

SUPERIOR COURT OF JUSTICE

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B E T W E E N:

ROBERT MCCABE

Plaintiff

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- and -

THE ROMAN CATHOLIC EPISCOPAL CORPORATION  
FOR THE DIOCESE OF TORONTO, IN CANADA

Defendant

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

BEFORE THE HONOURABLE JUSTICE G. LEMON  
On May 8, 2017  
at GUELPH, Ontario

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APPEARANCES:

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Mr. P. Ledroit  
Mr. O. Sabo  
Ms. S. Metzler  
Mr. C. Blom

For Plaintiff  
  
For Defendant

**SUPERIOR COURT OF JUSTICE**

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

**W I T N E S S E S**

WITNESSES

Exam      Cr-      Re-  
in-Ch      Exam      Exam

**E X H I B I T S**

EXHIBIT NUMBER

ENTERED  
ON PAGE

A	Photographic brief .....	1
B	One-page photo June 1968 TCSB .....	2
	RULING .....	16

Legend

[sic] - Indicates preceding word has been reproduced verbatim  
and is not a transcription error.

(ph) - Indicates preceding word has been spelled phonetically.

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Judicial Review Received:    May 24, 2017

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MONDAY, MAY 8, 2017

...

5 MR. LEDROIT: Your Honour, I am giving you the  
photographic brief that, if we can for the  
purposes of identification, mark as Exhibit A.  
EXHIBIT NUMBER A: Photographic brief - produced  
and marked.

10 MR. LEDROIT: And taking from - my - my friend  
objects to all of it and let me just give you,  
if I can, a little bit of background of the  
nature of the dispute between us. McCabe, or  
Robert McCabe, my client, is one of six children  
brought up in Toronto and was abused at age 11.  
15 The consequences of the abuse are in dispute.  
He eventually became a bad alcoholic, on the  
street, down to 80 pounds, and the defence takes  
the position that his alcoholism was caused by  
genetics, family. Because Bob told and admits  
20 to his father being, at one point in his life, a  
heavy drinker and one of his five sibs [sic] he  
describes as a heavy drinker. So the issue of  
alcoholism is in dispute. Secondly, Bob suffers  
from P-T-S-D, post traumatic stress disorder,  
25 and - and other psychological problems, I mean,  
anxiety, depression, anger, fear, I mean there  
is a litany of them. And as far as I know  
nobody else in his family does. My intent is to  
show to this jury that Bob was brought up in a  
normal family home, he was a normal person, and  
30 ended - would have ended up having a normal life  
like his brothers and sisters did had it not  
been for the abuse. That is the issue. Now, my

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friend objects to all of the pictures. One of the pictures is in the school record.

THE COURT: Just give me a minute.

MR. LEDROIT: I can hand this up to Your Honour as Exhibit B.

EXHIBIT NUMBER B: One-page photo June 1968 TCSB - produced and marked.

THE COURT: Is it one of these pictures?

MR. LEDROIT: No. No, that is - the - the other pictures are family pictures, Your Honour.

Subject to - the pictures of the school, the church, and the Notre Dame Basilica in Montreal.

All of those pictures are capable of being identified by my client but my friend, if I understand the objection, is saying that they are not relevant. Where, on the other hand, they are extremely relevant because it was a difficult task at any time to explain what Catholicism is like to a young child. But having grown up in that environment I know something about it and a priest and the power of a priest, the fear of a priest, the respect and the honour one has for a priest, the awe, if I can describe it as "awe", of the Catholic Church over an 11-year-old boy is overwhelming. This is not just sexual abuse by someone, it's sexual abuse by his priest. And I intend, and of course my intentions are always subject to a court ruling. But I intend to go into the evidence of what it was like to be brought up Catholic. Because mister - or, Doctor Jaffe will testify that the sexual abuse by a priest

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is a whole different animal than just childhood sexual abuse. It is monumental. And he will testify and provide an opinion, again subject to Your Honour allowing him to do that, that the relationship between childhood sexual abuse and substance abuse and psychological problems, a whole litany of problems, is prevalent. He will also say, well, you know, alcoholism, you know, tends to run in families as well. I mean, you - you can't separate it. I mean, not - you know, if - if somebody is an alcoholic, I mean, one of the things they do is ask you, "Well, do you have it in your family?" And 50 percent of the people will say, "Yeah, I do." But maybe 30 or 40 percent of them may say, probably will say that, "I was abused." Now, the amount of the abuse, the effect of the abuse, you see this was a one-time event, if I can put it that way. And my friends, I presume, will be arguing, "Hey, well, you know, I mean, it was only once. Therefore it wasn't important." And how many times does it take?

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THE COURT: You are going to have to help me a bit. I understand that is your argument. What has it got to do with the pictures?

MR. LEDROIT: Because I need to show what it was like to be brought up in a normal home. I mean, this - this....

THE COURT: Okay. So....

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MR. LEDROIT: I mean, this was not an alcoholic home. This was a normal home.

THE COURT: All right. So, that is - well,

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maybe - okay. It...

MR. LEDROIT: I mean, we have...

THE COURT: ...would be easier to...

MR. LEDROIT: ...father at....

THE COURT: ...it would be easier to hear the objection rather than me interrupt you so go ahead. Sorry.

MR. LEDROIT: All right. Well, you know my intent. My intent is to show what it was like growing up in a normal home, in a Catholic home, going to a Catholic school and a Catholic church. Pictures of which are there. He attended them and I want the jury to see where he was as an 11-year-old, to see what the effect of it is on an 11-year-old; not on an adult. And insofar as the pictures of the Basilica or the Notre Dame Cathedral in Montreal, that was the whole purpose of the trip, that is where they were going. They were going so that Father Robert would say mass at the - at the - at the Notre Dame. And that was part of the weekend. My client, in order to try, because he has been trying in the last five or six years, he has been - maybe it is a bit longer, maybe it is six or seven years. He has - he has quit drinking. He has - he has gotten into A-A and he has quit drinking. And he has - he has been trying to heal. Part of the healing process has been going to Montreal to make a pilgrimage as to that weekend. Part of that has been going to the graveside of Father Robert in order to try to make amends to - he wants to get rid, if he

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can, of the monkey on his back. And this is part of the process. So I want to be able to explain to the jury what it was like growing up, that he lived in a normal home, his father never lost a job because of alcohol. None of his brothers or sisters lost a job because of alcohol. Bob lost all his jobs because of alcohol. Bob lost his marriage because of alcohol, he lost his family because of alcohol. He is different from everybody else. I want to show the jury what it was like in a normal home, because had this abuse not have occurred, he would have been normal too. They need the pictures, they need the background. There is a video and if you need to see the video it's going...

THE COURT: I do not know...

MR. LEDROIT: ...to take a bit.

THE COURT: ...if there is - if there is an objection about the video, I need to...

MR. LEDROIT: Well, the...

THE COURT: ...see the video.

MR. LEDROIT: ...the - the pictures are from the video.

THE COURT: Yes, well, that is why we have videos, because they are more dramatic than pictures. If - if there is an objection about the video, I need to see the video.

MR. LEDROIT: Okay. There is. I mean, give me a second just to set up the...

THE COURT: Well, I think it might...

MR. LEDROIT: ...screen, it will only...

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THE COURT: ...be a little easier...

MR. LEDROIT: ...take a minute.

THE COURT: ...let me - it is helpful to have the background but in the normal course, the objection would be first and the response would be second so....

MR. LEDROIT: I'm sorry.

THE COURT: No, no, no. It is helpful to put me in context. What is the objection?

MS. METZLER: If I can start by asking you to look at these actual photographs, Your Honour, I can explain...

THE COURT: Sure.

MS. METZLER: ...the problem. Tab 1, this appears to be a photograph of the family home taken in 1956. The event that is said to have occurred here was in the summer of 1963. How is this relevant? What does this do to help the - the jury, other than to perhaps think, "Oh my, what a small little home for a family of six or eight people"? Tab 2, there is a photograph of St. Lawrence School which is current. We don't have anything of St. Lawrence School from 1963. And you know it's current, there is a Canadian flag, the phone number identifying the school and the church, which are the next two pictures, of 4-1-6. Of course, we didn't add area codes to phone numbers until well after 1963. We have nothing to help in terms of what these buildings look like, if relevant, back in 1963. There appears - and this goes all the way through to page, I guess 8. This looks like it is a

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5 picture of a confessional but nothing is said to  
have occurred in a confessional, why do we need  
that other than - I guess Mr. Ledroit wants to  
put a spin on the Catholic religion which, as we  
know, the Catholic religion is not at trial in  
10 this case. I don't know where the statue is  
from, on page 9. Now it looks like pages 10  
through 15 are what Mr. Ledroit describes as  
having come from this home video. I don't  
believe we have been advised as to when this  
video was taken, if it's one video or more than  
one, who took it or who is in the video. I  
don't - I don't know that it is suggested that  
Mr. McCabe is in any of these photographs but  
this looks to be something connected to - and I  
15 am going to guess, it - maybe it's Confirmation.  
I don't know the - yet again, this doesn't seem  
to have relevance to where the event occurred or  
when. If we go to Tab 3, these apparently are  
family photographs and I am....

20 THE COURT: Can I just stop you there?

MS. METZLER: Yes.

THE COURT: When were you provided with the  
video?

25 MS. METZLER: We received the video 10 days ago?

MR. LEDROIT: Ten months ago. No.

MS. METZLER: Ten months ago?

MR. LEDROIT: Well, it's just as big...

MS. METZLER: We just got a....

30 MR. LEDROIT: ...an exaggeration. How many  
months ago?

MS. METZLER: No.

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MR. LEDROIT: The beginning of February.

MS. METZLER: No. We received this...

THE COURT: Well, you are...

MS. METZLER: ...U-S-B port....

THE COURT: ...going to have to figure that one out.

MS. METZLER: Yeah, it was - it was 10 days, 2 weeks at the most, Your Honour, that we received this by...

THE COURT: Well, I....

MS. METZLER: ...courier.

THE COURT: One of you has got inaccurate information. So, I will hear your argument - but we are going to get that sorted out before I go much further. But I will hear your argument, carry on. So Tab 3.

MS. METZLER: So Tab 3 appears to be family photographs and I am told that the - the youngest boy in this photograph is Mr. McCabe. Again, we don't know when these were taken but I think it is pretty clear from the photograph that the youngest boy is not 11 and a half. These seem to have been taken....

THE COURT: Okay. When did you get these?

MS. METZLER: The photographs we probably got a month ago? It was at least a month ago, these particular photographs. And the photographs came not as part of any video, they just came on their own.

THE COURT: Okay.

MS. METZLER: And Tab 4, these, I am - I am told, are taken from the video. I don't know

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what the purposes of someone at a white picket fence. I mean, we can't certainly see any detail but maybe these are photographs of Mr. McCabe playing baseball? Is - is it?

THE COURT: Well...

MS. METZLER: I don't know.

THE COURT: ...I am not wasting my time. You folks talk about it. You find out what it is about, you tell them what it is about, figure out when you got that information, and I will decide whether I am going to make a ruling on it. I am not going to decide something is in or out because it "might be this" and it "might be that". Tell me when you are ready for trial and you have talked through all of these issues and made clear what the issues are agreed and what are not agreed, and whenever you are ready, I will come back. And if you are not ready by 2:15, the jury and I will say we will be back tomorrow whenever you are ready. Whether it was 10 days ago or 2 months ago, we do not want to waste 6 jurors' time. There was a long - there was plenty of time to focus all of these and get them cleared out of the way and not waste the jury's time. I will send them away at 2:15. If you are not ready for me to determine what the issues are, I have got other work to do. Tell me whenever you are ready to argue those issues.

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MS. METZLER: Your Honour, we want to move ahead. We don't want to waste time. We are not going to object to the video being presented at the appropriate time and Mr. McCabe can answer questions about it. In relation to these photograph books or excerpts from it, my concern continues to be in relation to the religious photographs, the current pictures of the - the - the school and the St. Lawrence Church. Those are at Tab 2 and the cathedral, which are current. We have no idea what it was like in 63 at Tab 8. So Mr. Ledroit, I believe, wishes to still have those photographs in and we will address those with you.

THE COURT: Well, let me just focus you then. So the ones that are not in dispute are 3, 4, 5, 6, and 7?

MS. METZLER: Correct. Now I should say in Tab 2 that it appears there are excerpts from the video, pages 10 through 15.

MR. LEDROIT: What tab?

MS. METZLER: Tab 2, pages 10 through 15.

THE COURT: All right.

MS. METZLER: Those are part of the video so no objection to those. But pages 1 to 9 and Tab 8.

THE COURT: Okay.

MS. METZLER: And we are not relying on timing as to when we received materials. We are not relying on timing or lack thereof of receiving materials so...

THE COURT: No....

MS. METZLER: ...we don't have to go into that.

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THE COURT: Okay. So that is the objection, Mr. Ledroit. What do you say?

MR. LEDROIT: Tab 2, 1 through 9, are pictures of church and school. Your Honour, the theory of the plaintiff's case, as I mentioned before but it's worth repeating, is that this was abuse by a Catholic priest to his altar boy. This is a different kind of abuse than childhood sexual abuse in general and I have to be able to present to the jury what it was like growing up - growing up Catholic. What it was like to attend in this church both before and after the abuse. What it was like going to confession. What confession is all about. How holy confession is, it is a sacrament where a priest performs the miracle of - it is called a miracle to an 11 year old boy. The miracle of reconciliation. Only a priest can forgive that sin. He went into a confessional. Maybe - maybe it wasn't - because it's a current picture, maybe it wasn't exactly like it is. I don't know. We can ask Mr. McCabe. That is the way it is today. That is what confession is like. I want to ask him what it is like going into a confessional, closing the curtain, having the priest open the window, and the boy says, "Bless me father for I have sinned." What it is like. There is pictures of communion in here, the First Communion. What is that like, where you receive the sacrament of...

THE COURT: Well, I think that is...

MR. LEDROIT: ...the Eucharist.

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THE COURT: ...that is now on consent if I have got the video, correct?

MR. LEDROIT: But - but - but whether it is confession or whether it's - it's - it's your First Communion, both are very important to a little boy. Confirmation, same thing. And you see the Confirmation on the video. Now, the fact that when you are Catholic you go to a Catholic school, where the church is right next door. They're all part of one thing. I want to be able to explain to the jury what it was like growing up Catholic, because you see this little boy's life, the plaintiff's theory of the case, is that his life was turned upside down.

Everything he had been taught prior to the age 11, didn't exist. I mean, he was taught that his priest was God. This was God abusing him, this wasn't just any person. I have to be able to put into the minds of a jury - I don't know, they all took an affirmation, maybe none of them were ever Catholic but I have to explain to them what it was like being Catholic. Going to a Catholic school, having nuns teach you, having the priest come over and teach you, having them - the school participate with the church in First Communion, or First Fridays, a Novena is a First Friday where the first Friday of every month the school marches you over to the church to go to confession, every class, one through eight. You go over to confession. You have to go. What's it like going....

THE COURT: Mr. Ledroit, the reason you picked

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judge and jury...

MR. LEDROIT: Yes.

THE COURT: ...is so that you can say things like that and - because you know...

MR. LEDROIT: Yes.

THE COURT: ...that that emotional thing isn't going to work with judge alone.

MR. LEDROIT: I get wrapped...

THE COURT: You are now in....

MR. LEDROIT: ...up in the case, I'm sorry.

THE COURT: Yes, I know. That is why I am just shortening you up....

MR. LEDROIT: All right. But, you understand where I am trying to go with this?

THE COURT: Yes, I do.

MR. LEDROIT: Okay. That is why they are relevant and - and very - very relevant to the plaintiff. Now, the other ones there was an objection to was Tab 8 and that is the splendor....

THE COURT: Well, let me just stop you there.  
Page 9.

MR. LEDROIT: Yes.

THE COURT: Of Tab 2.

MR. LEDROIT: Yes. The confessional - or, oh - yeah. Don't ask me.

THE COURT: I'm sorry?

MR. LEDROIT: Don't ask me. I - I forget. I don't know what that's a statue of but it's some kind of a holy figure. Bob will know, Mr. McCabe will know. It's - it was there when he was a kid, he walked by it every day.

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THE COURT: So what is it good for?

MR. LEDROIT: The awe that's created, that's surrounding, the complete indoctrination.

THE COURT: Can....

MR. LEDROIT: I presume that's a boy looking up to Jesus.

THE COURT: Okay.

MR. LEDROIT: And then we have Tab 8 which is the Notre Dame Basilica if I am correct. Yeah. Now, as I mentioned in my earlier remarks, Bob went there to make a pilgrimage, it was part of his healing process. He went there the morning after the abuse occurred. His memories are scant but he has some memories of being there, of what it was like, after a priest had done this to you, to go to there and watch the priest - participate in mass with the priest. The awe that one is struck by this cathedral. Look at the second picture. What does that do to an 11-year-old child when he sees that? Christ on the cross with all that splendor.

THE COURT: I don't quite remember those colours quite so dramatically when I was last there. It could have been on a rainy day but it does look like it might not be quite how one would see it when one walked into it. I...

MR. LEDROIT: Well....

THE COURT: ...would not want to rely on my memory but that does sort of jump out at me that that is not - those people are really wearing some pretty dazzling blue outfits that I have not seen on a regular basis.

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MR. LEDROIT: But - but let me have Mr. McCabe identify Jesus on the cross and below him Mary and Mary Magdalene.

THE COURT: Well, but you see the picture has to be accurate.

MR. LEDROIT: You mean was it like that at the time?

THE COURT: Well, are those colours like that now?

MR. LEDROIT: They're taken from the internet.

THE COURT: Well, when you shrug your shoulders and say, "I don't know if it looks like that," isn't....

MR. LEDROIT: He's been there. He was just there, you know, six months ago.

THE COURT: But you want to use this on an opening.

MR. LEDROIT: This, yeah, he'll...

THE COURT: Right.

MR. LEDROIT: ...he'll be in the box to identify it. Do you want to have...

THE COURT: Not - not in your...

MR. LEDROIT: ...a *voir dire* now?

THE COURT: ...not in your opening it won't.

MR. LEDROIT: Well then can we have a *voir dire* to prove it?

THE COURT: Do you know if they are accurate?

MR. LEDROIT: Mr. McCabe was there just a few months ago.

THE COURT: So you can tell me then that it is accurate.

MR. LEDROIT: It is.

THE COURT: You say it is accurate.

MR. LEDROIT: He tells me it is. I haven't seen it, I haven't been there, I mean....

THE COURT: Okay.

MR. LEDROIT: But you know, if Your Honour has been to churches around the world, the splendor of the church. And the reason they are there is to inspire. Thank you, Your Honour.

THE COURT: Anything in reply?

MS. METZLER: No, Your Honour.

R U L I N G

Lemon, J. (Orally):

Reasons to follow. Tab 1....

MR. LEDROIT: I'm sorry, I didn't address Tab 1. I - I forgot to....

THE COURT: Okay.

MR. LEDROIT: Did you want to hear me on that?

THE COURT: Well, since I am going to allow it.

MR. LEDROIT: Well, if you are going to allow, you don't need to hear from me. Sorry.

THE COURT: Well, what I hesitate on is....

MR. LEDROIT: It's in the video.

THE COURT: No, no. What I am worried - well, one step at a time.

R U L I N G

Lemon, J. (Orally):

Tab 1 and 2 are in. Tab 2, presuming that Mr.

McCabe will say that pages two and three are essentially accurate in comparison to what they were like when he was there as a child. And it may be that he is going to say the trees were smaller and the sign without a phone number is not accurate but the church has not changed much. Presuming that he is going to say that is accurate, then I have no trouble with pages one, two, and three.

Four, five, and six will depend on what his evidence is so I am not - and seven. I am not making that ruling at the present time. It may be that that fits into his evidence, it may not. And so those would have to be dealt with on a piece by piece basis.

Eight, I see no relevance. If it cannot be certain that that is what the confession booth looked like at the time, I think jurors can be trusted to know what a confession booth looks like. They do not need a picture that is not accurate.

Nine is not admissible. Eight, page one, it....

MR. LEDROIT: What about ten?

THE COURT: Ten is part of the video. At least that is what everybody else was going on.

MR. LEDROIT: Yes...

THE COURT: Ten through...

MR. LEDROIT: ...yes it is.

THE COURT: ...fifteen was admitted as part of the video.

R U L I N G (Cont'd)

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Lemon, J. (Orally):

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Eight, page one, I am satisfied that goes in. I have real doubts that the colours in Tab 8, pages two, three, and four, are an accurate depiction of what it looks like, of what the cathedral looks like. Presuming that it is accurate, I think any one of those would be satisfactory.

THE COURT: As part of that motion I was also given Exhibit B. Nobody has made submissions on that. That is the school record, is that something that is...

MS. METZLER: Oh, that - that's....

THE COURT: ...in issue?

MS. METZLER: No. That is part of the O-S-R so it is a document. There is no issue with that.

THE COURT: Okay. What is the next motion? Oh, let me - let me just - before we get to that.

My hesitation a moment ago, Mr. Ledroit, I am most concerned about what you put on that screen in your opening and where the envelope is for an opening. And I am not going to tell you how to do your opening, you....

MR. LEDROIT: Tab B - or Exhibit B. That's the only one.

THE COURT: The school record? In your opening.

MR. LEDROIT: Yes, sir. I will not bend the rules.

THE COURT: Okay. Says a good plaintiff's lawyer.

MR. LEDROIT: I just want some help with - with the exhibit once you are finished that ruling about what we expunge and I will just rip them out of the book.

THE COURT: Okay. Have we got another copy of the photograph briefs?

MR. LEDROIT: You know what? Why don't I make one, I will make one tonight and I will keep one of those three pictures that - from the Basilica.

THE COURT: Well, so long as you can prove it.

MR. LEDROIT: Yes.

THE COURT: Yes.

MR. LEDROIT: I will review it again with my client just...

THE COURT: Yes.

MR. LEDROIT: ...to make sure that - that I will be able to prove it.

THE COURT: Yes.

MR. LEDROIT: Thank you.

...

M A T T E R    A D J O U R N E D

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

*Evidence Act*

I, **Dolores Daly**,  
*(Name of Authorized Person)*

certify that this document is a true and accurate transcript of the recording of

**Robert McCabe v. Roman Catholic Episcopal Corp for Diocese of Toronto, in Canada**  
*(Name of Case)*

in the **Superior Court of Justice, Civil Trial**  
*(Name of Court)*

held at **74 Woolwich Street, Guelph, Ontario N1H 3T9**  
*(Court Address)*

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which has been certified in Form 1 by Reporter James Donnelly .

**May 11, 2017**  
*(Date)*

**Uncertified ecopy**  
*(Signature of Authorized Person)*

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