COURT FILE NO: M42702

COURT OF APPEAL FOR ONTARIO
PROVINCIAL OFFENCES

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

-and-

SHAWN CASSISTA

Applicant/Appellant

MOTION RECORD

SHAWN CASSISTA
[redacted]
MISSISSAUGA ON.
[redacted]

COURT FILE NO: M42702

COURT OF APPEAL FOR ONTARIO

PROVINCIAL OFFENCES

BETWEEN:

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Respondent

and

SHAWN CASSISTA

Applicant/Appellant

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Tab 1

NOTICE OF MOTION M42702

COURT OF APPEAL FOR ONTARIO

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

-and-

SHAWN CASSISTA

Applicant/Appellant

NOTICE OF MOTION TO EXTEND TIME FOR LEAVE TO APPEAL
NOTICE OF MOTION FOR LEAVE TO APPEAL PURSUANT TO s.131 (or 139) OF THE PROVINCIAL OFFENCES ACT

SEPT. 18, 2013 10:AM

TAKE NOTICE that a motion will be made before the presiding judge at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, on the ~~15th~~ day of ~~August, 2013~~, at ~~10:00am~~ or soon after that time as this motion can be heard, for an order under s. 131 (or 139) of the Provincial Offences Act granting leave to appeal for conviction and sentence from the judgment of Justice B Duncan which was given/ delivered by mail – document dated 28th day of May, 2013 – soon after the court appearance at the City of Brampton on the 10th day of May, 2013 dismissing an appeal by the Applicant/ Appellant, Shawn Cassista, from the judgment of Her Worship Justice M. McLeod given on the 19th day of July, 2012 at the City of Mississauga convicting the Applicant/Appellant on a charge of *Operate Motor Vehicle Without Insurance* contrary to the Compulsory Automobile Insurance Act s. 2 (1) (a). The Applicant/Appellant is also applying for an extension of time in serving this motion for leave to appeal as the time period for serving the documents is over the serving period in which the Applicant/Appellant had received the Judgment via mail. The Applicant/Appellant needed more time in researching and preparing the documentation needed as he is self-represented and overwhelmed with financial obligations and personal matters at this time.

THE SPECIAL GROUNDS FOR LEAVE TO APPEAL ARE:

1) The FACTUM AND AUTHORITIES document the Applicant/Appellant filed was never addressed and it appears as though no attention was given to it at all. The focus of the appeal was that of 11(d) Charter issues in which the Applicant/Appellant did not get a fair hearing, as he was not heard at all on some matters. In regards to the Appeal, he was not heard **again** – the Applicant's/Appellant's many hours of research and work that were put into his FACTUM AND AUTHORITIES document was completely absent of Justice Duncan's judgment. Therefore, Justice Duncan's thirteen page judgment, REASONS FOR JUDGMENT, is completely off topic as it did not address the 11(d) Charter issues (three (3) counts) or any of the lawful

reasoning the Applicant/Appellant brought to the attention of the court in his FACTUM AND AUTHORITIES book.

2) The presiding Justice argued overwhelmingly for the Crown. The transcript will show that the Crown had very little to say and that the presiding Justice created arguments that the Applicant/Appellant addressed, therefore failing in his duty to act as a neutral party. It would be noteworthy to mention that the Crown failed to argue the 11(d) Charter issues addressed in the Applicant's/Appellant's FACTUM AND AUTHORITIES book (see the Crown's FACTUM OF THE RESPONDENT).

3) The presiding Justice erred when he conducted a bias hearing. The transcript of the appeal will reveal this. An earlier transcript from the application for the appeal – the first appearance by the Applicant/Appellant in applying for the appeal, reveals that the same presiding Justice (Duncan) displayed biasness against the Applicant/Appellant after the Crown prejudiced the Applicant/Appellant when they associated the Applicant/Appellant with a group or movement – and then failed to treat the Applicant/Appellant fairly as an individual exercising his right to a fair and impartial trial to establish the facts and law.

4) The presiding Justice denied the right of the Applicant/Appellant to record the hearing according to the Courts of Justice Act. The transcript will reveal that the presiding Justice ordered the Applicant/Appellant to remove his recording device and claimed that it was at the court's discretion to allow recordings other than the court's – and did so without proof of claim. As a result of this action, delays in preparing court documents and making justice swift have occurred. With these actions, the presiding Justice had obstructed justice.

5) The presiding Justice erred in his judgment regarding the Applicant's/Appellant's accusation of the Crown intentionally lying to the presiding Justice on the day of the conviction (July 19th, 2012). After numerous false dates were made by the Crown and the presiding Justice asking questions to clarify the dates, which were once again falsely stated by the Crown, the Crown then corrected the mistake while doing so in a disparaging manner. Justice Duncan did not realize that Justice McLeod did not catch the correction. For if she did, she would have responded with something like, "hold on one second, you just told me on 3 occasions that this was the date, now your telling me it's a different date – so which date is it?" This entire deception, from the Justice's point of view, made the Applicant/Appellant look as if (in the words of Justice McLeod herself) he was "playing fast and loose with the process" and as a result, the Applicant/Appellant was denied the right to bring forward motions and a trial ensued, which the Applicant/Appellant was completely not prepared for.

6) In his REASONS FOR JUDGMENT, Justice Duncan made a claim on the record that Disclosure in this matter is "not needed at all." This is completely contrary to the landmark Supreme Court of Canada case **R. v Stinchcombe [1991] 3 S.C.R. 326**.

7) In his REASONS FOR JUDGMENT, Justice Duncan maintains that the Applicant/Appellant does not have the right to be heard – that he is undeserving of a fair hearing based on the **Meads v Meads** case. This case appears to have some similarities to certain factors being brought up by the Applicant/Appellant, but until the Applicant/Appellant has been allowed to bring his arguments to the attention of the court in full scope, it would be a great injustice to not allow the Applicant/Appellant to do so. The Applicant/Appellant has attempted to bring arguments

via motions to the court that are **sound in legal principles** and that are **supported by case law** – and has done so unsuccessfully.

OTHER NOTEWORTHY GROUNDS FOR APPEAL:

8) In his REASONS FOR JUDGEMENT, Justice Duncan made a claim on the record that the onus was upon the Applicant/Appellant "to prove that he was insured". The Applicant/Appellant was "attempting" to make claims via motions – supported by case law and the fundamental principles of law that Canada is founded upon – that the Compulsory Automobile Insurance Act a) does not have jurisdiction over the Applicant/Appellant and, b) is completely opposed to freedom in nature AND that the **onus would have been upon the Crown** to prove otherwise once the Applicant/Appellant made his case. The fundamental principle of law – *"The necessity of proving always rests upon the claimant"* ***Semper necessities probandi incumbit ei qui*** – supports the Applicant's/ Appellant's claim and Justice Duncan failed in seeing that this was a matter "of law" and not "the alleged facts."

THE GROUNDS FOR APPEAL ARE:

1) The FACTUM AND AUTHORITITES document the Applicant/Appellant filed on February 6th, 2013 was never addressed at all. Whether the presiding judge did not have it in his possession or he ignored it completely is unknown by the Applicant/Appellant. Regardless, it is not fair to a party if they are not heard fully – the Applicant/Appellant was denied Natural Justice.

The Law:

Canadian Charter of Rights and Freedoms
Proceeding in criminal and penal matters

Section 11. Any person charged with an offence has the right

(*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal

Fundamental principles in law:

Justitia nemini neganda est ***"Justice is to be denied to no one."***
Audi alteram partem ***"Hear the other side."*** **No one should be condemned unheard.**

Natural Justice is defined in The Dictionary of Canadian Law, 3rd Edition as:

Two main components, the right to be heard and the right to a hearing from an unbiased tribunal.

2) The presiding Justice erred when he argued overwhelmingly for the Crown. The proceeding conducted by Justice Duncan was unfair as he **created arguments on behalf of the Crown** and did not act as a neutral party.

The Law:

Canadian Charter of Rights and Freedoms
Proceeding in criminal and penal matters

Section 11. Any person charged with an offence has the right

(*d*) to be presumed innocent until proven guilty according to law in a **fair** and public hearing by an independent and **impartial** tribunal.

[Emphasis added.]

3) The presiding Justice erred when he conducted a bias hearing.

The Law:

Canadian Charter of Rights and Freedoms
Proceeding in criminal and penal matters

Section 11. Any person charged with an offence has the right

(*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and **impartial** tribunal

Natural Justice is defined in The Dictionary of Canadian Law, 3rd Edition as:

Two main components, the right to be heard and the right to a hearing from an ***unbiased*** *tribunal.*

[Emphasis added.]

4) The presiding Justice erred when he denied the right of the Applicant/Appellant to record the hearing according to the Courts of Justice Act.

The Law:

Courts of Justice Act
Prohibition against photography, etc., at court hearing

136.(2) Exceptions

(2)**Nothing** in subsection (1),

(b) prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the

sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22).

[Emphasis added.]

5) The presiding Justice erred in his judgment regarding the Applicant's/Appellant's accusation of the Crown intentionally lying to the presiding Justice on the day of the conviction (July 19th, 2012).

The Law:

The landmark Supreme Court of Canada decision **R. v. Stinchcombe [1991] 3 S.C.R. 326**

> *"Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."*

6) In his REASONS FOR JUDGMENT, Justice Duncan erred by claiming that Disclosure in this matter is "not needed at all."

The Law:

The landmark Supreme Court of Canada decision **R. v. Stinchcombe [1991] 3 S.C.R. 326**

"It is difficult to justify the position which clings to the notion that the Crown has no legal duty to disclose ***all*** *relevant information. The* ***arguments against the existence of such a duty are groundless*** *while those in favour, are, in my view, overwhelming."*

"The principle has been accepted that ***the search for truth is advanced rather than retarded*** *by disclosure of* ***all*** *relevant material."*

"This review of the pros and cons with respect to disclosure by the Crown shows that there is no valid practical reason to support the position of the opponents of a broad duty of disclosure. Apart from the practical advantages to which I have referred, there is the overriding concern that failure to disclose ***impedes the ability of the accused to make full answer and defence.*** *This* ***common law right*** *has acquired new vigour by virtue of its inclusion in s. 7 of the Canadian Charter of Rights and Freedoms as one of the* ***principles of fundamental justice.***"

*"**Without request, the accused is entitled**, before being called upon to elect the mode of trial or to plead to the charge of an indictable offence, whichever comes first, and thereafter:*

> **(d)** *to receive a copy of any statement made by a person whom the prosecutor proposes to call as a witness or anyone who may be called as a witness;*
> **(e)** *to receive any other material or information known to the Crown and which tends to mitigate or negate the defendant's guilt as to the offence charged, or which would tend to*

reduce his punishment therefore, notwithstanding that the Crown does not intend to introduce such material or information as evidence."

[Emphasis added.]

7) In his REASONS FOR JUDGMENT, Justice Duncan erred in his judgment when he stated that the Applicant/Appellant should not be heard.

The Law:

Canadian Charter of Rights and Freedoms
Proceeding in criminal and penal matters

Section 11. Any person charged with an offence has the right

(*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

Fundamental principles in law:

Justitia nemini neganda est ***"Justice is to be denied to no one."***
Audi alteram partem ***"Hear the other side."*** **No one should be condemned unheard.**

Natural Justice is defined in The Dictionary of Canadian Law, 3rd Edition as:

Two main components, the right to be heard and the right to a hearing from an unbiased tribunal.

To: The Registrar
And to: Her Majesty the Queen

IN SUPPORT OF THIS MOTION THE APPLICANT/APPELLANT RELIES UPON THE FOLLOWING:

1) Justice Duncan's REASONS FOR JUDGMENT document.

2) Court transcript from Applicant's/Appellant's first appearance to request an appeal which was heard on December 14th 2012.

3) Court transcript from Applicant's/Appellant's Appeal which was heard on May 10th 2013.

4) Portions of the Applicant's/Appellant's FACTUM AND AUTHORITIES book that prove it was filed and that of its contents.

5) The Crown's FACTUM OF THE RESPONSE – their response to the Applicant's/Appellant's FACTUM AND AUTHORITIES book.

6) The Applicant's/Appellant's closing arguments in response to the Crown's FACTUM OF THE RESPONSE.

THE RELIEF SOUGHT IS:

An order granting leave to appeal from the judgment of Justice B Duncan which was given/ delivered by mail – document dated 28th day of May, 2013 – soon after the court appearance at the City of Brampton on the 10th day of May, 2013.

The Applicant's/Appellant's address for service is:

[redacted]
Mississauga, Ontario
[redacted]

The Applicant's/Appellant's address is:

[redacted]
Mississauga, Ontario
[redacted]

DATED AT City of Toronto this 18th day of July, 2013.

Signature of Applicant/Appellant

Tab 2

COURT OF APPEAL FOR ONTARIO
PROVINCIAL OFFENCES

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

-and-

SHAWN CASSISTA

Applicant/Appellant

NOTICE OF APPEAL

(UNDER S. 131 (OR 139)
OF THE PROVINCIAL OFFENCES ACT)

PARTICULARS OF THE CONVICTION:

1) The place of the conviction was in the City of Mississauga.

2) The trial judge was M. McLeod.

3) The appeal judge was B. Duncan.

4) The offence of which the defendant was convicted was *Drive Motor Vehicle Without Insurance* contrary to the Compulsory Automobile Insurance Act s. 2(1) (a).

5) The defendant pled Not Guilty.

6) The length of the trial was about 30 minutes.

7) The sentence imposed is a $5,000 fine with $1,225 in additional fees.

8) The date of the conviction was the 19th day of July, 2012.

9) The date of the sentencing was the 19th day of July, 2012.

10) Justice B. Duncan mailed (post marked May 30th 2013) out his judgment at the end of May. His judgment is dated May 28th 2013.

11) Justice B. Duncan dismissed the appeal from both the conviction and the sentence.

The Applicant/Appellant appeals his conviction upon grounds involving questions of law alone and also appeals his sentence.

The grounds for the appeal are:

1) The Applicant's/Appellant's 11(d) Charter right was infringed upon on four (4) counts.
2) The Applicant's/Appellant's right to Natural Justice was infringed upon on three (3) counts.
3) The Applicant's/Appellant's right to record the hearing for the purpose of taking notes was infringed upon according to s. 136(2) (b) of the Courts of Justice Act.
4) The appeal judge erred in his decision regarding the Crown's duty to perform efficiently contrary to **R. v. Stinchcombe [1991] 3 S.C.R. 326**.
5) The appeal judge erred in his decision regarding the Crown's duty to disclose all relevant material contrary to **R. v. Stinchcombe [1991] 3 S.C.R. 326**.

An order granting leave to appeal from the judgment of Justice B Duncan's which was given/ delivered by mail – document dated 28th day of May, 2013 – soon after the court appearance at the City of Brampton on the 10th day of May, 2013.

The Applicant's address for service is:

[redacted]
Mississauga, Ontario
[redacted]

The Applicant's address is:

[redacted]
Mississauga, Ontario
[redacted]

Dated this 18th day of July, 2013.

Shawn Cassista
[redacted]
Mississauga, ON
[redacted]

Tab 3

Courts of Justice Act / R.R.O. 1980, Reg. 200
Loi sur les tribunaux judiciaires / R.R.O. 1980, Règl. 200

SUMMONS TO DEFENDANT
SOMMATION ADRESSÉE AU DÉFENDEUR

Under Section 22 of the Provincial Offences Act
Aux termes de l'article 22 de la Loi sur les infractions provinciales

Ontario Court of Justice Province of Ontario / Cour de justice de l'Ontario Province de l'Ontario

TB 558602

You are charged with the following offence
Vous êtes accusé(e) de l'infraction suivant

On the / Le 17 day of / jour de MAY yr / an 2010 at / à 12:15 M

Name / Nom CASSISTA SHAWN A
Last Name / Nom de famille — First Name / Prénom — Middle/Initials

Address / Adresse [redacted]
Number and street / N° et rue

MISSISSAUGA ONTARIO [redacted]
Municipality/Municipalité — P.O./C.P. — Province — Postal code/Code postal

At / À CAWTHRA RD NORTH OF DUNDAS ST MISSISSAUGA
Municipality/Municipalité

Did commit the offence of
Vous avez commis l'infraction suivante

OPERATE MOTOR VEHICLE WITHOUT INSURANCE

Contrary to / Par dérogation à COMPULSORY AUTOMOBILE INSURANCE ACT
Section / Article 2(1)(a)

Therefore you are commanded in Her Majesty's name to appear before the Ontario Court of Justice	**À ces causes, au nom de Sa Majesté, vous êtes sommé(e) de comparaître devant la Cour de Justice de l'Ontario**
At / À 950 BURNHAMTHORPE RD W MISSISSAUGA	On the / Le 23 day of / jour de JUNE
yr / an 2010 at / à 9:00 AM	Courtroom/Salle d'audience
and to appear thereafter as required by the court in order to be dealt with according to law.	et de comparaître par la suite chaque fois que le tribunal l'exigera de façon à ce que vous soyez jugé(e) selon la Loi.

Issued this day - Délivré ce jour 17 MAY yr / an 2010

Signature of Provincial Offences Officer
Signature de l'agent d'infractions provinciales

Summons confirmed / Sommation confirmée ☐	Summons cancelled / Sommation annulée ☐
this / le ___ day of / jour de ___ yr / an 20__ by / par	A judge or justice of the Peace / Juge ou juge de paix

Driver's Licence No. / N° du permis de conduire [redacted] Class / Catégorie G Cond / Restriction —

Sex / Sexe — Birthdate / Date de naissance D/J M Y/A — Plate No. / N° de plaque d'immatriculation — Juris / Aut — Commercial Y/O

[redacted]

CVOR / CEOVU Y/O — NSC / CNS Y/O — CVOR No. - NSC No. / N° du CEOVU - N° du CNS

Officer No. / Matricule de l'agent de police 1324 — Unit / Groupe

Defendant's Copy
Copie du défendeur

Note: This summons is issued under Part III of the Provincial Offences Act.
Cette sommation est émise aux termes de la partie III de la Loi sur les infractions provinciales.

Current Payment Slip

Ontario Court of Justice
Provincial Offences Office

City of Mississauga
P.O. Box 527, Station "A"
MISSISSAUGA ON L5A 4L5

Phone: 905-615-4500
Fax: 905-615-4587

Docket Date Year JUL 19 2012 Month _____ Day _____

Case No. 10-001942

Court Room No. 3161- M2 @ 10:30

Defendant's Name CASSISTA

Fine (1) $5,000

Service Cost $5.00

Victim Fine Surcharge to be added (see below) _____

TOTAL PAYABLE _____

Time To Pay 1 year.

Court Clerk's Signature _____

You can pay this fine on the Internet by going to www.mississauga.ca/paytickets or www.paytickets.ca
A service charge of $3.00 will apply. If you choose to pay by Internet allow 24 hours for the system to be up-dated with your trial results.

Important Notice

All fines are subject to a Victim Fine Surcharge. It is your responsibility to pay the fine plus the surcharge within the time given. Failure to pay within the given time period may result in a suspension of your driver's licence and/or collection agency enforcement. Do not wait for the notice in the mail.

The Victim Fine surcharge set out in column 2 applies to the range of fines set out in column 1.

Column 1 Fine Range ($)	Column 2 Surcharge Range ($)
0-50	10
51-75	15
76-100	20
101-150	25
151-200	35
201-250	50
251-300	60
301-350	75
351-400	85
401-450	95
451-500	110
501-1000	125
Over 1000	25% of Actual Fine

Note

O. Reg. 161/00 pursuant to Section 60.1 of the Provincial Offences Act, provides the legislative authority for the Victim Fine Surcharge *BFS).

Ontario Court of Justice
Provincial Offences Office
City of Mississauga
P.O. Box 527, Station A
Mississauga ON L5A 4L5

Cour de justice de l'Ontario
Bureau Des Infractions Provinciales
La Ville de Mississauga
C.P. 527, Succursale A
Mississauga ON L5A 4L5

Phone No./No de tél: 905-615-4500

To/À:

000524
SHAWN CASSISTA
[redacted]
MISSISSAUGA ONTARIO [redacted]

Notice of Fine and Due Date
Avis d'amende et d'échéance

You have been convicted of an offence, and you owe the amount noted below.

Vous avez été déclaré(e) coupable d'une infraction et vous devez payer l'amende indiquée ci-dessous.

Place of Offence / Lieu de l'infraction	Offence Date / Date de l'infraction	Offence / Infraction
CAWTHRA RD	17/05/10	OPERATE VEH.NO INSURANCE

Due Date / Échéance	File No. / No de dossier	Plate No./No de plaque d'immatriculation	Conviction Date / Date de condamnation	Amount Due/Montant exigible
DD/MM/YY - JJ/MM/AA 19/07/13	31619991000194200	[redacted]	DD/MM/YY - JJ/MM/AA 19/07/12	$6255.00 Includes fines, costs and Victim Fine Surcharge Comprend les amendes, les dépens et la suramende compensatoire

For most Provincial and Municipal offences, an additional administrative fee of $20.00 will be charged if the fine is not paid within fifteen days of the due date.

If you have already paid the amount due, please disregard this notice.

Pour la plupart des infractions provinciales et municipales, des frais administratifs supplémentaires de 20 $ s'ajoutent si l'amende n'est pas p dans les 15 jours qui suivent la date d'échéance.

Si vous avez déjà payé le montant exigible, veuillez ne pas tenir compte présent avis.

FAILURE TO PAY THIS FINE BY THE DUE DATE MAY RESULT IN:

- **Suspension of your driver's licence and the imposition of a licence reinstatement fee.**
- **Informing the Credit Bureau of the debt, which may affect your credit rating.**
- **Referral to a Private Collection Agency for formal collection proceedings.**

LE DÉFAUT DE PAIEMENT DE L'AMENDE AU PLUS TARD À LA DATE D'ÉCHÉANCE PEUT ENTRAÎNER LES ÉVENTUALITÉS SUIVANTES:

- **Suspension de votre permis de conduire et imposition de frais administratifs pour le rétablissement du permis.**
- **Communication à l'agence d'évaluation du crédit des renseignemer relatifs à votre dette, ce qui peut nuire à votre cote de solvabilité**
- **Renvoi du dossier à une agence de recouvrement privée qui prendr les mesures officielles de recouvrement.**

See reverse side of this form for **additional legal measures which may be taken** if payment is not received by the due date.

Voir le verso de la formule pour savoir les **autres mesures légales pouv être prises** si le montant n'est pas reçu au plus tard à la date d'échéanc

ATGME3 (3/99)

COMPLETE AND DETACH THIS PORTION AND SEND WITH PAYMENT.
SEE BACK FOR MAILING AND PAYMENT INSTRUCTIONS.

REMPLISSEZ CETTE PARTIE, DÉTACHEZ-LA ET ENVOYEZ-LA AVE VOTRE PAIEMENT. LES DIRECTIVES D'ENVOI PAR LA POSTE ET L MODES DE PAIEMENT SONT INDIQUÉS AU VERSO.

NAME AND ADDRESS / NOM ET ADRESSE: SHAWN CASSISTA
[redacted]
MISSISSAUGA ONTARIO [redacted]

☐ CHEQUE/MONEY ORDER ENCLOSED / CHÈQUE/MANDAT JOINT
☐ VISA / VISA
☐ MASTERCARD / MASTERCARD

Conviction Date / Date de condamnation	Authorized Amo / Montant autori
19/07/12	$6255.00

CARD NUMBER / NUMÉRO DE LA CARTE

CARD EXPIRY DATE: (MONTH) (MOIS) ___ (YEAR) (ANNÉE) ___
DATE D'EXPIRATION:

CARDHOLDER'S SIGNATURE
SIGNATURE DU DÉTENTEUR DE LA CAR

Tab 4

Court File No. M42702

ONTARIO COURT OF APPEAL

AFFIDAVIT of Shawn Cassista
Sworn September 9th, 2013

I, Shawn Cassista, of the City of Mississauga, in the Province of Ontario, MAKE OATH AND SAY/AFFIRM:

1) THAT, the grounds for appealing to the Ontario Court of Appeal are justified as the judgment made by Justice Duncan in the Brampton Court of Appeal does not serve in the best interest of the public; and,

2) THAT, Justice Duncan made numerous errors in his judgment and they are outlined in the NOTICE OF MOTION filed at the COURT OF APPEAL FOR ONTARIO and is within the MOTION RECORD and again addressed by me in this affidavit; and,

3) THAT, I am of the understanding that the purpose of the courts is to determine the **facts and law**; and,

4) THAT, I am of the understanding that I have the right to a fair and impartial hearing on any alleged charges; and,

5) THAT, I am of the understanding that any Act of law that infringes on any of my rights can be challenged; and,

6) THAT, I am of the understanding that Supreme Court of Canada case law represents a source of supreme law in Canada; and,

7) THAT, I am of the understanding that Canada is founded upon principles and that these principles represent self-evident truths in law; and,

8) THAT, I am of the understanding that law dictionaries represent an authoritative source of law in determining words in Acts and the law itself; and,

9) THAT, with these understandings, I have **attempted to bring the law to the forefront, in the form of motions that are sound in principle and supported by case law**, to ensure that all my rights are upheld and that justice is done in a fair and proper manner, and on the public record; and,

10) THAT, from my understanding of what took place in court on July 19th, 2012, was that the Crown took the position of trying to prove whether I did or did not have insurance on my privately owned vehicle – **the facts**; and

11) THAT, I was attempting to bring forward motions claiming that the Compulsory Automobile Insurance Act has no force and effect on me because it contradicts fundamental principles of our common law, case law and infringes on my liberties – so my position was to challenge **the law** before trial; and,

12) THAT, the appeal judge, Justice Duncan, failed to recognize my right to challenge the law; and,

13) THAT, Justice Duncan failed in his duty to perform for reasons mentioned in the NOTICE OF MOTION and this affidavit. Referring to his REASONS FOR JUDGMENT (the judgment) which is included within the MOTION RECORD, as well as the transcripts, they are as follows:

MY OVERVIEW OF JUSTICE DUNCAN'S APPEAL JUDGMENT…

a. There are plenty of issues that can be addressed from Justice Duncan's REASONS FOR JUDGMENT, but the main question remains did I get a fair appeal hearing? The answer simply is NO. Justice Duncan's focus of the hearing and judgment were centered on matters that should have been argued at trial. The fact that we even addressed any of those matters at the hearing was after the fact as those issues should not have been the topic of discussion. The same can be said for his written judgment REASONS FOR JUDGMENT. For example, why is it that the facts surrounding the 11(b) challenge was even being discussed? I wasn't prepared to discuss this in the appeal. I was only prepared to discuss the fact that I was denied the right to bring it forward before trial. **That is what the focus of the appeal hearing should have been about.**

b. Justice Duncan failed in his duty to act as a neutral party. The Crown provided myself and the court with their FACTUM OF THE RESPONDENT dated April 25th, 2013 – a couple of weeks before the appeal hearing (May 10th, 2013) and well after my FACTUM AND AUTHORITIES book was filed on February 6th, 2013. The nature of the Crown's document was solely focused on the 11(b) issue and not the 11(d) issues brought forward in my document. Referring to the judgment, for whatever reason, there is little to no mention of the 11(d) issues I brought forward in my documents, specifically the FACTUM AND AUTHORITIES book. Justice Duncan's REASONS FOR JUDGMENT is completely absent of PART III of my FACTUM that is within my FACTUM AND AUTHORITIES book – PART III is titled "ISSUES AND THE LAW". I endured many hours of research along with the compilation of the book itself and this section addresses three 11(d) Charter issues that were the focal point of the appeal and the law that supports the issues. As the transcript clearly evidences, the acting prosecutor had little to say at the hearing – meaning: Justice Duncan created arguments for the Crown and those arguments were not central to the appeal issues I brought forward.

c. Justice Duncan clearly conducted a bias hearing. At the first appeal hearing date of December 14th, 2012 (copy of transcript at Tab 9) when I gave grounds for an appeal to be heard, the prosecutor prejudiced me when she stated I was part of a group or movement. Justice Duncan, who was also the presiding judge that day, turned hostile towards me immediately and at one point inappropriately told me to "shut up". Throughout both the hearing dates and in his judgment document, it is clear that he did

not act in an impartial and unbiased manner while dealing with this matter. Also, if the court recordings of both hearings were to be listened to, it would show that Justice Duncan's demeanor towards me was that of "talking down" to me – completely unprofessional. **I must once again make it clear that all I have been doing since this process began is asserting my rights to challenge the Act that I believe is infringing on my liberties.** Regardless of whether I am part of a group or not, I am still entitled to a fair hearing as an individual answering to his accusers.

d. I may have at one point during the proceedings brought into question whether an Act of law applies to me or not (it was actually a matter of jurisdiction). Now there appears to be a question of whether an Act of law applies to Justice Duncan? The Courts of Justice Act defines the law in regards to court proceedings and section 136(2) of that Act is clear about allowing a self-represented individual recording his/her own hearing "for the purpose of taking notes". This can only accelerate the legal process as there can be great delays in acquiring transcripts that would further delay the preparation of other court documents. Anyone preventing this right should be considered to be committing the act of "obstructing justice". There is also another matter that should be considered which is not mentioned in the Act and that is for the right of a self-represented party to check for accuracy of a transcript with a recording – people make mistakes. And it just so happens that there is a few mistakes that I have noticed from memory. On page 2, line 8 of the transcript where it states "11(b)", it should read 11(d). I distinctly remember correcting the judge when he started the hearing believing the focus of the hearing was over an 11(b) matter. On page 10, line 5 where it reads that I said, "facts in law", that is incorrect as it should read, "facts and law". And on page 11, line 10, there should not be an "a" at the end on that line. Little things? What if there are more inaccuracies that are now "lost"? Can justice be done if this is the case? It appears as though Justice Duncan obstructed justice when he denied me the right to record the appeal hearing or maybe he "broke the law" that he swore an oath to uphold? He claimed that it was "at the court's discretion" to allow the recording or not and did so without providing any proof of that claim whatsoever.

e. Addressing point 5 in my NOTICE OF MOTION for this appeal, I admit that this matter appears to be more of an issue of FACT, not LAW. Never the less, it is an error Justice Duncan has made within his judgment. The trial judge was mislead after she asked for clarification of the dates regarding disclosure pickup and availability. After the Crown provided the wrong dates, it made me look as if I was abusing the court process. Then, later, the Crown attorney made the correction – slipped it in there actually – when the trial judge wasn't paying attention. There should have been a response from the trial judge on the correction because she asked for clarity of the dates at least twice and received a distinctive wrong answer from the Crown. I did not get the chance to speak in defense of these false dates. (In short, the Crown led the trial judge to believe that disclosure was available for pickup for 1 year before I actually picked it up and that I avoided picking it up. The fact is, I asked for it at least 3 times and when I was notified that it was available, I picked it up 10 days later.) This was a great injustice as it created a hostile environment for me and the whole matter concerning this issue should be seriously looked at. I have filed complaints which appear to be going nowhere at the

moment. No one has invited me to sit down and go over this matter which I was, and still am, willing to do. If these kinds of errors are allowed to continue, the integrity of our court system is seriously in question.

f. The matter of Disclosure. In his REASONS FOR JUDGMENT, Justice Duncan made a claim on the record **completely contrary to Supreme Court case law** that Disclosure in this matter is *"not needed at all"*. This is a most obvious error on his part and what is very disturbing is the fact that I provided this same case law in my FACTUM AND AUTHORITIES book – which evidences that he never looked at it. In **R. v Stinchcombe [1991] 3 S.C.R.326,** Justice Sopinka, **writing for a unanimous court**, states:

> ***Without request**, the accused is entitled, before being called upon to elect the mode of trial or to plead to the charge of an indictable offence, whichever comes first, and thereafter:*
>
> (d) *to **receive a copy of any statement made by a person whom the prosecutor proposes to call as a witness**...*

So, in contrary to Justice Duncan's claim, which has no merit when you compare it to this Supreme Court case law, I was fully entitled to know what the officer would say in his testimony and the delays in bringing the matter to trial swiftly were the fault of the Crown as I was never obligated to request disclosure and **they never provided it to me on my first 2 appearances in court – which occurred before my 2 requests and then my motion to obtain disclosure, which occurred "1 year after being charged"**.

I will also add that my requests for the definition of the word "person" (further disclosure – because person has more than one meaning) as it pertains to the Act, was my due diligence in gathering **all the facts surrounding this Act of law** as I was unclear at the time after reading the Act itself. My request was not unreasonable – again, from **R. v Stinchcombe [1991] 3 S.C.R.326**:

> *It is difficult to justify the position which clings to the notion that the Crown has no legal duty to **disclose all relevant information**. The **arguments against the existence of such a duty are groundless while those in favour, are, in my view, overwhelming**.*
>
> ***The principle has been accepted that the search for truth is advanced rather than retarded by disclosure of all relevant material**.*

My actions of challenging the law are justified as I believe that my natural rights are being infringed upon and by asserting my rights to use the courts to determine the law is a journey in search of the truth.

g. Justice Duncan has declared on the record/in his judgment that I "do not have the right to be heard" based on the **Meads vs Meads** case. In paragraph 8 of the judgment, Justice Duncan, felt justified labeling me an Organized Pseudo-legal Commercial Argument (OPCA) litigant by pointing out that, in my writings, *"I have a fondness for Latin*

phrases and citation of legal dictionaries." I am completely perplexed by this comment and even further perplexed that other judges would not recognize these as sources of authority – and/or rule of law. The Latin phrases mentioned represent the "principles in which Canada was founded upon (our common law heritage)" – known as Maxims of Law – and what is the purpose of law dictionaries other than to decipher the meaning of words used in law? From *The Dictionary of Canadian Law, third edition:*

- MAXIM: *A general principle; an axiom.* And AXIOM is defined in the same dictionary as: *A truth which is indisputable.*
- Example: *Maxime ita dicta quia maxima est ejus dignitas et certissima auctoritas, atque quod maxime omnibus probetur* ***A maxim is so called because its dignity is chiefest and its authority is the most certain, and because it is most approved by all.***
- Another example of a long settled principle in law (a maxim): *Actori incumbit onus probandi,* ***The burden of proof rests upon the plaintiff.***

h. Also in paragraph 8 of the judgment, Justice Duncan associates me with a group or movement when he accuses me of practicing the "bizarre" "dual/split person" routine by identifying myself to the court as "Shawn-Alan of the family Cassista". How I sign my name and/or refer to myself is no justification for denying me my rights to a fair hearing.

OTHER ISSUES WITHIN JUSTICE DUNCAN'S JUDGMENT WORTH ADDRESSING…

i. I must add that, I do not know the scope of the arguments that have been brought before the courts by these alleged OPCA litigants, but from what it sounds like, none of them appear to be in the context of what I now consider my arguments/challenges to be, that being: 1) jurisdiction and the fact that the Crown has not proven that it has any over me as far as the interpretation of the Act goes, and 2) a section (7) Charter Application as my liberties are clearly being infringed upon. Both of these arguments were sound in principle and supported by case law. I did bring forward the first motion orally on a previous date before trial, but I did not appeal it because the transcript wasn't available and I was focused on the 11(d) issues. As for the second motion/argument, the only way that this would have been acknowledged as a non OPCA argument, was if it were heard "fully", but again, it wasn't heard at all.

j. In paragraph 9 of the judgment, Justice Duncan claims that my motions were "easily recognizable well worn OPCA arguments" – without even hearing them. He goes on to say that the theme of my argument is "not being bound by or subject to the authority of the courts". This is absolutely incorrect and if the one motion that I was denied, was heard, the courts would have seen that I was bringing forward a legitimate argument. In other words, **I am using the courts to establish the law and taking advantage of the authority of the courts that are there to protect all my rights at law**. What Justice Duncan stated here was completely groundless. To be clear, I am not an OPCA litigant or part of the Freeman on the Land group, I have been accused of something and I am

exercising my right to a fair trial to determine the facts and, most specifically, the law. Until I have been heard fully, the courts will never know the true nature of my argument and that has to be considered a great injustice – denying me Natural Justice.

k. Justice Duncan brings up the issue regarding the motion I filed to obtain the definition of the word "person" as it pertains to the Act. I feel that, since he keeps bringing this up, I should answer to it… Very thorough research has shown that the Act applies to corporations (artificial persons) only and not natural persons (human beings). The Act itself does not define the word and it is the obligation of the Crown to once again disclose that information (**Stinchcombe** *supra*). Once again, I was merely doing my due diligence in deciphering the law. Further research (after the request for further disclosure) revealed that the Legislative Act, 2006 provided the answer I was looking for to solidify a lengthy motion/argument challenging "jurisdiction". Here are a few Maxims of Law in support of my actions:

> *A verbis legis non est recedendum,* ***The words of a statute must not be departed from.*** A court is not at liberty to disregard the letter of a statute in favor of a supposed intention. (BL7 P1620)
>
> *Misera est servitus, ubi jus est vagum aut incertum* ***"It is a wretched state of slavery which subsists where the law is vague or uncertain."*** (BL4R P1151)

l. On page 11, line 12 of the main transcript, Justice Duncan appears to make a completely false statement regarding laws imposed upon people by the democratic process which forces people into social contracts and that we are governed by the legislators. It is my understanding that we have a constitution which is a rule book for the governing body (legislators) and if that rule book isn't followed correctly and laws are passed that conflict with it, they have no force and effect. More specifically, we have a charter of freedoms and that charter is "supreme" in protecting the natural rights of the free people. The legislators can pass all the laws that they want, but if they infringe upon the people's God-given natural rights that are protected by the Charter, then they would have no force and effect if successfully challenged.

m. The fact that I was not shown any mercy as a self-represented litigant both at trial and at the appeal is grounds for an appeal as it begs the question of fairness. The previous hearings went beyond showing any kind of mercy, they were hostile environments for me and I felt intimidated, which affected my ability to adequately present my arguments in the courtroom. As well, In Justice Duncan's judgment at paragraph 32, he further suggests that future trial courts should give much harsher penalties such as: elevated fines; denying one's unalienable right to use their private property (vehicles) and use of the public roads; and even seize their private property without due process. These actions and comments appear to go beyond unfair.

n. Justice Duncan's REASONS FOR JUDGMENT, as well as the 2 transcripts provided, evidences that he has some kind of obsession with the **Meads v. Meads** case. It wasn't even his duty to bring this case law to the forefront in the first place as it was the Crown's

argument to make. And as I stated at (c) and further supported at (g) (h) (i) (j), there are no grounds for comparing my matter to **Meads** and other related case files. I have the right to challenge any Act of law that infringes on my freedoms. It not only appears that Justice Duncan has been misguided by some case law, but he also seems to have lost his way when it comes to ensuring that Natural Justice is a given and that I have every right to be heard without the "assumption" that I am bringing forward the same arguments made by others in some group or movement that I am not associated with.

o. On pages 5-6 of the judgment, Justice Duncan asks, *What hearing did these motions deserve?* Referring to the 2 previous motions mentioned (i), he refers to these motions as: being without merit, scams that abuse the legal process and should be rejected without submission or representation. And on page 6, paragraph 17, he states that if the trial Justice read the motions and heard submissions, "it is inevitable that the motions would have been rejected and dismissed." This appears to be an assumption of evidence. How is that fair to assume the context of an argument before even hearing the whole of the argument itself?

14) THAT, I have also learned through further research of the law, that the motion that I was denied the right to bring forward, should have been in the form of a Charter (7) Application; and,

15) THAT, with everything that occurred during the appeal hearing and in Justice Duncan's judgment the question that should have been asked, discussed and answered in short was, "Did I get a fair hearing on the 3 counts mentioned in my FACTUM AND AUTHORITIES book? YES or NO?" **There should not have been any discussion on the nature of the motions at the hearing and whether or not an 11(b) Charter challenge was justified – it was now irrelevant. These issues should have been addressed before the trial was conducted – not at the appeal hearing or in Justice Duncan's REASONS FOR JUDGMENT.**

SWORN/AFFIRMED before me at
the city of Toronto, in the
Province of Ontario, this
day of September 9th, 2013

Shawn Cassista

A Commissioner for taking affidavits.

Janusha Jeyabalan
a Commissioner, etc., Province of Ontario
for the Government of Ontario,
Ministry of the Attorney General.

Tab 5

CASE/FILE NO: 3161-999-10-001942

ONTARIO COURT OF JUSTICE
PROVINCIAL OFFENCES APPEAL COURT
(REGION OF PEEL)

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

and

SHAWN CASSISTA

Appellant

APPELLANT'S FACTUM AND AUTHORITIES

SHAWN CASSISTA
[redacted]
MISSISSAUGA ON [redacted]
OFFENCE NO: TB 558602
CASE/FILE NO: 3161-999-10-001942

CASE/FILE NO: 3161-999-10-001942

ONTARIO COURT OF JUSTICE

PROVINCIAL OFFENCES APPEAL COURT

(REGION OF PEEL)

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

and

SHAWN CASSISTA

Appellant

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Reference: July 19th 2012 transcript, page 9, line 15 to page 10, line 13

30. On July 19th 2012, the presiding Justice denied the right of the Appellant to bring forward the Motion that was adjourned from July 9th 2012, and that was to be heard on this trial date.

Reference: July 19th 2012 transcript, page 9, line 15 to page 10, line 13

PART III
ISSUES AND THE LAW

ISSUES

(a) Did the court err in being fair and just by not hearing the Appellant's 11(b) Charter application that was properly before the court?

(b) Did the court err in being fair and just by not giving the Appellant an opportunity to respond to the Crown's false allegation about the delays in bringing this matter forward?

(c) Did the court err in being fair and just by denying the Appellant's pre-trial motion?

THE LAW

Section 11(d) of the Charter of Rights and Freedoms provides that:

> Any person charged with a criminal offence has the right
> ...
> (*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal

In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817

> *"The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision."*

Reference: *Baker v. Canada*, Tab 14

Natural Justice is defined in The Dictionary of Canadian Law, 3rd Edition as:

> *Two main components, the right to be heard and the right to a hearing from an unbiased tribunal.*

Fundamental and long settled principles of law state:

> Justitia nemini neganda est ***"Justice is to be denied to no one."***
> Audi alteram partem ***"Hear the other side."*** **No one should be condemned unheard.**

REMEDY

Once a violation of section 11 (d) is established, the minimum remedy is a stay of proceedings. Indeed, the court no longer has jurisdiction to try an accused once an 11 (d) violation occurs; in effect, section 11 (d) recognizes the individual's right **not** to be tried for this occurrence. It is submitted that to allow a trial to begin or continue after a violation of section 11 (d) would be for the judiciary to participate in further violation of the Charter – section (b), "to be tried within a reasonable time". Therefore, the judiciary must be in a position to fashion an effective remedy when confronted with an individual's Charter rights. It is respectfully submitted that this must be the case when such a remedy may conflict with societal interest to proceed with trials when Charter rights have and are continuing to occur. As Mr. Justice Cory noted in *R. v. Askov*, "to conclude otherwise would render meaningless a right enshrined in the Charter as the supreme law of the land."

Reference: *R. v. Askov*, Tab 15

PART V
ANALYSIS

(a) Did the court err in being fair and just by not hearing the Appellant's 11(b) Charter application that was properly before the court?

31. In essence, the Appellant submits that the delay in getting his case to trial is attributable to the actions of the Crown in not providing Disclosure in a timely manner. It is the Crown's responsibility to provide Disclosure and even though the Appellant made requests, they are to do so *"without request"* according to *R. v. Stinchcombe*.

Reference: *R. v. Stinchcombe*, Tab 15, after blue tab

32. Furthermore, full disclosure was never provided after requests for further disclosure were made by the Appellant. In *R. v. Stinchcombe* it was made clear as to the duty of the Crown in disclosing all relevant information:

> *"It is difficult to justify the position which clings to the notion that the Crown has no legal duty to disclose all relevant information. The arguments against the existence of such a duty are groundless while those in favour, are, in my view, overwhelming."*
>
> *"The principle has been accepted that the search for truth is advanced rather than retarded by disclosure of all relevant material."*
>
> **Reference: *R. v. Stinchcombe*, Tab 15, after blue tab**

33. The Appellant submits that he is not responsible for any of the delays which elapsed in setting the initial trial date and the trial dates that followed up to the January 4th 2012, trial date. These delays will have accounted for more than nineteen (19) months after the issuance of the Summons to Defendant.

34. The Appellant submits that this argument was not allowed to be addressed on July 19th 2012, and that constitutes a violation of the Appellant's right to a fair trial as guaranteed by section 11 (d) of the Charter.

(b) Did the court err in being fair and just by not giving the Appellant an opportunity to respond to the Crown's false allegation about the delays in bringing this matter forward?

35. The Appellant respectfully submits that the timeline of events are, and have always been, readily available to the court and to the Crown. The facts are there for "all" parties to see and research. When the Crown Prosecutor made allegations that prejudiced the Appellant, the presiding Justice did not address the Appellant on any of his claims, nor did she carefully analyze the documentation before her.

36. The Appellant submits that, even though a simple and accurate one page Timeline Sheet was offered to the court to speed up the process and provide a response from the Appellant, the right to be heard in regards to the Crowns allegations, was completely ignored and then denied latter in the proceedings.

37. So once again, the Appellant submits that he was denied the right to address this matter as well on July 19th 2012, which also constitutes a violation of the Appellant's right to a fair trial as guaranteed by section 11 (d) of the Charter.

(c) Did the court err in being fair and just by denying the Appellant's pre-trial motion?

38. The Appellant submits that he brought forward a written motion on July 9th 2012, in advance of the trial date. The Motion was put over to be heard on the trial date due to time issues. Regardless of the nature of the Motion, it should have been addressed.

39. The Appellant submits that on a third count, he was once again denied the right to be heard, which also constitutes a violation of the Appellant's right to a fair trial as guaranteed by section 11 (d) of the Charter.

Conclusion

40. It is the Appellant's position that this case falls squarely into the circumstances discussed in *Baker, supra*. That the values underlying the duty of procedural fairness relate to the principle that the individual affected should have the opportunity to present their case fully and fairly and with an open impartial process, be established.

41. Therefore the Appellant submits that this legal process has not been treated in a fair and just manner as the Appellant's right to be heard was denied on July 19th 2012, and constitutes a violation of the Appellant's rights as guaranteed by section 11 (d) of the Charter.

Remedy

42. As noted earlier, when a Charter right has been violated, for it to continue, would be further violation of an individual's Charter rights. The Appellant therefore submits that a stay of the proceedings should be entered in this case.

PART VI
RELIEF SOUGHT

43. The Appellant seeks an order allowing the appeal application and ordering that the proceedings against him be stayed pursuant to section 11 (d) of the Canadian Charter of Rights and Freedoms.

Tab 6

Information #10-001942

Ontario Courts of Justice
Provincial Offences Division

BETWEEN

SHAWN CASSISTA

APPELLANT

AND

HER MAJESTY THE QUEEN

RESPONDENT

FACTUM OF THE RESPONDENT, HER MAJESTY THE QUEEN

PART ONE – NATURE OF THE CASE

1. The Appellant was charged on or about the 17th day of May 2010 at approximately 12:25 PM, was on a highway in the area of Cawthra Road, in the City of Mississauga, did commit the offence of being the Owner of a Motor Vehicle, did operate the motor vehicle on a Highway when it was not under contract of automobile insurance, contrary to the Compulsory Automobile Insurance Act, Section 2(1)(a)

2. A Trial was held on the 19th day of July 2012 at 950 Burnhamthorpe Road West. The Presiding Justice of the Peace, Her Worship McLeod, at the conclusion of the trial found the Appellant guilty of the charge.

PART TWO – SUMMARY OF FACTS

1. The location of the incident was in the area of Cawthra Road near Dundas Street in the City of Mississauga.
Transcript July 19, 2012 *Page 15 Lines 24 to 25*

2. After some discussion Mr. Cassista entered a plea of not guilty to the charge of Operate No Insurance.
Transcript July 19, 2012 Page 13 Line23 to 29

3. The vehicle being operated was Pontiac Montana with licence plate number ALMH 783 was stopped for a speeding violation.
Transcript July 19, 2012 Page 15 Lines 27 to 30

4. The individual was identified by an Ontario driver's licence as Shawn Cassista and the investigating Officer was satisfied with the Defendants identification at the time incident and in court.
Transcript July 19, 2012 Page 15 Lines 28 to 30, Page 16 Lines 1 to 6

5. Constable Smewing was provided ownership and driver's licence by Mr. Cassista.
Transcript July 19, 2012 Page 16 Line 7 to 8

6. Constable Smewing demanded Mr. Cassista to provide proof of insurance for the motor vehicle. At no time through the duration of the traffic stop did Mr. Cassista provide any proof of insurance for the said motor vehicle.
Transcript July 19, 2012 Page 16 Lines 10 to 11

7. Constable Smewing provided Mr. Cassista with his business card and allowed Mr. Cassista two days to proof of insurance, either by letterhead or pink slip.
Transcript July 19, 2012 Page 16 Lines18 to 23

8. Constable Smewing waited until May 31, 2010, 14 days after the traffic stop before proceeding to submit the Part 3 Summons, and The Officer had not received any information from Mr. Cassista that the vehicle had valid insurance.
Transcript July 19, 2012 Page16 Lines 23 to 25

9. From the traffic stop on May 17, 2010 until the trial date of July 19, 2012 Constable Swewing was never presented any valid insurance on the vehicle being operated that day.
Transcript July 19, 2012 Page 16 Lines 27 to 30

10. Mr. Cassista did not question the Constable Smewing about this evidence.
Transcript July 19, 2012 Page 17 Line 12 to 24

11. Documents were surrendered to the court under the hand and seal the registrar of motor vehicles to show that Mr. Cassista was the registered owner of the Pontiac Montana on the 17th of May 2010.
Transcript July 19, 2012 Page 17 28 to 32, Page 18 Lines 1 to 11

12. Mr. Cassista when questioned by court chooses not to say anything in defence to the charge.
Transcript July 19, 2012 Page 18 Lines 13-15

13. Her Worship McLeod convicted Mr. Cassista of the charges of Owner Operate without Insurance, as there was no evidence to contradict the Crown's Case.
Transcript July 19, 2012
Page 18 Lines 20 to 32, Page 19 Lines 1 to 32, Page 20 Line 1 to 13

PART THREE – ISSUES AND LEGAL ARGUMENTS

To the date this factum was produced the by the Crown, is still not in receipt of transcripts dated the following;

- June 23, 2010
- August 26, 2011
- January 4, 2012
- July 9, 2012

(The Crown has based its factum only on transcripts received from 20th December 2010 and the 27th May, 2011)

Mr. Cassista appeared on the 20th of December 2010 on a Defence Motion to change the original scheduled trial date for further defence preparation. Mr. Cassista motion was granted and a new Trial date was set for the 20th day of July 2011 @ 10:30am Courtroom M#2 (Transcript December 20, 2010 Pages 1 to 3)

Mr. Cassista again appeared on the 27th of May 2011 on another Defence motion to change the date of the 20th of July 2011 (Transcript May 27, 2011 Page 3) indicating he had not yet receive full disclosure. The Defence motion was granted and a new trial date was set for the 4th day of January 2012 @ 1:30 pm M#4. (Transcript May 27, 2011 Page 5 Lines 15, 17)

Mr. Cassista first requested disclosure dated on the 9th of February 2011. According this request and fax confirmation is in the Appellants authorities. Accordingly, a second request was made by Mr.Cassista on April 19, 2011 and subsequently he filed a motion on the 27th of May, 2011 on his request to change a July 20, 2011 Trial date.

The Crown supplied disclosure to Mr. Cassista and was ready on May 30, 2011. Mr. Cassista only provided a telephone number in which to be contacted when disclosure was available.

On May 31, 2011 at 1:03 pm notations where made by the disclosure clerk indicating the number provided by Mr. Cassista was called and a male spoke, who then requested a call back in ten minutes. The notations from the disclosure indicated that the same number was called another two times between 1:03pm and 1:07pm. The message received from the number dialled was the voicemail of "Shawn". A message was left accordingly indicating disclosure was ready to be picked up.

With the first request given on February 9th, 2011 to May 31, 2011 The Crown maintains a minor delay in preparation of disclosure was not unreasonable in this case.

The Crown picked up a form which indicates that the disclosure was picked up on the 9th day of June 2011 and was signed by Mr. Shawn Cassista. The Crown provided Mr. Cassista all the necessary disclosure to make a full answer and defence to the charge.

On the 30th day of August 2011 and November 25, 2011 Mr. Cassista requested further disclosure as to definitions of natural and artificial person.

The Crown was ordered by Her Worship Estaq Syme to provide the definition. The Crown provided a more than sufficient definition by November 23, 2011. At trial Mr. Cassista first objects to The Crown referring to his "Schedule A" (Transcript July 19, 2012 Page 8 Lines 14 to 22)

Mr. Cassista later admits that he was not satisfied with the answer provided. (Transcript July 19, 2012 Page 9 Lines 1 to 5) However, the Crown was satisfied with the answer provided and maintains these definitions do not unable Mr. Cassista from full answer and defence to the charge.

The Crown takes offence to Mr. Cassista motions and requesting for definitions of a person and the antics that transpired through the duration of this case. (All transcripts provided)

Mr. Cassista has indicated on a number of occasions that the Crown has lied to the court, however has not shown how this took place. Which all transcripts provided by the Appellant will indicate the opposite of that statement.

On 19th July 2012 Mr. Cassista attempted to submit a Timeline Sheet of the events surround this matter. Her worship McLeod referred to the information before her and put her findings of the information on record. Her Worship did not error in referring to the information which also provides timeline history. (Transcript July 19, 2012 Page 3 Lines 26-32, Pages 4 Lines 1-32)

The Respondent position Mr. Cassista has not conducted himself accordingly. The court can take notice that he did not respond to his name when it was called. He indicated he wished to be addressed by Shawn of the Cassista family. The Respondent submits it is a lack of respect to the court and its function.

The Respondent submits that Mr. Cassista plead not guilty to these charges on the 19th day of July 2012. With the transcripts that are available to the Crown, even the timeline given in the Appellant's factum that all the delay attributed in this case falls at the feet of Mr. Cassista. The Respondent gave all that is required with respects to disclosure for the defendant to make full answer and defence. Mr. Cassista filled motions that are not prudent to the charges as he is a person and he was charged accordingly.

The Respondent maintains there is no Charter Rights and Freedoms violation. Even if Mr. Cassista felt his rights were violated, he still pleads not guilty to the charge of No Insurance. He could have presented evidence in contrary of the Crown's case he decided to call no defence.

The Respondent submits the charge of No Insurance is a reverse onus charge and Mr. Cassista has yet to bring any evidence to show the Pontiac Montana in question had valid insurance on the 17th day May 2010.

PART FOUR – ORDER SOUGHT

1. The Crown asks this Honourable Court to uphold the conviction against the Appellant.

Dated 25th April, 2013

J.Stinson
7755 Hurontario Street
Suite #506
Brampton, Ontario L6W 4T6
Tel: 905-456-4777 ext#5249
Fax: 905-456-4780

TO: Shawn Cassista
[redacted]
Mississauga, Ontario
[redacted]

Tab 7

CASE/FILE NO: 3161-999-10-001942

ONTARIO COURT OF JUSTICE
PROVINCIAL OFFENCES APPEAL COURT
(REGION OF PEEL)

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

and

SHAWN CASSISTA

Appellant

APPELLANT'S CLOSING ARGUMENTS

Shawn Cassista
[redacted]
Mississauga, Ontario
[redacted]

PART I
CONTEXT OF CROWN'S FACTUM (RESPONSE)

1. The Crown's response focuses on some of the facts related to the Trial, and some of the facts related to the events that may have occurred at the scene of the alleged offence. The Crown uses transcript evidence from the trial portion of the July 19th 2012 Transcript.

2. In the ISSUES AND LEGAL ARGUMENTS portion of the Crown's response, the Crown addresses matters regarding missing transcripts, previous motions and Disclosure.

3. The Crown states in their response that they have been offended by the Appellant for ordering clarification of a word within the Compulsory Automobile Insurance Act and accuses the Appellant of displaying antics during the legal process.

4. The Crown states that the Appellant has "indicated on a number of occasions" that the Crown has lied and how the Appellant has "not shown how this took place" and further goes on to say that the transcripts provided indicates the opposite.

5. The Crown submits that the Appellant showed a lack of respect to the court and its function because the Appellant requested being addressed by his family name.

6. The Crown states it maintains that there is no Charter Rights and Freedoms violation.

7. The Crown submits that the burden of proof is upon the Appellant to show he had valid insurance on a vehicle.

PART II
APPELLANT'S RESPONSE TO THE CROWN'S FACTUM

8. All of PART TWO – SUMMARY OF FACTS addresses events that may have occurred and the source for these facts is the July 19th 2012 Transcript – the Trial portion of it. Expecting the Trial to not go ahead, the Appellant was not prepared for it because, due to administration errors, the transcripts for his 11(b) filing were not available. The Appellant did not prepare for an actual Trial because he was expecting another date to be set.

9. The Crown also addresses issues regarding missing transcripts. The only transcript needed by the Appellant to show that an 11(d) Charter Right has been violated is the July 19th 2012 Transcript. The Crown addresses matters relating to other subject matter within the content of the Appellant's FACTUM AND AUTHORITIES and that information is there simply to bring to full scope all of the facts of the case – these matters are not central to the grounds of the 11(d) Charter Application.

10. The Crown addresses issues regarding motions the Appellant had filed. Some of the motions were in regards to obtaining the Disclosure documents as the Appellant did not receive them until after thirteen (13) months of the alleged event. According to **R. v Stinchcombe [1991] 3 S.C.R. 326,** in which this landmark Supreme Court case decision puts great emphasis on matters relating to Disclosure, **Justice Sopinka** states:

> *"Without request, the accused is entitled to...full disclosure."*

11. There was a motion for "Further" Disclosure and this motion wasn't unreasonable. The purpose of our courts is to determine the facts and law and if there is anything that is unclear as to what the Crown alleges, the Appellant has every right to motion the court to have the Crown make it clear. The Appellant submits that all he has done is his due diligence to acquire the facts and law regarding this matter and that it is the Crown's duty to provide clarity regarding the law, for ***Misera est servitus, ubi jus est vagum aut incertum "It is a wretched state of slavery which subsists where the law is vague or uncertain."*** (BL4R P1151).

12. **Justice Sopinka** is very clear on the matters of Disclosure, for it gives the accused the opportunity to make full answer and defense with less disputing, and that is all the Appellant has been attempting to do. With this in mind, **Justice Sopinka** states:

> *I am confident that disputes over disclosure will arise infrequently when it is made clear that counsel for the Crown is under a general duty to disclose <u>all</u> relevant information.*

13. Since this matter is, in the words of the July 19th 2012 convicting Justice of the Peace, "quite a serious charge", the same respect regarding Disclosure must be given to this case as in any, and it has not. The Appellant submits that any argument the Crown addresses regarding Disclosure and the obligation of the Defense to obtain it is the responsibility of the Crown.

Reference: July 19th 2012 Transcript, page 1, line – 27

14. As for the accusation of the Appellant using antics in the courtroom, the Appellant submits that it is the general duty of the Crown to clarify the content of the Disclosure document if the Defense requests to save time and resources and determining the facts and law and the Appellant refutes the allegation of antics in the courtroom.

15. The Appellant rightfully accused the Crown of lying to the court because they have. They have misled the court then and they are now misleading the court again with their response. The Respondant's FACTUM, in response to the Appellant's FACTUM AND AUTHORITIES, states that the Appellant "indicated on **a number of occasions that the**

crown lied to the court". The Appellant's FACTUM AND AUTHORITIES states, "the prosecution **lied to the court regarding the numerous dates** that were set and the motions that were filed." Here are some of the lies within the July 19th 2012 Transcript (which needs to read in its entirety) with Mr. Anthony Bruno acting as prosecutor:

> *"So the defendant did bring a motion forward, your worship. The motion I have in front of me was from May the 7th, 2011* (actual date was May 27th, 2011) *to which it indicates there was-he requested full disclosure on the said matter, however the crown brief would indicate that there were a number of phone calls and Mr. Cassista did avoid any type of disclosure requests that were made by our office."*

After, the Court asks for clarification on the Appellant avoiding pick up of the Disclosure, Mr. A. Bruno responds with the following:

> *"Correct, through numerous phone calls. We have documentation here that suggest either he would say, and I can tell you this through personal..."* (He was cut off at this point but it sounded like he was going to say something like "...through personal experience or knowledge".)

The Court interrupts and asks for dates and he responds with the following:

> *"It was left on May the 30th and it's still in our possession."* (The Court asks' what year?) Mr. A. Bruno responds, *"2011"*.

He goes on to say,

> *"Although the requests were made on a number of occasions, February the 9th, 2012."* (A fax request was made on this date in 2011, not 2012.)

And the Court responds,

> *"He requested disclosure on February 9th, 2012 but it's been sitting in the crown's office since May 30th, 2011?"*

Mr. A. Bruno responds,

> ***"Correct. Yes, your worship."***

The Court clarifies the May 30th date and then Mr. A. Bruno goes on to say,

> *"That was left here at Police Bureau in Mississauga* ***to which it was not picked up.***"

The Court once again asks for clarification of the date Disclosure was available and Mr. A. Bruno once again responds,

> *"Disclosure was ready on May 30th, 2011 after the first request on February 9th."* (On April 19th, 2011 another fax request was sent and then a motion was

filed on May 27th, 2011 so this would be three (3) requests by the Appellant before May 30th, 2011.)

Mr. A. Bruno does get it right once soon after all the above statements, but not without using more words that would continue to vilify the Appellant when he states the following,

> *"He finally picked up the disclosure request on June 9th, 2011 at 3:30, after two phone calls were made on May the 30th* (picked up **just ten (10) days later**). *One time he actually picked up the phone and stated to call him back and then the next time it went straight to his voicemail. So he actually does have the disclosure picked up as of June 9th, 2011."*

16. There is more of this behavior from the Crown as Mr. A. Bruno makes it appear as if the Appellant is wasting the courts time. The tactic worked as the court didn't even ask the Appellant to comment on the accusations made by Mr. A. Bruno (one of the grounds for the 11(d) Charter Application). The Appellant submits, that because of the disparaging manner shown by the Crown, the presiding Justice immediately turned hostile towards the Appellant and made the following comments,

> *"You're playing fast and loose here."*
>
> *"Motion, shmotion, I've had enough of your motions. I've had enough of this stuff."*
>
> *"You're playing fast and loose with the process and it's not going to happen anymore. We're going to have-right now we're going for it, we're going to have a trial"*

PART III
THE TRUE NATURE OF THE APPEAL

17. The Appellant filed a Notice of Appeal in the Court of Appeal on three (3) counts that his Section 11(d) Charter Rights have been violated.

18. The Appellant's right to: 1) Bring forward and have an 11(b) Charter Application heard was denied; 2) Respond to the allegations that he was responsible for the delays in bringing the matter to trial went unheard; and 3) Bring forward a motion that evidences that the Compulsory Automobile Insurance Act is not in harmony with the fundamental principles of law.

PART IV
CLOSING ARGUMENTS

19. Although the Appellant, in his FACTUM AND AUTHORITIES, brought forward matters relating to dates of Disclosure pickup and the court being misled by the Crown, the true nature of the Appeal Application is regarding an 11(d) Charter matter – the Appellant was denied the right to be heard on more than one occasion. In the Crown's response, their FACTUM does not address the Charter issue, only matters unrelated to the grounds for this appeal, such as the ones mentioned above.

20. Clearly, the July 19th 2012 Transcript provides the evidence needed in determining that the Appellant's right to a fair trial – to be heard – was violated. Considering the Crown's FACTUM (response) doesn't even address the matter, proves that there is no argument to be made. The Appellant submits that motions brought forward before a trial must be heard in fairness to the party bringing it forward, and in this case, the presiding justice did not allow the Appellant's motions to be heard.

21. Furthermore, when the Crown alleged that the Defense was fully responsible for avoiding Disclosure and wasting the court's time with frivolous motions, it is only fair that the presiding justice allow the Defense to respond to the accusation. The Appellant submits that he was not given the opportunity to respond to the allegations as the July 19th 2012 Transcript evidences.

22. The court should also consider that the Appellant is self-represented. With the courts serving the purpose of conducting fair hearings to get to the truth regarding the facts and law, showing mercy to self-representing individuals should also be paramount and mandatory for the purpose of achieving fair play. The Appellant submits that the July 19th 2012 Transcript reveals that no mercy whatsoever was given to the Appellant.

23. The laws mentioned in the Appellant's FACTUM (under section PART III), are quite clear in regards to fairness and being heard. Therefore, the Appellant asks this Honourable Court to allow the appeal and reverse the conviction entered on July 19th 2012 by Justice McLeod and provide the Appellant with remedy as he pled not guilty to the alleged offence.

Tab 8

Citation: *R. v. Cassista*, 2013 ONCJ 305

ONTARIO COURT OF JUSTICE

Central West Region
Brampton Ontario

BETWEEN:

HER MAJESTY THE QUEEN

-and-

SHAWN CASSISTA

REASONS FOR JUDGMENT

Duncan J.

1. The defendant/Appellant was charged by information under Part III of the *POA* with driving without insurance, specifically:

> On or about the 17th day of May 2010 at the City of Mississauga in the Central West Region did commit the offence of being the owner of a motor vehicle licence number [redacted] did unlawfully operate the said motor vehicle on a highway to wit: Cawthra Road at approximately 12:25 pm when it was not insured under a contract of automobile insurance contrary to section 2(1)(a) of the Compulsory Automobile Insurance Act

2. He was ultimately tried over 2 years later, on July 19 2012. He was convicted and sentenced to pay the minimum fine under the statute of $5000. He was given 12 months to pay. He has appealed conviction and sentence.

The evidence:

3. At trial a police officer testified as to the stopping of a vehicle for speeding on May 17 2010. He identified the defendant as the driver. No proof of insurance was produced and in fact no claim of having insurance was made by the driver/defendant. The officer gave the defendant his card with phone and fax number and invited him to present proof of insurance. The defendant did not do so. On May 31the officer charged him with the offence and proceeded to have him summonsed.

4. The defendant did not challenge the officer's evidence in cross examination and did not testify. He made no submissions. In the over two years leading up to and including the trial, the defendant presented no proof or claim to having been insured at the relevant time. He still has not done so, three years later.

The Appeal:

5. As the defendant did not challenge the evidence or deny or dispute his guilt, one may well wonder what these protracted proceedings and this appeal are about. The Notice of Appeal lists no grounds but rather states that grounds will be provided when transcripts become available. The Appellant has since filed a factum and a written "Closing argument" and presented oral submissions. Stated broadly, the appeal is based on the contention that the defendant was denied the right to a fair trial because the trial Justice refused to hear the various motions that he had filed.

6. Indeed the trial Justice *did* refuse to hear the motions. She reviewed the history of proceedings, commented that the defendant was playing "fast and loose with

the Court" and declared "motion shmotion" , 'enough is enough" and that "this process has been abused enough". She directed that the trial proceed and it did - over the defendant's pouting. The issue now is whether the trial Justice committed an error of law in proceeding in this way or whether a miscarriage of justice was occasioned.

7. To determine the issue, the nature of the motions must be identified and appreciated. The motions in question were:

    1. A Motion to stay proceedings on the grounds that the *HTA and the CALA* apply only to corporations.[1]

    2. A Motion to stay proceedings on the grounds that a law only applies to those who consent to it.

    3. A Motion to stay proceedings for breach of the right to trial within a reasonable time.

The first two Motions – OPCA arguments

8. It is apparent that the defendant is an "Organized Pseudo-legal Commercial Argument" (OPCA) litigant of the type described, labeled, dissected, and exposed by Alberta Associate Chief Justice Rooke in *Meads v. Meads 2012] A.J. No 980.* While the defendant has not identified himself by any of the many names embraced by OPCA litigants, such as "Freeman on the Land", it is clear that his approach bears many of the OPCA hallmarks and characteristics. For example, his writings show a fondness for Latin phrases and citation of legal dictionaries. He practices the bizarre "dual/split person" routine, identifying himself to the

[1] This motion was actually brought a month before trial on May 28 2012 and was dismissed at that time. For some reason it seemed to still be before the court on the trial date of July 19 2012 (see para 16 below). There is no transcript of May 28. I am prepared to consider, for the benefit of the Appellant, that it was still alive as of the July trial date and was dealt with again at that time by the trial Justice.

court as "Shawn-Alan of the family Cassista" and accompanies this self-identification with mumbo-jumbo about artificial persons and natural persons and being one or the other or both (*Ref: Transcripts December 20 2010, May 27 2011: see Meads para 206; para 245; para 417*).

9. More importantly[2], both of these motions brought by the defendant are grounded on easily recognizable, well-worn OPCA arguments – frequently raised and uniformly rejected by the Courts *(see Meads para 71)*. They are based on a central OPCA theme that the litigant is not bound by the law or subject to the authority of the courts. The theme and many of its iterations have been identified in *Meads* and thoroughly rebuked as nonsense.

10. The first motion - based on the argument that traffic laws only apply to corporations - is built on a twisted path of reasoning to the effect that because the relevant statutes define "persons" as *including* corporations, the law therefore applies *only* to corporations. This argument was identified in *Meads (para 315)* and specifically rejected there and in other decisions cited.

11. The second motion sought a stay of proceedings on the grounds that:

> " the Crown's claim of the Defendant's obligation to enter into a private insurance contract is not in harmony with fundamental principles of law and long upheld rights based on self-evident truths of necessity"

While none too clear, it appears that this argument is based on the contention that the law cannot oblige the defendant to do something - in this case obtain and maintain auto insurance - unless he consents. Put another way, it is a

[2] Being an OPCA litigant in itself has little significance. The focus must be on the defendant's case, and not the defendant himself: *R v Martin (2012) N.S.J. No 689.*

contention that a person can unilaterally opt-out of a law. In his brief [3] submission before me on appeal, the Appellant confirmed that that was indeed his position. Again *Meads* identifies and eviscerates the argument (*Meads para 174; para 379-38, para 405-6).*

What hearing did these Motions deserve?

12. It is beyond doubt that every litigant before the court has the right to be heard. But how much of a hearing is he entitled to? Clearly the Court is not obliged to sit passively and patiently until the litigant exhausts his breath, decides to stop and sits down. A Court is entitled to give arguments and motions short shrift. But how short is too short? The answer must depend on the circumstances, including the nature of the argument and the bona fides with which it is presented.

13. In my view, OPCA arguments are entitled to the shortest possible shrift. They are patently without merit and, as shown in *Meads,* have never been successful in any Court. They are arguments that are not fact or case specific and therefore can have no more merit in one case than in another – that is, none. As neatly summarized by Justice O'Donnell in *R v Duncan[2012]OJ No 6405* in dealing with OPCA arguments:

> Such arguments are a waste of the court's time and resources, a selfish and/or unthinking act of disrespect to other litigants and deserving of no further attention, energy or comment.

14. Moreover OPCA strategies and arguments are not *bona fides* but rather are designed and presented with intention to disrupt. They are scams that abuse the legal process. (*Meads para 70-71)* They require a strong and swift judicial response. In *Meads* the Court suggested that OPCA material should not even be

[3] It was brief because I cut him off when it became apparent what nonsense he was arguing.

accepted for filing by the Court clerks and, if accepted, should be reviewed by a judge and "without further submission or representation by the litigants" be rejected *(Meads para 256)*

.

15. Accordingly, it is my view that the only hearing that such arguments are entitled to is to have the Court read and appreciate the grounds upon which the motion is based. If the motion contains incomprehensible gibberish or discloses patently ridiculous or meritless arguments or raises known rejected OPCA themes, then the Court is entitled to dismiss the motion or refuse to hear it - without further inquiry, representation or submission.

16. In this case the record is not clear that the trial Justice went even this minimal distance and informed herself as to the substance of both of the motions - though it is also not clear that she did not. She did refer to the "corporations" argument at one point (p10) and commented that the defendant was "playing" and that "enough was enough". The other motion was not mentioned but that may be because it was incomprehensible or at least not easily described with a label. The impression however is that, given the history to that point, the justice refused to hear any more motions at all, no matter what their character or content. Her similar treatment of the 11b motion supports this impression.

17. But even assuming that the trial Justice did not go far enough and failed to conduct what I consider to be the minimal review of the defendant's material, it is my view that he suffered no miscarriage of justice as a result. This is because, had the trial justice read the motions or even gone further and heard submissions, it is inevitable that the motions would have been rejected and dismissed. They had no merit. There is no point in awarding a new trial,

particularly in these protracted proceedings, in order to have another justice conduct a brief scrutiny of the defendant's motions before dismissing them. [4]

The 11b Motion

18. The motion to stay for alleged breach of section 11b is a different story. It was not one that the justice could decline to hear or could summarily dismiss. It was not an OPCA argument or otherwise one of manifest lack of merit. To the contrary, on the face of the record there had been an extraordinary delay that required examination.

19. The trial Justice reviewed the history of delay but with respect, in my view she failed to adequately examine the reasons that gave rise to the delay. Further she misapprehended the history of the proceedings in reading the endorsements on the information as indicating "seven dates specifically for trial" when in fact there had been "only" four trial dates.

20. Further, there were some mis-statements of the case history by the prosecutor, mainly the statement that the defendant did not pick up his disclosure for a year or longer. This was corrected seconds later by the prosecutor himself (P8 L 7). The Appellant's written argument on appeal dwells to the point of obsession with what he calls the prosecutor's "lies", a magnificent example of the pot calling the kettle black. For example the defendant's written factum on appeal in paragraph 2 states:

[4] The trial Justice's refusal to hear motions did not preclude the defendant from making his arguments at the end of the case. The person/corporations argument in particular would, in theory, be aimed at the scope of the statute, a matter going to the substantive question of guilt of the offence. It was not the proper subject matter of a pre-trial motion to stay. The defendant was not prevented from presenting his case; at worst, he was prevented from presenting his case in the form of pre-trial motions to stay proceedings. In any event, by either procedure he was doomed to fail.

> "The date that the initial summons was issued was May 17 2010 and *the only request for delay by the Appellant was on a third trial date of January 4th 2012*".

The transcript record now before me and summarized below betrays this as plainly inaccurate, to describe it charitably.

21. Contrary to the Appellant's contention, with the assistance of the transcripts, there is no significant conflict about any facts that are relevant to the 11b analysis. The chronology is as follows:

- May 17 2010 – date of the offence
- June 3 2010 – information under Part III of POA sworn charging the offence of no insurance. Summons issued returnable June 23
- June 23 2010 – first appearance in court – trial date set for January 12 2011
- December 20 2011 – the defendant brought a motion to adjourn the trial date on the ground that he needed more time to prepare his defence. A new date was set for July 20 2011. Note he had not even requested disclosure by this point.
- February 9 2011 – the defendant made his first request for disclosure. By fax
- April 19 2011 – the defendant made his second request for disclosure. By fax
- May 27 2011 – the defendant brought a motion for disclosure saying his earlier requests had not received a response. The Crown was unable to provide any information about that since its disclosure clerk was not available. There was some discussion as to whether the defendant was asking to adjourn the trial as well. The defendant expressed concern that he may not have enough time to prepare once

he received the disclosure. A new trial date was then set for January 4 2012.

- May 30 2011 – defendant was notified that disclosure was ready for pick up (see transcript July 19 2012 P 8)

- August 26 2011 – defendant brought another motion for "additional disclosure" – It was an unusual request asking that the Crown "clarify the meaning of the word "person" as used in the Compulsory Automobile Insurance Act. This was apparently in furtherance of the argument, later advanced, that the Act only applied to corporations. There is no transcript of the Court proceeding on August 26. It is not known whether such "disclosure" was ordered by the court. Whether it was or not, the Crown ultimately answered the defendant's question in writing by letter dated November 23 2011.

- December 21 2011 – the defendant filed a "Notice of Application for Stay of Proceedings" on the grounds of breach of his right to trial within a reasonable time, 11(b). He also filed a "sworn statement" detailing his version of the case history to that point, emphasizing the delays in obtaining initial disclosure and the additional disclosure.

- January 4 2012 – No transcript is provided but the defendant later told the court that he "postponed" that date so he could obtain transcripts for the 11b motion. (see transcript July 19 2012 – P 1-2). A new trial date was set for July 19 2012

- May 28 2012 – the defendant brought a motion to stay proceedings on the grounds that "the HTA and CAIA apply to corporations only". The motion was dismissed. (no transcript provided)

- June 21 2012 - the defendant filed a motion returnable on July 9 seeking a stay of proceedings on the grounds " that the Crown's claim of the Defendant's obligation to enter into a private insurance contract is not in harmony with fundamental principles of law and long upheld rights based on self-evident truths of necessity"

- July 9 2012 – the above mentioned motion was adjourned to be heard on the trial date.

- July 19 2012 – the trial date. The trial justice reviewed the record of proceedings as disclosed by the endorsements on the information and heard a summary of the case history from the Crown. The Court concluded that the defendant was playing "fast and loose" with the Court and abusing the process. She declared that "enough was enough". She declined to entertain any more motions and directed that the trial proceed. The defendant complained that he was being "ambushed". A short recess was called. When court resumed the trial proceeded as described above.

22. In summary, the defendant had 4 trial dates over the two year period. Each date was within the constitutionally tolerable time frame for POA traffic matters: *R v Andrade et al [2011] OJ 4245 (Libman J).* **Each of the three adjournments was at the request of the defendant.** However he seeks to shift responsibility for delay to the Crown by claiming that he was put in a position of having to seek an adjournment because of delayed disclosure.

The Late Disclosure Contention:

23. First it must be appreciated that while a defendant is considered to have a right to disclosure in these matters and that disclosure is provided as a matter of course in the Provincial Offences Court, realistically, in this case, disclosure was not required at all. The defendant had personal knowledge of all of the relevant facts and evidence related to the stop. To the extent that they mattered and may have escaped the defendant's memory, the particulars were set out in the charge itself (see para 1 above). It was his onus to prove that he was insured. What could he possibly learn through disclosure that he didn't already know? The suggestion that it was necessary for full answer and defence is transparently disingenuous.

24. The first adjournment and ensuing delay (Jan 2011- July 2011) was sought by the defendant without reference to disclosure and before any request for same had been made.

25. When disclosure was finally requested by the defendant for the first time in February 2011 there was an unexplained and inordinate delay until May when it was provided. But the question is not whether the Crown is responsible for disclosure being delayed but whether it is responsible for the trial being delayed. This is turn requires consideration of the importance of the disclosure and the timing of its eventual arrival in relation to the trial date: *R v NNM [2006] OJ 1802 (CA) at para 37*. As per above, this is not a case where disclosure was required at all in order for the defendant to go to trial. Further, when the motion for disclosure was brought, the trial was still two months away and albeit an adjournment was suggested by the court, the defendant readily agreed to delay his trial again. The delay in providing disclosure did not necessitate the adjournment and trial delay. Rather it was the defendant's decision and choice that resulted in the delay.

26. As for the second disclosure request re the meaning of "person", this was not disclosure at all. The Crown was not obliged to answer the defendant's questions regarding legal definitions. In any event, no trial delay was occasioned as a result of this unusual exchange since it all happened within the time between the second and third trial date.

27. The third adjournment of the trial date was again at the defendant's request in order to prepare an 11(b) application. Again, that was his decision and his choice. The defendant is responsible for delays caused by applications that he chooses to

bring: *R v NNM supra at para 65*. This is particularly so when the application at that point (and any point) had no merit whatsoever.

28. In summary, the Crown was not responsible for any of the three trial adjournments. They all resulted from requests or, in the one instance, a choice made by the defendant. Apart from that, there was absolutely no prejudice to the defendant. To the contrary he received the benefit of a two year postponement of the inevitable fine.

29. The 11(b) claim has no merit. Any error in the handling of the issue by the trial justice was of no consequence.

30. The appeal from conviction is dismissed.

Sentence appeal:

31. The defendant was fined the minimum amount of $5000. While there is authority under the POA to reduce even a minimum fine, this is not a case in which to do so. In fact, I would suggest that the inference is clear that the defendant does not accept that he is bound by law to insure his vehicle. It is very likely that he will continue to hold this attitude and continue to own and operate his vehicle without insurance. The need for specific deterrence is therefore augmented.

32. The Crown has not appealed sentence and I will not increase the sentence on my own initiative. I would suggest however that in the future trial courts should give serious consideration to elevated fines, licence suspensions, and vehicle impoundment in cases such as this.

33. The appeal from sentence is also dismissed.

May 28, 2013

B Duncan J

A Bruno *for the Crown*
S Cassista *for himself*

Tab 9

Information No. 10-MO001942

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

SHAWN CASSISTA

P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICE B.W. DUNCAN
on December 14, 2012, at BRAMPTON, Ontario

APPEARANCES:

P. John — Counsel for the Prosecution

Shawn Cassista — Self Represented

ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

WITNESS	Exam. in-Ch.	Cr. Exam	Re-Exam

E X H I B I T S

EXHIBIT NO.	PAGE NO.
Proceedings	1

Transcript Ordered	January 25, 2013
Transcript Required by	April 1, 2013
Transcript Completed	April 10, 2013

Friday, December 14, 2012

MS. JOHN: Good morning, Your Honour. Patricia John for the Prosecutions.

THE COURT: Yes.

MS. JOHN: If I can address on the Mississauga motions, number 11, Shawn Cassista.

CLERK REGISTRAR: Okay. Sorry, which line?

THE COURT: Eleven.

MS. JOHN: Eleven.

THE COURT: Cassista.

MS. JOHN: Mississauga motions.

CLERK REGISTRAR: Cassista.

THE COURT: Yes. The no insurance charge?

MS. JOHN: Yes.

THE COURT: What's your name, sir?

SHAWN CASSISTA: Shawn, Shawn Cassista.

THE COURT: Okay.

MS. JOHN: I understand it was a trial matter. He's seeking - he was fined $5000. He's seeking leave to....

CLERK REGISTRAR: Sorry, line number?

THE COURT: Line, line number 11 on the Mississauga motions.

CLERK REGISTRAR: Yes, I could see this is - yes.

THE COURT: Yes?

MS. JOHN: He's seeking leave to appeal and is requesting the fine be waived.

THE COURT: The fine be?

MS. JOHN: Waived pending the appeal.

THE COURT: Okay. Yeah. Was there a trial?

MS. JOHN: Yes, there was a trial.

THE COURT: Okay. Why are you appealing, Mr.

Cassista?

SHAWN CASSISTA: Well, I can't afford to pay the fine - oh, oh, why am I appealing? There's - a, a number of grounds for the appeal.

THE COURT: Mm-hmm.

SHAWN CASSISTA: I actually - I was waiting for the transcripts and I just got 'em yesterday.

THE COURT: Can you summarize them briefly what....

SHAWN CASSISTA: Oh, yeah. Sure.

THE COURT: It's a fairly simple matter.

SHAWN CASSISTA: Yeah. Well, I was....

THE COURT: Would - did you have insurance or didn't you?

SHAWN CASSISTA: Well, no. I'm talking about the whole trial process.

THE COURT: Well, I'm talking about the charge. Did you have insurance or didn't you?

SHAWN CASSISTA: I was, I was pleading not guilty to it.

THE COURT: Yeah.

SHAWN CASSISTA: Okay?

THE COURT: Yeah.

SHAWN CASSISTA: And I'm....

THE COURT: And what was wrong with the trial?

SHAWN CASSISTA: What was wrong with the trial?

THE COURT: Yeah.

SHAWN CASSISTA: Well, I was denied right - my right to bring a couple of motions forward.

THE COURT: Like what?

SHAWN CASSISTA: Well, I was gonna bring a forward - a motion forward to discuss the - to actually

address an 11(b) *Charter* challenge.
THE COURT: Ah-ha.
SHAWN CASSISTA: 'Cause it took 14 months for - or 13 months for me to get the full disclosure.
THE COURT: Mm-hmm.
SHAWN CASSISTA: And that is documented. It should be there in the courts, but there was some misrepresentation...
THE COURT: Okay...
SHAWN CASSISTA: ...as far....
THE COURT: ...so you have an 11, 11(b) argument. Yes.
SHAWN CASSISTA: That's right. And there were some other things that, you know, if I may I can enter some documentation into the record?
THE COURT: Just in a nutshell, what were you arguing about?
SHAWN CASSISTA: In regards to what? The motion? The 11(b) *Charter*?
THE COURT: Well, what are your grounds for the appeal? Before you get an extension of time, which I guess is what you're seeking here, you have to show some arguable merit for the appeal. You have any?
SHAWN CASSISTA: Yeah. Well, yes...
THE COURT: Okay.
SHAWN CASSISTA: ...but the main one is that it took 14 months...
THE COURT: Okay. Got that.
SHAWN CASSISTA: ...or 13 months to get disclosure.
THE COURT: Yeah.

SHAWN CASSISTA: And I will bring in some other documentation. I wasn't prepared to make an argument. Actually, I did - because I did get the transcripts later....

THE COURT: Well, what possible disclosure would you need? I mean you know whether the vehicle is insured or not. You know whether you were driving. It's not exactly a complex matter. What....

SHAWN CASSISTA: Sir, I'm, I'm arguing the - there are other issues that I am making...

THE COURT: Okay.

SHAWN CASSISTA: ...to the court...

THE COURT: Okay.

SHAWN CASSISTA: ...in regards to that and that is one of the reasons why I filed another motion which was not allowed to be heard that day...

THE COURT: Now...

SHAWN CASSISTA: ...and if you review the court....

THE COURT: ...and what was it? What was it?

SHAWN CASSISTA: Oh, it was just the, the, like, you know, with the, the fact that the, the compulsory *Automobile Insurance Act*...

THE COURT: Yeah.

SHAWN CASSISTA: ...is not in harmony with the fundamental principles of the law.

THE COURT: Oh, yeah?

SHAWN CASSISTA: And I was going to make an argument based on that. And I was not allowed to bring forward that argument.

THE COURT: You're not allowed to make it or...

SHAWN CASSISTA: I was not...
THE COURT: ...it was rejected?
SHAWN CASSISTA: ...allowed - I was denied the right to bring it forward to even to be heard.
THE COURT: Really? All right. Okay. What do you say, Ms. John?
SHAWN CASSISTA: And I was not shown any mercy whatsoever in the courtroom that day.
THE COURT: You what?
SHAWN CASSISTA: I was not shown any mercy whatsoever in the courtroom that day as I was defending myself.
THE COURT: Yeah. So what do you say about this, Ms. John? The conviction was July of this year?
MS. JOHN: Yes...
THE COURT: Yeah.
MS. JOHN: ...and he filed his motion in August.
THE COURT: Yeah. Okay.
MS. JOHN: Yeah. I think you still have to come back and argue it.
SHAWN CASSISTA: I....
MS. JOHN: And I see, as he signed his motion Shawn Allen of the Cassista family.
THE COURT: Sorry. Say that again?
MS. JOHN: No. I was watching the - how he signed his motion...
THE COURT: Yeah.
MS. JOHN: ...which is....
THE COURT: I was signing it my family name.
MS. JOHN: Shawn Allen of the Cassista family.
THE COURT: Yeah. What's that....
MS. JOHN: So I'm, I'm going to - so the motion, I

think he's talking about, that he was denied is probably one of the individuals who consider themselves a freeman of the land.

THE COURT: Oh....

SHAWN CASSISTA: Ah, no. Actually, it wasn't.

MS. JOHN: It wasn't?

SHAWN CASSISTA: It wasn't. There was nothing, nothing like that.

THE COURT: Well, what is this about? Of the Cassista family, what's that hoax?

SHAWN CASSISTA: I'm just - I - I'm just signing a signature as my family name, just clarifying my family name.

THE COURT: Well, why wouldn't you write Shawn...

SHAWN CASSISTA: As, as compared to....

THE COURT: ...why wouldn't you write Shawn Cassista?

SHAWN CASSISTA: Well, that's my legal name.

THE COURT: Yeah.

SHAWN CASSISTA: Okay? There's a legal name...

THE COURT: Right.

SHAWN CASSISTA: ...there's a legal name...

THE COURT: And that's what people go by...

SHAWN CASSISTA: ...and a family name. It - by....

THE COURT: ...that's what people sign, that's what people sign important court documents with, right? Wait, what is this stuff?

SHAWN CASSISTA: I'm, I'm just....

THE COURT: You know, I, I, I, I got to say, I have very little sympathy for people like you who come here and play these little games with the

court...
SHAWN CASSISTA: I'm...
THE COURT: ...you know.
SHAWN CASSISTA: ...not playing games with the court, sir.
THE COURT: Yeah, you are playing games with the court. You start signing documents like that, you know. You got a name, Shawn Cassista. You're the, you're the applicant here. You sign your affidavit in that name not this garbage about being of the Cassista family.
SHAWN CASSISTA: With all due...
THE COURT: What is this stuff?
SHAWN CASSISTA: ...with all due respect, sir, I - all I'm trying to do is bring forward....
THE COURT: Well, I don't know that you show any respect for the court. You, you, you treat it as a - as if it's a playground for you.
SHAWN CASSISTA: I'm not treating it as a playground...
THE COURT: Yeah.
SHAWN CASSISTA: ...sir.
THE COURT: Well, what is this junk? You know. I mean really.
SHAWN CASSISTA: Sir, can we get back to the facts at law here based on....
THE COURT: Well, the...
SHAWN CASSISTA: That's what the purpose of the court is...
THE COURT: ...the fact is you have to show some....
SHAWN CASSISTA: ...is it not?

THE COURT: I'm sorry?
SHAWN CASSISTA: Isn't the purpose of the Court...
THE COURT: Yeah. You had a...
SHAWN CASSISTA: ...not to bring forward the facts of law.
THE COURT: ...you had a trial. You were convicted. You come here and you ask for an extension of time...
SHAWN CASSISTA: Well, sir....
THE COURT: ...and, and, and you, you know, you file documents like that.
SHAWN CASSISTA: Okay. Excuse me, sir. If I....
THE COURT: Why should we pay any attention...
SHAWN CASSISTA: ...Okay. Can I just...
THE COURT: ...somebody who's playing games?
SHAWN CASSISTA: ...bring something to your attention here?
THE COURT: What?
SHAWN CASSISTA: Okay. On December 21st an 11(b) Charter application was filed and I did appear in court on January 4th, which was a trial date, that's 2012. And because of the short time frame, there was a - you know, I did not have the transcripts available. So on that date they actually said that I - in order to deal with this properly that, that I needed the transcripts.
THE COURT: This is....
SHAWN CASSISTA: So from there we set up another date for July 19th. And on July 19th...
THE COURT: This....
SHAWN CASSISTA: ...I was approached by a Court Reporter...

THE COURT: Yeah.
SHAWN CASSISTA: ...to present a number of - actually, the - she was going - she gave me two transcripts out of four. Okay. So I didn't have full transcripts to provide the 11(b) Charter application. And I tried to bring that to the attention to the sitting Justice at that time and she didn't want to hear any of it.
THE COURT: Yeah. Well, I'm looking at your, your motion here the motion to grant a stay of proceedings. All this - "Every man is a person not every person is a man", referencing, I guess, Lax Law Dictionary (ph).
SHAWN CASSISTA: Well, that was a motion...
THE COURT: That the....
SHAWN CASSISTA: ...to acquire the definition of the word, "Person"...
THE COURT: Yeah. You know what...
SHAWN CASSISTA: ...as it applies to the....
THE COURT: ...it's garbage. It's absolutely garbage...
SHAWN CASSISTA: Sir, it's....
THE COURT: ...when people like you bring this stuff, clog up the courts with your nonsense as if it's a playground...
SHAWN CASSISTA: Sir...
THE COURT: ...for you.
SHAWN CASSISTA: ...I....
THE COURT: But - just shut-up. This is an - he's only applying for an extension, right?
MS. JOHN: Yes.
THE COURT: And he required an extension because

he had to come to court and enter into a recognizance, right?
MS. JOHN: Yes.
THE COURT: Okay. So I guess we can't deny him that.
MS. JOHN: But should we not look at the one heard...
THE COURT: Yeah.
MS. JOHN: ...even though it's an extension...
THE COURT: Yeah.
MS. JOHN: ...did he have insurance on the vehicle at the time?
THE COURT: Yeah.
MS. JOHN: If he didn't have insurance...
THE COURT: Yeah.
MS. JOHN: ...I'll ask the motion be dismissed.
THE COURT: Yeah.
MS. JOHN: That's the difficulty.
THE COURT: Yeah. I, I - except, except, you know, you know, even if he's completely guilty, he's entitled to an appeal, right? And the only reason he didn't appeal is because of this business about entering a recog and he couldn't get before the court before...
MS. JOHN: Okay.
THE COURT: ...that.
MS. JOHN: Okay.
THE COURT: Okay. So I'm prepared to grant the motion. You'll enter into a recognizance in the amount of the fine. Was it 5000?
MS. JOHN: Five thousand.
THE COURT: Yes. And, and....

MS. JOHN: He...
THE COURT: But....
MS. JOHN: ...he knows he has to order the transcript.
THE COURT: Yes. He has to order the transcript...
SHAWN CASSISTA: I did - I actually....
THE COURT: ...and the time to appeal is extended to January 15, 2013. And I can tell you, Mr. Cassista, if you're - the material you file is of the same tenor as the stuff you filed up until now, your appeal will be a very brief hearing. That's all.
SHAWN CASSISTA: Well, what about the 11(b) *Charter*?
THE COURT: What?
SHAWN CASSISTA: What about the 11(b)...
THE COURT: Bring your...
SHAWN CASSISTA: ...*Charter*?
THE COURT: ...bring your argument when you bring your appeal. Okay?
SHAWN CASSISTA: Okay. So you're going to hear the argument in regards to the 11(b) *Charter* on the January 15, is what you're saying?
THE COURT: No. No. No. Your - you have to file your Notice of Appeal by January the 15th. If you don't, it's all over. If you file your Notice of Appeal, then you can order the transcripts and bring your case to the appeal court when the transcripts are ready and you're...
SHAWN CASSISTA: Well...
THE COURT: ...prepared to argue it.

SHAWN CASSISTA: ...isn't this the Notice of Appeal though?
THE COURT: I don't know. It, it....
SHAWN CASSISTA: Sir, it says right at the top Notice of Appeal.
THE COURT: All right.
SHAWN CASSISTA: So I filed it already.
THE COURT: He filed it already?
MS. JOHN: The recognizance. He has to pay the fine before so he'll have to...
THE COURT: Yeah.
MS. JOHN: ...go downstairs to enter into the...
THE COURT: But he says he's filed it.
MS. JOHN: ...recognizance.
THE COURT: He may have prepared - I, I don't know. You weren't able to - they shouldn't have taken that if....
MS. JOHN: The - the fine wasn't paid.
THE COURT: Yeah. You haven't paid the fine, have you?
SHAWN CASSISTA: No.
THE COURT: No. Okay.
SHAWN CASSISTA: Okay...
THE COURT: You have to enter into a recognizancs....
SHAWN CASSISTA: ...you're saying I should have only filed the Notice of Motion and not this Notice of Appeal?
MS. JOHN: Yes.
THE COURT: Yeah. That's right. That's all you've put before the court so far...
SHAWN CASSISTA: Okay. So....

THE COURT: ...Notice of Appeal has to be filed by January the 15th and you had - and you have to enter into a recognizance in the amount of the fine. You do that downstairs. That's all.

MS. JOHN: Okay. Wicket number two on the ground floor downstairs. If I may be excused, Your Honour?

THE COURT: Yeah. Thank you.

...WHEREUPON THESE PROCEEDINGS HAVE BEEN ADJOURNED

FORM 2

Certificate of Transcript

***Evidence Act*, Subsection 5(2)**

I, Rosaria A. Sirianni certify that this document is a true and accurate transcription of the recording of R. v. Shawn Cassista, in the Ontario Court of Justice, held at 7755 Hurontario Street, Brampton, Ontario, taken from Recording No. 3111-409-20121214-090300, which has been certified in Form 1.

April 10/13
(Date)

(Signature of authorized person)

Tab 10

Is the Case Law... Link:

canlii.org/en/ca/scc/doc/1991/1991canlii45/1991canlii45.html?resultIndex=4

File # M42702

R V Shawn Cassista

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
MISSISSAUGA
~~Osgoode Hall, Toronto~~

MOTION RECORD

Shawn Cassista
[redacted]
Mississauga, ON
[redacted]