Charles (Mike) Wheeler
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September 21, 2010.

The Honourable Chris Bentley, Minister of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON
M7A 2S9
Tel: (416) 326–2220
Email: cbentley.mpp.co@liberal.ola.org

Dear Minister

RE: Wrongful arrest and imprisonment of myself by Crown Attorney, Mr. Mark McElroy for attempting to lawfully audio record my court proceeding

On Tuesday Sept 14, 2010, I was wrongfully arrested, handcuffed in the courtroom in front of the public, rough-handled by police, thrown in jail and denied my rights to a fair hearing at the Chatham-Kent Provincial Offences Court. After my arrest at the courtroom I had my shoes removed and was forced by police to walk without my shoes outside of the courthouse to the parking lot at the courthouse and again from the police car to the jail at the police station. It was a very humiliating and degrading experience for me as I have been a law-abiding citizen who has never been involved with the criminal justice system. From my experience, the actions of police and the Crown Attorney was nothing more than a show of brute force and abuse of power and authority intended to show a law-abiding citizen that the authorities at the courthouse are above the law. I did not get my shoes back until I was released from the jail at the police station and even the red marks from the handcuffs were visible several hours later.

The alleged crime

I was charged under Section 136(1) of the Courts of Justice Act which states that members of the public who are not attending their own court hearing are not allowed to record court proceedings. Attached to this letter please find a copy of the charges. In other words, for simply bringing a small recording device into the courtroom and placing it openly on the table in front of me as is permitted by law to audio record my hearing, I was abused and my rights violated in a most brutal and uncalled for manner by officers of the court.

The problem with the charges against me is that I was clearly within my rights to record my own court hearing. Under section 136(2)(b) citizens of Ontario have the right to record their own court proceedings. This law is very clear and many in the Province of Ontario have exercised this same right before me. Testimony from other citizens about audio recording in the courts court can be viewed on the Canada Court Watch website at:

http://www.vimeo.com/1858526

http://www.vimeo.com/1773283

The other problem is that I never started recording my proceeding. I was arrested before I could even get a chance to press the record button. I was arrested based on the assumption and the over-zealous actions of the Crown Attorney, Mr. Mark McElroy.

There is recent case law from the Superior Court of Justice to support this, not to mention just plain common sense. Section 136(2)(b) of the Courts of Justice states:

Exceptions

136.(2)Nothing in subsection (1),

(a) prohibits a person from unobtrusively making handwritten notes or sketches at a court hearing; or

(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).

At my court hearing I was denied my rights to natural justice mainly by the actions of the Crown Attorney, Mr. Mark McElroy, who within seconds of my hearing starting, took on an adversarial role against myself in a most aggressive and unprofessional manner. At my hearing I had full documentation including recent case law from the Superior Court of Justice which clearly supported my position to record my own court hearing to supplement my notes. Shamefully neither the Justice of the Peace nor the Crown Attorney knew the law nor did they seem interested in seeking the truth that day.

In spite of having supporting documents to support my arguments as to my rights to record my own court hearing and in spite of myself making statements to this effect before the court just moments before my arrest, the Crown Attorney, acting without the lawful authority over police, gave direct orders to the police officers in the courtroom to have me arrested. He stated, "arrest him" and after the Crown shouted these orders to police, I was immediately handcuffed, led away and held in jail against my wishes in violation of my rights under the Canadian Charter of Rights and Freedoms.

I was never given the opportunity to present my evidence which I stated in the court I had in my possession. The Crown Attorney, Mr. Mark McElroy, was supposed to at least listen to my arguments before ordering me arrested but he did not. Mr. McElroy had a **DUTY** under Ministry guidelines to at least listen in accordance to the policy standards of the Crown Attorney's office which states:

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.

Mr. Mark McElroy did not carry out his duty to see that my legal evidence and facts were presented in a fair manner. He was not vigilant in presenting his case. Clearly, Mr. McElroy did not even exercise his duty to read the very next paragraph of section 136 of the Courts of Justice Act which would clearly show that the charges were wrong and the arrest unlawful. Mr. McElroy ordered me arrested first and then tried to find charges to justify my arrest.

It is clear that the charges laid against me by police are without foundation in law and nothing more than an attempt to subvert freedom and democracy in Canada. The laying of these charges under these circumstances should be an embarrassment to the Attorney General's office as well as the police. Clearly the Crown attorney, Mr. Mark McElroy, lacked knowledge of the law as did the police. On top of that Mr. McElroy was not willing to listen. It is not acceptable that the citizens of Ontario be treated as was I by authorities at the court who are supposed to know the law and to protect the rights and freedoms of the citizens of Ontario. Another question that should be answered is since when do lawyers in the Province of Ontario get to issue orders to police officers to arrest the citizens of Ontario in a courtroom in the middle of the person's court hearing?

The Crown Attorney, Mr. Mark McElroy, proceeded ahead with my court traffic court hearing after he had me arrested and forcefully removed from the court!

To add further insult to the administration of justice, after the Crown Attorney Mr. Mark McElroy ordered me arrested and forcefully removed from the courtroom in handcuffs, he proceeded ahead with the traffic offence charges against me in my absence. Now how's that for fairness and justice? Of course, Mr. McElroy had the court find me guilty in my absence. Pardon my language but what just kind of absolute crap is going on in our courts of justice? The actions of Mr. McElroy were so fundamentally wrong from a legal perspective and so morally wrong that only an imbecile could not see how his actions were contrary to the

very principles of fundamental justice.

The conduct of Mr. McElroy that day was also clearly contrary to the written policies outlined in Ontario's Crown Attorney policy manual. Even the Crown Attorney policy manual speaks about the conduct of the Crown. Crown Attorneys are supposed to stand up to defend justice as well. To give a quote from the Crown Attorney Policy Manual for Ontario:

> Public confidence in the administration of criminal justice is bolstered by a system where Crown counsel are not only strong and effective advocates for the prosecution, but also Ministers of Justice with a duty to ensure that the criminal justice system operates fairly to all: the accused, victims of crime, and the public. The role of Crown counsel has been described on many occasions. The following observations from the Supreme Court of Canada provide a summary of our complex function within the criminal justice system:
>
> "It cannot be overemphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. 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 responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness, and the justness of judicial proceedings." *(R. v. Boucher)*

It has been almost a week since I was wrongfully arrested and abused by authorities. By this time, if the Crown or the police had any sense of justice or decency, they should have honestly admitted their error and contacted me about having the charges withdrawn as quickly as possible. They have almost unlimited resources at their disposal. However, they have not bothered to contact me. When the local newspaper attempted to contact Mr. McElroy for comment, he would not speak to the press to answer their questions.

My letter here is not the first letter that has been sent to your office about the harassment of citizens by court officials over the right to use recording equipment as is allowed under the Courts of Justice Act. Even the Panel on Justice and the Media submitted a report to your Ministry in August of 2006. The report is published on your website at the following link:

http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/pjm/rpjm-EN.pdf

Recommendation #2 of the Justice and the Media report to your Ministry deals with the issue of recording in the courts and supports the concept completely. Recommendation #2 states the following:

> **Use of Tape Recorders**
> Recommendation #2: Use of tape recorders
>
> The Panel recommends that as a general principle tape recorders be permitted in the courtroom by lawyers, persons acting in person and journalists for the purposes of accuracy. Accordingly, the Panel recommends that:
>
> (a) s. 136 (2) (b) of the Courts of Justice Act be amended to permit the unobtrusive use of tape recorders at a court hearing without prior approval of the judge;
>
> (b) in the interim, the use of tape recorders as now permitted by s. 136 (2) (b) of the Courts of Justice Act and the Practice Direction of Chief Justice Howland dated April 1989 be publicized by appropriate signage in all courtrooms.

In the Justice and the Media Report (August 2006), it makes mention of the Practice Directive of former Ontario Chief Justice Howland. The very reasonable and logical Practice Directive issued by the former Chief Justice to all the courts in Ontario back in 1998 stated the following:

> ***"Subject to any order made by the presiding judge as to non-publication of court proceedings, and to the right of the presiding judge to give such directions from time to time as he or she may see fit as to the manner in which an audio recording may be made at a court hearing pursuant to s. 146 [now s.***

136] of the Courts of Justice Act, the unobtrusive use of a recording device from the body of the courtroom by a solicitor, a party acting in person, or a journalist for the sole purpose of supplementing or replacing handwritten notes may be considered as being approved without an oral or written application to the presiding judge."

It would appear that the fair and just directive of Chief Justice Howland is being swept under the rug to help the players in the courts hide their shenanigans and to corrupt the justice system in Ontario. The fact that problems regarding section 136 have been encountered in a number of courts coupled with the fact that nothing is being done to protect the citizens of Ontario would suggest that a conspiracy may exist amongst influential players within the justice system. The justice system in Ontario is supposed to be improving as time goes on and technology advances. Since the issue of the Chief Justice Howland's Practice Directive, it has become evident that the justice system in Ontario has become less open and less respectful of the people of Ontario. The wisdom and common sense contained in Chief Justice Howland's Practice Directive are being ignored and trampled upon by those who currently operate the courts.

The charges against me are so ridiculous and completely illogical. Taxpayer dollars and valuable court and law enforcement resources should not be squandered on these frivolous and vexatious charges. Mr. McElroy has failed to exercise due diligence in the carrying out of his duties as a Crown Attorney and has failed in his **DUTY** to act in a fair and just manner. In my opinion, Mr. McElroy has put the administration of justice into disrepute and should be fired from his position as Crown Attorney.

Due to the fact that it is clear that your Crown Attorney does not know or understand the law, I am asking that you, as the Attorney General of Ontario, personally intervene and to take immediate action to have the unlawful charges against me be dropped. Such action will show the citizens of Ontario that you really care and that you will not stand idly by while such an obvious injustice is being perpetrated by the Crown's office against a citizen of Ontario. Show the citizens of Ontario that you will not stand by and allow a law abiding citizens to be brutalized by police just for exercising his rights under the law.

It's no wonder why good law-abiding citizens of Ontario are losing faith with the justice system in this province. It seems as if those in "the system" have taken on an adversarial role against the very citizens they are supposed to be serving and protecting and the Attorney General's office is failing to address the problem effectively. This is not what fairness, justice and openness is all about in a democracy. This is not what the citizens of Ontario want for their justice system. When is someone at the Attorney General's office going to stand up for the people of Ontario and to lay down the law, get those misleading signs about audio recording at the courthouses torn down and thrown out and to get Ontario's out-of-control courts once again accountable to the people of Ontario? It's time for action by the Attorney General in this issue, not more delays.

Your prompt and personal attention in dealing with my charges and your attention to get section 136(2)(b) of the Courts of Justice Act respected by all court officials in Ontario would be most appreciated.

Yours truly,

Charles (Mike) Wheeler

Attachments

1) Recognizance form of Charles (Mike) Wheeler (1 page)
2) Copies of Superior court transcripts from May 4, 2009 (4 pages) which show that issue of recording was argued and approved by a judge of the Superior Court of Justice in Ontario.

cc:

Premier Dalton McGuinty

Various members of the Provincial Legislature

Southwest Region | CKPS | CK10029698

RECOGNIZANCE ENTERED INTO BEFORE OFFICER IN CHARGE
ENGAGEMENT CONTRACTÉ DEVANT UN AGENT RESPONSABLE

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO

Under Section 149(2) of the *Provincial Offences Act*
Aux termes de l'article 149(2) de la Loi sur les infractions provinciales

Form / Formule 134
Courts of Justice Act
Loi sur les tribunaux judiciaires
R.R.O. / *R.R.O.* 1990
O. Reg. / *Règl. de l'Ont.* 200

I, **Charles Michael WHEELER (DOB: 1966/01/16)**
Je soussigné(e),

of **393 Scottsdale Dr., Guelph, ON**
de

understand that it is alleged that I have committed / *comprends qu'il est allégué que j'ai commis*

Unlawful Use of Recording Device at a Court Hearing, contrary to S. 136(1)(a) Courts of Justice Act

(set out substance of offence / *indiquer l'essentiel de l'infraction*)

In order that I may be released from custody, I hereby acknowledge that I owe $ **200.00** (not more than $300,
Afin de pouvoir être mis(e) en liberté, je reconnais devoir $ *(au plus 300 $,*
no deposit or sureties are required) to Her Majesty the Queen, which may be collected in the same manner as money owing under a judgement of the Superior Court of Justice if I fail to appear as hereinafter required.
nul dépôt ou nulle garantie ne sont exigés) à Sa Majesté la Reine. Cette somme peut être recouvrée de la même manière que s'il s'agissait d'une somme d'argent due aux termes d'un jugement de la Cour supérieure de justice, si je fais défaut de comparaître de la façon dont je suis requis(e) ci-après.

I acknowledge that I am required to appear in the Ontario Court of Justice
J'admets être requis(e) de comparaître devant la Cour de justice de l'Ontario

at **21633 Communication Rd., RR #5 Blenheim, Ontario** **1**
à (address / *adresse*) (courtroom / *salle d'audience*)

on the **10** day of **November / novembre**, yr. **2010**, at **10:00 p.m. / après-midi**
le *jour de* *an* *à* (hour / *heure*)

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 pour y être traité(e) selon la loi.

Dated at **Chatham, Ontario**
Fait à

this **14** day of **September / septembre**, yr. **2010**
le *jour de* *an*

(Signature of Defendant / signature du défendeur)

Cst. Michael CURRIE #1012
(Officer in Charge / *agent responsable*)

Chatham-Kent Police Service
(station, etc. / *poste, etc.*)

NOTE: Section 154 of the *Provincial Offences Act* is as follows:

154 (1) The recognizance of a person to appear in a proceeding binds the person and the person's sureties in respect of all appearances required in the proceeding at times and places to which the proceeding is adjourned.

(2) A recognizance is binding in respect of appearances for the offence to which it relates and is not vacated upon the arrest, discharge or conviction of the defendant upon another charge.

(3) The principal to a recognizance is bound for the amount of the recognizance due upon forfeiture.

(4) The principal and each surety to a recognizance are bound, jointly and severally, for the amount of the recognizance due upon forfeiture for non-appearance.

REMARQUE : *L'article 154 de la* Loi sur les infractions provinciales *se lit comme suit :*

154 *1) L'engagement à comparaître dans une instance lie la personne qui l'a consenti et ses cautions à l'égard de toutes les comparutions exigées au cours de l'instance, aux date, heure et lieu fixés pour la reprise de l'instance après un ajournement.*

2) L'engagement est exécutoire à l'égard des comparutions relatives à l'infraction qu'il vise et n'est pas annulé par l'arrestation, la libération ou la déclaration de culpabilité du défendeur à l'égard d'une autre accusation.

3) La personne que consent un engagement est tenue de payer le montant de l'engagement exigible au moment de la réalisation.

4) La personne que consent l'engagement et chacune de ses cautions sont tenues solidairement de payer le montant de l'engagement exigible au moment de la réalisation pour défaut de comparaître

FOR INFORMATION ON ACCESS TO ONTARIO COURTS FOR PERSONS WITH DISABILITIES, CALL 1-800-387-4456 TORONTO AREA 416-326-0111

POUR PLUS DE RENSEIGNEMENTS SUR L'ACCÈS DES PERSONNES HANDICAPÉES AUX TRIBUNAUX DE L'ONTARIO, COMPOSEZ LE 1-800-387-4456 RÉGION DE TORONTO 416-326-0111

Information #

SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

LARRY O'BRIEN

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RULING ON USE OF RECORDING DEVICES

BEFORE THE HONOURABLE JUSTICE D. CUNNINGHAM
On May 4, 2009, at Ottawa, Ontario

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CHARGE: S.121(1)(d) CCC
S. 125(b) CCC

****

APPEARANCES:

S. Hutchison — Counsel for the Crown

M. Edelson — Counsel for the Accused

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SUPERIOR COURT OF JUSTICE

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

Transcript Ordered: May 4, 2009
Transcript Completed: Ma7 4, 2009
Counsel Notified:

R vs O'Brien

R U L I N G

CUNNINGHAM, J. (Orally):

Again, let me express my appreciation to counsel for their assistance in this somewhat novel issue.

As I indicated earlier, anything I rule upon today on the issue of Blackberries or other such devices will apply to this trial and should not be taken as a broad policy statement for this Court.

As I stated, jury trials may present a whole set of different problems, and perhaps more challenging issues, but that is for another day.

I agree with Mr. Hutchison that I need not treat this as a constitutional issue. This really goes to my power to control the process in an exercise of my discretion.

Section 136(2)(b) of the Courts of Justice Act is quite clear, that nothing in subsection 1 prohibits a journalist, indeed anyone else mentioned therein, from unobtrusively making an audio recording in a manner approved by the

judge. It is also for the purpose of supplementing or replacing handwritten notes.

What we are talking about here is instant text transmission to the blogosphere, but that is the world in which we live.

I recognize the concerns that have been registered; the distractions that may affect the court proceedings, the incompatibility of these devices with court equipment, but most significantly, the "genie in the bottle" concern that has been registered.

Even if I were to accept the 20-minute delay as proposed by the amicus curiae, I am not sure that it would have the desired affect.

I do not need to consider whether such a lag would offend Dagenais Mantuck test. In my view it would not because I am satisfied that what the amicus proposes is not a ban. But again, that is for another day.

I am simply not persuaded that exercising my discretion in that way would have any practical affect; in other words, I simply cannot see how a 20-minute delay could satisfy the concerns that have been registered.

I also recognize that some private information or protected information could inappropriately be

disclosed but I am afraid that is a risk I will have to take, recognizing as I do, the caliber of counsel I have before me in this case.

So subject to my being satisfied as to the practical concerns, that they can be alleviated, Blackberries or such devices will be permitted so long as any texting is done in an unobtrusive way and does not affect the running of the trial.

They will be operated as silently as the devices permit and if problems develop later on, I will deal with them.

I should note that these devices are to be used for text or receiving purposes only so long as this does not interfere with the court proceedings. Needless to say, cell phones are not to be used for receiving or calling and I am sure I do not need to say that the use of any camera or video equipment on these devices is prohibited.

THE HONOURABLE JUSTICE CUNNINGHAM

SUPERIOR COURT OF JUSTICE

Certificate of Transcript
Evidence Act, subsection 5(2)

I, Andrea Johnstone, certify that
This document is a true and accurate
Stenographic transcription of the recording of
R vs O'Brien in the
Superior Court of Justice
Held at 161 Elgin Street
Ottawa, Ontario
Taken from Recording No.
Courtroom #36
Which has been certified in Form 1
To the best of my skill and ability.

May 5, 2009
Date:

Andrea Johnstone
A.L. Johnstone,
Certified Court Reporter

Note* **Pursuant to subsection 5(3) of the Transcription Manual, 2003, "*A transcript prepared from a sound recording must be certified by the person who prepared the transcript.*"**