

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

- v. -

JOHN BRADLEY ATKINSON

COURT PROCEEDINGS

BEFORE THE HONOURABLE JUSTICE E. MEIJERS

On MARCH 10th, 2017, at BARRIE, Ontario

APPEARANCES:

M. Levasseur

Counsel for the Crown

D. North

Amicus for Mr. Atkinson

March 10th, 2017

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MS. LEVASSEUR: Mr. Atkinson is before the court.

THE COURT: Mr. Atkinson.

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MS. LEVASSEUR: Mr. North is here.

MR. NORTH: Good morning, Your Honour.

THE COURT: Good morning Mr. North.

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MS. LEVASSEUR: I can confirm, Your Honour that we have managed to select dates in respect of the hearing for Mr. Atkinson that Your Honour may well be aware of in July; July 18, 19, 20 and 27. Unfortunately, in terms of witness availability Doctor Pearce who I anticipate is going to be testifying was only available on July the 20th. We did try - it would have been preferable certainly to have him testify earlier in the hearing, but it just wasn't workable any other way.

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THE COURT: Okay. And you're available on those dates as well, Mr. North?

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MR. NORTH: Yes, I am. Thank you.

THE COURT: So that's what we need to do today then is put it to 18 July for a hearing then?

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MS. LEVASSEUR: I believe those dates have already been green sheeted and set, if I'm not mistaken.

CLERK OF THE COURT: Yes. 18th of July 9:30
courtroom 10.

THE COURT: All right. And are there further
materials coming from the Crown at all?

5 MS. LEVASSEUR: Yes. I still - I will be
filing a formal application. In terms of
further materials, I don't anticipate further
voluminous materials. I think the court -

10 THE COURT: Okay.

MS. LEVASSEUR: It's been so long since I've
filed the application and the supporting
materials, I'll have to go back and look to see
if what's been filed is a fulsome account of
what the Crown relies upon or not.

15 THE COURT: Okay.

MS. LEVASSEUR: But certainly I will be
endeavouring to work on that.

THE COURT: Is there anything further from you
to address today at all?

20 MS. LEVASSEUR: Not from my perspective.

THE COURT: Mr. North.

25 MR. NORTH: Just to - I mean, obviously as
amicus I'm in the court's hands with respect to
my role at the hearing. I mean, obviously I'll
attend every date and listen to submissions of
the parties. I'm happy to make submissions.

I'm in the court's hands on that issue.

30 However, the court wishes to communicate with
me...

THE COURT: Well, I'm thinking at this point I
would appreciate your being here, listening to

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the witnesses, cross-examining the witnesses
where you see an issue that should be brought
to my attention and make submissions where you
see submissions that ought to be brought to my
attention.

MR. NORTH: That's fine.

THE COURT: Okay.

MR. NORTH: Thanks very much.

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THE COURT: Mr. Atkinson, anything further
from you?

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MR. ATKINSON: Yep. I have - I didn't send
anything by Purolator because I want to make
sure that you do get. So actually if I have
these off for five minutes just to do this.
So there was a period of time when we were
speaking about Mr. Brodsky and so what I've
done is I brought his email so there's
clarification and I'll be handing that to you.
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I have here is my motion for *Rowbotham* and my
statement of facts.

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MR. NORTH: Just so the court is aware while
Mr. Atkinson is preparing neither - I'm
certainly not aware of any of this material has
been provided or advanced notice to me as
amicus.

MS. LEVASSEUR: I have not received anything.

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MR. ATKINSON: I didn't send anything by
Purolator because last time I sent something
she said you never got it. I just to - if I
have got - this is to verify that she actually
said to a Justice Minister that she never

received the fact about when I did the fresh evidence. I sent everything in one package. So I have this here.

THE COURT: What do you have from Mr. Brodsky?

MR. ATKINSON: Just make sure everything is here. I have an affidavit and I have the motion and if it was required, I did a stay of proceedings, a conditional stay of proceedings. I have copies made up for the Crown and one for Mr. North.

CLERK OF THE COURT: These are copies for the judge?

MR. ATKINSON: What you don't have is the copy from Mr. Brodsky. I only had one copy. I got these handed to me came last night at three o'clock in the morning. There should be one for every one. So this is all contained. This is all - this one is the stay, the motion and the affidavit and this here - the thick one here, I believe I'm supposed to send that to the Attorney General. If it's going to get handed back to me, I'm not sure, but I'm going to give it to you anyways. I've also given the same material that I would send to the Attorney General as well. So the way that is, that's how they should all be. You have one for the stay; one for the affidavit, and one for the Attorney General. And the one for the motion, I didn't put down *Rowbotham* on it. It's just as motion, but there's no *Rowbotham*. It just says motion only.

MS. LEVASSEUR: I've got two copies.

MR. ATKINSON: You got -

MS. LEVASSEUR: A document entitled motion which Mr. Atkinson says it's a *Rowbotham* application.

MR. ATKINSON: Yeah.

MS. LEVASSEUR: And then I've got what's purported to be a supporting affidavit for that application, two copies of that as well. Then I've got two copies of a notice of motion to stay proceedings under section 24(1) of the Charter and then I've got one copy of what looks to be purported exhibits.

MR. ATKINSON: That's for the Attorney General. There's two copies. You guys have my actual copy. That's why you've got doubles.

MS. LEVASSEUR: I think I've got the original.

MR. ATKINSON: Yes.

MS. LEVASSEUR: I will hand that back to you.

MR. ATKINSON: And if you got those of anything that means that - one - one of the doubles will come back to me.

MS. LEVASSEUR: I now have two copies of these documents. At this stage I'll need to notify Legal Aid Ontario about Mr. Atkinson's intention to bring a *Rowbotham* application.

MR. NORTH: Your Honour, if I can address the court.

THE COURT: Yes.

MR. NORTH: I understand you have a matter continuing today involving an individual in custody. We've heard rumours about this

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potential application but obviously until we see the application there's very little that could have been done. I've never conducted - been involved in a *Rowbotham* in my career, but my understanding is that parties need to be notified within the Attorney General's office and presumably within the Legal Aid office. And my suggestion would be if the matter is to be heard, and obviously it's Mr. Atkinson's right to bring this application that rather than select a hearing date for this particular application, rather than select that today, given the number of parties that need to attend that we have the matter return in the video stream and that my friend and I can assist with this obviously would notify the various parties.

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THE COURT: Where's the *Rowbotham*, do I hear that or does that get heard -

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MS. LEVASSEUR: I've only done it in Superior Court and I've done it, it was civil counsel who argued it. I didn't do it myself and I'm trying to remember if it was in Superior Court because it was a Superior Court matter or that's where it's argued, and I don't remember.

MR. ATKINSON: I believe it's here, Your Honour.

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THE COURT: And maybe on some level that makes sense. On another level, I thought it might have been a jurisdiction thing that required the Superior - like a federal judge on it. So

I'll have to figure that out too between now and then. All right. This doesn't surprise you Mr. Atkinson, these things get complicated and -

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MR. ATKINSON: I have been picking this brain pretty thorough. I mean, I'm not going to start letting on that I know but I'm very good at picking people's thoughts and - I mean, it's really beyond my league but I - I think that to put it over and do a video might be a good thing, but I think that one of the things that I kinda been sort of like cautioned about is once I've done this, I mean, I've sort of taken everything away from David and putting to you and that decision may fall the *Rowbotham* application and then it goes to - if it happens and it goes to a lawyer.

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THE COURT: Here's the thing, what I'm really interested in and I suspect you are as well, is not losing the dates that we have set to have the hearing, right. I know that there are a lot of other things that you're very interested in pursuing by means of appeal and so forth and the matter needs to be completed, but it needs to be completed fairly with all your procedural rights completely protected.

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So what we're going to do, I think, makes sense what Mr. North suggested I think that we put it on a video remand date. The people that need to be advised of this should be advised of this and all of us will have to get our minds

precisely where the forum is that it needs to be heard. And we'll set that date.

How much time do you think would be required for that?

5 MS. LEVASSEUR: I'm going to suggest two weeks please.

MR. NORTH: Sorry, I was thinking time to argue the hearing.

10 MS. LEVASSEUR: You mean for video remand date?

THE COURT: For video remand date.

MR. NORTH: Right. Not next week, but any time the following week is agreeable to me; towards the middle or the end of the following week so I think two weeks is a good estimate.

15 THE COURT: All right. Let's set it for Wednesday of that week, what date would that be?

MR. NORTH: 22.

20 THE COURT: 22. And between now and then we'll be looking into things and hopefully on that day we'll have a date and place for your *Rowbotham* application and notice given to all the people who need to have notice of it.

25 Okay.

MR. ATKINSON: I've been in contact, I did a motion with Julian Gojer for the assessment and Matthew Yeager, a criminologist. I sent you a motion on that. I'm wondering if you could make a decision on Matthew Yeager. I'm at a situation now where I want to move ahead with that and start to do what I need to do with

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5 that because you read his vitae. So I mean, I would like to start doing some of that as well getting that stuff rolling and it's going to sort of delay things if I don't because - this case is quite complex and it's very vague and there's a lot of material.

10 THE COURT: If we're at this point, I'm looking at the possibility or the likelihood of counsel being on board as retained counsel to actually assist you on this matter, then it seems to me that it's a little bit premature to be making applications, or dealing with certain aspects of evidence and assessments before that lawyer is on board. When you speak with that lawyer, 15 if it comes to that point, that lawyer will obviously have some interest in determining and deciding what should or should not be done. So I'm not going to make that kind of a ruling right now, but we will put it on to the 20 Wednesday, what was the date again?

MS. LEVASSEUR: March 22nd.

25 THE COURT: March 22nd, nine o'clock and that will be to set a date for a *Rowbotham* hearing. Madam clerk, just to be clear, we're preserving the July trial - hearing dates, rather. To set a date for a *Rowbotham* hearing.

30 MR. ATKINSON: Because I turned that down a little while ago because I was not thinking too clear when I said that I wasn't going to have Julian Gojer do the assessment. Do I send in a new application or - because I said I wasn't

going to, and now it's on the record? I just want to make it clear do I send a new one in?

THE COURT: Are you saying you do want that now? We can revive the old application.

MR. ATKINSON: That's what I'm requesting.

MS. LEVASSEUR: Mr. Atkinson, I certainly am happy to forward your application on your behalf to Crown Law Civil as well as the Ministry of the Attorney General given that it's challenging for you to do so from custody. But as I understand it, they require to proceed with the *Rowbotham* application a copy of your legal aid file which I don't have. So is that something that you have?

THE COURT: I've been given materials, and I'm going to ask you -

MR. ATKINSON: It should be in the thick package.

THE COURT: I've got materials here that look like they are Legal Aid Ontario materials. I'm not sure - I've just glanced through them. I haven't really read any of them, but this is what I'm going to ask you to do is just compare what you have and what I have. I think that may help with what you're looking for, not now afterwards.

MS. LEVASSEUR: So I shall borrow this then, is that what Your Honour is suggesting go through it, compare it and then -

THE COURT: Maybe what might be easier this way, once we start the trial, I'll ask madam

clerk just to make a copy of that for you and then for Mr. North so that everybody is singing from the same song sheet then.

MR. ATKINSON: Mr. North has a copy of it now.

THE COURT: He has a copy of everything now.

MR. NORTH: I have a copy. I'm fine, just for the Crown.

THE COURT: Thank you very much.

MR. ATKINSON: The only thing that she wouldn't have is a copy of we need a copy of Mr. Brodsky's email. I just had the one copy.

THE COURT: Madam Clerk, what I would like you to do just for completeness I'd just like you to make a copy of everything and give it off. Thank you. That's good. Thank you. I'll see you a little bit later and see where this goes.

MS. LEVASSEUR: Thank you, Your Honour.

THE COURT: Thank you.

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FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

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I, Cathy Knelsen, certify that this document is a true and accurate transcript of the recording of R. v. Atkinson in the Ontario Court of Justice, held at 75 Mulcaster Street, Barrie, Ontario, taken from Recording No. 3811-06-20170310-084750 which has been certified in Form 1.

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March 27th, 2017

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