Ms. Blom.

...

THE COURT: Ms. Segal.

MS. SEGAL: Mr. Dunlop. Thank you for your indulgence, Your Honour. I have a copy for my friend of Mr. Sager's letter. I have the original. I have spoken with....

THE COURT: Is the envelope with it too by the way? Oh, thank you, yes.

MS. SEGAL: I have spoken to Ms. Blom, and I appreciate that she's just here on behalf of Crown law civil, so none of her views I take personally. I have spoken to Mr. Wisener. Now let me just go back for one moment. I had the opportunity to speak to Mr. Ghosh and Mr. Tait about this matter. As a result of some discussions between us, Mr. Ghosh and I are going to be further communicating in a week's time regarding where the prosecution is going to proceed. However, I've spoken to Mr. Dunlop, and I believe that even after a decision is made by Mr. Ghosh, he will require some time, a) to consult with a lawyer and b) to further digest what's been communicated to him by myself now and subsequently, and that time would certainly require at least a few weeks and if there's any - if there's ever going to be an issue in terms of Section 11(b), certainly the adjournment - most of it's going to factor into what I've just indicated. I know Your Honour is away for some of July, and

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Mr. Wisener, I've been given some dates from him, a couple in July and one in August, prior to the 13th of August. My suggestion is since he's already set a matter before Your Honour in 303 Court on August 13th, that Mr. Dunlop attend on that date. I will make myself available. I don't know off hand where I am, but I'll make myself available at that time as well, and I understand that someone from Ms. Blom's office can attend on August 13th. So that deals with the issue of the rate. And Mr. Sheldon - Mr. Wisener will be appearing on behalf of the CLA.

THE COURT: He'll be here actually - he is marked down on the 13th of August, nine thirty.

MS. SEGAL: Because we attended the trial coordinator.

THE COURT: Will Mr. Wisener be here on behalf of the CLA?

MS. SEGAL: Yes.

THE COURT: Yes, thank you.

MS. SEGAL: And I'll just certainly be here just as amicus. I can advise also that - that if as a result of discussions with Mr. Ghosh, this matter takes another course, I will look into Your Honour's schedule in between now and the beginning of August and if it - if it can be brought forward, it will be brought forward. But that's something that can be dealt with later. I understand that Mr. Sager has already returned the property to Mr. Dunlop, that he's satisfied with the returning of same. It does not include any monies. I have a copy of the letter and although I am as amicus

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curiae concerned with the content of the letter in terms of a - a breach of ironically solicitor and client privilege for which he is not a solicitor, it is addressed to Your Honour, and I agree it should be filed. However, and although I was not here on the previous occasion, I understood that one of the orders Your Honour made was that Mr. Sager self-report himself so to speak to the Law Society. And what I do note is that this letter is addressed to you, not the Law Society. It is c.c.'ed, but I imagine that a letter or - I believe that a letter based on your order, the letter should be sent to the Law Society, and it doesn't appear as if Mr. Dunlop, unless he says otherwise, has actually reported himself to the Law Society.

THE COURT: You mean Mr. Sager.

MS. SEGAL: Sorry, Mr....

THE COURT: That's all right.

MS. SEGAL: I'm sorry, yes. So those are the updates I can present to Your Honour.

THE COURT: All right, so the suggestion is that this matter would go over to the 13th of August...

MS. SEGAL: Yes.

THE COURT: ...at nine thirty in courtroom 303, and at that time, there would be a determination made where I - I would hear submissions from perhaps Mr. Tait and Mr. Ghosh with respect to the prosecution of this matter from you in terms of whether Mr. Dunlop has retained counsel and also the issue that it's been presented, with regard to your compensation and the submissions that would be made from the Attorney General's office in that regard.

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Is that right, Ms. Blom?

MS. BLOM: Correct.

THE COURT: Are those the three issues?

MS. BLOM: That's my understanding, yes.

THE COURT: Do I have them in mind?

MS. SEGAL: Yes, and Mr. Dunlop has been advised as well by me that that is also the day that he - that his decision needs to be made in terms of how this case is to proceed. He's well aware of that as well.

THE COURT: All right. Now, Mr. Sager.

MR. SAGER: Yes, sir.

THE COURT: Although this letter that I received yesterday, the 24th of June is dated the 15th of June, have you in fact complied with my order?

MR. SAGER: Yes, I have.

THE COURT: And reported.

MR. SAGER: There is a short cover letter that goes with this letter just breaking down what has occurred briefly because I know they're going to send an investigator out....

THE COURT: Let me just finish my question.

MR. SAGER: Yes.

THE COURT: Have you made a report to the Law Society...

MR. SAGER: I have.

THE COURT: ...of Upper Canada?

MR. SAGER: Yes.

THE COURT: And where is a copy of that report?

MR. SAGER: I can submit it. I don't have it with me today, but I can submit it to you.

THE COURT: All right. Has it been submitted to

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the Law Society?

MR. SAGER: It has.

THE COURT: And when did it go there?

MR. SAGER: The same day this letter went.

THE COURT: Well this letter's dated the 15th, but it didn't arrive in my hands until yesterday, the 24th, so I ask the question again, when did you report this matter to the Law Society?

MR. SAGER: On the - the date of this letter I mailed the Law Society a copy of this letter with a covering letter...

THE COURT: And you'll....

MR. SAGER: ...as to what this letter was.

THE COURT: And will you be providing me with a copy of that report?

MR. SAGER: I will so, yes sir.

THE COURT: Thank you. I will ask that you do that if you would today.

MR. SAGER: I will.

THE COURT: Thank you. And I would ask as well, sir that you come back on the 13th of August, courtroom 303, at 9:30 a.m. Have you given us your address by the way?

MR. SAGER: My address - home address is on the letter.

THE COURT: Thank you. I want to make sure the transcripts of these proceedings are provided to you. I don't know if they're complete yet. I still haven't been given the indication, but they're largely complete.

MR. SAGER: In my letter to you, Your Honour, I spoke about health problems that I have.

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THE COURT: Yes.

MR. SAGER: Is it, at this stage, is it truly necessary for me to attend?

THE COURT: Yes, it is.

MR. SAGER: Are you serious?

THE COURT: It is, on that occasion. Thereafter we may be able to make some other arrangements.

MR. SAGER: Thank you.

THE COURT: But on that occasion, I am requiring your attendance.

MR. SAGER: Thank you, Your Honour.

THE COURT: All right. Is there....

COURTROOM CLERK: Would you like a reminder?

THE COURT: Is there anything else that we need to....

MR. SAGER: No, it's okay.

THE COURT: Is there anything else we need to deal with before this matter is adjourned to that date?

MS. SEGAL: No, just I - I meant to - I'll say on the record that having spoken to Mr. Tait and Mr. Ghosh about this, they are taking the matter seriously and are looking into this and have been looking into this since our last appearance.

THE COURT: Thank you. All right. All right, well thank you very much. I'm indebted to all for their assistance in this matter. Mr. Dunlop, this matter will be adjourned to the 13th of August 2008, at 9:30 a.m. in courtroom 303 to be spoken to on the three issues, which I have identified and any subsets of those issues, and Mr. Sager will be here on that occasion as well. I will endeavour to continue to obtain the transcripts, and I will make

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them available to all counsel and also to Mr. Sager
at the address which he has given.

MS. SEGAL: Thank you very much, Your Honour. I
thank my friends.

THE COURT: Thank you very much.

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Form 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

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I, Dana Blum, certify that this document is a true and accurate transcript of the recording of R. v. Derek Dunlop in the Ontario Court of Justice held at Newmarket, Ontario, on June 25, 2008, taken from Recording Nos. DD-4911-203-0282/08 and DD-4911-203-0283/08, which have been certified in Form 1.

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September 25, 2008

(Date)

D. Blum

Dana Blum

(Signature of authorized person)

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Transcript Ordered: August 19, 2008
Transcript Completed: September 25, 2008
Ordering Party Notified: September 25, 2008

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Photostatic copies of this transcript are not certified and have not been paid for unless they bear the original signature of D. Blum in blue ink, and accordingly are in direct violation of Ontario Regulations 587/91, Court of Justice Act, January 1, 1990.