

**In this case, Dynamic Legal Solutions
had a SPEEDING TICKET dismissed
because of violations of the
defendant's Constitutional Rights
(Failure to make proper disclosure)**

**ALSO: We obtained \$100 for our client
as compensation.**

1 GRS No. 07-0757

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ONTARIO COURT OF JUSTICE

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5 B E T W E E N:

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HER MAJESTY THE QUEEN

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- and -

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ANDREW HOPPER

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P R O C E E D I N G S A T T R I A L

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BEFORE HER WORSHIP JUSTICE OF THE PEACE D. DOELMAN

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on July 10th, 2007 at Perth, Ontario.

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23 APPEARANCES:

24 Mr. P. Stafford

for the Crown

25 Mr. D. Anber

for the accused

1 **EXCERPT FROM THE JULY 10TH, 2007 PROCEEDINGS OF**

2 **THE PROVINCIAL OFFENCES COURT, PERTH, ONTARIO**

3 THE COURT: The next matter, please?

4 MR. STAFFORD: The next matter is Andrew Hopper.

5 THE COURT: And there's the exhibits.

6 MR. ANBER: Good morning again, Your Worship.

7 Good morning, my friend.

8 THE COURT: Good morning.

9 MR. ANBER: I guess I will begin. As Your
10 Worship is well aware there is an application -- a
11 Stinchcombe application for violation of Charter rights
12 under section 7, 11(d), and 46(2) of the Provincial
13 Offences Act as well, for failure to provide disclosure.
14 I will relate a few facts as a way of introduction.

15 First of all, on January the 10th, 2007 a
16 disclosure request was made by myself on behalf of Mr.
17 Hopper in a timely manner. It would have been two and a
18 half months before the trial date at that time, which
19 was at that time in March. The trial was at some point
20 adjourned because I was actually in Montreal due to
21 medical reasons.

22 THE COURT: Yes.

23 MR. ANBER: And it was adjourned to May 15th.
24 On May the 2nd I filed an application to receive a
25 disclosure order and served it on the prosecution on that

1 day. On May 15th before your brother justice, Justice
2 McKechnie, the application was supposed to be heard.
3 However it was consented to by the prosecution, who was
4 represented by Mr. Brian McClinton at the time. So a
5 disclosure order was granted on consent. The
6 authorities for the application, had the application
7 been contested, are found in my submissions I believe at
8 page 7.

9 THE COURT: Yes.

10 MR. ANBER: As a result of the application His
11 Worship McKechnie ordered first of all the disclosure,
12 second of all an adjournment and third of all he pointed
13 out that this has been before the courts for a while and
14 marked it as preemptory, at least my understanding was
15 that. I'd like to point out that -- the crucial point,
16 Your Worship, that this disclosure order was eight weeks
17 ago.

18 On June 25th, which is 15 days ago, I filed
19 Notice of Constitutional Question, served it on the
20 Attorneys General of Canada and Ontario and on the
21 prosecution as well, complying with statute. At
22 that point I'd not received any disclosure. On July
23 4th, which would have been six days ago, I did receive a
24 telephone call from a member of the OPP whose name I do
25 not recall, who indicated that disclosure would be sent

1 to me. He asked for a fax number. I told him to send
2 it to the mailing address as originally requested. I
3 confirmed that he had the address and he did confirm --
4 I was satisfied that he knew what the address was, and
5 to this day I did not receive any disclosure except
6 today in court.

7 As I would indicate, my submissions are this,
8 Your Worship, that Stinchcombe is settled case law and
9 that the accused has made timely disclosure requests and
10 that the failure to provide disclosure would violate his
11 rights under section 7, 11(d) of the Charter as well as
12 section 46.2 -- 46(2) of the Provincial Offences Act
13 which guarantees the accused the right to a full answer
14 and defence. I would also point out, Your Worship, the
15 important issue when deciding what remedy is appropriate
16 you must consider that first of all other remedies have
17 already been considered by this court, for instance an
18 adjournment and a disclosure order. Case law has held
19 that a stay is only granted once other remedies have
20 been attempted, and since other remedies have been
21 attempted I would ask Your Worship to grant a stay of
22 proceedings in the case against Andrew Hopper.
23 Those are my submissions.

24 THE COURT: Thank you, sir. Mr. Stafford,
25 what's your position?

1 MR. STAFFORD: Yes, Your Worship, first of all
2 I'm in a poor position to handle this. The court officer
3 that was present, which I would require I would think
4 to...

5 I do have several instances here where
6 disclosure was made by fax and by mail. Exactly what
7 was disclosed I'm not sure. Initially a disclosure was
8 made on the 9th of February. It says it was sent by
9 mail. Now, what that was I don't know but apparently it
10 wasn't sufficient and another request was made on the
11 4th of July. I have a fax that was sent. I understand
12 the gentleman says he did not receive it -- this is from
13 a previous conversation -- for whatever reason, but it
14 was sent and I say today it was handed to him in person.
15 Having said all that, to get back to the start, I'm not
16 in a good position to handle this because... Constable
17 Harniston is the normal court officer here and he's
18 familiar with all of this, these transactions, and of
19 course I'm just in for the day type of thing. Those are
20 my submissions on it, if you're going to proceed with
21 this today and I assume we are.

22 I believe that he had received disclosure. This
23 is common, this business with the faxes. Where the fax
24 number went to -- I don't know whether it went to his
25 office, or his employer's office, or... I have no idea,

1 but apparently he didn't receive it. The initial
2 request it says he may be served with the documents and
3 it's got an address 161 Augusta Street, suite 706,
4 Ottawa, and a fax number of 613 241-4226 and that's
5 where the fax was sent and as far as we know the fax was
6 completed and he should have received it. We have a
7 confirmation on that fax. The machine prints it out and
8 says "Yes I sent it to that number, it was received".
9 So...

10 MR. ANBER: Your Worship, may I make a brief
11 reply to the comments of my friend?

12 THE COURT: You may indeed.

13 MR. ANBER: Your Worship, my friend has
14 essentially said three things in his submission and I'll
15 address them one by one. The first thing my friend has
16 mentioned is he's in a poor position to deal with the
17 application. As Your Worship is well aware, the reason
18 why there are so many requirements for Charter
19 applications to be filed and served 15 days in advance
20 on the Attorneys General and on the prosecution is to
21 make sure the prosecution is well in a position to deal
22 with these applications. So seeing as though we
23 discharged our duty I don't see that it's a valid reason
24 to dispose of the application in a negative way.

1 Second, Mr. Stafford did raise the point he
2 wasn't sure what items were requested in disclosure. I
3 did neglect to mention that -- to specify there were
4 certain items, including notes, that were requested in
5 the initial disclosure request which were provided but
6 there were certain things, such as testing procedures
7 photocopied from the manual, which were not provided and
8 those were the things that were ordered in His Worship
9 McKechnie's decision.

10 Finally, the last point of the prosecution is
11 that I actually did receive the disclosure. I'd be
12 prepared, Your Worship, to give evidence, viva voce
13 evidence, that I did not receive that disclosure and
14 although a fax number was put in the application it was
15 specifically for the service of documents. The
16 conversation I had with the court officer who had phoned
17 me was specifically to confirm, I said to him, that it
18 would be mailed to me and I confirmed the address with
19 him.

20 The last point I'd like to make is, even if six
21 days before I had received the disclosure -- on July the
22 4th -- even if I had that would not be sufficient given
23 that the disclosure order came from eight weeks ago.
24 There are a number of things I would have done upon
25 receiving the disclosure. First, I would have met with

1 my client. Second, I would have obtained the materials
2 referred to in the disclosure, the disclosure referring
3 to a mailing address where I could obtain further
4 information. Third, I would have visited the incident
5 scene and used the specifications found in that
6 disclosure with regards to the length of the laser beam
7 and the width of the laser beam to have taken my client
8 through what would have happened when and where.
9 Fourth, based on the specifications found in that
10 disclosure I would have potentially considered hiring an
11 expert and, fifth, I would have had to prepare a
12 defence. I respectfully submit, Your Worship, that all
13 these things would not have been possible in six days
14 and that the prosecution should have respected the order
15 made by Justice McKechnie eight weeks ago.

16 Those are my submissions.

17 **(REASONS FOR JUDGEMENT)**

18 THE COURT: Thank you. I will need a moment.
19 Would you like to stand, Mr. Anber. You stand
20 before this court as an agent for Andrew Hopper. You
21 have presented a well-organized motion that according to
22 the Canadian Charter the charge of speeding should be
23 stayed and the reason that this application is being
24 heard is because the previous order by my colleague
25 Justice McKechnie was not followed. I note that the

1 order was made on the 15th of May and you've done the
2 calculations, that here we are eight weeks later and it
3 wasn't until this morning that you actually received the
4 disclosure that had been requested. I believe that the
5 motion before the court has been certainly properly
6 filed and duly noted. I also believe that your motion
7 has been successful and a stay will be granted of the
8 charge.

9 It is true that the prosecutor is in a poor
10 position this morning, not through any fault of the
11 gentleman before the court, Mr. Stafford, but certainly
12 the order directed by Justice McKechnie in May was not
13 followed with due diligence by the prosecutor's office.
14 Full and complete disclosure is essential, and although
15 some would argue that this is a minor traffic speeding
16 matter it nevertheless requires the -- I'm searching for
17 a word, you can tell -- the respect that Canadian law
18 dictates. Based on this, the fact that the telephone
19 call on July the 4th indicates that disclosure had still
20 not been sent but that it would be sent as requested,
21 that here we are six days later on the 10th of July and
22 it has not arrived, noting well that we have just gone
23 through a holiday weekend, it's my belief that all
24 previous protocols have been followed, disclosure was
25 still not provided, and that it is now appropriate that

1 the charge of speeding arising from the 20th day of
2 September 2006, certificate 78784756 will now become
3 stayed.

4 Thank you, Mr. Stafford and Mr. Anber.

5 MR. ANBER: Your Worship, I do have one
6 further request to make. As Your Worship may be aware
7 the Supreme Court decided in Numbered Company Ontario
8 Inc. -- I don't remember the specific number but in that
9 decision, which is a well-known decision, that when
10 there are violations of the Charter even in a provincial
11 offences matter in the province of Ontario that costs
12 may be awarded. I therefore make an application to the
13 court now that since Your Worship has decided that the
14 rights of the accused have been violated that costs --
15 to subsidize the fact that I had to spend more time on
16 this matter and the accused had to wait longer for this
17 matter to be disposed -- in the amount of \$375, which
18 would represent five hours of additional work at \$75 per
19 hour.

20 THE COURT: I am not certain that I have the
21 appropriate information with me regarding costs as they
22 are fixed by regulation. Mr. Stafford, can you assist?

23 MR. STAFFORD: I cannot, Your Worship.

24 THE COURT: I too am here for the day and may be
25 considered to be in a difficult position. Mr. Anber...

1 MR. ANBER: Yes, Your Worship?

2 THE COURT: ...can you assist as to under what
3 section of the Provincial Offences Act I might direct
4 myself if it's by regulation?

5 MR. ANBER: To be honest, Your Worship, the
6 section doesn't come to mind. I know that the decision
7 comes from the Supreme Court in Numbered Company Ontario
8 Inc. I, again, neglected to memorize the exact number
9 of that numbered company but it's a recent decision.

10 THE COURT: A short pencil is always better than
11 a long memory even at your tender age.

12 MR. ANBER: That is correct, Your Worship.

13 THE COURT: I'm going to take a short recess and
14 try to obtain some answers, if costs of \$375 would in
15 fact be within the limits that are dictated. So thank
16 you all for your patience.

17 THE CLERK: All rise. Court is in recess.

18 **(REASONS FOR JUDGEMENT)**

19 THE COURT: Thank you for that indulgence. We
20 have searched the resources that we have at hand but we
21 note that they are limited. It's my understanding of
22 the Provincial Offences Court that the -- of the
23 Provincial Offences Act that the court does have the
24 power to order costs which it considers to be just and
25 reasonable.

1 Mr. Anber, you've requested -- that you've had
2 an extra five hours at a billable rate of \$75 in order
3 to consider the motion to stay. I certainly do commend
4 you on your application. It's been well-organized,
5 thorough, and well-presented. It would be my position
6 that something should be paid in order to compensate you
7 for the extra time and I'm going to choose an arbitrary
8 amount of \$100, which may seem minimum to you. At least
9 it will help you with your mileage. I'm going to
10 suggest to you that as an articling student you've
11 presented your matters well and perhaps sometimes the
12 extra expenses are attributed to experience. Perhaps
13 you'll be able to pass on some of these costs to your
14 client rather than being able to recover them through
15 the court's venue.

16 MR. ANBER: Thank you, Your Worship.

17 THE COURT: You're welcome, sir. It's my
18 understanding that would complete our matter. So costs
19 of \$100 are awarded to the defendant.

20 MR. ANBER: Your Worship, this may seem like a
21 simple question but how does one actually obtain the
22 costs?

23 THE COURT: I trust that a cheque would be sent
24 in care of Mr. Anber but Madam Clerk can research that.

1 I don't know if it's appropriate to go directly to you
2 or to Mr. Hopper.

3 THE CLERK: Perhaps we could have his business
4 card, Your Worship?

5 THE COURT: Costs are usually ordered to the
6 defendant and I am not aware if it goes directly to the
7 defendant, being Andrew Hopper, or if it would go to
8 counsel. Madam Clerk, if I may leave that with you to
9 research? And I know Mr. Anber will be diligent.

10 Thank you all. It's been a great morning in
11 Perth and, boy, I just wish I could get scheduled here
12 more often. Have a good day.

13 THE CLERK: All rise.

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17 WE HEREBY CERTIFY THAT the foregoing was
18 transcribed to the best of our skill and
19 ability, from taped and monitored proceedings.

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