

**ONTARIO COURT OF JUSTICE**  
Central East Region

B E T W E E N:

**HER MAJESTY THE QUEEN**

- and -

**DEREK DUNLOP**

\* \* \* \* \*

**PROCEEDINGS**

**BEFORE THE HONOURABLE JUSTICE P.J. WRIGHT,**  
**On FRIDAY, MAY 8<sup>TH</sup>, 2009**  
**At NEWMARKET, ONTARIO**

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**A P P E A R A N C E S:**

**A. GHOSH (Mr.)**

**Counsel for the Crown**

**D. DUNLOP**

**Appearing in Person**

FRIDAY, MAY 8, 2009

...Upon resuming:

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MR. GHOSH: Amit Ghosh for the Crown. Firstly, I appreciate Your Honour's patience today. I was before Justice Chisvin on an - a rather involved sentencing matter this morning, but I understand this Court was - had some other things on its list as well.

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THE COURT: Thank you. Yes?

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MR. GHOSH: We have Mr. Derek Dunlop here. Would you please come forward?

THE COURT: Mr. Dunlop, would you come forward please? Mr. Dunlop has been here since 9:30, I'm advised.

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MR. DUNLOP: Yes.

...MATTER HELD DOWN

...OTHER MATTERS SPOKEN TO

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MR. GHOSH: Mr. Dunlop is here today scheduled for his application to excuse the presiding justice from hearing his matter.

THE COURT: Yes.

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MR. GHOSH: I've just had a - a - as - as I prefer to do, I attempt to confirm any brief discussions I've had with Mr. Dunlop on the record, and he'll correct me if I'm wrong. Just a few minutes before court opened, I advised him that today was scheduled for the recusal application, which - which means an application to excuse the judge from

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5 hearing his matter, and I suggested that the  
evidence on that application would usually go  
first. In the Crown's view, Mr. Dunlop would have  
to testify under oath to explain the basis upon  
which his application is premised, as basically to  
testify why Your Honour should be excused from the  
record, and after that we may get to submissions.  
That was my proposed track for the hearing.

10 And - and Your Honour may or not receive - be  
willing to receive written submissions from each of  
us as to what the test is and whether or not the  
test has been met to excuse Your Honour. That's  
what I thought would make sense in terms of how to  
deal with this recusal application. I'd invite Mr.  
15 Dunlop to correct me if I've - if - is that the  
tone of what I told you just before Court started?

MR. DUNLOP: No. That's fair. That's fair. Mr.  
Ghosh informed me of something similar to - to  
exactly what he had just referred to you.

20 MR. GHOSH: Okay. So what I'm suggesting and Mr.  
Dunlop, in fairness to him, advised me that he  
didn't expect to be testifying today on - on this  
motion, and as he is unrepresented, he may not know ???  
the necessity of having an evidentiary basis for  
25 the - for any application; that the affidavit  
itself is not enough if the Crown wants to cross-  
examine you on it. So I'm not sure those details  
are known to him.

30 I don't expect him to know that, obviously.  
He's here doing his best to defend himself, but I  
just thought that that was important to clear up,  
that the Crown does expect to ask Mr. Dunlop a few

questions as to the basis of - of - under which he seeks to remove Your Honour from the case. I'm not sure where that leaves us today.

5 THE COURT: Madam Clerk, do you have the application, please?

CLERK OF THE COURT: This has federal stuff. Is this an ongoing thing?

MR. GHOSH: Oh, yes.

CLERK OF THE COURT: Oh.

10 MR. GHOSH: I'm - could I take a look at it? Maybe I could help with it.

CLERK OF THE COURT: Yes, please. If I could just give you the stack?

MR. GHOSH: Sure. Here's this.

15 CLERK OF THE COURT: Thank you.

THE COURT: What's the - how do you wish to proceed with this application?

20 MR. DUNLOP: First of all, Your Honour, I guess I'd kind of like to back up to - to the last court date if I - if I may just for a moment. Obviously there was numerous events that kind of transpired on that day that - that'd be April 15<sup>th</sup> - I have April 15<sup>th</sup> - that I didn't necessarily know were - were going to happen. I had come to court prepared to proceed I guess with a - with a hearing in relation to Mr. -  
25 Mr. Sager and Ms. Sara Wilson testifying at that time. I didn't - that was - that was kind of my understanding on that.

30 So it's kind of - with everything that transpired on that date - I'm not sure if His - His Honour recalls exactly what happened, but it kind of just - I wasn't really focused like very much on

that date. I obviously have submitted that application.

5 And not knowing all the ins and outs, I've done some research since, know what the onus is with proceeding with that application to prove some sort of I guess reasonable apprehension of bias or - or something to that effect in relation to some either favourable inclination towards the Crown or in - or unfavourable inclination towards myself the applicant. That is the best of my knowledge.

10 And at that point I guess it proceeds from there to an evidentiary hearing. And that was kind of - I'd had a - a brief discussion with Mr. Ghosh in relation to that. So that was kind of a little bit of a sticking point as I think I mentioned to you before. I apologize to the Court for any ignorance that I have in relation to the law, in relation to this recusal application, because it's 15 - there is some precedence in law I guess, but numerous case law or some case law anyway in relation to this, but I don't know whether it's something that you know there's a lot of it going on - so just for a better lack of words.

20 And I realize that the complexity of it is fairly dynamic at this point. And as I informed Mr. Ghosh, I - I'm not trying to delay the process, but I didn't know that there was a possibility that it'd be - or the Crown would be requesting that I testify today. Well, as far as putting some 25 further - I mean this has become a fairly tenuous I guess situation unfortunately.

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And particular legalities and you know complexities involved with it at the juncture it's at, I'm assuming that they - Court would - I don't know - prefer whether affidavit - further affidavit - further updated book of authorities, notebooks, anything further comprehensive information in relation to. And I don't want to get into too much because I'm not sure whether the Court's wanting me to discuss verbally what my allegations are.

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I know there's been numerous other documents I've submitted to the Court in my applications that contained some exhibits prior to the 26<sup>th</sup> of March - I guess the application that you have in front of you. So I don't know what the process is at this point and I don't want to step kind of out of bounds or obviously. But there is evidence that I do have and have somewhat - some of it has been submitted previously. So that - I don't know where to go from there.

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THE COURT: Well, Mr. Dunlop, you're the one who brought the application for the recusal, and the circumstances under which this application was brought are well documented. They intercepted an earlier application that you had brought for direction from the Court with regard to a number of witnesses that you wished this Court to entertain in relation to your application to strike your plea of guilty on criminal offenses which are before the Court.

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And I made it clear to you on the last occasion that I was not going to undertake your earlier application, directions on the summoning

5 or subpoena of witnesses, or movement on the application to strike the plea until we had first dealt with the issue of whether or not I should be recused from this case based on the application which you have now filed.

10 The recusal application was first filed by you attached to a letter of the 26<sup>th</sup> of March 2009, received at the office of the Crown Attorney on the 9<sup>th</sup> of April and dealt with several weeks ago. And amongst the materials that were filed was the notice itself, which was seven pages in length, signed by you, together with an affidavit which was two pages.

15 The materials speak for themselves. But in paragraph two of your application, you sought an adjournment of the matter "in order to research case law, the Criminal Code of Canada, and other legal resources in order that you the applicant be able to defend yourself adequately in this matter"; this matter being the application. I'm reading directly from your application, sir.

20 The function of this Court is to ensure that everyone receives a fair hearing, and that's what we're going to conduct. So I ask you now again sir, how do you wish to proceed with your application for recusal at this time?

25 MR. DUNLOP: As I - as I - I don't really mean to keep going back and forth here. As I said, I presented some evidence, and I don't know if His Honour - Your Honour's had the chance to read it in relation to some exhibits, in relation to some analysis I've done, previous court transcripts and...

THE COURT: Point these out to me, sir. It's now one o'clock. We're going to take our lunch recess.

MR. DUNLOP: Sure.

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THE COURT: And when we come back I will expect you to provide to me the basis upon which you are proceeding. You'll have to show me where, in these materials that you claim are filed and - and which have been brought to my attention, where it is that the basis for your application for recusal lies. That is your obligation advocating for yourself, and I will make a determination on the merits of that application based on the information and evidence that you provide to me.

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You should understand that while Mr. Ghosh has indicated that there may be an understanding on his behalf as Crown counsel that you testify, there's no obligation for you to testify if you choose not to. How you wish to conduct this application is entirely up to you. What evidence you choose to adduce on this application, be it documentary evidence that's admissible, or vive voce evidence from a witness from the witness box, by yourself or by others is entirely up to you. But this is your application and I sit in a position where I must make a ruling based upon that application and the evidence which you intend to and in fact deliver to this Court in support of that application. That's your obligation.

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MR. DUNLOP: Sure.

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THE COURT: So there's no misunderstanding, when we resume at 2:15, I expect that you will be in a position to commence your application and to



provide me with any evidence that you intend to  
rely upon, any authorities that you intend to rely  
upon in support of your application. That will be  
what I'll be calling on you to do at 2:15. Do you  
understand that?

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MR. DUNLOP: Yes, I do Your Honour.

THE COURT: Thank you.

MR. GHOSH: Your Honour, could I make a very brief  
comment? It sounds like if I'm reading Mr.  
Dunlop's comments right, and I'm not here to  
propose or suggest anything as to how this hearing  
- proposed - is - is to commence - that he prefers  
the hearing be determined on the written record,  
meaning his affidavit and the Court transcripts  
that he wishes to point Your Honour to, and I think  
he prefers not to testify.

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If that's what he hopes will form the evidentiary  
basis for the hearing, I'll consider over the break  
whether or not I'm content not to seek leave to  
cross-examine him on his affidavit. I - I may not  
need to for - for the recusal application. So  
maybe Mr. Dunlop can clarify that; like does he  
want the paper application entirely based on his  
affidavit? Is he resisting testifying?

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MR. DUNLOP: It's - and I'm not trying to - like  
I'll make a decision. I'm not trying to - I  
appreciate Mr. Ghosh's accommodations and - and  
what he's just said. It's - it's not something  
that I guess in - in coming to court today, it's  
not something that I guess - I wasn't even really  
thinking about testifying. So in relation to a  
response to Mr. Ghosh's I guess question it's

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5 something that if I can think about it in the next  
hour and 15 minutes, then I can let him know. I  
don't know whether that's something that Your  
Honour is - it - it's just not something I was  
prepared to even - I didn't know. So that's where  
my - that's where my hesitation kind of lies. It's  
not necessarily that it - I'm resisting to testify.  
MR. GHOSH: Right.

10 THE COURT: Mr. Dunlop at 2:15 we will commence the  
application by hearing whatever evidence you intend  
to rely upon, be that live evidence from the  
witness box, or paper evidence, or a combination of  
both, your submissions and the law, and then I will  
15 make a determination based upon that and any  
response that the Crown has. The Crown has the  
right to ask this Court for leave to cross-examine  
you on the affidavit which you have filed. If it  
chooses to do so, I'll have to make a ruling on  
that as well, but we will resume at 2:15. Do you  
20 understand that, sir?

MR. DUNLOP: Yes.

THE COURT: Thank you.

MR. GHOSH: Thank you, Your Honour.

25 THE COURT: Court will adjourn at this time. We'll  
resume at 2:15

**...Recess**

**...Upon resuming:**

30 MR. GHOSH: Good afternoon, Your Honour. If Mr.  
Dunlop would come forward?

THE COURT: Yes.

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5 MR. GHOSH: Your Honour, shortly after the taking  
of the lunch break I furnished Mr. Dunlop with four  
cases that may assist him and hopefully the Court  
in the application to excuse, and I have four  
copies for Your Honour as well. And I can -  
perhaps I'll read out the sites first: R. v Di  
Giuseppe - D-I G-I-U-S-E-P-P-E, 2005, OJ No. 4064,  
Superior Court decision of Justice Clark; R. v  
Vally in the OCA, 1986 OJ No. 77; R. v Brouillard;  
10 R. v Brouillard - B-R-O-U-I-L-L-A-R-D.

THE COURT: B-R-O-U-I?

MR. GHOSH: Yes, L-L-A-R-D.

THE COURT: Yes.

15 MR. GHOSH: 1985, 1 SCR No 39; and most recently R.  
v Stucky - S-T-U-C-K-Y, 2009 OJ No. 600. If - if I  
could...

THE COURT: Which level was that?

MR. GHOSH: This was Ontario Court of Appeal.

THE COURT: Thank you.

20 MR. GHOSH: And that's it. I furnished Madam  
Registrar with the cases and Mr. Dunlop has had  
them throughout his lunch break. I understand Mr.  
Dunlop was to tell us now how he'd like to proceed  
on the bench.

25 MR. DUNLOP: Your Honour, I - I've obviously  
submitted numerous applications to the Court on my  
own basically since I guess I don't know. I'm not  
exactly sure - middle of '08, I guess. I'm not  
exactly sure of the date. And then when Sara  
30 Wilson was representing me I guess from October on,  
there's certain ones. I guess they're  
predominantly on my own from November of 2008 on.

5 And that's some of my concern is some of those  
haven't been addressed and some of the provisions  
are - requests I've outlined in those applications  
haven't been addressed. The 13<sup>th</sup> of February '09 I  
submitted a fairly extensive application that  
included numerous exhibits in relation to a willsay  
statement June 2<sup>nd</sup>, 2008, in relation to Mr. Sager's  
letter that he - oh no, sorry - I apologize. I  
apologize. It was in relation to Mr. Ghosh and Mr.  
10 Sager's contact on March the 6<sup>th</sup>, 2008 in which the  
initial plea was entered.

15 It also includes another exhibit I believe in  
relation to Mr. Sager submitted a letter June 15<sup>th</sup> -  
I believe - 2008. Anyway I've assessed that letter  
for better lack of - it - it's very - it's full of  
numerous outright lies from my standpoint. So I  
mean I don't want to - Mr. Sager's not here to  
defend himself or in any way in any shape or form  
at this point.

20 MR. GHOSH: Your Honour, maybe I could assist. Mr.  
Dunlop's alleging something about March 6<sup>th</sup>, 2008  
between myself and Mr. Sager. What's being alleged  
about that? Tell us what you're alleging.

25 MR. DUNLOP: That is the - the - well the - the  
willsay statement I - that I submitted on June 2<sup>nd</sup>,  
2008.

MR. GHOSH: What's that about? Tell us.

30 MR. DUNLOP: That's in relation to the fact that I  
believe there was collusion done behind the scenes  
in relation to what had happened in that case - in  
- in that plea. And Mr. Sager obviously I mean -

that's the - the huge information - the contents of that outlines that.

Then further supporting evidence is in the certified court transcripts which I received, which I've analyzed. And the analysis of those certified - certified court transcripts Exhibit E of the affidavit application February 13<sup>th</sup>, 2009 is where the major concerns come in. And what I...

MR. GHOSH: And what are they?

MR. DUNLOP: It's just...

MR. GHOSH: Just tell us now.

MR. DUNLOP: It's outlined. Well, this is what I mean. This is what I mean. Here's the bias...

THE COURT: Okay. Just - just - just...

MR. DUNLOP: Here's the bias.

THE COURT: ...just a moment. Repeat the...

MR. DUNLOP: No. No. Here's the bias here...

THE COURT: But just - please?

MR. DUNLOP: ...right here - right here.

THE COURT: Just a moment, please? Just a moment.

MR. DUNLOP: I - I - I will not...

THE COURT: Mr. Dunlop, just stop talking.

MR. DUNLOP: I will...

THE COURT: Stop talking.

MR. DUNLOP: Okay.

THE COURT: You don't interrupt when I'm talking, sir.

MR. DUNLOP: I appreciate that, Your Honour.

THE COURT: Any questions or comments will come through me, all right? So perhaps Mr. Ghosh, in the circumstances, we'll just let Mr. Dunlop talk and we'll - we'll see what he has to say, and then

*Mr. Ghosh's  
Preliminary*

I will give you an opportunity to - to reply and raise the issues that you obviously are - are concerned about.

MR. GHOSH: Yes, Your Honour. I'll - I'll do that.

5 THE COURT: Thank you.

MR. GHOSH: The - the only concern I have is that the - very little of this has to do with the recusal application of Your Honour. So I just want to stay focused..

10 THE COURT: Yes.

MR. GHOSH: ...on the topic.

THE COURT: And - and believe you me I will stay focused on that, and - and that's - that's my function right now and that's what I will do. Go ahead please, Mr. Dunlop.

15 MR. DUNLOP: Exhibit E of - of that application dated the 13<sup>th</sup> of February '09, Your Honour, is the - my analysis of the - of certain court transcripts that I have probably - that I - I haven't analyzed all the court transcripts. That is a major document that I'm relying on in this recusal application.

20 THE COURT: What is it again that you're relying on?

25 MR. DUNLOP: Exhibit E of my application of February 13<sup>th</sup>, 2009.

THE COURT: Just a moment please. Madam Clerk, could I just interrupt you for a moment, please? The officer can stand down in this issue. Can I please have Exhibit E to the application from February the 13<sup>th</sup>, 2009?

30 CLERK OF THE COURT: Yes.

THE COURT: Thank you.

CLERK OF THE COURT: Your Honour, I'm not sure where I would find this.

THE COURT: Do you have a copy of that Mr...

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CLERK OF THE COURT: Can I...

MR. DUNLOP: I have a copy right here, Your Honour.

CLERK OF THE COURT: I'll give you this. And the - because I...

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THE COURT: Just a moment. I'll look. Just a second.

CLERK OF THE COURT: There aren't any exhibits filed upstairs.

MR. DUNLOP: If I just may, Your Honour, for a second, examine it and make sure that...

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CLERK OF THE COURT: And then I have this, and that's it.

MR. DUNLOP: I don't know if Mr. Ghosh is - has a copy of this or.

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MR. GHOSH: Not at my fingertips. I - I may have it. Is there an extra copy?

MR. DUNLOP: I believe it's 14 pages in length. Let me just double check. I don't have an extra copy on me so...

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MR. GHOSH: That's fine, Your Honour. I'll - I'll assess it as it goes along.

CLERK OF THE COURT: If we can review the information, maybe it's attached somewhere in there.

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MR. DUNLOP: There. There's a - there is a copy in there. I'd appreciate it.

CLERK OF THE COURT: Just to let the court know, I've checked upstairs. There aren't any exhibits filed on this - this matter.

MR. DUNLOP: There's a copy and I'd appreciate it. I mean I don't have an extra one.

THE COURT: Just a moment please, Mr. Dunlop.

MR. DUNLOP: Sorry.

THE COURT: Mr. Ghosh, do you have an application dated the 13<sup>th</sup> of February, 2009?

MR. GHOSH: Sorry, the - the date again? February?

THE COURT: February the 13<sup>th</sup>, 2009 as Mr. Dunlop has indicated.

MR. GHOSH: Not at my fingertips, Your Honour. As - as - as Your Honour can see from the desk here I have - quite a bit of materials have been received. I'm - I'm happy to address the matter as we go along. I - I...

THE COURT: All right.

MR. GHOSH: ...don't need a...

THE COURT: Go ahead Mr. Dunlop.

MR. DUNLOP: Sorry, I apologize. It's January 27<sup>th</sup>, 2009 and was returnable on the 13<sup>th</sup> of February, 2009.

THE COURT: What is the date of the application?

MR. DUNLOP: It's...

THE COURT: It's most helpful Mr. Dunlop if you give me accurate information when you're giving me your submissions, please? What is the date of the application?

MR. DUNLOP: The date of the application Your Honour - I apologize - is the 27<sup>th</sup> of January, 2009.

THE COURT: 2000 and...



MR. DUNLOP: Nine. It was returnable on February the 13<sup>th</sup>.

MR. GHOSH: Is this the document?

MR. DUNLOP: No. It's the 13<sup>th</sup>. That was my answer to your - to your - that was my answer to your - your striking of the plea.

THE COURT: Go ahead then. Now that we have the correct date; January the...

MR. DUNLOP: 27<sup>th</sup>, 2009...

THE COURT: Yes.

MR. DUNLOP: ...and was returnable on the 13<sup>th</sup>. That way my error, Your Honour.

THE COURT: Thank you. Go ahead. It required us to look for documents which obviously don't exist. There was no application dated the 13<sup>th</sup> of February '09. Go ahead, Mr. Dunlop.

MR. DUNLOP: As I - as I said, I - you know those applications, my concerns in relation to those.

THE COURT: What applications?

MR. DUNLOP: The ones that I submitted from basically October '08 through to the current time I guess - through to April 6<sup>th</sup> I think was the last one I believe or something of that nature.

CLERK OF THE COURT: Mr. Ghosh, do you need a copy?

MR. GHOSH: I - if there is an extra one that would help.

CLERK OF THE COURT: I made you one.

MR. GHOSH: That's very helpful. Thank you.

THE COURT: Go ahead, please.

MR. DUNLOP: Yes. I'm also...

THE COURT: And when you say from October of '08...

MR. DUNLOP: Yes.

THE COURT: ...do you have a specific date in October or a dated application that you're referring to, sir?

5 MR. DUNLOP: I believe it was October 9<sup>th</sup>, Your Honour.

THE COURT: That's the date of the application, so we're clear?

MR. DUNLOP: Yes.

10 THE COURT: Thank you. And you said a dated application in April of this year. Is that correct?

MR. DUNLOP: Yes. It was - let me just double check that, Your Honour. April 6<sup>th</sup> would have been the last one - 2009.

15 THE COURT: Thank you. All right, go ahead then, please.

MR. DUNLOP: There's other case law, I don't have copies of it here, though. I mean I appreciate Mr. Ghosh give me copies he's had. I've had a little bit of time obviously to look over some of those over the lunch hour. I'm concerned obviously about - I mean - some of the events that transpired on March 25<sup>th</sup>, 2009 and March 27<sup>th</sup>, 2009 which led to the events that occurred on April 15<sup>th</sup>, 2009 which I guess prevented a hearing from occurring.

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THE COURT: April the?

MR. DUNLOP: April the 15<sup>th</sup>, on - Your Honour, 2009...

THE COURT: Okay.

MR. DUNLOP: ...was our last time in court.

30 THE COURT: So we're having the hearing now.

MR. DUNLOP: Yes.

THE COUR: So we need to know what it is that you're basing your recusal application upon.

MR. DUNLOP: It - it's on the events of March 25<sup>th</sup>, 2009 and March 27<sup>th</sup>, 2009.

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THE COURT: And what is it that occurred on those dates that provides the foundation for your recusal application?

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MR. DUNLOP: I have - I have informed Your Honour on the 25<sup>th</sup>. I know that this was - Your Honour has stated before that there was an accommodation to me requesting witnesses. However on the 25<sup>th</sup>, after being her on March 18<sup>th</sup>, and February 18<sup>th</sup> - three times within a month travelling from North Bay and I informed Your Honour on the 25<sup>th</sup> and I've informed Your Honour twice, I guess, on the court record as of the 15<sup>th</sup> of April that I was unable to afford to make a two day turnaround on the 27<sup>th</sup> of March. BIAS

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Subsequently, and - and then the fact that Mr. Ghosh himself was unable to attend on March 25<sup>th</sup>.

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I appreciate and respect the fact that Mr. Ghosh was busy, I'm sure, that day, as I'm sure Your Honour was. I know in relation to the fact that the courtroom was busy that day. And I informed His - Your Honour that I couldn't afford to make it on the 27<sup>th</sup>, travelling from North Bay.

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And subsequently, I showed up here on the 15<sup>th</sup> of April and there was a bench warrant out for my arrest that I wasn't aware of until I showed up here on the 15<sup>th</sup> of April, which I mean I - I'm concerned about that fact, and I guess now I have to answer to that charge as well. So that's -

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that's something else that I'm - I'd like to bring to Your Honour's attention.

5 I'm not sure what Your Honour's going to think about this, but I don't have all the court transcripts and in - in these - in these applications I've submitted to Your Honour or to the Court - to the Honourable Court, I've requested the other court transcripts. The list of dates is fairly extensive in which I do not have court  
10 transcripts which I do believe would assist me, so I'm requesting that His Honour consider that as well. I know that that would set things back.

15 And I don't - I don't know whether His Honour - Your Honour wants me to speak to any of this stuff in Exhibit E that I'm referring to now, or do want to wait on that?

20 THE COURT: It's not a question of what I want Mr. Dunlop. This is your application for recusal. You provide me with what the evidence is upon which you are relying to support your application as we - as I have mentioned to you repeatedly today and on other days; several times today, both before and after lunch. What is it that you're relying upon; if it includes materials contained in Exhibit E,  
25 then by all means.

30 MR. DUNLOP: Well there's many things contained in Exhibit E that I - I don't know whether Mr. Ghosh has had a chance to read this previously, or he's just - this is kind of his first time through it as well. So I don't know whether this is something that he's read before or not.

MR. GHOSH: I have not, but I can digest it as we go.

THE COURT: Go ahead, Mr. Dunlop.

MR. DUNLOP: There's numerous concerns in relation to the Honourable Court, Mr. Sager, some in relation to Mr. Ghosh. I don't believe that - I mean there was other Crown Attorneys involved at the time, so it's - it's not necessarily a considerable amount. Some of the things I was concerned about is the fact that I had requested that Mr. Sager be removed from the record, and His Honour - Your Honour still proceeded to request that Mr. Sager have me elect mode for trial at the time. Your Honour has also permitted Mr. Sager's submissions in June of 2008 - June 10<sup>th</sup> I would believe that is - in June - in June of 2008 and knowing full well that I would - had requested his removal way back in January of 2008.

*Permitted Sager's submissions*

That's a six month time period in which his submissions were put on the court record and Mr. Sager and I had been at - there was numerous - you know dissention existed between us for a long period of time at that point.

*11B WAIVED WITHOUT ME AND HOW EVID?*

My 11(b) rights were waived without my knowledge and/or consent in the presence of Your Honour of - while Mr. Sager was under designation. That would be on page five of this document, top of the page.

THE COURT: This document you're referring to is Exhibit E?

MR. DUNLOP: Yes, Exhibit E. Yes, Your Honour.

THE COURT: These pages are not numbered. Is it the 5<sup>th</sup> page in sequence which has at the top "Certified Court Transcript, September 19<sup>th</sup>, 2007 Continued"?

5 MR. DUNLOP: Continued - page number five, line six through to number eight.

THE COURT: But the pages on the document Exhibit E are not numbered, Mr. Sager - or Mr. Dunlop. Excuse me.

10 MR. DUNLOP: Yes. I apologize for that, Your Honour. It begins with the - the quotation begins with "I take it Mr. Sager your client, although not present...". I don't know if you want me to read on further or...

15 THE COURT: I can read that. Yes.

MR. DUNLOP: Okay.

THE COURT: I have those comments in mind.

20 MR. DUNLOP: Once again, below there Mr. Sager appearing for counsel. There's concerns there making reference about the matter being ready to be resolved. At this point of the - the matter, on June - or January 9<sup>th</sup>, 2008 going into that, I had met with Mr. Sager - I know this is not necessarily your concern - on January 4<sup>th</sup>, 2008 at his office and was - I didn't agree with what he had to say prior to entering court on January 9<sup>th</sup>.

25  
30 I wasn't here. He was here on a designation. And there was stuff about the matter being resolved that I didn't have knowledge about until I analyzed these court documents because I wouldn't have had knowledge to this information until I was able to

read through these court - certified court transcripts.

Once again on the next page - page six - it's reiterated that my 11(b)...

5

THE COURT: Page six?

MR. DUNLOP: Yes.

THE COURT: You mean the sixth page?

MR. DUNLOP: The sixth page, Your Honour, I apologize.

10

THE COURT: Is it un-numbered Exhibit E?

MR. DUNLOP: E - Exhibit E.

THE COURT: Sixth page, yes?

MR. DUNLOP: Page number one line seven through line twenty-seven.

15

THE COURT: I'm sorry. I don't have that, and again, I can't follow you because these pages are not numbered. The sixth page...

MR. DUNLOP: Yes.

THE COURT: ...of Exhibit E.

20

MR. DUNLOP: It begins with "been involved in judicial pre-trials" at the top in quotations. Do you have that, Mr. Ghosh?

MR. GHOSH: Yes.

THE COURT: The sixth page begins?

25

MR. DUNLOP: The quotations, "we've been involved in judicial pre-trials...".

THE COURT: Yes. The heading...

MADAM REPORTER: Your Honour. I'm sorry.

30

THE COURT: ...the heading on the sixth page is "Certified Court Transcript, January 9<sup>th</sup>, 2008".

And the next subheading is "Page number one, line

number seven dash number twenty-seven, Mr. Sager".  
Is that what you're referring to?

MR. DUNLOP: Yes it is, Your Honour.

THE COURT: Yes.

5 MR. DUNLOP: About three quarters of the way down,  
two thirds of the way down, "He's waived his 11(b)  
rights, so I've got time to get all the files in  
one place so he can gather two things". Once again  
10 it's just reiterating the fact that my 11(b) rights  
were waived. And though it's - might be a moot  
point at this point, but at the time it was you  
know something that I wasn't aware of.

15 I wanted to go on to the next page, Your  
Honour, which is the seventh page. "Certified  
Court Transcript, January 9<sup>th</sup>, 2008, Continued", the  
bottom section page number three, line 20 to 28.  
In quotations, "It's not that I'm not prepared to  
accept your word for it as an officer of the  
Court...". That would be in reference to Mr. Sager.

20 "...I most certainly am, but I'm trying to  
protect the integrity of the record in particular.  
So given the fact that you've indicated your  
intentions to be removed as counsel of record, and  
the client's apparent indication that he no longer  
25 wants you to represent him. So I'm going to grant  
that adjournment."

THE COURT: Yes?

30 MR. DUNLOP: So that that's - that's indicating  
Your Honour from the Honourable Court, in your  
stance that's indicating that Mr. Sager was  
requesting his removal as counsel of record and



that I no longer wanted him to represent me in this matter.

5 Go on to the eighth page, Your Honour; again  
"Certified Court Transcript, January 9<sup>th</sup>, 2008". At  
the top of the page, Your Honour, reference to the  
Court when a lengthy pre-trial had occurred on the  
15<sup>th</sup> of August, 2007, and I had anticipated based on  
my rather detailed notes and length of time that  
was spent, that this matter would be resolved. Mr.  
10 Sager's response to your direction of the Court or  
your statement is "So did I, Your Honour".

*WRIGHT  
REVIEWED  
OFFICE  
WILL BE  
RESOLVED  
15<sup>TH</sup> OF AUG 2007*

15 The Court: "I understand that it hasn't. But  
that's all the more reason given the time lines in  
this that the matter proceed to trial as quickly as  
possible. And I'm going to select a date at your  
convenience, some time in early February if you  
have your calendar with you". I've noted that you  
anticipated the matter would be already resolved.  
I've also noted on what basis did you at that time  
20 - I mean Mr. Sager and I are - on January 9<sup>th</sup>, 2008  
were - there's numerous dissensions. I wanted him  
removed. There's discussion about this matter  
being resolved, and from my standpoint, I'm not  
even aware of this matter being resolved at that  
25 time.

I haven't even been in court on the matter  
since the initial stages, Your Honour. In November  
I believe of 2006, December of 2006 was my last -  
almost my last time in court. Mr. Sager basically  
30 attended through the 2007 calendar year under  
designations.

THE COURT: Yes. Go ahead please, Mr. Dunlop.

MR. DUNLOP: On the top of the next page there's a very short...

THE COURT: The ninth page?

MR. DUNLOP: ...I believe we're on to nine now.

5 Sorry, ninth page.

THE COURT: Yes.

MR. DUNLOP: "The Court: I did try -re-try this matter, and I know that Mr. Enright had actually indicated that he was hoping that it would be resolved and it could be dealt with before me. So once again Mr. Enright, who I guess - I don't know whether he - I - he was one of the numerous Crowns I guess at that point that had had some carriage of this matter.

15 He had also had some indication - don't know whether that's from Mr. Sager or where that all comes from - but that's the matter was going to be dealt with. So that's just another point that I'm not aware of it and the matter deals with me, yet it seems that Mr. Sager and everybody else is aware that this matter is apparently supposed to be resolved on January 9<sup>th</sup>, 2008.

20 And as I said to you Your Honour, I met with him on January 4<sup>th</sup>, 2008 with my mother at his office in - at Highway 7 and 404 in - that was his Markham office, I believe, and I did not agree with what Mr. Sager had to tell me that day. I have documented notes on that.

25 Page 10 is primarily in concerns to...

30 THE COURT: Page 10?

MR. DUNLOP: Yes. It's primarily in...

THE COURT: You mean the tenth page?

MR. DUNLOP: The tenth page.

MR. COURT: There is - there are no numbers on the pages. I have to continue to remind you, Mr. Dunlop.

5 MR. DUNLOP: The "Certified Court Transcript, February 7<sup>th</sup>, 2008", the heading - until we get down to the bottom.

THE COURT: Where are we now, please?

10 MR. DUNLOP: It's - there's two lines there. Page number three, line number six and line number seven - the Court. It's about two thirds of the way down.

THE COURT: Yes.

15 MR. DUNLOP: "What is it that Mr. Sager hasn't said that you don't agree with?" Mr. - Mr. Dunlop's response - my response, "Well I - his reference..." and I guess I cut myself off or stuttered, or I don't know, "well I - his reference to what he said about just our kind of the way we agreed to disagree, I guess in relation to, you know..."

20 THE COURT: Did you send him an email for instance indicating that you no longer wanted him to represent you?

25 Mr. Dunlop: After he advised me that that is what he would require prior to court on the 9<sup>th</sup>". So that is - it's just indicating that I did send him an email indicating that I - I didn't want him to represent me anymore and that you were aware of that.

30 Then you went on to the top of the 11 - 11<sup>th</sup> page, "Certified Court Transcript, February 7, 2008, Continued", page number three, line 18 to 20.

5 You went on to quote - in quotes "Is this issue about fees or is this issue about the circumstances of the matter in which the case is being conducted? Which is it?" My response was, "It's not about fees". And it was never - it was no concerns in relation to Mr. Sager and fees.

10 There's nothing really else further on that 11<sup>th</sup> page, Your Honour. It's primarily in relation to Mr. Sager, it appears.

15 At the top of page 12 - the 12<sup>th</sup> page, sorry - "Certified Court Transcript, February 7, 2008, Continued", page number four, line 17 through 26. Your Honour, the Court, your - your response in quotes: "Which means this matter is now dated by some 16 months. This matter has been the subject of extensive pre-trial discussion, and I'm sure your office is aware that since Mr. Sager is conversing with members of your staff with a view towards a resolution, on the eye <sup>with</sup> of the completion of that Mr. Sager indicated that he'd received an email from his client advising that his client no long - longer wanted to represent him".

200  
THIS MAY  
HAVE BEEN  
MAYBE NOT-UP  
AT THE  
TIME!

25 Once again, we're discussing resolution. And once again, I'm not in any way, shape or form in agreement with the person that's representing me. So I - I'm not sure exactly what some of your references are. Maybe it's my misunderstanding of what some what some of the wording is. I'm not sure. But the bottom of the page, Your Honour?  
30 THE COURT: The bottom of which page - the 12<sup>th</sup> page?

MR. DUNLOP: The same page. Yeah.

THE COURT: Thank you.

MR. DUNLOP: Mr. Sager makes reference to his application to remove - be removed as counsel of record; page number six, line number 22 through to 24. Mr. Sager: "My question Your Honour is once we have set this trial date, my friend and I, are you going to grant this order?" Your response Your Honour is, "Yes, Mr. Sager. Thank you". So in response to that you granted the order to remove Mr. Sager as counsel of record at that time.

Top of the next page, "Certified Court's Transcript, February 7<sup>th</sup>, 2008, Continued", I believe this is the 13<sup>th</sup> page. The Honourable Justice Wright asked Mr. Sager, Mr. St. Michael who was the Crown Attorney at that time or that day - on that date, Mr. Dunlop to attend the Trial Coordinator's office. Mr. St. Michael and Mr. Sager did, I believe. I'm not 100 per cent sure I wasn't in attendance.

Mr. St. Michael came back, page 7 line 30 through 31, "I'm wondering if the accused should be put to his election at this point, Your Honour?"

The Court: "I think he should. "I'm going to ask you Mr. Sager to assist the defendant in relation to this matter if it is going to trial. The Crown has not yet elected its mode of - or method of proceeding". Sorry. "And I thought I should mention that to you, Mr. St. Michael". Mr. St. Michael: "Crown is proceeding by indictment".

The Court Your Honour, yourself: "Madam Clerk, if you would endorse the information that the Crown is proceeding by indictment? In the

PUT ME TO MY ELECTION

circumstances, I would ask he be arraigned and the elections that are available to the defendant. Please listen carefully, Mr. Dunlop". I didn't put it in here, but Madam - Madam Court Clerk - and I'm not sure who it was on that day and I don't have the court transcripts - but went through and read to me the modes.

I mean I was very concerned that the fact that knowing that I had put forth emails and knowing that this Court knew that I didn't want Mr. Sager to represent me at that point, that this Court would proceed with the fact of having me elect mode with Mr. Sager's advice. It was determined at that point, I believe, I - on the spur of the moment.

THE COURT: Just so we're clear...

MR. DUNLOP: Yeah.

THE COURT: ...on that particular point, Mr. Dunlop?

MR. DUNLOP: Yes.

THE COURT: In view of the fact that you would leaving the retainer that you had established with Mr. Sager, and in view of the fact that the Crown had not yet indicated its election regarding mode of trial, it was important that you understand what that election was, and I required that the Crown enter it and what your choices were with regard to your mode of trial.

That was in February of 2008. You were not put to your election; the elections were simply provided to you by way of information so that you would be fully informed. As you know, you did not in fact elect trial by this Court for eight months later on October the 9<sup>th</sup>, 2008.

*LIE*  
*to Dunlop*

*LIE*

MR. DUNLOP: I was - that was what I was going to say, Your Honour.

THE COURT: Well the way your presentation was suggesting was that you were being put to your election. You were not being put to your election <sup>LG</sup> in February of 2008. The election as to the mode of trial was simply provided to you so that you <sup>LIG</sup> would be fully informed. No election was taken <sup>LIG</sup> from you for a number of months thereafter.

MR. DUNLOP: No. No election was taken from me, Your Honour, because I was the one that stepped forward after you had stated - I mean, it's right here in ink Your Honour, that you wanted me to have my elect - you wanted me - to put me to my election.

THE COURT: You weren't put to your election. It <sup>LIG</sup> was simply - you were simply informed. I'm not <sup>LIG</sup> going to argue with you, Mr. Dunlop. Carry on with your submissions, please.

MR. DUNLOP: No, no. But that's - that's where the apprehension of bias..

THE COURT: You're wrong.. <sup>LIG</sup>

MR. DUNLOP: ...comes in, Your Honour.

THE COURT: You're wrong, sir. You were simply <sup>LIG</sup> informed by this Court...

MR. DUNLOP: Well what - read..

THE COURT: ...as to what the..

MR. DUNLOP: ...read - read the court documents..

THE COURT: Mr....

MR. DUNLOP: ...Your Honour.

THE COURT: ...Mr. Dunlop, I'm not going to argue with you.

MR. DUNLOP: Okay. I'm not...

THE COURT: I'm simply trying to clarify...

MR. DUNLOP: ...going to argue with you either.

THE COURT: ...for the record that you were informed  
5 about the options that you had so that they would  
be clear to you since there was obviously some  
difficulty that you were having with Mr. Sager as  
to what your options were for trial. You were not  
required to elect your mode of trial on that  
10 occasion. This was simply provided to you so that  
you would understand what those election options  
were. That was all. Go ahead. You totally  
misapprehended that, but in any event proceed  
please. You're on the 13<sup>th</sup> page. Carry on, please.

*L16 - I  
WAS to the 13  
BE ONLY  
WHEN I  
ANNOUNCED  
IT DID  
SOUND*

15 MR. DUNLOP: That's about it for that then, Your  
Honour. With...

THE COURT: That's about it for what?

MR. DUNLOP: That page.

THE COURT: The 13<sup>th</sup> page? Yes.

20 MR. DUNLOP: Yes; moving on to the 14<sup>th</sup> page.

THE COURT: Yes?

MR. DUNLOP: "Certified Court Transcript, March 6<sup>th</sup>,  
25 2008". I had provided a willsay statement to the  
Court that's dated June 2<sup>nd</sup>, 2008 which corresponds  
with some of the information that I've outlined  
here. The Court, page five, line number three  
through eighteen: "The matter is adjourned to  
30 April the 10<sup>th</sup>, 2008 at 2:15 p.m., and I'm going to  
simply mark it as to be spoken to, because quite  
frankly if this matter doesn't resolve by way of  
plea, I don't want something noted on the record -



record - sorry - that would prejudice the defendant.

5 He has been ambivalent with respect to his instructions and the manner in which this case has proceeded within the court. I want the defendant to clearly understand that this matter will proceed to trial on the 17<sup>th</sup> and 18<sup>th</sup> of November if this matter is not resolved in the interim. An indication has been given that there may be a resolution on April 10<sup>th</sup>, and for that reason I'm adjourning this matter to courtroom 201 at 2:15 to be spoken to".

10 I put a note on the bottom here. How was a plea entered on March 6<sup>th</sup>, 2008, Your Honour, if there was no collusion or collaboration or conspiracy involved in this matter? How was a plea entered when you had stated that the matter would be put over until April the 10<sup>th</sup>? If you further analyze - I don't have it all an - analyzed here right readily available, but the court transcript of that day will outline further things in relation to what I'm alleging, as the Court will see as allegations at this point.

15 THE COURT: Go ahead.

20 MR. DUNLOP: And that's what...

25 THE COURT: Just for the - just for the purposes of the record, to clarify that point, the plea that you did enter on March the 6<sup>th</sup> was struck and a plea was not re-entered again until the 9<sup>th</sup> of October, 2008. That comes from the information, as you know.

30 MR. DUNLOP: Sure.

THE COURT: Go ahead.

MR. DUNLOP: But these - these are just some of the points, Your Honour, that I'm you know relying on for my application of recusal in relation to the you know the apprehension of bias or of proving some apprehension of bias in relation to the dealings of this matter.

THE COURT: And when you entered your plea on October the 9<sup>th</sup>, 2008, you were represented by counsel Sara Wilson.

MR. DUNLOP: Yes. That's correct.

THE COURT: And there was no application for apprehension of bias before the Court, and there was...

MR. DUNLOP: Pardon me, Your Honour? I apologize.

THE COURT: And the application - pardon me - the plea which you had entered on March the 6<sup>th</sup> while represented by - or at least during the period of time during which there was a question with respect to Mr. Sager, that plea was struck and not re-entered, as I say, until the 9<sup>th</sup> of October, 2008 on the court record while you were represented by counsel. Go ahead.

MR. DUNLOP: And to clarify Your Honour, I was not aware I guess that that plea was struck until I had a discussion with Mr. Ghosh. I believe it probably was either the last court date of April 15<sup>th</sup> or the court date of March - no, it wouldn't have been that, it would have been April 15<sup>th</sup> of 2009. I...

THE COURT: How could you say that when you entered a plea on the 9<sup>th</sup> of October 2008?

MR. DUNLOP: Well I never - we never had - we never had a - a hearing to strike the plea in relation to the March 6<sup>th</sup> 2008 entering. I - that's - that was - that - and that may be some of my ignorance. I'm not...

5

THE COURT: No, it's not ignorance. But I'm simply saying to you Mr. Dunlop, you were represented by Sara Wilson, counselled, and on October the 9<sup>th</sup>, 2008, while represented by counsel and after a full plea comprehension inquiry was conducted by this Court, you entered a plea of guilty to this offense. Do you not recall that?

10

MR. DUNLOP: I - I - I didn't say that, Your Honour.

15

THE COURT: Well, I'm asking you, do you not recall that?

MR. DUNLOP: Yes. I was represented by Miss Sara Wilson and a plea was entered on that day.

THE COURT: All right.

20

MR. GHOSH: Your Honour, not to interrupt Mr. Dunlop's submissions, I think I can clarify where Mr. Dunlop's misapprehension arises. Now with respect to the Crown's office, and we'll get to that at some point, much of Mr. Dunlop's concerns have to do with what Crowns and what Court. The Crown is indivisible first of all. This is more for Mr. Dunlop's information than anything else. That whether or not it's me or Mr. Tait or Mr. St. Michael, it's immaterial.

25

30

There's - there's no possession of a Crown by Mr. Dunlop. He doesn't own me as the Crown; I'm one of many and we're a team. The Crown is

5 indivisible. So when Mr. Tait attends a particular hearing, there's - as the Head Crown it's his prerogative and there's usually a reason. So when I don't attend as I did not attend the date when the plea was ultimately re-entered, what Mr. Dunlop may - may not appreciate, although I was not there, I have to assume the plea was struck on consent and re-entered.

10 That's the only way it could happen, because there was already an existing plea and Mr. Sager's conduct became questioned and Ms. - Ms. Wilson came on board. She had discussions with Mr. Dunlop, I assume, in advance of the plea - there was a plea comprehension.

15 But on October 9<sup>th</sup>, 2008 for those pleas to have been entered, it would have required a consent striking of the plea from March of '06 - of March of '08 that he had entered into with Mr. Sager. So that's where Mr. Dunlop may not appreciate that his plea with Mr. Sager was already struck on consent just so he could re-enter it in - in October of '08. I'm not sure if that clarifies things, but that's very likely what happened. I wasn't there but I can only assume that was the procedure that happened.

25 THE COURT: Sara Wilson appeared as counsel retained on the 17<sup>th</sup> of September, 2008. And as a matter of fact, her name had been mentioned by Mr. Herman for Ms. Segal when he appeared as amicus curiae on the 13<sup>th</sup> of August, 2008, indicating that Sara Wilson was now or would be shortly retained as counsel for Mr. Dunlop.

???

new ID  
GET  
TRANSCRIPT  
FOR OCT 9<sup>TH</sup> 2008

5 She made an appearance, as I've said, on the  
17<sup>th</sup> off September, 2008 and then again re-attended  
with Mr. Dunlop on the 9<sup>th</sup> of October, 2008 at which  
time Mr. Dunlop entered a plea of guilty with the  
assistance of counsel and after a plea  
comprehension inquiry in relation to this charge.  
Go ahead, Mr. Dunlop.

10 MR. DUNLOP: I'll state again - reiterate, Your  
Honour - that on October the 9<sup>th</sup>, 2008 I was not  
aware of what Mr. Ghosh has just informed the  
Court. I did not - I was not aware that that  
aspect had transpired. And you'll note I submitted  
information in relation to Mr. Ghosh - I guess it  
was in January of '09. I'm not sure of the exact  
15 date. He would have submitted a motion to strike  
the plea or an application to strike the plea. And  
my response was in relation to Mr. Sager and Ms.  
Wilson. *IMPORTANT*

20 So I - that - I just didn't know, Your Honour;  
that's the bottom line. I didn't know that that  
transpired. I can't say anything. It's nothing  
against any Crown Attorney or Mr. Ghosh or I can't  
even remember who was in - which Crown Attorney was  
in the court that day. I just didn't know that  
25 that transpired. That's all.

THE COURT: Go ahead, please.

MR. DUNLOP: So I mean there's further other court  
transcripts, as I said. A June 10<sup>th</sup> court  
transcript.

30 THE COURT: June 10<sup>th</sup> of...

MR. DUNLOP: Yes. I don't - of 2008.

THE COURT: Yes?

MR. DUNLOP: No. I don't - have not had an analysis of it, but my biggest point about that is is that Mr. Sager was permitted to give submissions to the Court on my behalf, and I'm rather concerned about some of his submissions.

5

THE COURT: Do you have that information here?

MR. DUNLOP: I do not, Your Honour. The - my biggest point about that is I'm rather concerned that his submissions were permitted to be entered into the court record. And now they've been entered into the court record, I don't know whether those have been struck as well. I guess - is that my understanding that those would have been struck as well now that the...

10

THE COURT: No submissions are ever struck, Mr. Dunlop. If anything is said in this court on the record, there's a record made of it. My - my concern here quite frankly is the following; that regardless of what took place prior to being retained by Ms. Wilson on September 17<sup>th</sup>, I'm having a real struggle to understand how that bears on the relationship which is the primary focus of this Court, which was that on the 17<sup>th</sup> of September, 2008, you appeared with retained counsel, Ms. Wilson.

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25

On the 9<sup>th</sup> of October 2008, you appeared with retained counsel Ms. Wilson. You indicated through Ms. Wilson that you intended to enter a plea of guilty. A plea comprehension inquiry was conducted; it's a matter of record. And with the assistance of Ms. Wilson, you entered a plea. At no time was there a complaint made during that

30

*ISSUING  
THE  
INVOLVEMENT  
(B.A.S.)*

period regarding the proceedings that had occurred prior to the period of time from the 17<sup>th</sup> of September, 2008 leading up to the 9<sup>th</sup> of October and on the 9<sup>th</sup> of October.

5           The matter after your plea on the 9<sup>th</sup> of October of guilty to operating a motor vehicle while your ability to do so was impaired by alcohol or a drug causing bodily harm to Terry Corbett contrary to S.255(2) of the Criminal Code was then the matter of a fact inquiry by the Court. The Court heard facts. You agreed to those facts. I find - I found you guilty, and the matter was then put over to the 25<sup>th</sup> of November for purposes of sentence - pardon me, the 18<sup>th</sup> of November, 2008. Let me back that up again - the 25<sup>th</sup> of November, 10 15 2008 for sentence.

          A week prior to that date Ms. Wilson filed an application returnable the 18<sup>th</sup> of November asking to be removed as counsel of record. But the 20 critical period here, when you appeared in court on the 9<sup>th</sup> of October was when you were represented by counsel licensed by the Law Society of Upper Canada to practice law. You received her advice, you acted on that advice. You answered questions which 25 are a matter of record on a plea comprehension inquiry, and you entered a plea of guilty and accepted the facts and were found guilty.

          And at no time on the 17<sup>th</sup> of September or on the 9<sup>th</sup> of October while Ms. Wilson was your counsel 30 was there ever any information provided to this Court about levels of dissatisfaction by the manner in which this Court had conducted its business in

DID NOT  
HAVE COURT  
TRANSCRIPTS  
UNTIL  
AFTER  
THIS  
DATE!

relation to you or by - in relation to any conduct of the Crown Attorney's office, or in relation to any counsel.

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Yes, Mr. Sager, as we found out, was a fraud; he wasn't a lawyer, and you had concerns, as did the Court, as did the Crown. But those were resolved when you retained counsel who provided you with advice upon which you acted to resolve this matter. And I can understand that you would be deeply upset by the fact that Mr. Sager had misrepresented himself in a fraudulent fashion. You were victimized by a fraud artist without question.

But nothing that you've said here today so far as I can see to this point impacts upon what occurred on the 17<sup>th</sup> of September, 2008 and the 9<sup>th</sup> of October, 2008 in relation to the manner in which this Court conducted itself such as to engage a recusal. Nothing. If there's something about what occurred on those dates when you entered your plea that I should know about, please bring it to my attention.

MR. DUNLOP: I brought it to the - that's - you're - you know, Your Honour, we're talking apples and oranges here because you're talking in relation to that. I'm talking back prior to. This is - this is where my concern comes in. This is where my concern about the bias or the - the - trying to prove there's an apprehension of bias in relation to you know some unfavourable - unfavourable inclination towards myself and/or a favourable -



see? I mean you - you don't even let me speak. So why - why bother?

THE COURT: I've not said anything.

MR. DUNLOP: And - and the...

5 THE COURT: I'm listening. I'm anxiously listening and waiting to hear you tell me something that demonstrates that this Court acted in some fashion where there was an apprehension of - an objective apprehension of bias. I'm - and - and I'm waiting to hear from some - from you...

10 MR. DUNLOP: I've provided...

THE COURT: ...some evidence.

15 MR. DUNLOP: I provided numerous examples in those court transcripts. And if I get the - these other court transcripts that I've requested that the Honourable - Your Honour consider providing me, I'm assuming that there'll be an abundance of information in those court transcripts as well.

20 I - I don't know how Your Honour can - I appreciate and respect your professional abilities, Your Honour, and I - I have no - by no means wanted to ever be in this situation. The entire administration of justice in this matter has been compromised due to the fact that Mr. Sager -  
25 primarily due to the fact that Mr. Stephen R. Sager, who was not authorized to practice law by the Law Society of Upper Canada, and a full investigation was conducted by Mr. Adrian Greenway of the Law Society of Upper Canada supervised by  
30 Mr. Alex McWilliams - Alex McWilliams, and it's - this is - this is - I mean that's where the - the trolley-train - I mean, I don't know - for a better

5 - like, that's not very appropriate - appropriate word, but that's where the train runs. It's - like, it's totally gone off the tracks. And I mean I've had concerns with you know, Ms. Wilson as well. And I've outlined some of those. It was a very, very short turnaround.

10 And Mr. Ghosh is aware of the concerns. I - I don't - you know what, Mr. Ghosh has been more than - he's been a - he's been nice to me. He's been accommodating in a lot of respects, but that still doesn't take away some of the events of March 6<sup>th</sup>, 2008. So I don't know what else I can say. I - I've provided numerous examples. And I don't believe, and I really don't - truly don't believe that His Honour - and I'm not trying to - from the information I have I know you're a highly, highly respected judge. I don't have - I don't want to - I didn't want to be in this situation. I didn't want to be doing this.

20 But I'm doing this in my best defense, for my best legal interest. And I don't believe that with everything that's happened - I mean there's more legalities involved in this case than - I'm sure you're well aware of it - than - than - not every case. There's other cases that have is - a lot of numerous other legalities involved, but this case has taken on...

30 THE COURT: Mr. Sager, this Court bent over backwards to accommodate you when it discovered that you had been the victim of a fraud artist by Mr. Sager. And this Court had great empathy, sympathy as well for the manner in which you had

*WENT?*

5  
been victimized by Mr. Sager, as did Ms. Segal, as  
did Mr. Herman. And this Court took every step  
possible to ensure that your legal position in  
relation to these matters were to be protected and  
safeguarded, including your ultimate retainer of  
Ms. Wilson as counsel on the - and her attendance  
in court on the 17<sup>th</sup> of September 2008 and again  
with you when you entered your plea on the 9<sup>th</sup> of  
October.

10  
This Court took particular pains to ensure that  
you were properly advised, properly retained  
counsel, and that when your plea was entered on the  
9<sup>th</sup> of October it followed as a result of that  
advice of those instructions and after a full plea  
15 comprehension inquiry.

This is not a personal issue. This is simply  
a concern that the Court has as to the basis upon  
which there was an apprehension of bias for this  
Court's conduct during the critical period of time  
20 that you were before this Court having retained Ms.  
Wilson and entered your plea on the 9<sup>th</sup> of October.  
Because primarily, until relatively recently, your  
focus had been on striking the plea on a motion to  
strike the plea. And then it evolved into an  
25 application - fairly currently given the length  
that this matter's been before the Court - to an  
application of bias.

I'm simply struggling with trying to  
understand where this bias comes from when this  
Court has done virtually everything that I could  
30 imagine to ensure that you would be properly  
represented in relation to these proceedings and

5 certainly would not rely upon a single thing that  
was done by Mr. Sager that prejudiced your position  
and did not rely upon anything that occurred. And  
I'm - I remain empathetic about the difficulties  
that you sustained and from which you suffered as a  
result of Mr. Sager's misconduct, and that may be  
the subject of involvement by other parties beyond  
this Court.

10 But I'm trying to stay focused on the key  
component here of what this matter's all about.  
And that is your plea of guilty to this serious  
offense on the 9<sup>th</sup> of October. And how it is that  
you come to the understanding that there's evidence  
that demonstrates some element of bias by this  
15 Court or an apprehension of bias by this Court in  
terms of the way in which it's conducted its  
business.

20 I've heard and listened to you patiently as  
you've been telling me various things about the  
track record of the court proceedings, about the  
materials that formed the basis of your  
application. But I continue to remain none the  
wiser. And when you make comments, as you have  
with respect to certain critical points that are  
25 just fundamentally wrong, about what occurred on  
certain dates and ignore events that - other events  
- important events that did occur, I'm compelled to  
interject.

30 I have done so; not with a view to preventing  
you from speaking or making your submissions, but  
with a view to trying to assist you in remaining  
focused on what the task here is, because I

appreciate you're not a lawyer and you don't have legal training that I'm aware of. And I will continue to listen to what it is that you say forms the basis for your apprehension of bias.

5 MR. DUNLOP: Your Honour, I - I - I don't - I mean this - I never wanted this to ever be like in some sort of respect a personal attack or appear to be that way or - or...

10 THE COURT: It's not - I - I need to tell me where - where. Continue to tell me where the bias is. You - you were on - you were talking for a while; continue to tell me where.

MR. DUNLOP: In relation to?

15 THE COURT: Or - or is there anything further that you want to tell me?

MR. DUNLOP: What? In relation - I think I've already mentioned about the March 25<sup>th</sup> date and..

20 THE COURT: Yes. Your comments were - were clear about those two dates actually.

MR. DUNLOP: Yes.

THE COURT: March 25<sup>th</sup> and 27<sup>th</sup>.

25 MR. DUNLOP: Yes. And - and the fact that I mean no disrespect to Mr. Ghosh, obviously he couldn't make it on March 25<sup>th</sup>. But I couldn't make it on the 27<sup>th</sup>; I couldn't afford to be here. And I informed Your Honour on that day that I couldn't afford to be here.

30 THE COURT: But we're here today and I'm still waiting to hear it. Tell me would you please what the apprehension of bias is in relation to these proceedings.

MR. DUNLOP: I - I've indicated numerous things. I  
- I have - as I said in these applications I've  
submitted to you. I can't go through - I mean  
obviously I can't go - I can go through them all.  
5 I mean we can go through every provision I put in  
here, but there's many provisions in here that I  
don't know that the Court really wants to sit here  
and to listen to this all day or tomorrow or Monday  
I guess or so on and so forth.

10 THE COURT: When you say "in here" are you talking  
about the application materials that you have  
filed?

MR. DUNLOP: Yes. Since Octoberish I guess.

15 THE COURT: I'm aware of every single piece of  
paper that you have filed and any documentation  
that has been filed as well. Subject to  
qualifications that the Crown had with respect to  
the time that these documents were entered and some  
of the contents of them and their accuracy; but I  
20 certainly have seen everything. I have it all in  
mind.

MR. DUNLOP: And - and I mean you know with  
relation to the court transcripts I've requested, I  
mean I haven't been provided answers in relation to  
25 many of the provisions or...

THE COURT: Well, you see...

MR. DUNLOP: Yes.

THE COURT: ...it's not my job to provide you with  
transcripts, Mr. Dunlop.

30 MR. DUNLOP: Okay.

THE COURT: I - I think that what's occurred during  
the course of these proceedings is that transcripts

5 have been ordered on a pretty regular basis, and I  
have tried to ensure that copies were in fact  
provided to all parties. If there's a transcript  
that you don't have and that you feel is required  
in order for you to complete your submissions, then  
I certainly will endeavour to make sure that you  
get that. And - and it's not a problem. But it's  
not my obligation, understand, to secure  
transcripts. That's your obligation. It's your  
10 application. Do you understand me?

MR. DUNLOP: I appreciate that, Your Honour.

15 THE COURT: Both in terms of striking the plea and  
in terms of a bias application. But having said  
that, I'm not going to shut you down from being  
able to make further submissions regarding anything  
that may exist in some of those transcripts that  
you don't have possession of. In fact, just to  
demonstrate again what I've said all along, in an  
effort to be just as fair as I possibly can I will  
20 ensure that you get those transcripts if you feel  
that you need them.

MR. DUNLOP: There's - I don't even know how many  
here, Your Honour. There's 20 transcripts, Your  
Honour. That's not including today.

25 MR. GHOSH: Your Honour, not to interject. I'm  
just thinking of an - practical and expeditious  
approach to Mr. Dunlop's application that preserves  
his right to make a thorough application to excuse  
Your Honour. I'm a little unclear as to - Mr.  
30 Dunlop hasn't yet answered Your Honour's question  
before the lunch break as to how did he want to

proceed on an evidentiary basis on the recusal application.

Does he just want it to be submissions and the Court record and his affidavit with no - no testimony from the witness box? What was he proposing that the evidentiary basis for the application be; the transcripts, what he said today, his affidavit on the recusal motion? Is that what he wants to...

5

10

MR. DUNLOP: And - and the case law and that. At this point, to protect my own legal rights I'm not sure it's - as Mr. Ghosh just proposed to today - kind of proposed to me today about my testimony. It's not that I don't want to testify; it's just at this point I might want to speak to somebody in relation to whether I should testify.

15

THE COURT: Well Mr. Dunlop, this is your application. It has been adjourned on several occasions and I think to follow what Mr. Ghosh has said, and I've made this comment even before the lunch break, I need to hear what evidence it is that you intend to rely upon, if you have such evidence, and you've indicated to me the transcripts. What else is there?

20

25

MR. DUNLOP: There's the - as I've mentioned to Your Honour all the provisions outlined in the application.

THE COURT: Those are applications; that's not evidence.

30

MR. DUNLOP: Okay.

THE COURT: That - that's submissions. What evidence is it that you rely upon? Is it the



materials - is it reference to the - the transcripts that are contained within those application records? Is that what you're talking about?

5 MR. DUNLOP: Yes. Some of that would be in - obviously I would think would be vital.

THE COURT: Okay. What else?

10 MR. DUNLOP: Maybe - I've thought about this; I don't whether it's - I don't even know whether Mr. Ghosh has a copy of Mr. Greenway's - I don't know if it's protected by statute by them or I'm under the impression that it is. I don't know whether Mr. Ghosh has ever received any information from Mr. Greenway's investigation into Mr. Sager.

15 THE COURT: Well no - no. We're - I - I want you to tell me; that's your obligation. You - it's your application. What do you intend to rely upon in support of your application?

20 MR. DUNLOP: That - that may be some - that would be...

THE COURT: Well why isn't that here then?

MR. DUNLOP: I don't whether it's - I don't know how to get it.

THE COURT: Well...

25 MR. DUNLOP: I don't - I think...

THE COURT: ...it's your application.

MR. DUNLOP: ...I believe - I believe it's protected by statute, Your Honour.

30 THE COURT: It's your application. It's your obligation to find out how to get these things here.

MR. DUNLOP: Yeah.

THE COURT: So...

MR. GHOSH: And Your Honour, I can't see how those materials would have any relevance on Your Honour's conduct in this case; zero. That's the concern I have. I - I know Mr. Dunlop has some concerns about these allegations of collusion between the counsel Mr. Sager and Your Honour the Crown's office. The reality is, and frankly just to deal with the argument at its highest, let's say everything that Mr. Dunlop alleges is on the transcripts in terms of Your Honour's dealings in the matter on the court record.

I'm willing to accept the transcripts at its highest, that Your Honour had commented that this is moving along a resolution track. In my respectful submission, your only - Your Honour can only rely on the representations made by counsel and the Crown. So Mr. Sager at the time was falsely representing himself as counsel to the Court. Your Honour in good faith relied on that, as did the Crown, and we made submissions as is in the normal course.

Mr. Dunlop seems to be under the impression that the dealings on this matter are somehow unique to any other matter that happens in this courthouse. He's terribly wrong on that because these are routine discussions that happen on the record where counsel have discussions in the absence of their clients. This is - happens almost all the time that they seek instructions in a private meeting with their clients; then they meet the Crown alone.

5 The clients are not present during these discussions with the Crown. It never happens. In a judicial pre-trial, even where the judge is present, the client waits outside and then has private discussions with their lawyer. That's the reality of the manner in which our criminal justice system is fashioned. So if Mr. Dunlop thinks that somehow these discussions that happened in private are evidence of collusion, he's wrong.

10 Our justice system is premised on counsel getting instructions from their client after speaking to the Crown or if there's a judicial pre-trial after speaking to the judge in chambers, and they report back to their client and they get  
15 instructions as to whether or not it's going to be a resolution or a plea. So all of these discussions on the record relating to the prospect of resolution - it may be resolved, it may be not, it may be a trial - none of that matters until Mr. Dunlop comes to court and says "I'm ready to plead  
20 guilty and my plea is voluntary".

25 So when that happens all of these discussions in the background, they can only move forward until the client, Mr. Dunlop, is ready to move forward with the plea. So Your Honour's comments relating to "this is moving towards resolution", it means nothing in terms of - of whether or not there is a reasonable apprehension of bias. These are routine things that happen on every matter that comes  
30 through these Courts.

I'm not faulting for Mr. Dunlop; he's not a regular in the criminal justice system, I

understand that, but this suggestion that there is somehow - he may have, in my submission, falsely perceived Your Honour as somehow having some sense of bias. But it has to be a reasonable apprehension of bias. It has to be something objective that the reasonable person can see that Your Honour has somehow shown impartiality or bias towards one of the justice system participants.

If I take Mr. Dunlop's submissions at its highest, that these comments were made on the record, and he personally seems to have developed this sense that - of Your Honour, the Crown, Mr. Sager, Ms. Wilson, all somehow were meeting in private without his presence or his consent, that is his perhaps understandable misunderstanding of the way the court process works. He's not going to be present for every discussion with the Crown. He's not going to be present for every discussion with the judge. That's why we have designations - to avoid inconveniencing a - an accused that has to come in from North Bay for example, that Mr. Sager was appearing on his behalf.

So all of these things - Mr. Sager's conduct obviously is in question. But when the plea is re-entered in October of 2008 with the assistance of experienced counsel, she ultimately gets fired. Mr. Dunlop has allegations against her.

None of this, in my respectful submission, remotely meets the test for reasonable apprehension of bias. So just to deal with the application expeditiously, if Mr. Dunlop wants to get in the witness box and testify as to what he's essentially

5 submitted to, and I would seek leave to cross-examine him, or if he just wants Your Honour to have as the evidentiary foundation for the application the transcripts and his affidavit attached to this recusal motion, I'm fine with any of that. Because at it's highest, there's no way it meets, in my respectful submission, the test for a reasonable apprehension of bias for the recusal of Your Honour. And...

10 THE COURT: Mr. - Mr. Dunlop, you have my assurance that any transcripts that I have - and I have most of them, I believe - will be considered. And all of the materials that you have filed, every piece of paper that you have filed, every letter, every application, every document, the exhibits attached to them will be considered, and the submissions that you've made today will be considered.

15 Now do you - do you have any additional evidence that you want to provide to this Court? First of all, from witnesses including yourself; are there any witnesses here you intend to call today or do you intend to give evidence yourself?

20 MR. DUNLOP: Well I would think Your Honour that Ms. - Mr. Sager and Ms. Wilson, Mr. Ghosh, Ms. Segal - I would think that those people in relation to all the - the events that have transpired and all the legalities. I would think - I mean obviously there's been a hearing that was set for April 15<sup>th</sup> that didn't proceed forward. And I would think that their testimony would be somewhat of these - well not somewhat - I would think it would be essential.

25

30

THE COURT: On the application of recusal, are there witnesses you intend to call and are they here to give evidence?

MR. DUNLOP: There's not - they're not here. Mr. Ghosh is.

MR. GHOSH: I'm not here to testify.

THE COURT: No.

MR. DUNLOP: I'm not either.

THE COURT: Do you have witnesses here you intend to call?

MR. DUNLOP: Well, if Mr. Ghosh...

THE COURT: Excuse me.

MR. DUNLOP: ...Mr. Ghosh. Sorry.

THE COURT: Excuse me. Please don't interrupt me, Mr. Dunlop?

MR. DUNLOP: Yes, I'm sorry. I apologize, Your Honour.

THE COURT: All right. Do you have witnesses you intend to call to give evidence on the recusal motion? Or do you intend to call yourself as a witness on the recusal motion?

MR. DUNLOP: As I have indicated to Your Honour a few minutes ago, at this point I would - I'm not going to be calling myself or testifying at this time...

THE COURT: Well this is the time...

MR. DUNLOP: ...in this matter.

THE COURT: ...Mr. - Mr. Dunlop. This is the day and the time for you to call evidence if you intend to do so in relation to the recusal. So I'm putting you to your election now. Do you wish to call - do you wish to testify or not in relation to these

proceedings? This is the date and time and place.  
You don't have to.

MR. DUNLOP: Mm-hmm.

5 THE COURT: That's entirely up to you, of course;  
we live in a democracy. But if you intend to  
testify, this is the time, date, and place for you  
to do so. Do you intend to do so?

MR. DUNLOP: No I don't, Your Honour.

10 THE COURT: Are you calling any witnesses on the  
recusal motion?

MR. DUNLOP: I was - I mean obviously I would like  
to call Mr. Ghosh, but he's not going to testify.  
And as I - Mr. Ghosh has indicated, I'm well aware  
15 that when Mr. Sager spoke to Mr. Ghosh in private  
on March 6<sup>th</sup> - this is - this is another - this is  
not to deal with the recusal motion, but I wanted  
to say it anyways. I submitted a willsay statement  
on June 2<sup>nd</sup> in relation to what Mr. Sager had told  
me.

20 THE COURT: Mr. Dunlop...

MR. DUNLOP: And that...

THE COURT: ...Mr. Dunlop, I want to...

MR. DUNLOP: ...coincides...

25 THE COURT: ...stay focused on the recusal  
application. I'm not going to allow you to wander  
off on some fancy expedition of your own for a  
moment. Stay with me on this. The recusal motion  
is what I'm concerned about. I can't entertain  
other applications until we've dealt with that.

30 MR. DUNLOP: Sure.

THE COURT: Now you've indicated to me you do not  
wish to give evidence on the recusal motion.

That's fine. Do you have witnesses here today, since you knew that this was the date, time, and place for the recusal application, who are prepared to testify today in relation to the recusal application?

5

MR. DUNLOP: I do not. And Your Honour, as I've stated to you, this is a very complex matter in which - in which I would think that the Honourable Court would think that I should be represented.

10

I've made numerous contacts - hundreds of contacts - with lawyers in the community, which I've provided in the - one of my - people don't want to touch this, Your Honour. People are - people are leery of this case; they don't want to touch it.

15

This - this - this case is becoming - it's snowballed into a huge, heated - it started out here and it snowballed.

THE COURT: Do you have witnesses you intend to call?

20

MR. DUNLOP: No I do not, Your Honour.

THE COURT: Thank you. Do you have any further evidence, documentary evidence beyond the transcripts and beyond the materials that you have filed with the various attachments - anything else in a documentary fashion that you wish to bring to my attention in relation to the recusal motion?

25

MR. DUNLOP: Not other than my assessment of those further transcripts - those certified court transcripts that I do not have in my possession.

30

THE COURT: And you indicated something about case law. Do you have case law?

MR. DUNLOP: I do...



THE COURT: You indicated...

MR. DUNLOP: ...have some case law, but have - I don't have it printed off, Your Honour.

THE COURT: You did indicated in the application which you filed under date 26<sup>th</sup> March, 2009 - six weeks ago - that you wish to have an opportunity to reflect upon researching case law and other legal resources in order that you the applicant, Derek Dunlop, be able to defend himself adequately in this matter. Do you have such case law?

MR. DUNLOP: As I said, I have some reference to case law, but I don't have it printed off. Other than...

THE COURT: What - what are the references that...

MR. DUNLOP: ...other than...

THE COURT: ...you have to the case law?

MR. DUNLOP: R. vs. Musselman, 2004; CanLii 34073 is the...

THE COURT: Can you spell Musselman?

MR. DUNLOP: M-U-S-S-E-L-M-A-N.

THE COURT: Yes. And what is the citation for that case?

MR. DUNLOP: I don't have it on CanLii - that's the way it pops up on CanLii, Your Honour, like the second edition criminal court cases or Supreme Court cases it didn't have that, if that's what you're requesting.

THE COURT: Do you have the year of the decision or the Court?

MR. DUNLOP: 2004.

THE COURT: 2004? Do you know the Court? Was it in Canada?

MR. DUNLOP: Yes.

THE COURT: Do you know which province?

MR. DUNLOP: I believe it was Ontario Superior Court, but I'm not 100 percent sure.

5 THE COURT: But you're saying it's a 2004 decision...

MR. DUNLOP: Yes.

THE COURT: ...Regina and Musselman. Is that right?

MR. DUNLOP: Yes.

10 THE COURT: What other case or cases do you intend to rely upon?

MR. DUNLOP: Some of them which were included in the R vs. Felderoff and that you had provided me Your Honour on a...

15 THE COURT: What cases in particular relate to your application for apprehension of bias?

MR. DUNLOP: Regina vs. McClevis.

MADAM REPORTER: Spell that please, sir?

20 MR. DUNLOP: M - small c - capital C-L-E-V-I-S. Ex parte Robbins - R-O-B-B-I-N-S - 1 CCC, I guess it is - CCC 2<sup>nd</sup> 278. And...

THE COURT: The year?

MR. DUNLOP: ...I do not have the year, Your Honour. I apologize.

25 THE COURT: It's a very old case. It's in the second series of the Canadian Criminal Cases. It's in the very first volume. It's a number of years ago, but I'll find it.

MR. GHOSH: What level of court, do we know?

MR. DUNLOP: I don't know. I apologize.

30 THE COURT: That's all right. Go ahead. What's the next case?

MR. DUNLOP: R. vs. S.(R.B.). I'm not sure that's  
- it doesn't have a - full name or anything  
referenced.

THE COURT: Do you have numbers?

5 MR. DUNLOP: 1997, 3 SCR I believe it would be.  
I'm not 100 per cent sure whether that's  
what SCR stands for.

THE COURT: Yes.

10 MR. DUNLOP: 484. And those are - those are the  
predominant ones.

THE COURT: So S. and R.D., Regina and McClevis, ex  
parte Robbs - Robbins, Felderoff and Regina and  
Musselman? Is that correct?

MR. DUNLOP: Yes, Your Honour.

15 THE COURT: Are there any other cases to which you  
wish me to have regard?

MR. DUNLOP: Just the ones that Mr. Ghosh has given  
me. I mean the - Di Giuseppe - is that - Di  
Giuseppe I guess is - Your Honour provided me a  
20 copy I guess the last time or second last time in  
court.

THE COURT: I have those cases in mind.

MR. DUNLOP: Yes. Well those four cases as well.

25 THE COURT: As - as the - as do - as well as the  
other cases to which Mr. Ghosh referred - Vally,  
Brouillard, and Stucky.

MR. DUNLOP: Yes. I haven't had much time to  
review those, Your Honour, obviously.

30 THE COURT: I understand that. Are there any other  
cases that you wish to bring to my attention that  
would support your application for recusal?

MR. DUNLOP: That's predominantly it, Your Honour. Those are the cases - those are the - those are the main ones.

5 THE COURT: Thank you. Are there any further submissions that you would like to make to me, having to do with the application for recusal?

10 MR. DUNLOP: I - I mean there's obviously evidence in relation to Sara Wilson too, Your Honour. I - you know I - you're asking me about evidence in relation to that. I - I have documented information on this whole case since the beginning so I - I don't know whether you want my documentation - documented notes, or?

15 THE COURT: No. I - it's not what I want, Mr. - Mr. Dunlop, it's what you want to give to me in relation to the application for recusal. Is there anything further that you want to give me on the issue of your application that this Court be recused from hearing your matter?

20 MR. DUNLOP: I could give you copies of all those, Your Honour, but I don't really necessarily have every - I have most of the information I guess in relation to Sara Wilson, but I don't - like in considering with emails and so on and so forth.

25 THE COURT: How do...

30 MR. GHOSH: More to assist Mr. Dunlop, Your Honour, Ms. Wilson's dealings with - with Mr. Dunlop, all of that may or may not be relevant ultimately on the motion to strike - or to excuse Your Honour from the proceedings. It has to do with Your Honour's conduct and what reasonable appearance of bias or impartiality may result from Your Honour's

conduct on this case. So dealings with - off the  
record with Ms. Wilson in his - in her office, none  
of that matters, in my respectful submission, on -  
on this motion. As an aside, I should indicate Mr.  
5 Dunlop's free not to testify pursuant to his  
affidavit filed on this recusal motion. He may be  
subject to a Crown submission for diminished weight  
on the affidavit for his refusal to testify on it.  
But I'm - I'm content to proceed if it'll move the  
10 application forward. So...

THE COURT: Is there anything further that you'd  
like to say at this time then, Mr. Dunlop, in  
relation to the application to recuse?

MR. DUNLOP: There is not, but I have a question,  
15 Your Honour. I know it's not - it's in relation to  
the hearing that was suspended last week. Does  
that - after there's a decision made here, does  
that - is that rescheduled or...

THE COURT: We - we'll deal with that after we deal  
20 with the recusal.

MR. DUNLOP: Okay.

THE COURT: I'm staying on the...

MR. DUNLOP: Okay.

THE COURT: ...recusal right now.

MR. DUNLOP: Okay. No, I think at this point I  
25 think I...

THE COURT: Would you sit down then please. And  
Mr. Ghosh, I'd like to hear from you please now.

MR. GHOSH: Yes, Your Honour. There's not much I  
30 can add to that. I made some submissions of when I  
thought Mr. Dunlop when substantially complete. It  
- it's not the traditional manner in which we would

deal with a motion that Mr. Dunlop has made mixed submissions and testimony - unsworn testimony from where he's seated. And if it'll expedite matters and he feels like he was able to get whatever considerations put forward before Your Honour for you to consider, I'm content to proceed with his allegation...

THE COURT: Yes.

MR. GHOSH: ...at - at it's highest.

THE COURT: Thank you.

MR. GHOSH: And my submission remains there is nothing on the court record, or frankly off the record, in Your Honour's dealing as - I'm - I'm unaware of any off the record dealings of - between Your Honour or any of the justice system participants on this matter that would draw any undue attention to Your Honour's conduct. There is - the simplest way to put it in my respectful submission, there is absolutely no basis for the recusal application, except Mr. Dunlop's own subjective concern that Your - Your Honour is somehow colluding with his prior counsel, his prior agent, the Crowns. But frankly, there is no evidence of that nor is there any objective basis to interpret the transcripts as suggesting that Your Honour has displayed any type of a bias reasonable or otherwise.

So I - I won't pour into the - that standard - the Supreme Court outlined in Brouillard, nor will I delve deep into the - the Court of Appeal - or a refinement of the recusal test in Stucky as originally - or seminally outlined in Vally. But I

don't see on a prima facie basis any - any justification for the recusal application to be remotely meritorious, and I'd invite Your Honour to dismiss it.

5 THE COURT: Mr. - thank you, Mr. Ghosh. Before you sit down...

MR. GHOSH: Yes.

10 THE COURT: ...Mr. Dunlop has been referred to four cases although we don't have full - please sit down, Mr. Dunlop.

MR. DUNLOP: Oh, sorry.

15 THE COURT: Has referred to four cases in his submissions that I should have regard to: R. and S.(R.D.), R. and Musselman - when I say R. I should appropriately say Regina and S.(R.D.), Regina and Musselman, Regina and Felderoff, and Regina and McClevis, ex parte Robbins. He's given partial citations to some of these cases. Felderoff I think he referred to as a case that the Court provided to him. And do any of these cases have principles which could be extracted to have application to the recusal application so far as you are aware?

20 MR. GHOSH: Not - not without having reviewed them specifically, Your Honour. I - I may ask for a moment to see if I can locate them on - on Quick Law and see if I can assist. But those cases - those names did not jump out at me in my review of - for this application.

30 THE COURT: And I think we have sufficient - Felderoff of course - I'm sure you have that.

MR. GHOSH: Yes.

THE COURT: The other ones I'm sure you could get in a matter of a few minutes.

MR. GHOSH: Yes.

5 THE COURT: And if there are operative principles that engage this issue, then I would be indebted if you could provide those - well actually provide the cases to me. And if there are operative provisions that engage this issue, to bring those to my attention and I'm sure that Mr. Dunlop would -  
10 would want to do the same. He doesn't have those cases here apparently, but he has the citations he referred to.

MR. GHOSH: It wouldn't take me too long to..

THE COURT: Thank you.

15 MR. GHOSH: ...take a look for them.

THE COURT: Okay. But those are your submissions?

MR. GHOSH: Yes, Your Honour.

THE COURT: Do you have any submissions in response to that which Mr. Ghosh has said, Mr. Dunlop?

20 MR. DUNLOP: I don't necessarily - I mean Mr. Ghosh has claimed that I think that you've been in collusion with - or I - correct me if I'm wrong. That's what I've understood Mr. Ghosh to say. I don't necessarily know that per say, and I wouldn't  
25 - that's not my necessarily claim that you're in collusion with Mr. Ghosh or Mr. Sager or Mr. - or Ms. Wilson or Mr. Sager. That's not necessarily my claim. My - my other claim's in relation to the collusion are in relation to other things. So that  
30 I just want to clarify that point, Your Honour.

THE COURT: Anything else?

MR. DUNLOP: No, that's it.



THE COURT: Okay. You may sit down, sir.

THE COURT: All right. I'm going to adjourn this matter for a few minutes and let you Mr. Ghosh withdraw to see if you can secure these cases. If you have any problem, would you let my associates know and we'll make efforts to assist if that's the case. But we'll stand this matter down for a few minutes. You can have a breather or stretch your legs, Mr. Dunlop. I have a couple of other matters I have to deal with here that are independent of your case. So we're just going to stand this down for a few minutes, okay?

MR. DUNLOP: Thank you.

MR. GHOSH: Thank you.

THE COURT: Thank you.

...MATTER HELD DOWN...

...OTHER MATTERS SPOKEN TO...

...Recess

...Upon resuming:

MR. GHOSH: Yes, Your Honour. I've reviewed the case as well on behalf of Mr. Dunlop. I've reviewed it and maybe very deep submissions need not to be made on it. But it - only in the most cosmetic sense matches Mr. Dunlop's circumstances when Your Honour issued the warrant against him in - in March - I believe was it March 25 or 27 of - of this year.

The distinguishing features of - from my recollection and I was there - there were no gratuitous comments at all from Your Honour with

5           respect to the circumstances that led to the  
          issuance of the warrant. So I don't think that  
          particular case is of much assistance given the  
          manner in which Your Honour conducted yourself in  
          issuing of the warrant on the Crown's submissions  
          that particular day.

10           And Regina and Musselman, 2004, Ontario  
          Judgements number 4226, Ontario Superior Court of  
          Justice. I've reviewed this matter as well and it  
          is also yet another example of a Superior Court  
          decision relating to a recusal application. And -  
          and I would submit it's also appropriate for Your  
          Honour to consider. But there are distinguishing  
          features from Mr. Dunlop's circumstances to frankly  
15           all of the cases that both myself and Mr. Dunlop  
          have furnished Your Honour with.

          But my submission remains there's a dearth of  
          evidence meriting Your Honour's recusal from this  
          matter. Nothing further.

20           THE COURT: Thank you. All right. I now have  
          submissions and I have the information and - and  
          evidence such as it exists, materials in relation  
          to this application. When are you available next  
          week, Mr. Dunlop, for my ruling?

25           MR. DUNLOP: Towards the latter part of the week  
          probably would be better, Your Honour.

          THE COURT: How about the - how about the 14<sup>th</sup> of  
          May?

          MR. DUNLOP: That's the Thursday? Yes.

30           THE COURT: That's the Thursday. Is that  
          convenient to you?

          MR. DUNLOP: Yes.

MR. GHOSH: The one pause I have with that, Your Honour, is that every Thursday I'm in judicial pre-trial court in 303. I - I might not be able to - but if it's just for judgement, another Crown can take it, but Your Honour may prefer me here. I - I'm indifferent to that. So...

THE COURT: Well, I - I can - Mr. Dunlop has asked the latter part of the week. I can go on either the 14<sup>th</sup> or the 15<sup>th</sup>. I happen now to be here on the 15<sup>th</sup>. I wasn't originally, but I am.

MR. GHOSH: Could we do the 15<sup>th</sup>?

THE COURT: Was the 15<sup>th</sup> - that's a Friday. Is that convenient to you, Mr. Dunlop?

MR. DUNLOP: Yes, sir.

THE COURT: And I'm in courtroom 204. Would it be convenient for you, Mr. Dunlop, to be here at 2:15 as opposed to 9:30? Is that better for travel purposes?

MR. DUNLOP: Morning is better for me, Your Honour.

THE COURT: Morning is better is it?

MR. DUNLOP: Yes, it is.

THE COURT: Oh, all right.

MR. DUNLOP: 9:30 is - yes - that's better for me actually.

THE COURT: I'm glad that I asked then. We can make it...

MR. DUNLOP: Yes. I appreciate that.

THE COURT: Is that convenient for you, Mr. Ghosh?

MR. GHOSH: Yes, Your Honour.

THE COURT: All right. I've considered this matter and I will provide my ruling on Friday the 15<sup>th</sup> of

May, 2009, at 9:30 in courtroom 204. Do you have that date in mind, Mr. Dunlop?

MR. DUNLOP: Yes, I do.

THE COURT: Okay.

5 CLERK OF THE COURT: Do you need a reminder?

THE COURT: We can - well provide Mr. Dunlop..

MR. GHOSH: Could we do one just in case?

THE COURT: ...if you would please with a reminder slip in the usual course, Madam Clerk. Thanks.

10 MR. GHOSH: As an aside Your Honour, because I'm - I'm struggling with...

THE COURT: And that would be in relation to the application and also the information in which Mr. Dunlop is charged with the offense of unlawfully failing to attend court can be adjourned to that date to be spoken to, I take it?

15 MR. GHOSH: Yes, please.

THE COURT: Thank you.

20 MR. GHOSH: Could I make a very brief closing comment?

THE COURT: Yes.

25 MR. GHOSH: It doesn't have so much to do with the application, but I'm - I'm struggling with what to do with - Mr. Dunlop as he - as he deems it appropriate sends out mass emails to which I am attached, and there are a number of allegations that arise from the mass emails. I'll - I'll answer to them if and when it's appropriate, but they're not before the Court. If Mr. Dunlop has  
30 any specific requests for these proceedings that he has of the Crown, I should reiterate, I'm not going to respond by email any further. But he should

make them on the record as well and I'll respond  
before Your Honour so that Your Honour has control  
over the process. And I'm only responding to  
inquiries in Court because I won't - I won't be  
responding to the emails as Mr. Dunlop knows.

5  
MR. DUNLOP: At - at this point Your Honour I'd  
like to inquire about the failure to appear. I  
guess that's going to be heard next Friday from my...

10  
THE COURT: Just to be spoken to - the charge will  
be spoken to at that time.

MR. GHOSH: Your Honour, I don't want the fail to  
appear any longer really to be in issue. I've been  
- the - the bench warrant was a means to ensure  
that Mr. Dunlop attended court and attended as Your  
Honour had directed him to do a few days prior.

15  
That charge itself - I know Mr. Dunlop's been  
attending faithfully. I want to have the impaired  
charges dealt with on its merits, the recusal  
application determined, have the - if we get there  
- the - the motion to strike the pleas determined.

20  
I don't want the fail to appear to be any longer in  
issue. Mr. Dunlop's attended since then. I'll -  
I'll withdraw the charge in the public interest  
even though the Crown has a reasonable prospect of  
conviction on the fail to appear. So I'll...

25  
CLERK OF THE COURT: When?

MR. GHOSH: Today.

CLERK OF THE COURT: Oh, thank you.

30  
THE COURT: Thank you. That charge then Mr. Dunlop  
has been noted withdrawn at the request of Crown  
counsel for reasons indicated. The matter is at an  
end.

MR. DUNLOP: Okay.

THE COURT: All right. We'll see you next Friday then at 9:30 in courtroom 205?

5 MR. GHOSH: Thank you, Your Honour. If I could be excused, please?

MR. DUNLOP: One other thing, Your Honour. You said you'd provide me a copy of the court transcripts. Am I going to have to pay for those or...

10 THE COURT: I'm not going to provide them.

MR. DUNLOP: Oh, sorry. I apologize.

THE COURT: You - you can - you can make inquiries of the court reporters and if you have a list of transcripts that you - that you feel will assist you in these proceedings, I'm - I'm happy to provide them to you - or not to provide them to you - I'm happy to assist by ordering them. But you'll have to pay the copy rate, whatever that rate is. Is that correct, Madam Reporter?

15 MADAM REPORTER: That's right, Your Honour.

THE COURT: So my - by my ordering them, you won't have to pay the - the far more expensive cost of three or four dollars a page, but the copy cost of something in the range of...

20 MADAM REPORTER: Fifty-five cents.

THE COURT: ...fifty-five cents a page. Do you understand that?

25 MR. DUNLOP: Yes, I do, Your Honour. I just - sorry - I'm not exactly clear on the process. You would submit and order, and then I would contact the Court Reporter's office...

30 THE COURT: If you wish - if you wish to speak...

MR. DUNLOP: ...or something like that?

5 THE COURT: ...on Monday with the Court Clerk in  
Provincial Court here, determine what dates you  
wish to have transcripts for, and you provide those  
dates to the Court Clerk and I will ask my  
secretary to obtain those dates from her, and I  
will initiate an order for transcripts on those  
10 dates. And therefore the Court will pay whatever  
the full cost is for those, but I'll also ask that  
a copy be made for you at the copy rate, but you'll  
have to pay for them if you want them.

MR. DUNLOP: Yes. I appreciate that, Your Honour.

THE COURT: Is that correct, Madam Reporter?

MADAM REPORTER: That's correct.

15 THE COURT: Is that how it's done? Yes. So I - do  
I take it sir that we have your undertaking for  
purposes of these proceedings that you will pay for  
the - the - the copy cost for those transcripts?

MR. DUNLOP: Yes, Your Honour.

20 THE COURT: All right. All right. Madam Clerk if  
you might give Mr. Dunlop the phone number for the  
Provincial Court office here, he can then  
communicate with that office on Monday. They'd be  
closed now, so you're not going to be able to get  
25 that information today.

MR. DUNLOP: Sure.

THE COURT: All right?

MR. DUNLOP: Thank you very much.

30 **...Adjourned**

**CERTIFICATE OF RECORDING**  
**EVIDENCE ACT, SUBSECTION 5(2)**

5 I, **MARION HUNT**, certify that this document is  
a true and accurate transcript of the recordings of  
**R. v DUNLOP** in the Ontario Court of Justice, held  
at 50 Eagle Street West, Newmarket, Ontario, taken  
10 from recordings 4911-203-211-2009, 4911-203-212-  
2009, 4911-203-213-2009 and 4911-203-214-2009  
previously certified in Form 1.



15 \_\_\_\_\_  
MARION HUNT, CVR  
Court Reporter

20 Photostatic copies of this transcript are not  
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Hunt (in blue ink), and accordingly are in  
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25 Courts of Justice Act, January 1, 1990.

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