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

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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.