

1 FEBRUARY 1, 2019

2

3 THE CLERK: Court is open.

4 MR. SWERYDA: Good morning, Your Worship. It's
5 Christian Sweryda, first initial C, last name S-W-E-R-Y-D-A,
6 for the record.

7 THE CLERK: And with you? Who's with you?

8 MR. SWERYDA: Oh, and Cecilia Nguyen is with me,
9 the -- she's the accused in this matter. I'm here to speak
10 on her behalf.

11 MS. MALAVIYA: It's Malaviya, first initial R, this
12 -- appearing for the Crown just with respect strictly to the
13 summary dismissal motion this morning, Your Worship. I don't
14 know, and I'm -- don't know whether or not we're expecting
15 Ms. Yung this morning.

16 Just -- I don't know what Your Worship's intentions
17 are this morning. As an initial matter, having received the
18 materials and being aware of the fact that the two motions
19 which are appearing on today's docket are the summary
20 dismissal motion, then, if not granted, then the motion to
21 have Mr. Sweryda removed. Just as a matter of protocol, I'm
22 wondering whether or not, absent a motion to join the two
23 matters, we can argue both motions here simultaneously and
24 have one decision rendered, or if Your Worship's intention
25 was to have the two matters argued separately, one for each,
26 and then issue two separate decisions.

27 THE COURT: In terms of -- so Ms. Nguyen's here,
28 correct?

29 UNIDENTIFIED PERSON: Yes.

30 THE COURT: And so Ms. Yung, where is Ms. Yung
31 today?

32 MR. SWERYDA: Ms. Yung is at work right now. Ms.
33 Nguyen's here because there -- the Crown had succeeded in
34 getting an order for her to be here under Section 54 of The

1 Provincial Offences Act, but there is no such -- there was no
2 such order from Ms. Yung, so she's simply appearing by
3 representative as opposed to in person under Section 53(1) of
4 The Provincial Offences Act.

5 THE COURT: Do I have copies of the authorizations
6 for these individuals?

7 They're both photo enforce tickets?

8 MR. SWERYDA: Correct.

9 THE COURT: So in terms of the overall -- what's
10 going to take place today with respect to -- obviously, there
11 are the motions that are before the court, but should --
12 whatever the decision of the court is, what are we doing with
13 these after the motions have been decided? Would they proceed
14 to hearing today or --

15 MR. SWERYDA: My understanding is that, regardless
16 of the result, that they will be adjourned. My understanding
17 is this is simply a pretrial hearing for a contested motion.
18 I go -- I believe it was at least implied in the emails I've
19 exchanged with my learned friend that it's -- that this is
20 just simply a contested motion hearing and, either way, I'm
21 anticipating that both matters would be adjourned.

22 If I'm excluded from representing, then both
23 accused would have to decide what they intend to do going
24 forward. If I'm permitted to represent, I would still need
25 time to then prepare my case to the substantive matter and
26 actually prepare the response to the charges at hand.

27 THE COURT: Anything from the Crown?

28 MS. MALAVIYA: I should have indicated -- and I
29 apologize for the oversight -- that seated with me at counsel
30 table is Ms. Cheys, first initial A, articling student with
31 our office.

32 If I recall correctly -- and I wasn't involved in
33 the administrative aspect of this -- we did arrange or we did
34 specifically request a pretrial motion in order to address

1 this issue and have it resolved prior to proceeding to a
2 hearing, so the -- it wasn't anticipated that a hearing would
3 proceed today.

4 THE COURT: Okay. My understanding in terms of
5 under The Provincial Offences Act -- I mean, Mr. Sweryda, I
6 appreciate you've been authorized under the backs of the
7 tickets in terms of the photo enforce tickets to represent
8 these individuals.

9 In terms of appearing today on these types of
10 motions, I'm surprised that Ms. Yung is not present -- given
11 that the seriousness and complexity of what's taking place,
12 that she's not here. It's not simply that you're representing
13 her on the ticket. You're representing her now, apparently,
14 on something that -- where I have to make a decision in terms
15 of whether you should be representing her. Ultimately,
16 without having her present in the courtroom to even be able
17 to question her in terms of things that I might want to know
18 about how she came to choose you as a representative, her
19 relationship with you, and those types of things, or whether
20 she even understands what's going on, she's not present.

21 MR. SWERYDA: If I may indicate, Your Worship,
22 normal practice in the courts is to be able to appoint
23 somebody as your representative. The back of the ticket says
24 you may appear in person or by representative. It's normal
25 practice. It's also in The Provincial Offences Act and,
26 simply put, if she could have been here -- she works a full-
27 time job at CRA; she simply can't take the time off to dispute
28 this ticket so she's willing to respect whatever the outcome
29 is today, and that's part of why she wanted me as her
30 representative to begin with. If she was able to come to
31 court and had the time to do so, she would have been doing it
32 herself to begin with and then we wouldn't have this disputed
33 motion.

34 In most photo enforcement tickets in general, if a

1 representative appears, the Crown will not put up any fuss
2 over that. Normally, the accused isn't required to be here.
3 And I understand that this is a motion over and above the
4 trial, but Ms. Yung is certainly aware that what she says is
5 really not going to matter in the outcome of whether or not
6 I'm permitted to ask as a representative, so she fully trusts
7 my ability to argue this motion, and should I be unsuccessful
8 here today, then she'll have to respect that decision and
9 then at that point she would have to self-represent. I'd
10 anticipate she'd probably try and contact the Crown but -- or
11 she might end up just having to pay the ticket in general.

12 And I should indicate that the stakes are a lot
13 lower here; there's no points on her licence or anything, and
14 if it wasn't for me being able to do this for her, she would
15 have simply paid the ticket, which is as prejudicial as it
16 could possibly get. There can't be any worse than paying a
17 photo enforcement ticket so ... Photo enforcement can affect
18 her licence, so if, if I wasn't available to represent her,
19 she would have just been paying it anyway, so there's really
20 no added risk to her by, by what goes on here today anyways.

21 THE COURT: Well, and I can appreciate what you're
22 saying, Mr. Sweryda. However, in terms of -- first off, just
23 dealing with photo enforcement tickets themselves, I mean,
24 the position I take with photo enforcement tickets is that
25 authorization -- albeit that the new POA allows for somebody
26 to represent somebody on a, on a matter, the back of the photo
27 enforcement ticket was put in place well before the new POA
28 came in, and that was for the purposes of because it's a
29 ticket that is issued to the registered owner of the vehicle,
30 there might be instances where an individual wasn't driving
31 so they want to give permission to somebody who was driving
32 to be able to deal with the ticket before the court. That's
33 the ultimate reason behind the authorization on these
34 particular tickets when they were created.

1 Now, in terms of when somebody appears before me on
2 these tickets, if it's simply an admission to an offence and
3 they want -- somebody wants to speak to something, usually I
4 don't take too much issue with that if they've been authorized
5 to do so. When somebody's going to construct -- or conduct
6 a hearing with respect to that matter, it's not my normal
7 practice just to blankly allow anybody to proceed on any
8 matter without consulting first with the, the individual who
9 is disputing the matter, to make sure that I understand that
10 they understand the consequences of what the ticket either -
11 - even if they're not serious consequences, that, number one,
12 how -- the establishment of the relationship between those
13 individuals, how it came to be, the fact that they understand,
14 again, whether or not this person's merely assisting them or
15 whether this person is having full conduct of all the matters
16 surrounding what's going to take place.

17 So it is important in terms of, I believe, with
18 respect to a hearing, that the -- in most cases that, at the
19 very least, the person who is the defendant be present.

20 MR. SWERYDA: Your, Your Worship, I'd like to just
21 make a couple comments, if I may. The first is that this
22 notice on the back of the ticket is actually not specific to
23 photo enforcement. The -- you may -- the --

24 THE COURT: It is, it isn't now --

25 MR. SWERYDA: It's on --

26 THE COURT: -- but it was.

27 MR. SWERYDA: It's on the pinks as well.

28 THE COURT: It wasn't on the pinks before, though.

29 MR. SWERYDA: Yeah, but we are --

30 THE COURT: In the history.

31 MR. SWERYDA: Yes, be we are dealing with the --
32 under The Provincial Offences Act now, and this ticket was -
33 -

34 THE COURT: Right.

1 MR. SWERYDA: -- issued under The Provincial
2 Offences Act. The -- under the old law it used to be Section
3 800(2) of the Criminal Code which was -- which previous, under
4 Summary Convictions Act, S-230, we adopted this wording in
5 the Criminal Code which was Section 800(2) and it essentially
6 was the same thing. Ontario changed their law in 1980; we
7 changed ours in 2017. But, really, the effect of Section
8 53(1) of the new POA and 800(2) of the former adoption of the
9 Criminal Code really are, in effect, the same thing.

10 I'd also indicate that in this instance, Ms. Yung
11 was not even interested in disputing this charge. She didn't
12 even want to go a hearing. She simply appointed me to go in
13 and discuss with the Crown to have a discussion over, over
14 having a reduction and the Crown's refused to discuss the
15 matter with me. So, really, by forcing Ms. Yung to come in
16 here, allowing the Crown to unilaterally decide who they think
17 they should be allowed to deal with and who not, and then
18 when the Crown does this in a case like Ms. Yung, if she's
19 not able to come in, she could get stuck with the full ticket
20 and I'd argue that's quite prejudicial, that the Crown would
21 just be able to pick and choose who they want to deal with.
22 And representatives go into this -- into the 4A program all
23 the time and get reductions.

24 The Crown does not take issue with any of them, so
25 the Crown's just simply picking me out, saying, Well, they're
26 not going to deal with me. Now, here we are in a contested
27 hearing because the Crown's forced this to go to contested
28 hearing, so it would be quite prejudicial for Ms. Yung to be
29 forced to come in simply because I'm the one she chose as her
30 representative as opposed to anybody else who the Crown would
31 choose not to oppose.

32 THE COURT: Okay. I don't have -- I'm not privy to
33 the conversations in terms of the reasons why the Crown at
34 that point didn't allow for you to represent her as a

1 representative on a simple admission --

2 MR. SWERYDA: They --

3 THE COURT: -- but, again, I don't know if Ms. Cheys
4 has any knowledge of that.

5 MS. CHEYS: I --

6 THE COURT: Is that just overall stemming from the
7 motions issue?

8 MS. CHEYS: Cheys, first initial A, articling
9 student, Provincial Crown, for the monitor.

10 I don't have my computer with me now. I've asked
11 Madam Clerk to check the notes on COMS to hopefully provide
12 us with some more information in that regard.

13 It is my understanding that in some matters Mr.
14 Sweryda refuses to attend 4A. I don't know if Ms. Yung's
15 matter is one of those cases, but I can also indicate to Your
16 Worship that the Crown's ...

17 So based on the notes that Ms. Lacey (phonetic)
18 from our office has provided us today, it does indicate that
19 Mr. Sweryda didn't attend 4A, whether that's -- is that
20 correct, Madam Clerk?

21 THE CLERK: That is correct.

22 MS. CHEYS: Okay.

23 MR. SWERYDA: I'm looking at the facts here. I
24 would anticipate that that could very well be true in this
25 instance, but I would say that if I didn't attend 4A in this
26 matter, it's simply because on the Airmaster matter in
27 October, the Crown outlined that they outright refused to
28 deal with me and that, that they did not -- would, would not
29 speak with me going forward.

30 So if I didn't attend 4A on this particular case,
31 that would be the reason why, is because the Crown had already
32 indicated their refusal to discuss matters with me, and with
33 already forcing the Airmaster matter to go to a contested
34 hearing, in that case I do know for a fact that I did go to

1 4A and did attempt to resolve it, and same --

2 THE COURT: Okay.

3 MR. SWERYDA: -- with Ms. Nguyen's ticket here,
4 which --

5 THE COURT: But that wasn't an admission, right?
6 Because an admission, you would just appear at -- in 4C.

7 MR. SWERYDA: Yes, well --

8 THE COURT: So you would -- in order to get into
9 4A, you actually have to say that you're disputing the matter.
10 Is that not correct, Mr. Sweryda?

11 MR. SWERYDA: My understanding is you have to go to
12 4A no matter what, to talk with the Crown before you even get
13 in the door, because --

14 THE COURT: No.

15 MR. SWERYDA: -- I would have been perfectly fine
16 going to 4C to begin with, walking in the door, and that's
17 part of why Ms. Nguyen -- or, sorry, Ms. Yung wanted me to
18 represent her on this matter. She just simply wanted to enter
19 a not guilty plea and --

20 THE COURT: Well, that's -- okay, so --

21 MR. SWERYDA: I'm sorry --

22 THE COURT: -- first of all --

23 MR. SWERYDA: I, I, I meant a -- I apologize -- a
24 guilty plea and ask for a reduction. I believe her ticket
25 was on Grant. I know there's a lot of signage issues on
26 Grant, which I would, would -- but I was not prepared to
27 litigate those and --

28 THE COURT: No, no, but what I'm saying --

29 MR. SWERYDA: Um-hum.

30 THE COURT: -- Mr. Sweryda, is that typical practice
31 in terms of an individual who receives a ticket and they're
32 given their options, when they attend to the main floor here,
33 the staff justice will ask them if they are either admitting
34 to the offence or if they're disputing the offence. If

1 they're simply admitting to the offence and seeking either a
2 reduction in the fine or a time to pay, then what they're --
3 they would do is they would go to 4C.

4 MR. SWERYDA: Um-hum.

5 THE COURT: If the individual is disputing the
6 matter, then they would be going to 4A to speak to the Crown
7 --

8 MR. SWERYDA: Um-hum.

9 THE COURT: -- to see whether or not a resolution
10 can be reached. So I would believe that if you appeared on
11 the main floor, that you would have had to tell them that you
12 were disputing the matter, you weren't simply admitting to
13 that matter --

14 MR. SWERYDA: Um-hum.

15 THE COURT: -- because that would have been simply
16 probably resolved by now.

17 MR. SWERYDA: Well, I can indicate that certainly
18 is -- the intention is to just simply seek a reduction in
19 this amount, but if that's the case, I would just ask to
20 adjourn it and I'd be willing to go to 4C and go from there,
21 then, and we can just go through this routine with Ms. Nguyen,
22 if that's the way we want to go with it, because I'm perfectly
23 okay with going to 4C to seek a reduction.

24 THE COURT: Okay.

25 MR. SWERYDA: That's all my --

26 THE COURT: Well, at this, at this point I don't
27 know how you can do that without contacting Ms. Yung first,
28 anyways. Given that she's anticipating that this is taking
29 place today, you would have to get her authority to do that
30 again if you're a person who's representing her in court.

31
32 (OTHER MATTER SPOKEN TO)

33
34 THE COURT: Okay. So the first motion, I'm, I'm,

1 I'm guessing, is Mr. Sweryda's to summarily dismiss the
2 Crown's motion?

3 MR. SWERYDA: Yes.

4 MS. MALAVIYA: That's correct.

5 MR. SWERYDA: That's correct.

6 THE COURT: Okay. And just for the record, just so
7 there's an understanding, in terms of the materials, Mr.
8 Sweryda, you filed --

9 MR. SWERYDA: Um-hum.

10 THE COURT: -- I got them about four o'clock
11 yesterday because I guess they were in Provincial Court
12 yesterday, so --

13 MR. SWERYDA: Yes.

14 THE COURT: -- I've had -- obviously, I've had time
15 to read the -- not necessarily go through all the case law
16 with a fine-toothed comb, but your, your motion I've read.

17 So in terms of -- I'll give you -- there's -- if
18 you want to -- and I guess I should ask, too, in terms of ...
19 These matters, in terms of -- is there anything significantly
20 different between these particular matters than other -- to
21 my understanding, there's been another decision out of this
22 court earlier this week.

23 MS. MALAVIYA: Yes.

24 MR. SWERYDA: No.

25 MS. MALAVIYA: To the best of my knowledge there's
26 -- you know, we're certainly aware of the fact that Justice,
27 Justice of the Peace Cuthbert-Buchanan's decision isn't
28 binding on this court, but the issues are --

29 THE COURT: No, but there's certainly an
30 understanding that courts of the same level --

31 MS. MALAVIYA: Well, it's persuasive.

32 THE COURT: -- should accept decisions of other
33 justices or judges or, or whatnot, barring that there be
34 something different.

1 MS. MALAVIYA: It's certainly persuasive and, and
2 there is an assumption on some level that, of course, the
3 justice of the peace who heard the original matter, where
4 there are no differences, correctly applied the law. But,
5 yes, as far as I'm aware, the issues aren't substantially
6 different in, in any of these cases.

7 MR. SWERYDA: Your Honour -- sorry, Your Worship,
8 I should say. The matter is here, though, that the Crown has
9 taken the position that basically comity, as what we're
10 alluding to here, is that it doesn't exist in this court.
11 That's the only reason the Crown's been able to push this
12 issue as far as they have.

13 If you look at my brief, my summary dismissal
14 application, on -- I discuss this case. It's on page 8,
15 paragraph number 9(e), the Lawrence matter. The Lawrence
16 matter is attached to tab 22. The most relevant part is, is
17 page T6, line --

18 THE COURT: Just one second --

19 MR. SWERYDA: Oh, sorry.

20 THE COURT: -- Mr. Sweryda, just --

21 MR. SWERYDA: Yeah.

22 THE COURT: -- have the right ...

23 You're talking about -- no, this is ...

24 MR. SWERYDA: It's my, my motion for summary
25 dismissal, should be the, the bigger of them.

26 THE COURT: I'm not sure I have the right one yet.

27 MS. MALAVIYA: Are we proceeding to Mr. Sweryda's
28 submissions at this point?

29 THE COURT: Well, and that's -- yeah, I just want
30 to make sure I have everything.

31 MS. MALAVIYA: I just want to know if I can sit
32 down.

33 THE COURT: Okay, so ... Yeah, this is the
34 application for brief -- application brief of the accused,

1 right?

2 MR. SWERYDA: Yes. On --

3 THE COURT: Okay, yeah, you can have a seat.

4 MR. SWERYDA: Yeah, I discussed a case. I have a
5 paragraph describing it on page 8, paragraph number 9(e), and
6 the case is attached as tab 22. Now, the relevant portion
7 starts on page T6, line 5, and it goes to page T7, line 10.
8 I'm just going to pull up, pull up here my copy.

9 MS. MALAVIYA: Which transcript are we looking at?

10 THE COURT: I believe it's --

11 MR. SWERYDA: The Kevin Lawrence.

12 THE COURT: -- number 22. Tab 22?

13 MR. SWERYDA: Tab 22, page -- starting on page T6.

14 As you can see here, the court asked me in what
15 capacity am I here as -- this was JJP Rosset -- and they --
16 she -- I clarified that I was here as a representative, not
17 as an agent, and then she gave her decision. Starting on
18 line 30, she said:

19
20 So Section 53(1) of the Provincial
21 Offences Act, indicates a defendant
22 may appear and act personally. Now,
23 Ms. Yan did provide, I guess,
24 submissions revolving around the
25 Legal Professions Act, however, Mr.
26 Sweryda has now indicated that he's
27 not here as counsel, but as a
28 representative.

29

30 So the Crown has -- the Crown opposed me and the
31 very first decision on this matter, I also indicate that the
32 Crown had made previous opposition, then had abandoned them.
33 That's in the Quigley, the Quigley case, which is described
34 in paragraph 9(c) at -- that one's tab 19. The -- it's this

1 -- the, the Crown had already abandoned this issue.

2 So we've got a pattern here where the Crown was
3 bringing up this issue, abandoning it or simply getting
4 nowhere with it, and then in the Lawrence case the Crown
5 brought the whole thing again, and the, and the Lawrence case
6 was the first time that they actually pursued it right till
7 the end. JJP Rosset researched the law on the matter and
8 ruled in my favour and said The Provincial Offences Act does
9 allow me to be here.

10 So if, if we're going to be following comity here
11 and say that JJP Buchanan's decision is in any way persuasive
12 here today, then JJP Rosset's decision on May 9th should have
13 been the deciding issue right then and there and we shouldn't
14 have been -- the Crown shouldn't have been pushing this any
15 further. So the simple point I'm making is that on this exact
16 same issue -- and Kevin Lawrence was also a photo enforcement
17 ticket; facts were identical in that respect -- that the Crown
18 had already lost the issue.

19 The Crown continued pushing it, ignoring comity,
20 and eventually -- and, actually, following the Kevin Lawrence
21 decision, the Crown actually didn't even attempt it in front
22 of Judge Schille, and then came out of nowhere with it on
23 June 9th in front of, again, JJP Buchanan. That was the first
24 time they won this issue.

25 So my submission is simply that if we're going to
26 be arguing rules of comity here, that, that somehow Tuesday's
27 decision is any way persuasive here today, then we have to
28 consider that going back to the very root of this issue, the
29 Crown had lost it to begin with and comity should have
30 dictated it shouldn't have gone any further. So since the
31 Crown has pushed this matter on the claim that each and every
32 case is decided in and of itself, I would argue simply that
33 this is -- we're going to have to decide this case in and of
34 itself because if we weren't operating under that premise, we

1 wouldn't have gone this far to begin with.

2 THE COURT: Ms. Malaviya?

3 MS. MALAVIYA: Again, going back, I mean,
4 certainly, comity is, you know, a real issue, a legitimate
5 one. However, what Mr. Sweryda's comments fail to take into
6 account, apart from the fact that each of the cases is decided
7 on its own merits, and as I say -- even having regard to
8 comity, it doesn't bind the Crown or one court as compared to
9 the next.

10 But situations are also fluid and this situation
11 has changed substantially in the last couple of years. And
12 I can speak more to this if we get that far, but Mr. Sweryda
13 is referring to a decision that was made in May of 2018.
14 Really, in terms of everything that proceeded through the
15 courts in this regard, that's a long time ago and a lot has
16 happened since then. And it's many of the matters in which
17 Mr. Sweryda's been involved which have given rise to the
18 Crown's concerns and is the reason -- are the reason -- form
19 the reasons why the Crown is taking the position that it is.

20 So most, most significantly, in July of last year,
21 I think -- it was some time sort of late spring, early summer
22 -- we started to experience the motions that were being filed
23 by Mr. Sweryda on one of the Lisa Eisbrenner matters, which
24 created a significant amount of chaos in both 408 York courts
25 and in these ones, and it was at that point that it became
26 clear that we needed to sort of review the nature of Mr.
27 Sweryda's involvement, and having regard then for the
28 legislation, for the law, and for our view of the nature of
29 the practice that Mr. Sweryda was undertaking, that we needed
30 to make -- take a position. And so, you know, whether --
31 we're not bound by a decision that was made in 2018 by a
32 Provincial Court judge. We can certainly make reference to
33 it; Mr. Sweryda's free to rely on it. But if a situation
34 changes, then, certainly, the Crown and the court are entitled

1 also to change their positions.

2 MR. SWERYDA: Your Worship, in response to that,
3 I'd like to indicate that the Crown is now alluding to
4 specifics of the case and they're going entirely outside of
5 the scope of this motion. If you, you look at their brief,
6 their entire argument here is that an accused cannot appear
7 by a non-lawyer. They've argued that under the Moss case
8 it's limited to mere support and assistance. That's a legal
9 question. That's got nothing to do with the particulars of
10 how involved I am or what cases I presided over since Lawrence
11 was decided. The law was the same a year ago as it is here
12 today. The Crown has not taken a position, from what I
13 understand in their brief, that there's anything that makes
14 my situation a one-off or anything particular to my
15 circumstances.

16 JJP Buchanan actually ruled specifically that she's
17 not finding me in any way to be incompetent. If we get to
18 the substantive legal argument, I will argue that 53(2), you
19 have -- it is normally the incompetent clause; we'll get there
20 if we get there -- but simply I want to say that the Crown is
21 arguing somehow that matters have changed, somehow I got more
22 involved since that Lawrence decision. But the Lawrence
23 decision was an issue of law. The Crown argued that the law
24 forbid non-lawyers from arguing traffic cases unless they're
25 bonded and they -- and then they argued in front of Judge
26 Sandhu and Section 53(2) was brought up in front of Judge
27 Sandhu on June 28th. These were legal -- these were questions
28 of statutory interpretation and, and JJP Rosset on May 9th,
29 and Judge Sandhu especially on June 28th, all ruled that the,
30 the substantive legal issue is whether or not a non-lawyer
31 can represent traffic tickets, and they ruled that, yes, they
32 can.

33 In three different -- I believe it was about three
34 different points throughout the Eisbrenner one -- which is

1 actually the exact case that my learned friend here brought
2 up. That's the case where Judge Sandhu himself analyzed the
3 Crown's arguments and on more than one occasion said to the
4 Crown -- when the Crown said that non-lawyers can't do traffic
5 tickets, he said, this -- that is not what the law says. It's
6 in the transcript of that decision. And the Crown has
7 continued pushing the exact same legal issue.

8 If you look at the Weber (phonetic) transcript,
9 which I believe was tabs -- I believe it was 11 or 12 in the
10 ... Okay.

11 THE COURT: In the Crown's --

12 MR. SWERYDA: (Inaudible) don't have one --

13 THE COURT: That was the Crown's book?

14 MR. SWERYDA: -- but tab, tab 10, if you look at
15 even tab 10 in the Crown's initial motion, that the Crown is
16 continuing to push the same argument that Section 40 of The
17 Legal Profession Act only allows lawyers or bonded agents to
18 appear for traffic tickets. That's the legal question that
19 the Crown has continued to adamantly push, despite it being
20 a settled legal issue decided initially by JJP Rosset and
21 then, and then decided by Judge Sandhu.

22 Now, JP (sic) Cuthbert-Buchanan ruled on June 6
23 that she didn't trust my motives. Well, that's not a finding
24 of law; that's just a one-off case. JJP Buchanan never
25 actually ruled on substantive legal matters. She never made
26 a finding or statutory interpretation analysis. Then it went
27 to Judge -- then -- yet the Crown tried to get JJP Buchanan's
28 decision. They got it transcribed and tried to use it as, as
29 if it were comity while ignoring all the other decisions.
30 The Crown's been cherry-picking which cases they think are
31 important and put JJP Buchanan's decision in front of Judge
32 Sandhu. Judge Sandhu had JP Buchanan's decision in front of
33 him. He, he looked at it; he considered the arguments. The
34 Crown made their position that the law says that I can't be

1 in the court, and Judge Sandhu said that's not what the law
2 says. I've got the quotes here, actually --

3 THE COURT: I've read it ---

4 MR. SWERYDA: -- in my brief.

5 THE COURT: -- so I don't need to hear the quotes.
6 Anything further, Mr. Sweryda?

7 MR. SWERYDA: Just that the Crown -- it's a bit of
8 a -- it's a interesting position here that the Crown's taking,
9 that facts are changing, yet the Crown's argument is remaining
10 that that law doesn't allow me to be there. Crown hasn't
11 argued that I'm somehow incompetent or unethical so there's
12 nothing that's specific to my situation.

13 And I'll just make one more comment. My learned
14 friend here has argued that starting in June I caused a lot
15 of chaos in the courts.

16 Also, I make one submission that the Crown on June
17 28th came there with a motion that I'm not allowed to
18 represent. The whole thing was out of nowhere. They never
19 filed a motion, never complied with practice directives. Now,
20 on Tuesday my learned friend in this very courtroom argued
21 that it was because of articling students, that they were
22 inexperienced, that -- I believe they -- she said that, that
23 it was a matter of -- that this was a new issue, whether or
24 not non-lawyers would appear in traffic court. I'd say this
25 is certainly nothing new. Non-lawyers have been doing this
26 for a long time.

27 But Ms. Malaviya's already admitted on Tuesday here
28 that the Crown's approach was entirely wrong and in error,
29 and now the Crown's trying to say that I caused all this chaos
30 back in June after admitting that the Crown was going
31 completely off script and not following proper protocols or
32 procedures, and I was stuck running on the offensive trying
33 to combat these motions that were never even filed to begin
34 with, yet the Crown was still trying to argue them. So I

1 would say I -- we can't say that I caused chaos in June and
2 July. I'd say that the Crown caused chaos by their very
3 admission two days ago because they didn't know what they
4 were doing.

5 THE COURT: Ms. Malaviya?

6 MS. MALAVIYA: Thank you, Your Worship. I'm -- my
7 submission is more or less specific to the summary dismissal
8 issue because, as I understand it, that is the initial matter
9 which needs to be addressed. I will say at the outset,
10 because it needs to be said for the record, I have never --
11 our office is not blaming articling students for the way in
12 which this matter has proceeded, but I will get to that.

13 My -- I start by saying that I -- the Crown -- and,
14 and Mr. Sweryda will be familiar with a lot of my comments
15 because I made them on Tuesday, as he says, in a different
16 form than he's characterizing them, but the Crown apologizes
17 for not having complied with the practice directives and for
18 not having provided a written submission in response to the
19 summary dismissal motion given the short timeline.

20 And the Crown does take the position that a lot of
21 the facts that are asserted, asserted in Mr. Sweryda's
22 materials are inaccurate or incomplete, but for the purposes
23 of this motion, that's not specifically relevant so I won't
24 go through them in any detail.

25 He is correct when he says that the Crown was
26 inconsistent in the past. We certainly don't take any issue
27 with that.

28 We also don't disagree, again, that the filing of
29 our motion with respect to his removal didn't comply with the
30 practice directives. By way of explanation -- and, and not
31 excuse -- in my career we've never been faced with this
32 situation. Since long before The Provincial Offences Act
33 came into effect, Mr. Sweryda has been appearing on Highway
34 Traffic Act matters. Since the POA came into force, he's

1 amassed a substantial list of individuals for whom he says he
2 acts, as Your Worship is aware. His involvement has made
3 matters increasingly and unnecessarily complex and confused,
4 and it therefore became clear that his activities were not
5 limited to providing the sort of support contemplated by the
6 POA and -- the ones that Your Worship alluded to earlier, but
7 instead that he was engaging in the practice of law.

8 Having reviewed the relevant legislation and
9 jurisprudence, the Crown determined that, in our view, his
10 behaviour and involvement were not in keeping with the spirit
11 of the POA and as of, again, June or July of last year, we
12 have been entirely consistent in our position that the
13 interests of defendants and the interests of justice require
14 that the Crown object to his involvement. Often, we were
15 entirely unaware of his involvement until the last minute
16 when a student would attend for a hearing or in 4A, and he'd
17 make an appearance. Because this was foreign territory to us
18 to a large extent, rightly or wrongly, our response was
19 necessarily reactionary.

20 The situation evolved into repeated, often last-
21 minute arguments wherein Mr. Sweryda was required to make
22 submissions to the court as to why he should be allowed to
23 remain involved, and we took a hard line regarding the
24 practice directives because, in our view, he was the keeper
25 of the information when we often knew nothing of what he
26 intended, including at a basic level, an intention to be
27 involved with various defendants. He was familiar with the
28 practice directives and, as importantly, was aware of our
29 position following a certain point, and that not dealing with
30 the issue of representation in advance would result in likely
31 derailment of the hearing.

32 In a number of instances, the Provincial Court
33 judges and the justices of the peace have agreed with the
34 Crown. A number of months ago, Mr. Sweryda started filing

1 appeals in the Court of Queen's Bench. We, and to this point
2 numerous judges in the Court of Queen's Bench, take the view
3 that there is no authority for a non-lawyer to appear in a
4 superior court. Because he's continued to press the issue
5 and, in fact, a motion is scheduled on the point to be argued
6 by Mr. Bewkert (phonetic) on his behalf next week, research
7 was ongoing and dealing with the appeal-related files.

8 Our research confirmed the error we'd been making.
9 We'd been approaching the situation based on the view that a
10 Provincial -- in Provincial Court the onus is on the
11 representative to establish the ability to act and, in fact,
12 as Mr. Sweryda says, The Provincial Offences Act provides
13 that authority in Provincial Court. We realized then that it
14 was therefore on the Crown, if it wishes to prevent that, to
15 bring a formal motion for removal. Neither we, nor the court,
16 really, or Mr. Sweryda, had picked up on that. The situation
17 is the opposite in Q.B., as I say, where no such standing
18 exists and it's on the proposed representative to seek it.

19 Having realized our mistake while preparing our
20 response to Mr. Sweryda's motion on the -- on more recent
21 matters, we endeavoured to correct it immediately by filing
22 our own response as soon as possible. There was nothing
23 vexatious or nefarious about the timing, as he has suggested.
24 We were simply committed to doing it properly as soon as we
25 realized we'd been doing it wrong.

26 And here is where I very much disagree with Mr.
27 Sweryda's characterization of what I had said on Tuesday.
28 The reason that I am here is because it has been students
29 dealing with the situation, who have been taking their
30 direction from senior Crowns. It felt very unfair to send
31 them in here to explain all of this and to apologize on our
32 office's behalf for having not recognized up until very
33 recently that we need to be the ones bringing the motion. No
34 one individual needs to be taking responsibility for that,

1 but if anybody does, I will.

2 Among the purposes of the practice directives is to
3 avoid prejudice to a party caused by last-minute motions and
4 adjournments. Here, the late filing by the Crown results in
5 no prejudice to Mr. Sweryda or the defendant precisely for
6 the reasons I've articulated. He's well aware of our
7 positions and the authority we submit in support of that
8 position. Had we simply filed a response to his brief, and
9 on the summary dismissal motion generally, the arguments
10 would be identical.

11 Having regard to some of the comments that he's
12 made and anticipating others that he likely will make if --
13 having heard what he said on Tuesday, I have just a number of
14 final points.

15 He includes a request -- and I'm not clear whether
16 this is currently before the court formally; I believe that
17 it is -- but he includes a request to have this matter heard
18 by a Provincial Court judge rather than by a justice of the
19 peace. He's never provided any authority in support of such
20 a request. As far as I know, there is no legal authority in
21 that regard.

22 There is nothing in law that indicates that a
23 justice of the peace by virtue of the power or authority
24 conveyed by the relevant legislation can't hear legal
25 arguments and, in fact, we researched this issue
26 significantly when the Charter -- when the delay motions
27 started becoming filed very frequently after Jordan, whether
28 or not justices of the peace could, in fact, hear those
29 Charter arguments. And again, there is nothing in law that
30 prevents that. That's a direction from Provincial Judges
31 Court in keeping with their ability to control their own
32 process.

33 If his arguments, though, in his view are so
34 complicated or are so significant that a justice of the peace

1 can't or shouldn't hear them, then this further supports our
2 position that he's doing far more than simply assisting a
3 couple dozen family and friends who happen to have traffic
4 tickets, but is instead engaging in the practice of law.

5 In -- and I have alluded to this because it came up
6 earlier, but in response to his suggestion that the Crown's
7 continually been changing its position, I want to make clear
8 that it is not, has not for now for, for quite some time. We
9 maintain that it's his involvement in these matters -- or
10 that his involvement in these matters, again, is for all
11 intents and purposes engaging in the practice of law and
12 should be discouraged, if not disallowed. We'll continue to
13 take that position until a superior court or some other body
14 determines that we're wrong.

15 And as an aside, it's only such an authority which
16 can create the sort of precedent, the binding precedent that
17 we were discussing earlier. His reliance on Judge Sandhu's
18 decision is misplaced -- it's not actually even in the
19 decision; it's a sort of comment that he refers to -- because
20 while Judge Sandhu acknowledged the provision which allows
21 for representation, as we do, his comments were specific to
22 the case before him and have no precedential value insofar as
23 other courts, including this one, are concerned.

24 We don't dispute that in most situations non-
25 lawyers are allowed to assist defendants without opposition,
26 and at the outset, it must be noted, though, that Mr. Sweryda
27 is no longer a non-lawyer. He's a law student, which, as
28 I'll come back to, sets him apart as it puts him in a very
29 specific category to which very specific rules apply.
30 Regardless, typically, the assistance of a third party is in
31 benefitting the defendant and the administration of justice
32 insofar as they're providing emotional or perhaps practical
33 support to individuals, not turning what should be
34 straightforward matters into overly complex and prolonged

1 adventures.

2 He asserts that the Crown's accused him of
3 receiving compensation. I don't know if he's going to say
4 this again; I just want to pre-empt it if he does. We've
5 never taken a position that we have any evidence that he has
6 received any sort of remuneration -- remuneration -- I'm not
7 sure how that's pronounced -- any sort of fee. We're not
8 relying on that assertion.

9 He has also been quite vocal about his theory that
10 the Crown's been taking this position as a result of a success
11 on, on some Charter argument he made some time ago. To be
12 honest -- and I looked through the list again last night --
13 we have no idea what argument he's talking about, so that
14 can't be true. And, in fact, in reviewing the earlier
15 matters, it appears, if my -- the list that we provided to
16 the court is correct, that he has been unsuccessful in his
17 dealings with the court on far more occasions than he has
18 been successful, which further speaks to our concern about
19 the extent to which he's doing any sort of service for the
20 defendants that he's assisting.

21 More fundamentally, that's not how our system
22 works, as to who -- he uses the word win. Nobody wins in
23 these courts, and certainly not the Crown. Sometimes we're
24 successful, sometimes we're not, and there are many skilled
25 defence lawyers out there, yet we don't ask that they be
26 removed if they happen to be more successful than others.
27 The jurisdiction -- jurisprudence and our internal policies
28 are crystal clear. The Crown, as I say, does not win or lose.
29 That's not our goal.

30 Our goal is to do our part to further the
31 administration of justice, to provide the court, in an
32 objective and fair way, with the tools to do the job whatever
33 the outcome. It's in that spirit that we take the position
34 that we do and, ultimately, though, it's up to the court to

1 ensure that defendants are represented properly and that the
2 advice that they are receiving is in their best interests and
3 not in the furtherance of some agenda.

4 I do need to correct, respectfully, one
5 misstatement that was made by Justice Cuthbert-Buchanan on
6 Tuesday on, on the similar matter. She understood that law
7 students don't come under the rubric of the Law Society and,
8 in fact, not only is that the case but they're considered
9 members of the Law Society. So the rules specifically include
10 a provision which allows students an ability to practise law,
11 but it also requires them to be supervised in doing so.

12 It's an especially important provision because it
13 relates directly to the Law Society's function in ensuring
14 the protection of the public. That isn't specifically our
15 issue, but it does speak to the reasons for which we're
16 concerned. It's the reasons that -- it's for that reason
17 that a scheme was enacted pertaining to agents specifically,
18 and to the best of our knowledge, there is no direct benefit
19 to the Law Society and the regulations specific to agents
20 having been enacted. Their sole reason for being is to ensure
21 that litigants are protected should something go wrong, even
22 in traffic matters.

23 Were it the case here that Mr. Sweryda had fulfilled
24 the necessary requirements to be an agent or if, as a student,
25 he complied with the requirement to be supervised, we might
26 not even be here, and if so, this court wouldn't need to be
27 called upon to consider the effect of his involvement in this
28 matter and other matters on the proper administration of
29 justice.

30 We seek the dismissal of his motion for summary
31 dismissal, though, ultimately, again, because -- based on our
32 explanation for not having complied with the practice
33 directives, and due to the lack of prejudice that he's
34 occasioned thereby. Those are my comments.

1 THE COURT: Thank you.

2 MR. SWERYDA: Your Worship, I'd like to make a
3 response to the Crown, if I may.

4 THE COURT: Mr. Sweryda, just to anything that's
5 sort of new.

6 MR. SWERYDA: Yeah, well, yeah, it's only response
7 to what the Crown submitted.

8 Well, first of all, the Crown made -- alluded many
9 cases to Q.B. and my representation there filing briefs. The
10 Crown's taken the position I can't. I'm not sure what the
11 Crown means about numerous justices have said I can't. I
12 know Abra actually said that sounds to me like this is a
13 contested issue and he set it down for a motion, so the Crown
14 doesn't have any decisions, so I certainly dispute that, that
15 -- and I don't know what Q.B. has to do with this court
16 anyways because Q.B.'s not making a decision as to whether or
17 not I'm allowed to be in this court. Q.B.'s making decision
18 whether or not I'm allowed to be in Q.B., so I don't know
19 what it's got to do with being in this room.

20 The Crown said that a lot of this is because I
21 haven't notified them and, and the Crown keeps alluding to
22 that. I'm certainly not prepared to submit evidence to that
23 effect, but I'll say that I have notified the Crown on many
24 occasions and the Crown has still not brought its motions
25 when they were supposed to.

26 Now one good example, though, that I do have in my
27 filed materials would be -- if you look at -- I believe it's
28 on page -- well, page 7, there's -- I talk about paragraph
29 9(c) and (d) in Quigley. The Crown abandoned the issue of
30 representation in Quigley. The Crown said that -- right here
31 -- Quigley is attached as tab 19. It said the respondent
32 Crown filed an application for summary dismissal. The Crown
33 indicated there was -- representative was not acting for
34 remuneration, so there would be no concerns on

1 representation. So the Crown is on record knowing that I'm
2 representing Mr. Quigley, on record stating that they are not
3 entering any objections.

4 And then if you look at the next transcript at tab
5 21, the Crown came out of nowhere and ambushed with an attack
6 saying I -- now I can't be in court. They gave no warning of
7 it. I was on record saying that.

8 So the Crown's on record on January 15th saying
9 that we're not taking issue with his representation, and then
10 walk into court three weeks later and, and ambush with it,
11 and now, now --

12 THE COURT: Okay.

13 MR. SWERYDA: -- standing in this court saying --

14 THE COURT: And -- Mr. Sweryda --

15 MR. SWERYDA: -- I'm not notifying them.

16 THE COURT: Yeah, I mean -- and I think the Crown's
17 addressed in terms of the differences of where their position
18 has sort of changed as --

19 MR. SWERYDA: Um-hum.

20 THE COURT: -- the -- as time has gone by.

21 In terms of -- the Crown indicates, yes, because
22 you do raise argument about a Charter argument that you won.
23 What Charter --

24 MR. SWERYDA: Yes.

25 THE COURT: -- argument did you win?

26 MR. SWERYDA: Oh, that's described in paragraph
27 9(a) and that's the other thing I found interesting, is the
28 Crown says that they can't find such a case. I'm not sure
29 why the Crown can't find a case I provided in my brief.

30 Tab 15 is the case I've been referring to. It's a
31 case where I made a Charter argument. The Crown met with me
32 and, and, and -- out in the hallway and then we went back in
33 the court and the Crown stayed the charges in, in agreement
34 for me to retract my Charter motion and that -- and the Crown

1 registered no objections to my representation of Ms.
2 Eisbrenner. That is tab 15 in my, in my summary dismissal
3 application.

4 THE COURT: Okay. So let me just back you up there
5 --

6 MR. SWERYDA: Yeah.

7 THE COURT: -- because if the Crown stays the
8 charges, then there's no Charter motion. So it's -- I don't
9 understand how --

10 MR. SWERYDA: Well --

11 THE COURT: -- that's all -- if, for using back of
12 a letter term, a win.

13 MR. SWERYDA: Well, the Crown --

14 THE COURT: You didn't argue the Charter motion,
15 did you?

16 MR. SWERYDA: No, I -- well, I, I retracted it in,
17 in a --

18 THE COURT: Okay, so you didn't --

19 MR. SWERYDA: -- agreement with the Crown.

20 THE COURT: -- win any -- you didn't win a Charter
21 motion.

22 MR. SWERYDA: Well, it --

23 THE COURT: So the --

24 MR. SWERYDA: A stay is ultimately a win in the
25 case because --

26 THE COURT: Well, and again, aside from, aside from
27 -- when you say that you, for lack of a better term, win a
28 Charter motion, that would be that you argued a Charter motion
29 in court --

30 MR. SWERYDA: Um-hum.

31 THE COURT: -- on its -- whatever -- before --

32 MR. SWERYDA: Merits.

33 THE COURT: -- whoever the judge would be, or
34 justice, or --

1 MR. SWERYDA: Yeah.

2 THE COURT: -- or whatnot, and that the decision
3 went to your favour after arguments, not the fact that the
4 Crown stayed the charge and therefore you didn't have to make
5 it. That's not considered something where you actually --

6 MR. SWERYDA: Well --

7 THE COURT: -- litigated something in court.

8 MR. SWERYDA: It did occur in the Quigley matter of
9 a couple -- few months later on February 7th, and that was
10 where Judge Martin did rule in my favour. That one is
11 attached as tab 21 where Judge Martin -- that was a case where
12 it went right to litigation. The Crown opposed me
13 representing Mr. Quigley. That's the ambush I was referring
14 to, actually.

15 THE COURT: Right.

16 MR. SWERYDA: And Judge Martin basically argued my
17 case for me because the Crown was opposing me so much, and
18 then ruled my favour in the end and said my written materials
19 were so adequate that she was able to rule without me having
20 to even argue. So if you want to -- if we need to discuss an
21 actual win in litigation --

22 THE COURT: No, I just --

23 MR. SWERYDA: -- I would submit --

24 THE COURT: And I was just --

25 MR. SWERYDA: -- that example.

26 THE COURT: -- more concerned when you, when you
27 mentioned in terms of that you successfully argued a Charter
28 motion.

29 MR. SWERYDA: Yeah, well, February 7th, yes. Or
30 I'd say writing a written brief would be arguing it. Whether
31 or not I actually had to verbally litigate, it was argued.

32 THE COURT: Okay. Anything else, Mr. Sweryda,
33 quickly?

34 MR. SWERYDA: Yes. I'll just say a couple other

1 things.

2 That the Crown's saying that they didn't file their
3 applications on time. They're -- the Crown's saying that
4 it's because they didn't fully -- weren't fully aware of what
5 they were doing; they didn't know the, the rules regarding
6 this. I'd say that that's really not an excuse, because
7 whenever I or any self-represented litigant has filed
8 anything even a day late -- in the May Yung matter, actually,
9 on December 6th of '17, that's in here, that -- my motion
10 wasn't filed late at all. The Crown actually falsely took
11 the position it was late to try and get it thrown out.

12 So I'm saying that we, we're dealing with self-reps
13 in our courts all the time. A self-rep files anything even
14 a day late, or in my case actually not even late, the Crown
15 will take the, take the position that we're causing
16 unnecessary delay in the courts and that, that this will cause
17 adjournments and they're -- and they try to get these matters
18 thrown out, and these are self-reps.

19 And Judge Rolston ruled on January 15th of 2018
20 that practice directives are there for legally trained
21 professionals; they're not there so much for self-reps. The
22 Crown are legally trained professionals. Now the Crown's
23 trying to say that, well, we didn't know -- we didn't
24 understand, we didn't know the rules, we didn't know what we
25 were doing so that's why our motions weren't filed at all,
26 and now in this case late, yet whenever even a self-rep off
27 the street that has no legal training, has never been -- set
28 foot in a law school, files anything even a day late, the
29 Crown's trying -- filing for summary dismissal immediately
30 trying to get it thrown out.

31 THE COURT: Okay.

32 MR. SWERYDA: Now --

33 THE COURT: But I'm going to just --

34 MR. SWERYDA: Ah, yes.

1 THE COURT: -- stop you for one second with respect
2 to that because that has nothing to do with the motions that
3 are before the court now, does it?

4 MR. SWERYDA: Well, it does in this --

5 THE COURT: Just, just --

6 MR. SWERYDA: Okay.

7 THE COURT: -- one second, because I --

8 MS. MALAVIYA: Well, I mean --

9 THE COURT: In terms of these --

10 MS. MALAVIYA: -- I suppose it does --

11 THE COURT: -- motions, I received them about a
12 week ago. I don't know when they were filed in terms of this
13 particular matter and, and I'm just -- I'm assuming that
14 nobody has raised issue with ...

15 MS. MALAVIYA: I suppose that what Mr. Sweryda's
16 arguing is in support of his summary dismissal motion as a
17 result of the fact that we weren't in compliance with the
18 timelines attached to the practice directives.

19 THE COURT: Okay.

20 MR. SWERYDA: My legal argument is: Sauce for the
21 goose is sauce for the gander, to put it ...

22 I should also speak to this issue the Crown's
23 bringing up of law students. This is an entirely new
24 argument. The Crown has not put this in their brief. It's
25 pretty hard to expect me to litigate it on the spot, but I
26 can certainly give a response. I happen to be a law student.
27 I'm not practising as a law student and it would be absurd to
28 argue that when I started law student my first day all of a
29 sudden I had less rights to argue cases for people than Joe
30 -- any Joe off the street that has never been to law school.
31 I certainly think that cannot possibly be the case.

32 Practise by law students is -- are private cases
33 where a normal citizen would not be able to argue a case and
34 would have to rely on the -- under the Law Society of being

1 a law student or a lawyer, like a civil matter or a, or a
2 criminal matter, things like that. I, I'm not arguing that
3 I'm here as a law student or that I should have any added
4 privileges to argue as a law student. I'm arguing that as
5 any -- as a chosen representative of the accused that I have
6 the ability to argue a traffic ticket. All because I happen
7 to be a law student shouldn't deprive me of my ability to
8 represent people. This has got nothing to do with the Law
9 Society, for that matter.

10 The Crown's also referred to agents. The Crown
11 admitted in -- it's on the record in Quigley, it's also on
12 the record in Lawrence, that agents are paid. By definition,
13 agents are paid. I'm not being paid. I don't fall into that
14 category. It's got nothing to do with me. So we don't -- we
15 shouldn't be talking at all about the fact I'm a law student
16 or the fact of what, what applies to agents. I'm not an
17 agent. I'm not being paid. And that's in the definition of
18 Reg. 105/90 of the -- under The Legal Profession Act.

19 One more thing I should say is the Crown is also
20 saying that I'm making these matters complex, that, that,
21 that, that evidence of that is the fact that I'm asking for
22 this to go to a judge. I'm just saying that these decisions
23 have been all over the place. JP Rosset ruled in my favour.
24 JP Buchanan didn't, but JP Buchanan didn't do a legal
25 analysis, either. JP Desrosiers ruled against me, but never
26 considered my arguments to begin with. Judge Sandhu ruled in
27 my favour. And the Crown says that in most cases they're
28 successful -- I think something along those lines; I'm trying
29 to remember -- but the Crown's not counting the cases where
30 they abandoned the motion whenever the judge wasn't friendly
31 towards it. Judge -- in, in Judge -- with Judge Rolston, the
32 Crown brought it up -- or, sorry, Judge Rolston outright asked
33 the Crown, Are you, are you opposing him, and the Crown says,
34 No, we're not, and, and then tried again in three weeks. So,

1 so it's not just a matter of which way judges or JPs have
2 ruled. We also need to consider the number of times the Crown
3 has abandoned the issue.

4 I'd like to speak once more to the Eisbrenner
5 matter. On June 6th, 2018, the Crown argued in front of JP
6 Buchanan that I'm not allowed to represent, but if you look
7 at my summary dismissal application, on May 15th of '18 that
8 exact same case was in front of Judge -- sorry, Judge Schille,
9 and the Crown came in and said, We've spoken to the authorized
10 person -- sorry, we've spoken to the accused, she's indicated
11 that he's authorized to speak on her behalf, and the Crown
12 took no position against me. So then the Crown waited until
13 it got to a JP and then tried the whole thing.

14 So the Crown's on record on May 15th as talking to
15 the accused. If the Crown had an objection to me, should
16 have made on May 15th. By all indications, on May 15th I --
17 the Crown gave the appearance to me that they were going to
18 respect JJP Rosset's decision of May 9th, only six days
19 before, and, and not bring this up again. And then out of
20 nowhere it came up again on June 6th, so --

21 THE COURT: Okay.

22 MR. SWERYDA: -- I'm saying that, that it's simply
23 not true to say the Crown didn't file these motions on time
24 because they weren't aware.

25 And I'd like to point out, in this particular case
26 the Crown sought adjournment. They've -- this case already
27 been adjourned. I will agree to that it was adjourned because
28 of my compassionate reasons. The Crown had ample opportunity,
29 the Crown knew all along that I was on this case, and was
30 still, even in this particular case, not, not in compliance
31 with practice directives after being on the record knowing
32 that I was representing this case. So the argument that I
33 just showed up and, and surprised them really doesn't apply,
34 especially to this case, but I've got evidence it doesn't

1 apply in the other -- in any of the other cases as well.

2 One last thing is the Crown's saying that I'm making
3 these matters unnecessarily complex. Now, I apologized at
4 the beginning when we discussed the 4C issue and why I didn't
5 go to 4C. What I was going to say is that what I failed to
6 indicate at the beginning was the reason I was going to 4A is
7 I was seeking the reduction that the Crown often gives for
8 guilty pleas. The Crown will often half the ticket in the 4A
9 program, so I wasn't willing to enter a not -- a guilty plea
10 or -- I should say -- I forget what the new term is for it,
11 but the equivalent of not guilty --

12 THE COURT: Disputing?

13 MR. SWERYDA: Yeah, yes.

14 THE COURT: All right.

15 MR. SWERYDA: Oh, accept. It's accept or deny,
16 sorry. I -- we're not willing to enter an accept plea until
17 I talk to the Crown in the 4A program, and then I would have
18 -- and then if I had a joint recommendation, then I would
19 have gone to 4C. So I didn't want to enter a -- sorry --
20 accept plea and end up in 4C with no joint recommendation
21 from the Crown. And when I went to 4A, the Crown then refused
22 to talk to me and has led to this whole thing of why we're
23 here today.

24 So these things have been made unnecessarily
25 complex because of the Crown's persistence in arguing that I
26 cannot represent these people and then carrying it outside
27 the courtroom to say the Crown will not even talk to me in
28 the 4A program. So if the (inaudible) talk to me in the 4A
29 program and, and if I'd been successful in getting the joint
30 recommendation the Crown normally gives for these matters,
31 (inaudible) always a half, then I would have entered a accept
32 plea and I would have gone to 4C and very likely a JP would
33 have accepted it and we would have been done with this matter
34 and the Yung matter as well. That was the, the intention for

1 both of them.

2 So this, this is not made unnecessarily complex
3 because of me. It's made unnecessarily complex because of
4 the Crown's continual opposition, including carrying it right
5 over to the 4A program.

6 THE COURT: Thank you.

7 MS. MALAVIYA: I apologize, Your Worship. This is
8 not my style, I don't do the back -- I'm just -- I'm very
9 concerned about a lot of the inaccuracies that are being put
10 forward by Mr. Sweryda. I'm not going to address them all.
11 I just need to respond to a couple of things.

12 One is, when I speak about chaos and complexity and
13 sort of the, the difficulties and challenges that Mr.
14 Sweryda's matters have been creating for the court, they're
15 in any number of matters, but the one Lisa Eisbrenner matter
16 is, is probably the best example in which numerous motions
17 that have absolutely nothing to do with his representation
18 have been filed by him, have been filed repeatedly by him to
19 the extent that courts have been sitting both at 373 Broadway
20 and at 408 York in order to have to deal with them, on what
21 should have been just a very straightforward traffic matter
22 and which resulted in a conviction just after the evidence
23 itself was heard.

24 Mr. Sweryda's seems to be thinking -- seems to be
25 taking, I think, the view that this is personal, that somehow
26 we are targeting him. We're not targeting him. What we are
27 concerned about is the defendants and, again, the
28 administration of justice. He seems to be of the view that
29 we're taking an objection because he's a law student. That's
30 not what I said. What I was referring to, or the reason that
31 I made the comment specifically was because Justice, Justice
32 of the Peace Justice Cuthbert-Buchanan on Tuesday had
33 inquired as to whether or not the Law Society rules apply to
34 a law student, or to Mr. Sweryda specifically, and at the

1 time the -- she was of the misunderstanding that they don't,
2 when, in fact, they do. Regardless of what capacity he feels
3 he's in here today, they do. He is a law student. So I just
4 -- my, my point was to correct that inaccuracy.

5 The fact that agents are paid, again, also wasn't
6 my point. That wasn't the reason for which I raised that
7 issue. The reason for which I raise the issue is because the
8 regulations are in place with respect to agents again just
9 for the purposes of protecting the public, and that's our
10 only concern here.

11 With respect to decisions being all over the place
12 in this court, that's certainly the case in any number of
13 matters. Every day we go into two different courtrooms and
14 get two different results. That's just the nature of the
15 work that we do.

16 With -- in terms of Ms. Yung, I just wanted to point
17 out that there was, there was and is nothing preventing Ms.
18 Yung from emailing or phoning the Crown's office in -- or the
19 opinions Crown to discuss some sort of a mutual resolution to
20 her matter. If she wanted rejection of the fine, she didn't
21 actually need to come down here in order to facilitate that.
22 We would have put a note on our system indicating that we had
23 reached a joint resolution.

24 And again, finally, just with respect to the
25 summary dismissal motion, I'm -- I would just repeat the fact
26 that there is no -- there's been no prejudice to Mr. Sweryda
27 in having brought it late because, as I say again, he has
28 been well aware of our argument for some time now.

29 THE COURT: Okay. Mr. Sweryda I don't need to hear
30 anything more, I don't think.

31 MR. SWERYDA: I do have something very quick.

32 THE COURT: I don't think Ms. Malaviya's raised
33 anything new, so I don't think that there's a need for us to
34 go back over anything else again.

1 MR. SWERYDA: Okay.

2 THE COURT: In terms of your -- the motion that
3 you're, that you're making, the application to basically
4 summarily dismiss the Crown's motion, I'm going to take about
5 20 minutes just to, to review everything and then --

6 MR. SWERYDA: Okay.

7 THE COURT: -- we'll come back. Just before we do
8 that, so, in terms of -- because I know that Ms. Malaviya had
9 raised it, we didn't, I think, put it right on the record
10 that with respect to these applications that are before the
11 court, Mr. Sweryda, I take it that you're in agreement with
12 the court's decision to be -- today to be made on both
13 matters.

14 MR. SWERYDA: I would -- yes, I would be in
15 agreement.

16 Would I be able to make one request of Ms. Malaviya
17 on the -- while we're on the record? Ms. Malaviya indicated
18 that if Ms. Yung called in, that the Crown would be willing
19 to talk on the phone or by email with Ms. Yung. That's never
20 -- the Crown takes that position repeatedly, but that's not
21 been the case in reality. If the Crown will --

22 THE COURT: Well, here's --

23 MR. SWERYDA: -- commit to that --

24 THE COURT: -- what I'm going to say, okay? I'm
25 going to take --

26 MR. SWERYDA: Yeah.

27 THE COURT: -- 20 minutes to review all this matter.

28 MR. SWERYDA: Um-hum.

29 THE COURT: If you want to have a conversation with
30 the Crown with respect to those issues or whatnot --

31 MR. SWERYDA: Um-hum.

32 THE COURT: -- you can do so. I don't need to have
33 to hear anything with respect to it, with respect specifically
34 to the Yung matter, but -- and I guess, Ms. Malaviya, there's

1 no -- you have no issue with the court making a decision with
2 respect to both of these matters today?

3 MS. MALAVIYA: Certainly not, unless, unless Your
4 Worship wants to hear more on, on the substantive motions.

5 THE COURT: Well, yeah, what we'll do is I'll make
6 a decision on Mr. Sweryda's application first, and then
7 depending upon the decision on that, we'll go forward. I
8 just want to make sure that it's applying to both so that
9 that's what the understanding is on the record.

10 MS. MALAVIYA: And, and I just want to highlight
11 the fact that Mr. Sweryda's motion includes two requests for
12 relief. One is -- one dismissing the --

13 THE COURT: I do see that --

14 MS. MALAVIYA: -- Crown's motion, the --

15 THE COURT: -- yeah.

16 MS. MALAVIYA: -- other being the --

17 THE COURT: There's two points of relief.

18 MS. MALAVIYA: -- Provincial Court judge, yes.

19 THE COURT: Yeah. Thank you. So we'll adjourn for
20 about -- we'll come back at about -- let's say 25 after
21 eleven.

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

23

24 (BRIEF RECESS)

25

26 THE CLERK: Court is re-opened.

27 THE COURT: Be seated.

28 The first issue to be decided today is Mr. Sweryda's
29 application to the court to summarily dismiss the Crown's
30 motion to have him removed or barred from representing Ms.
31 Nguyen on her photo enforcement ticket. I've heard
32 submissions from both Mr. Sweryda, as well as the Crown. Mr.
33 Sweryda's points at issue that he's raising with respect to
34 the dismissal of the motion would be that it's frivolous,

1 lacking merit -- legal merit, vexatious, non-compliant with
2 practice directives, and because it comes from the applicant,
3 as he refers to it, that is approaching the court with unclean
4 hands.

5 In terms of the first part of that with respect to
6 the motion being frivolous and lacking merit, in terms of the
7 issues that are at hand, I don't find that the Crown's motion
8 is frivolous or lacking merit. There are certainly arguable
9 issues within the motion.

10 In terms of it being vexatious, the Crown has
11 addressed the issue with respect to why Mr. Sweryda is
12 specifically being requested to be removed, as opposed to
13 other individuals in terms of given ultimately Mr. Sweryda is
14 somewhat different than other individuals as the number of
15 matters presiding -- that you're presiding over in different
16 -- or assisting with in Provincial Court is clearly higher
17 than the average individual who would be appearing before the
18 individual, so I don't find it as being vexatious specifically
19 towards you. The Crowns feel, as explained, this simply is
20 the mechanism which they feel that they need to proceed with
21 in order to address the issue.

22 In terms of the compliance directives, again you've
23 indicated -- the Crown's indicated, and from this court's
24 review, there's nothing -- having the Crown not necessarily
25 sort of follow the exact compliance or directives under what
26 they're supposed to -- or how they're supposed to comply, I
27 don't find that that's prejudiced Mr. Sweryda in any way with
28 respect to any of the matters that are before the court.

29 So in terms of the application to dismiss summarily
30 the motion, I am dismissing Mr. Sweryda's application.

31 The second issue is with respect to that the court
32 preside over the motion that the Crown's making by a
33 Provincial Court judge rather than a justice of the peace.
34 Certainly, in terms of most recently, I think Judge Lerner

1 has sort of ruled that where the trial is going to be heard
2 by a justice of the peace -- and that's where this type of
3 matter would be heard -- that the justice of the peace should
4 be the one that hears the motion. The -- I've also, in my
5 own experience with respect to Judge Preston, had similar
6 matters go to a motions court where Judge Preston has sent
7 them back down to this court because, again, as a justice
8 myself, I'm the person hearing the hearing so I'm the person
9 that's required to -- or should be required to hear the
10 motion. Certainly, there are issues that sometimes go before
11 the higher court, but not certain -- usually Charter
12 challenges, those types of things. But motions such as this,
13 I feel can be heard in this court.

14 So given that, we'll proceed with the motion
15 itself, which I believe is the Crown's motion, correct?

16 MS. CHEYS: Good morning, Your Worship. It's, as
17 indicated a moment ago, Cheys, first initial A, articling
18 student with the Provincial Crown. A number of the comments
19 made by my learned colleague are ones that I'm going to
20 briefly reiterate with respect to our submissions on the
21 substantive motion today.

22 I'd like to acknowledge at the outset that Mr.
23 Sweryda does place a lot of reliance on the fact that on the
24 back of each ticket it indicates that an individual may appear
25 personally or by a representative, and that seeking to have
26 him barred as a representative flies in the face of this
27 authorization.

28 What isn't acknowledged by Mr. Sweryda is that
29 what's also included on the back of these tickets is that it
30 indicates that a justice may order that the defendant appear
31 personally and that the justice may also refuse to allow a
32 person to act as their representative if, in his or her
33 opinion, the person is not able to properly represent or
34 advise the defendant. This is, of course, consistent with

1 the provisions of The Provincial Offences Act, and while, as
2 you know, the POA allows for a defendant to appear personally
3 or by representative, it is the Crown's view that this section
4 doesn't operate in a vacuum.

5 It should not be interpreted to provide an
6 individual with free reign to act as a lawyer otherwise would,
7 without having to satisfy any of the protective conditions
8 put in place by The Legal Professions Act, which, as you know,
9 is an act that governs the delivery of legal services and
10 seeks to protect the public from conduct that would otherwise
11 jeopardize the public confidence in the delivery of those
12 legal services. And as Your Worship is also no doubt aware,
13 the court also maintains controls over its own processes.

14 In the Crown's respectful view, the spirit and
15 intent of the representative provisions within The Provincial
16 Offences Act was intended to allow for a defendant to seek
17 the assistance of a, of a family member or friend for
18 emotional support or perhaps practical guidance should they
19 be unfamiliar with the process. In the Crown's view, the
20 over-involvement in Highway Traffic matters exhibited by Mr.
21 Sweryda far exceeds this intention.

22 In advancing our position this morning and in
23 requesting that this honourable court bar Mr. Sweryda from
24 acting as a representative on the matters before you, we place
25 a great reliance on some of the materials that Your Worship,
26 as I understand, has had a moment to read, and those cases
27 being Moss, Parsons, Marques v. Bambrick, and, of course,
28 provisions within The Legal Professions Act. I'm just going
29 to touch on some of those very briefly.

30 The Crown relies on Moss for two reasons, the first
31 being in that what we, what we've seen historically is that
32 Mr. Sweryda appears before this court by and large without -
33 - in the absence of a defendant, I should say, and Moss
34 touches on this in that case. What it indicates to us is

1 that a self-represented litigant must be present and cannot
2 have a non-lawyer purport to make an appearance as agent with
3 the intention of having conduct of the matter as a lawyer
4 would. And the Crown's view is this: This is a civil decision
5 and Highway Traffic matters are quasi-criminal, and it's
6 arguably more important that this principle be honoured when
7 we're looking at matters that carry additional jeopardy as
8 HTA matters do.

9 The second reason why the Crown relies so heavily
10 on Moss is for the fact that it undertakes an analysis in
11 terms of what conduct by a representative would likely find
12 them in violation of The Legal Professions Act, and what the
13 court finds in that particular case is that an individual
14 present in court in order to lend assistance to a self-
15 represented litigant, depending on the nature and extent of
16 the assistance provided, would, on an isolated occasion,
17 likely not be in violation.

18 When we look at that in comparison to Mr. Sweryda's
19 appearances before this court, it certainly can't be said
20 that this is isolated. It's far from that. He's appeared on
21 17 matters that we know of, and his involvement far exceeds
22 mere support for these defendants. And as you heard, this
23 includes Charter motions as well as abuse of process motions.

24 The second aspect that the Crown highlights is --
25 and relies on is the purpose of The Legal Professions Act
26 and, as you know, it's to protect the public interest. It's
27 principally concerned with the protection of clients, and it
28 also establishes standards of professional responsibility and
29 competency for those that are offering legal services. The
30 LPA also identifies what would constitute the unauthorized
31 practice of law, and some of which is included: someone who
32 carries on the practice of laws; someone who's -- who appears
33 as a lawyer before any court or justice of the peace; or
34 commences, carries on, or defends any action or proceeding

1 before a court unless, of course, they're permitted to do so
2 either by the LPA or another act.

3 If Your Worship would just give me -- wouldn't mind
4 giving me just one moment?

5 Within the LPA, Section 20(3) characterizes some of
6 the activities that would be identified as the practice of
7 law. What's important to recognize is that this is a deeming
8 provision. The activities that are outlined in that section
9 that indicate that those activities would constitute the
10 practice of law for a fee are automatically deemed to be the
11 practice of law. It's not a section of exclusion such that
12 if an (inaudible) isn't -- individual, rather, isn't
13 receiving compensation, they're not practising law.

14 And when we specifically look at the issue with
15 respect to whether or not a representative receives a fee,
16 Mr. Sweryda does rely on that to some extent that because he
17 doesn't receive a fee or monetary compensation for his, for
18 his acting as a representative, that the inference therefore
19 should be that he can't possibly be considered to be
20 practising in law, and the Crown is in disagreement on that
21 for three reasons.

22 One, because, as I've indicated, Section 20(3) is
23 a deeming provision, but we also disagree with that point
24 because it simply just isn't logical. When one considers a
25 lawyer that offers legal services pro bono, for example, it
26 can't be said that they're not practising law.

27 Second, in the materials filed by the Crown, the
28 Crown's reliance -- relies on the case of Parsons, and this
29 was a situation in which Mr. Parsons had taken over the
30 overall proceedings and he controlled the process on behalf
31 of that litigant. His conduct was found to be in violation
32 of The Legal Professions Act, and that was despite the fact
33 that he acted without a fee. So in the circumstances, when
34 we specifically consider whether or not someone's receiving

1 a fee for their actions as a representative, it's the Crown's
2 position that someone's conduct can amount to the practice of
3 law whether or not they're, they're receiving monetary
4 compensation for their conduct.

5 The final case that I'll touch on that's provided
6 within the Crown's materials is Marques v. Bambrick, and it's
7 the Crown's suggestion that this court should be relying on
8 the factors that are provided within that decision when trying
9 to make a determination as to whether to disallow Mr. Sweryda
10 from acting as a representative. The court in Marques sets
11 out a number of factors that can be considered -- and I'm not
12 going to go over all of them, but some of the salient ones
13 that the Crown wishes to highlight include the degree of
14 assistance, the nature of the relationship, the complexity of
15 the particular case, and the integrity of the proceedings,
16 being that the public confidence in the administration of
17 justice is of the utmost importance.

18 And when we look to apply those factors to the cases
19 -- or to the case at hand, rather, Your Honour (sic), what we
20 can see -- and I indicated this a moment ago -- Mr. Sweryda's
21 involvement in the HTA matters is far from modest. He assumes
22 conduct of the matters and this is largely in the absence of
23 the defendants. The Crown has had concerns in the past with
24 respect to defendants' knowledge of the actions and decisions
25 that have been, that have been made on their, on their
26 matters. His involvement is consistently of a complex nature.
27 Again, as you heard, this also includes filing Charter motions
28 and abuse of process motions, and there have been instances
29 in which he's also indicated his intention to persuade a
30 Provincial Court judge to overturn existing Manitoba Court of
31 Appeal jurisprudence.

32 And what the Crown provides particularly salient
33 when we look at the over-involvement and complexity of the
34 natures, is that when Mr. Sweryda appeared in front of

1 Associate Chief Justice Krahn in an attempt to overturn the
2 dismissal of his motion when we look at the Eisbrenner matter
3 to which he failed to appear, Judge Krahn, in dismissing her
4 motion, she also ordered that Mr. Sweryda not file further
5 motions of a similar nature, and, and that's because in that
6 particular matter his conduct was beginning down the road of
7 vexatious litigation.

8 A final point with respect to the factors provided
9 by Marques is that he asserts his relationship with the
10 defendants are, are friend or family friend. However, the
11 court need look no further than the Wasyluk (phonetic)
12 transcripts to, to indicate that this isn't always the case.

13 And a final concern that the Crown has is Mr.
14 Sweryda's continued reliance on Judge Sandhu's decision to
15 suggest that this legal issue has been determinative and that
16 Judge Sandhu's ruling therefore provides a precedent for all
17 cases in which he appears. The Crown respectfully disagrees
18 with that. Judge Sandhu's decision, at best, provided him
19 with the authority to act as a representative as it
20 specifically related to that matter and certainly not to all
21 matters in which he seeks to act as a representative.

22 And to conclude, Your Worship, the Crown is of the
23 view that Mr. Sweryda's over-involvement in Highway Traffic
24 matters does amount to the practice of law. It does nothing
25 further to -- sorry, it does nothing to further the interests
26 of justice, either generally or on behalf of defendants. It
27 offends the purpose and spirit of the provision's intent.

28 The Crown submits that the risks associated with
29 allowing an individual to conduct, to conduct themselves as
30 a lawyer otherwise would are high. The court ought not allow
31 someone to attempt to provide legal services without having
32 to satisfy any of the checks and balances members of the legal
33 profession are required to, as they're in place to ensure the
34 proper delivery, proper delivery of legal services. To

1 continue to allow Mr. Sweryda to act as a representative
2 leaves defendants without any avenue of recourse should a
3 situation go awry.

4 Subject to any questions Your Worship may have,
5 those are my comments.

6 THE COURT: Thank you. Mr. Sweryda.

7 MR. SWERYDA: Yes, Your Worship. I have a lot of
8 responses I'm going to make to the Crown's submissions, but
9 first I'd like to simply take this from a holistic perspective
10 and argue how the law applies to this, and then we'll circle
11 back, and hopefully once I've explained the law here that
12 we'll see how fallacious these -- my learned friend's
13 arguments are.

14 So I'd like to start off with The Legal Professions
15 Act and I believe that -- just give me one second here to
16 find it.

17 Tab 4 in the Crown's brief. I invite the court to
18 follow along with me. The Crown -- I don't know -- recall
19 the Crown citing it by number, so I'll say that lot of the
20 submissions I heard from the Crown sound a lot like 20(2) of
21 The Legal Profession Act so I'll read into the record.

22 THE COURT: You don't need -- I mean, you can just
23 summarize what your argument is, Mr. Sweryda, because I don't
24 need to be read into the --

25 MR. SWERYDA: Well --

26 THE COURT: Again, I don't want to -- I have all
27 the material --

28 MR. SWERYDA: Yes.

29 THE COURT: -- so I don't need to get --

30 MR. SWERYDA: It is quite critical, though, to
31 explain how these provisions interrelate because --

32 THE COURT: And you can explain how --

33 MR. SWERYDA: Okay.

34 THE COURT: -- they do. I don't need to hear the

1 actual -- I can read --

2 MR. SWERYDA: Okay.

3 THE COURT: -- the statute for myself.

4 MR. SWERYDA: Okay. Section 20(2) of The Legal
5 Profession Act -- okay, I won't read it. There are (a) --
6 there's clauses (a), (b), and (c). Clause (a) says that a
7 non-lawyer shall not -- sorry. Sorry. It says that a person
8 shall not (a) practise law; (b) appear -- and (b) and (c) are
9 both interrelated -- appear as a lawyer or argue, sue, writs.
10 That's all (b) and (c).

11 Now, the -- there's a distinction here between
12 these matters, these, these two types of conduct. (A) is -
13 - if you look at Section 20(3) of The Legal Profession Act,
14 it describes what the practice of law is. Now, the Crown's
15 saying that that is describing practices that would
16 automatically be practice of law, but that it, but that it's
17 more extensive than that. I would say absolutely not. It
18 gives the definition of the practice of law and it says a
19 person who does any of the following for fee or reward, or -
20 - sorry -- fee or compensation. It's, it's an exhaustive
21 list. The Crown can't simply take a definition and say, Well,
22 we're just going to add to this.

23 Now, now, it's complete -- that is completely
24 immaterial for why we're here anyways because my conduct does
25 not fall under 20(2)(a), which is practising law. This isn't
26 practising law. This is appearing before a court. That's
27 (b) and (c) of Section 20(2), not (a). (A) is defined under
28 Section 20(3).

29 If you look at the characteristics, all of the
30 conduct described in Section 20(3) occurs outside of a
31 courtroom. It's about negotiating; it's about filing
32 documents, preparing documents. That's described as the
33 practice of law. That's what's being referred to in 20(2)(a)
34 as a prohibited activity. That's got nothing to do with me.

1 That's outside the courtroom. (B) and (c) applies to conduct
2 in the courtroom.

3 And I can indicate to the court -- I don't know if
4 my learned friend's aware of this, so to give clarification
5 for why this applies in this way, it's the difference between
6 -- fundamentally between a barrister and a solicitor. A
7 barrister applies to somebody that comes before the court and
8 argues a case. What I'm doing right now would normally be
9 the conduct of a barrister. I will agree to that. A solicitor
10 is a person who prepares documents outside the courtroom.
11 That's -- normally lawyers now are barristers and solicitors,
12 but that's a distinction between sub (a) and sub (b) and (c).
13 So a person -- to summarize this, a person can act as a
14 solicitor and do all the activities of a solicitor as long as
15 they don't do it for fee or compensation. That's as defined
16 by Section 20(3), referring to (a).

17 I'm not acting as a solicitor. I'm acting like
18 similar to way a barrister would. That's 20(2)(b) and (c).
19 If you look at 20(2)(b) and (c), those two are not contingent
20 on remuneration (sic). They're an outright prohibition; I
21 will agree with my learned friend on that. What I'm doing is
22 an outright -- would be an outright prohibition, prima facie,
23 under Section 20(2)(b) and (c) of The Legal Profession Act,
24 with or without compensation. It's immaterial, I agree.
25 Completely agree with my learned friend here on that, so I
26 don't know why we had to litigate that part.

27 Now what I'm going to say, though, is that I'm not
28 falling under a caveat for fee or reward. I, I, I'm not
29 saying that that's a distinction.

30 Now, this -- but I do have to give an indication
31 because my learned friends indicated that I'm -- I've argued
32 that that's a distinction. Let me make a point here. If you
33 refer to -- it's in my application brief for summary
34 dismissal. In tab, tab 17 in Yung, like, if Your Honour would

1 be willing to refer to tab 17. This is a transcript of a
2 matter that I presided over. Now, the Crown put here -- right
3 here -- page 1, starting on line 31:

4
5 We do have concerns with Mr.
6 Sweryda's speaking on her behalf,
7 but it's not unusual in Traffic Act
8 offences for them to provide written
9 authorization.

10
11 So the Crown's conceding right there that it is
12 common for one to provide written authorization and for
13 someone to appear in court. But then the Crown said:

14
15 I, I would just concern if there's
16 been any sort of compensation
17 provided either way for Mr. Sweryda
18 to appear on her behalf.

19
20 So, so I never brought up the issue of remuneration.
21 The Crown did. The Crown brought up the issue of
22 remuneration, said it was the only issue, implied that I might
23 have been collecting compensation. When I responded and said
24 I'm not collecting compensation, now the Crown's responding
25 here saying somehow, Well, compensation doesn't matter, why
26 is he arguing that? I argued it because it was their position
27 to begin with and I responded to it.

28 If you look at -- further in tab ... Let's see
29 here. It's the Quigley matter, tab 19. In that case, the
30 Crown also argued the issue of remuneration and I'll just
31 point it out. It's in my summary dismissal application,
32 paragraph 9(c). The Crown filed application for summary
33 dismissal, late filing, Crown indicated there'd be no
34 remuneration so it's non-issue. That is tab 19, page T3,

1 lines 9 to 18. So tab T3, line 9 to 18, it's right here. I
2 apologize.

3 The Crown argued in this case ...

4 I, I apologize, I'm just looking for, for the --
5 oh, I see what happened. I'm sorry, I have on the wrong
6 transcript. That's my fault.

7 Page T, T3, line 9. So the court:

8

9 That leaves Mr. Quigley. Does the
10 Crown have a position with Mr.
11 Sweryda acting --

12

13 The court says as agent; it actually was as representative.
14 And the Crown says:

15

16 No, Your Honour, I can advise I had
17 a conversation with Mr. Sweryda. He
18 indicates he's acting as a
19 representative. There's no
20 remuneration which would lead him
21 into the category of agents. The
22 Crown does not take any position.

23

24 So again, twice the Crown has, has alluded to the
25 fact that remuneration is the deciding factor, and in the
26 first case the Crown had expressed concern but then realized
27 they'd never be able to prove that I was getting remuneration
28 because, simply put, I'm not. And then in the second case
29 the Crown conceded, well, he's not getting remuneration, we
30 don't take an issue. Now the Crown's here saying, well, I
31 said remuneration was relevant. I never started with that.
32 The Crown did.

33 So now this takes us back to 20(2)(b) and (c) of
34 The Legal Profession Act. I agree, prima facie, my behaviour

1 falls under the -- that category, basically the conduct of a
2 barrister. Now, where this goes, though, is the caveat has
3 nothing to do with remuneration. It's at the start of that
4 section that says expressed as ... Except as expressed by
5 this act or another act. It's to do with the exceptions.

6 I'm not saying that my conduct doesn't meet the
7 definition. I'm saying that I'm exempt by The Provincial
8 Offences Act. Now, where you go with that is Section 20(2)(b)
9 and (c) are under a caveat, except as permitted by this, this
10 act or another act. Now, in -- to give examples, if you look
11 at that provision on its face, it actually bars everybody
12 from appearing in court, even lawyers. It doesn't even say
13 except lawyers. Nobody is allowed to appear in court. It's
14 an outright prohibition; nobody can, can practise. The Crown
15 is trying to leave the debate there. That's where they're
16 trying to walk away from this. If we accept the Crown's
17 argument in this respect that that's where it ends, then, at
18 that point we would have to accept the argument that lawyers
19 can't argue in a court, either. That's, that's where the
20 Crown's conclusion leads to.

21 So what the issue is, is we have to rely on the
22 exceptions. You look to 20(1) of The Legal Professions Act,
23 that's where it provides an exception for practising lawyers.
24 But if you look at 20(2), not even self-reps can represent
25 themselves. That falls under the category of a self-
26 represented litigant under Section 20(4)(d) of -- and 20(4),
27 there's a whole list of people that 20(2) does not apply to.

28 So what we're here with is we're here with a
29 definition of what's acting as a barrister, and then under
30 the caveat "except as provided by this or another act." Then
31 we're given the list of exceptions. 20(1) says lawyers can
32 do it. 20(4)(d) says that self-reps can do it. 40(1) says
33 that agents can do it. And then that toward -- takes me to
34 Section 53(1), The Provincial Offences Act says that a

1 defendant may appear by -- in person or by representative.
2 That is an exception to 20(2)(b) and (c) of The Legal
3 Profession Act.

4 Now, what the Crown's tried to use here is Moss.
5 The Crown's argued that my conduct falls under Moss and, and
6 that I'm over and above giving mere assistance. I agree, I
7 am. But what the Moss case dealt with was how far a person
8 would go -- or how far a person's conduct could go before
9 they fall into the definition of the conduct under Section
10 20(2)(b) and (c). Once they fall into that definition, then
11 they would have to rely on the exception, including even
12 lawyers would.

13 Now, in the case of Moss, Moss was a civil case.
14 There was no exception. That's why a husband was not even
15 allowed to represent his wife and the -- and, and what the
16 court analyzed in that case was what -- how far could the
17 husband go before he fell into the definition of 20(2)(b) and
18 (c). And their issue in that case was there was no exception
19 for a person to be represented by a spouse in a civil matter.

20 That's different than in this case. In my case,
21 there is an exception: 53(1) of The Provincial Offences Act.
22 Now, the Crown's argued that Section 53(1) of The Provincial
23 Offences Act is intended to apply mere -- sorry, intended to
24 provide allowances for mere assistance. That's not possible.

25 First of all, the Court of Appeal's already said
26 you could provide assistance without referring to Section
27 20(2) -- without falling into the definition of 20(2)(b) and
28 (c). So if you can provide it anyways, there'd be no need
29 for a statutory exception Provincial Offences Act. If, if
30 The Provincial Offences Act was only intended to allow mere
31 assistance, well, according to the Court of Appeal, you can
32 already provide that and not fall into the prohibition. So
33 53(1) has to allow more than mere assistance, otherwise it
34 would be redundant. And I'm sure we can all in this courtroom

1 agree that under rules of statutory interpretation, you never
2 interpret a statute in a way that leads to its redundancy,
3 and the Crown's interpretation here would lead to 53(1)
4 becoming a redundancy.

5 Secondly, the Crown argued that it's to provide
6 mere assistance, emotional support. Well, if all I was
7 allowed to do here is to stand here and hold the accused's
8 hand while they argue their own case and whisper in their
9 ear, if that was the case, then why would the act contemplate
10 the accused not being in the courtroom? It says the accused
11 may appear in person or by representative. It's either/or.
12 If they're allowed to appear by representative, being me, I
13 must be allowed to argue the case in the same way that the
14 accused would if they were there in person.

15 Further supporting that, Section 6 of our
16 interpretation act says that you must interpret the act
17 liberally and, and, and holistically. The Crowns made arguing
18 that argument in their own submissions regarding 53(1) and
19 53(2) of The Provincial Offences Act.

20 So -- but if you look at the interaction between
21 53(1) of The Provincial Offences Act and 54, 54 allows a
22 justice to order an accused to attend court despite having
23 appeared by representative. Fifty-four confirms that 53(1)
24 is intended to allow a representative to appear without the
25 presence of the accused. Without the presence of the accused,
26 the representative has to be able to do more than just provide
27 mere assistance, because who would, who would they be
28 providing assistance to if the accused isn't there? So under
29 the rules of statutory interpretation, the representative
30 must be able to do all the actions that the accused would.
31 And I'm not denying the Crown is trying to end this discussion
32 at the definition of 22(2)(b) and (c), saying that I fall
33 into the definition of practising law while arguing a case.
34 I agree, I would be if there wasn't an exception, but there

1 is an exception. Moss never contemplated that.

2 Now, this argument -- this whole point should
3 deflate the Crown's other positions. If you look-- here's
4 what all these cases have in common. All the cases where the
5 Crowns submitted here that -- as their evidence -- British
6 Columbia, Law Society, Parsons. Parsons case from B.C. The
7 Prince Edward Island Court of Appeal. All these cases deal
8 with civil matters. All of these cases are dealing with to
9 what extent a person can assist a litigant without falling
10 into the definition of conducting a trial in and of
11 themselves.

12 I'm, I'm admitting I'm conducting a trial in and of
13 itself. I'm just -- I just fall under an exception, which,
14 which these cases, there was no exception. There, there
15 wasn't a way around it.

16 Now, furthermore, my interpretation, the Crown is
17 actually asking this court to overturn the Court of Queen's
18 Bench. I'm going to make a submission here the -- that the
19 -- that this court does not have the authority to overturn
20 the Court of Queen's Bench. And if you look at -- and my
21 authority is, is two cases. The Court of Queen's Bench, the
22 case -- and, and surprisingly the Crown actually provided it
23 themselves, tab 6 of the Crown's materials.

24 This is where Justice Kennedy decided not only
25 whether a person could appear as a representative, whether -
26 - or as an agent back then, but whether or not that person
27 could be paid. That's what Justice Kennedy was deciding, and
28 Justice Kennedy ruled that the person cannot be paid, but the
29 person argued, well, but in a similar case in Ontario, the
30 courts in Ontario said they could be paid. Then they tried
31 to argue that, well, here -- that means it should be followed
32 here.

33 Justice Kennedy drew a distinction. Justice
34 Kennedy said ...

1 I apologize, I just need a second to get to it.
2 Okay. Well, first of all, paragraph 16, Justice
3 Kennedy says:

4
5 Section 51 of the Ontario Provincial
6 Offences Act expressly provides:
7 51(1), a defendant may appear and
8 act personally or by counsel or
9 agent.

10

11 And then on paragraph 17, he says:

12

13 It is clear from the above that the
14 Ontario legislature has authorized
15 agents to act for a defendant and as
16 the report says, in affirming the
17 trial judge's decision: The
18 Legislature has thus created a new
19 trade or calling, that is to say,
20 the calling of paralegals. Such
21 provisions are found under the
22 Provincial Offences Act in Ontario
23 do not exist in Manitoba
24 legislation.

25

26 So Justice Kennedy's already ruled that, that, that
27 virtually identically worded provision from Ontario, if, if
28 Manitoba had that law, it would, it would not only allow
29 agents to appear in the courts, or in my case a
30 representative, it would allow them to be paid.

31 As of November 20th, 2017, my case has become even
32 stronger because we have since adopted the Ontario
33 legislation for -- word for word in our Provincial Offences
34 Act. Justice Kennedy has already essentially pre-emptively

1 interpreted what the Ontario Provincial Offences Act meant
2 and as -- ostensibly would, would mean then if it was here in
3 Manitoba. Back then, it wasn't here in Manitoba. Today, it
4 is.

5 Furthermore, Justice Kennedy drew a second
6 distinction. He said, in paragraph 15:

7
8 As a matter of distinction between
9 the Ontario and Manitoba
10 legislation, the Ontario Law
11 Society Act, has as its opening
12 words to 50(1) --

13
14 That's the prohibition; that's their equivalent of our 20(2).

15 ... quote, except where otherwise
16 provided by law, end quote.

17
18 Manitoba never had that at the time. Now we do.
19 Now we have that in our 20(2). When we changed our Law --
20 and this all came in in 2004 when we changed our Law Society
21 act to our Legal Profession Act, that we now adopted in our
22 prohibition on practising law or appearing as a barrister or
23 solicitor. We've now adopted it well as Ontario, except as
24 provided by this or another act.

25 So now we are virtually identical to Ontario in
26 every possible way that, that Justice Kennedy ruled back in
27 1989 that if we had those laws in Manitoba (inaudible)
28 basically interpreting the Ontario law, not only would people
29 be allowed to represent others in traffic court, they'd be
30 allowed to be paid for it. Now, I'm not being paid so we're
31 not into that issue.

32 Now, secondly, in the Pollock case -- that is tab
33 7 -- in that case Justice Monnin, who is now actually in our
34 Court of Appeal, he ruled that in Manitoba we have now adopted

1 -- we've largely followed the Ontario way, and, and he was
2 referring to the expressed except as provided by this or
3 another act.

4 Now, he talked about paragraph 93. Sorry. Sorry.
5 He talked, around paragraph 93, about the issue of traffic
6 tickets. He says ... Paragraph 91, I'll start there.

7
8 To the extent there is a conflict
9 between Section 800 of the Criminal
10 Code and Section 20(2) of the act by
11 allowing an agent to appear for a
12 fee, I find, in accordance with the
13 reasoning Magnat (phonetic), that
14 the provisions of the Criminal Code
15 prevail --

16
17 Magnat was a Supreme Court of Canada case. Off the top of my
18 head, it's 2001 S.C.C. 67, for the record.

19
20 ... Code prevail in accordance with
21 the paramountcy doctrine.

22 I note that the Criminal Code
23 was amended in 2002 --

24
25 And he talks about a limitation, but that doesn't matter.

26
27 The reasoning in Romanowicz
28 with respect to Section 800 applies
29 to summary conviction proceedings
30 under the Criminal Code. However,
31 it would not apply to summary
32 conviction proceedings under
33 provincial statutes pursuant to the
34 Summary Convictions Act. While that

1 Act incorporates by reference
2 Section 800 of the Code, as argued
3 by the Law Society, the issue is not
4 one of paramountcy between the
5 federal and provincial legislation,
6 but a statutory interpretation of
7 provincial.

8 One must look at the provisions
9 of Part 5 of the Act --
10

11 And that's where he goes in talking about
12 remuneration and paid agents, and he interprets -- the Crown
13 put that in their arguments -- that there's, that there is a
14 duplication between 53(1) and 40(1) The Legal Profession Act
15 referring to paid agents.

16 Now, you see -- if you go back further in the
17 Pollock decision, back to paragraph 87 and 88, he talks more
18 about summary conviction matters and he concludes that Mr.
19 Pollock could appear for summary conviction matters, could
20 argue them, and this is -- we're talking about provincial
21 summary conviction matters here -- and concluded that he
22 could, and he could charge for his services.

23 But then at paragraph 89, he says:

24 Does that mean that the agent may
25 charge for his or her services? The
26 Ontario Court of Appeal did --
27

28 And I'm, just for the record, referring to paragraph 89:
29

30 The Ontario Court of Appeal did not
31 see why not. In Romanowicz it found
32 that neither the Criminal Code nor
33 the provincial legislation limited
34 the word 'agent' to, quote, 'unpaid

1 agents'. Magnat is of no assistance
2 as the legislation in that case
3 specifically provided for non-
4 lawyers to be able to charge a fee.
5

6 So he talks about how agents could actually appear
7 for summary conviction matters. There was an exception, the,
8 the former Provincial -- sorry -- Criminal Code, Section
9 800(2). Since then we've adopted The Provincial Offences
10 Act, which is essentially the same thing, and that's where
11 Justice Monnin said that while -- but when we consider
12 remuneration ... Once we consider remuneration, now we're
13 dealing with duplication between the law because Part 5 of
14 the Law Society act or Legal -- sorry, I should say Legal
15 Profession Act now, does talk about paid agents, Section 40,
16 and he talks about the duplication. That's why he says that
17 Mr. Pollock's allowed to act for these matters, but, but since
18 he's being paid, he has to register as a paid agent under the
19 Law Society or Legal Profession Act.

20 Well, I'm not being paid, so therefore my conduct
21 does not fall into that category of where the Law Society act
22 both govern because the Law Society act does specifically
23 govern only paid individuals. That's Section 40(1).

24 And the Crown itself has confirmed that. I can
25 cite that in a couple of cases here. In the Quigley case ...
26 Quigley, which was -- in Your Honour's materials, it's in my
27 dismissal application. It is at tab 19. In the Quigley
28 matter, tab 19 -- sorry, I apologize. Actually, it's the
29 second Quigley, so that would be tab 21.

30 Tab 21 of the Quigley matter where the Crown made
31 their motion to have me removed, the Crown talks about how
32 I'm conflicting with the Law Society act. They talk about
33 the issue of paid agents. I refer Your Honour to page T3 of
34 tab 21, line -- starting at line 39. The Crown themselves

1 read into the record -- this is from -- I know it off, off
2 the top of my head; I don't -- they didn't cite the source,
3 but it's Reg. 105/90. It's the reg that's for -- pursuant
4 to Section 40 of our Legal Profession Act, the definition of
5 agent.

6 It says -- the Crown quoted:

7
8 Agent means an individual carrying
9 on business as a sole proprietor, a
10 corporation or partnership, or an
11 employee of a sole proprietor,
12 corporation or partnership who acts
13 as an agent or provides legal advice
14 to another person pursuant to
15 Section 50(1) of the Act.

16
17 That, that's an error in the regulations. They haven't
18 updated the regulations. It used -- Section 40(1) used to be
19 57.

20 But as you can see, right there in the definition
21 of agent, it's a person carrying on a business. Agents are
22 paid, by definition. I'm not being paid; I'm a
23 representative.

24 And under the Pollock decision, Justice Monnin
25 already interpreted that the Criminal Code provision, 800(2),
26 allowed unpaid representation in Highway Traffic Act matters.
27 It's just that once representation became paid, there was
28 duplication and that's why the Section 40(1) of the Law
29 Society act would kick in. It doesn't kick in until you're
30 being paid for Highway Traffic Act matters under Justice
31 Monnin's own decision.

32 Since then we've actually repealed our use of
33 Section 800(2), and now we're on 53(1) of The Provincial
34 Offences Act, which Justice Kennedy ruled, back in 1989, that

1 if we had in Manitoba would not only allow agents or
2 representatives to appear in the court, but to be paid for
3 such services. Not an issue because I'm not being paid, but
4 I'd argue that not -- since then the law's even progressed
5 even further in my favour that I probably could be paid.
6 Doesn't matter, because I'm not. So that's where we're at
7 now with the legal provisions here.

8 So, simply put, to summarize, the Crown is relying
9 on the definition of what's prohibited conduct under Section
10 20(2) (b) and (c), and they're using Moss and these other cases
11 to support that, that I fall into the definition of that
12 conduct. I'm not disputing that I fall into the definition
13 of that conduct. The Crown is trying to leave the matter at
14 that point and not go any further, but you do have to go
15 further. You have to go look for the exceptions that apply.
16 The exceptions apply, 20(1) of the Law -- sorry, Legal
17 Profession Act is for lawyers, 20(4)(d) is for self-reps,
18 53(1) is for representation in all provincial offences,
19 800(2) is for representation in summary conviction offences
20 of the Criminal Code. Magnat also talked about Immigration
21 and Refugee Act exceptions.

22 So you see what we're dealing with here is, is a -
23 - well, I'm engaging in conduct that would prima facie be
24 prohibited if it were not permitted by or under that or
25 another act, as the provision says in its opening. And if we
26 accept the Crown's argument that we have to end off at the
27 Moss analysis of, of what point you could -- we would cross
28 that line to be conducting control of the trial, if we
29 accepted that Crown's argument, we'd have to go to the
30 courthouse right now and take every lawyer in there and throw
31 them out of court because they're in violation of the Crown's
32 interpretation of Moss and The Legal Professions Act.
33 Luckily, that's not where that interpretation ends; you have
34 to start looking at the exceptions.

1 The Crown is asking Your Worship to not do that,
2 but we have to look at the law holistically. We have to look
3 at all the provisions and we have to look at the exceptions.
4 And this has been -- so this has been ruled on. It's been
5 ruled on in Pollock, it's been ruled on in Lawrie, the Ontario
6 Court of Appeal dealt with it in Romanowicz, (inaudible) that
7 it is a right to appear through a non-lawyer.

8 So that, that ends my initial arguments and overall
9 broad submissions related to the Crown's brief. I'd like to
10 take this opportunity now to respond specifically to the
11 Crown's verbal submissions.

12 The Crown says that the number of -- that my conduct
13 over the number of matters is relevant. It's not relevant.
14 If anything -- there's nothing in the law. We can't read
15 into the law words that are not there. The law does not say
16 -- Section 53(1) of The Provincial Offences Act does not say
17 a person may appear by representative so long as that
18 representative does not, does not act for more than four
19 matters per year or whatever the -- whatever number the Crown
20 wants to pull. It's not in the act. We can't read -- we
21 can't create legislation here in this court. We can't just
22 add words to a provision. The provision is a blanket
23 permission to appear by representative. It doesn't say the
24 number of times the representative appears is relevant.

25 Now, also, Section 53(2) is -- I'm going to call it
26 the incompetence clause, where if a person's unable to
27 represent, I'd say that, if anything, I'd be more -- the more
28 matters I presided over would increase my ability to
29 represent. It means that I'm more experienced. I -- and I,
30 I have -- as, as we already got on the record, I have won a
31 Charter motion. I've done multiple Charter motions. Most of
32 them -- many of them, I should say, have resulted in the Crown
33 staying so we don't actually get to litigate them, but I,
34 I've gone way further than even litigating a basic traffic

1 ticket. So by the Crown's own submissions, I should be more
2 than qualified to act as a simple representative for a 4A
3 ticket if I've taken it as far as winning Charter motions.
4 So the number of matters doesn't matter. That's my submission
5 regarding that.

6 Now, the Crown says I'm relying on the back of the
7 ticket. I'm not relying on just the back of the ticket. I'm
8 relying on the law. The back of the ticket doesn't matter.
9 It's -- we have to refer to the law. The back of the ticket,
10 it actually cites the law virtually word for word: A
11 defendant may appear in person or by representative.

12 Now, the Crown talks about Section 53(2). Well,
13 the Crown's saying that I'm -- that under 53(2) a justice may
14 bar a person, but why? The Crown's submission is that I'm
15 not allowed to be here in the court, therefore a justice
16 should bar me under 53(2). That's not a proper application
17 of 53(2) because even under the Crown's own case, being Moss,
18 if I weren't allowed to be here to begin with, then that would
19 be it. I wouldn't be allowed to be here. We don't need a
20 provision allowing a justice to exclude somebody that's
21 already not allowed to be there. That, that just makes no
22 sense. It's complete circular reasoning.

23 So we start off with -- what we have to debate is
24 whether or not I'm allowed to be here under Section 53(1),
25 which I'm submitting that I am. We can't jump to 53(2) and
26 then say, Well, I'm not allowed under 53(1) so we're going to
27 exclude him under 53(2). If I don't fall under 53(1), then
28 there's no argument to be here to begin with. We can't circle
29 -- law can't circle back on itself that way. If I'm allowed
30 to be here, we can't say, Well, now I'm not allowed to be
31 here because the justice has discretion over that. If I'm
32 allowed to be here, I'm allowed to be here.

33 53(2) is not about that. It's not about excluding
34 somebody that's legally not allowed to be in the courts. We

1 don't have that in our other laws. We don't have legal
2 provisions that say a justice can bar the person if they're
3 not allowed to be here. We don't have that in civil law or
4 any of these other things because they're not allowed to be
5 in the court, they're not allowed to be in the court. That's
6 Legal Profession Act. So we can't use a discretionary clause.

7 I also would invite Your Worship to -- I want to
8 point out something else here in The Legal Profession Act.
9 The Crown is arguing that the -- that you have to exclude me
10 under Section 53(2), but their argument is because I'm not
11 authorized to be here. Well, if I'm not authorized to be
12 here, that's 53(1). But the Crown's submission is, is that
13 I should be under the Law Society act and that therefore would
14 provide protection to the public.

15 If Your Honour would be willing to refer to tab 4,
16 being The Legal Profession Act, take a look at around Section
17 40, which is the section dealing with paid agents. Right
18 here, Section 40(3), Justice may bar agent:

19
20 "A justice may bar a person
21 from appearing as an agent under
22 this section if he or she finds that
23 the person

24 "(a) is not competent to
25 properly represent or to advise
26 another person; or

27 "(b) does not understand or
28 comply with the duties and
29 responsibilities of an agent."
30

31 Right there, part (b) is actually virtually worded
32 identically to 53(2) of The Provincial Offences Act. So if
33 the Crown wants to argue that I'm not allowed to be here to
34 begin with and we need to use 53(2), by the Crown's own

1 submission now we're -- that would circle right back to paid
2 agents. Well, then you could exclude a paid agent because
3 they're not allowed to be here under 40(3). The law can't
4 possibly mean that.

5 And if you look, (a) actually says if, if the
6 person's not competent to properly represent. That's not
7 even in The Provincial Offences Act. The Provincial Offences
8 Act is only (b), so I'd say that the ability to bar a paid
9 agent is actually even broader, because it's got two clauses,
10 than the 53(2) of The Provincial Offences Act for a
11 representative. So you -- it, it can't be applied in that
12 way.

13 Now, Judge Sandhu -- the Crown is submitting that
14 Judge Sandhu ruled on the legal -- on whether or not I could
15 represent that individual accused. Under the Crown's own
16 submission in Moss, if I'm not allowed to be in the court,
17 Moss -- the Court of Appeal has said, in Moss, if a person's
18 not allowed to be in the court, it's not up to the court to
19 make an exception. The court does not have that power. They
20 cannot allow breaking of the law. So Judge Sandhu was not -
21 - did not have the power to allow me to represent that person
22 unless I was allowed to under law.

23 Now, Judge Sandhu did rule on statutory
24 interpretation. The Crown's submitting it only applied to
25 that case, but Judge Sandhu did actually apply the law and I
26 think it's critical -- critically important here for me to
27 read into the record what Judge Sandhu actually says regarding
28 this exact issue because we're not dealing with one-off cases
29 here. We're not dealing with whether I'm incompetent. The
30 Crown's not taking that position. The Crown's taking the
31 position that I'm not allowed to be here to begin with under
32 the law.

33 Well, if we're going to discuss that, then Judge
34 Sandhu's decision is most certainly relevant because if --

1 and even if every case has to be decided in and of itself,
2 the law is the same. The law can't change from case to case.
3 Maybe my conduct, maybe things progress, as the Crown says,
4 maybe I've done things differently the last six months; those
5 things might change. The law doesn't change. The law's been
6 interpreted by a judge, it's been interpreted by a judge.
7 It's done.

8 And on paragraph 9(h), page -- on page 9 in my
9 brief, I want to read into the record. In this case the Crown
10 again tried to claim that there was no legal authority for a
11 non-lawyer bonded agent to argue traffic tickets. It's page
12 3, starting at line 31. Crown went all through it. The Crown
13 then tried to use the Cuthbert-Buchanan decision from June
14 6th. Following the Crown's submissions, I'm going to read
15 directly a quote out of Judge Sandhu's decision.

16
17 ... I'm permitting him to represent
18 this individual because, quite
19 frankly, I don't know why an
20 individual can't have anybody
21 represent them on a Highway Traffic
22 Act matter who is a friend or family
23 without compensation and run afoul
24 of The Legal Practices Act. I don't
25 see it. It's not -- there's no
26 jeopardy, there's no jail jeopardy
27 involved.

28
29 So right there Judge Sandhu made a ruling on the
30 substantive legal issue. Am I allowed to be there? I am.
31 That is an interpretation of the law; it's been applied.

32 The Crown's trying to say that, Well, Judge Sandhu
33 only decided in that case. He didn't have the power to decide
34 the law in only one case. The law doesn't change from case

1 to case. The one-off situations do, my conduct might, but
2 the Crown's not here arguing my conduct. The Crown's here
3 arguing that under the law I'm not allowed to be here.

4 Now, further in that case, the Crown further
5 pressed their claims that the law prohibited a non-lawyer
6 from representing a traffic matter by citing that the law
7 allows a justice to exclude a representative. That is the
8 exact provision the Crown is here today trying to use.

9 That is at page 10, starting at line 19. The Crown
10 said that, that the judge can exclude a representative. Judge
11 Sandhu said, can. He reminded the Crown. And then another
12 Crown attorney made further submissions about the law, about,
13 about 53(2) and, and how Judge Sandhu had to exclude me. And
14 Judge Sandhu said -- direct quote, page 11, lines 33 to 34,
15 direct quote, Judge Sandhu: That's not what the legislation
16 says.

17 So the Crown's already -- the exact submission
18 they're putting in front of you is you need to exclude me
19 under 53(2), trying to circle it back on 53(1), Crown tried
20 it on June 28. Judge Sandhu's direct answer to it: That's
21 not what the law says.

22 And then another lawyer interjected, read into the
23 record the relevant provisions of the legal -- of The
24 Provincial Offences Act, and he, he said:

25
26 I'm not sure why we're here debating
27 the merits of what's clearly written
28 in the Provincial Offences Act.

29
30 And I'd make the same submission here today.

31 And then following that, that's when Judge Sandhu
32 said:

33
34 I'm going to permit you to

1 act for this individual at the trial
2 that is going to be occurring
3 momentarily in this same building.
4 I stick with my original feeling you
5 are permitted to act. It's in the
6 discretion of the justice as long as
7 the judge feels you are competent.
8 I do feel you're competent.
9

10 So he's already interpreted 53(2). It's a
11 discretionary clause regarding incompetence. He, he talked
12 further in the case about how it replies -- it applies to
13 somebody that's disrespectful to the court or does scambly
14 work. That's an incompetence clause. That's got nothing to
15 do with whether or not I'm allowed to be here to begin with.
16 It has to do with whether or not my conduct would bar me, and
17 the Crown's not making that, that claim. The Crown's claiming
18 that, that I'm not allowed to be here prima facie.

19 Now, also, the Crown talks about how I come in here
20 and make -- and argue cases and that the accused often isn't
21 present, and makes -- as if that's somehow relevant. But I'd
22 like to refer Your Honour to tab 28 of my summary dismissal
23 application. It's a case of R. v. Halosey (phonetic), argued
24 in this court -- actually, I believe in this exact room --
25 January 14th of 2019. And in that case, the Crown came in -
26 - around the second paragraph, the Crown said that the, that
27 the authorized person's here to speak. I was sitting -- I
28 was present in the courtroom that day. The accused wasn't
29 here. Crown walked in with an authorized person, said, This
30 person's authorized, here they are.

31 And now the Crown might submit, well, as a spouse
32 or something. Doesn't matter. Under the Moss case, which
33 the Crown is fully aware of, not even a husband can represent
34 their wife if the law prima facie does not allow it. So if

1 the Crown's submission that the -- that under Moss I'm not
2 allowed to be here, then under Moss nobody would be allowed
3 to be here, even spouses or even the drivers of the vehicles
4 on photo radar tickets.

5 The Crown argues that the -- that they acquiesce in
6 the case of photo radar tickets where the court allows the
7 driver of the vehicle on a photo radar offence. That's not
8 in the law. The law doesn't even -- The Legal Profession
9 Act, Provincial Offences Act, 53(1), nowhere is the term photo
10 enforcement offence ever used. The law is no different
11 whether it's a photo enforcement offence, cop-issued ticket,
12 or any other provincial offence. It's universal.

13 And under Moss, as the Crown has submitted, if we
14 were to apply Moss in this case we'd have to first of all
15 throw out every lawyer in the court because under the Moss
16 analysis that, that, that's how they got to what conduct falls
17 under 20(b) and (c). Now, Moss actually went into the
18 exceptions. They did talk in Moss about 20(1) allowing
19 lawyers, 20(4)(b), allowing self-rep. The Crown's trying to
20 glaze over that. We can't glaze over that. Those are the
21 exceptions, and my case is a further exception that applies
22 that didn't in Moss.

23 So, so the -- under Moss, if, if, if a husband can't
24 even appear for his wife or argue with his wife present in
25 the courtroom, then we wouldn't be allowed to allow -- if you
26 rule that that's -- the Crown's perspective is correct on
27 that, then Your Honour would have to be ruling that nobody
28 could appear even for photo radar tickets. The husband -- a
29 husband can't represent their wife -- that's what Moss said
30 -- unless, unless another provision applies. If we find that
31 the Crown's correct and another provision doesn't apply and
32 Moss has to be applied on its face, that's where we end up in
33 that respect.

34 Now, I just have a few more things to say about

1 some of the Crown's submissions.

2 THE COURT: Okay, I'll give you about ten more --

3 MR. SWERYDA: Yeah.

4 THE COURT: -- minutes, Mr. Sweryda --

5 MR. SWERYDA: I'm pretty close, actually.

6 THE COURT: -- and that's it.

7 MR. SWERYDA: The Crown also talks about how --
8 it's, it's about assisting. They said that, that 53
9 (inaudible) that allow for mere assistance. You can't allow
10 for mere assistance. It can't possibly be limited to that,
11 because if it did, then the accused would have to be present
12 to argue their own case in order to be assisted. That --
13 then we're back to 54, allowing the justice order the accused
14 to attend or as -- the wording of 53(1), not allowing the
15 accused to attend through representative instead of in
16 person, so it has to be more than that right in the wording
17 of the law itself.

18 Now, the Crown is also talking about my involvement
19 in past matters. I don't see how that's relevant.

20 Crown also talks about how my conduct has gone well
21 above mere assistance. Well, my submission to that, as I'm
22 sure your -- you'd be aware, that I'm allowed to do it.
23 That's what the law says. Judges have allowed me to do it.
24 I've appeared in Provincial Court arguing Charter motions.
25 I've gone way further, and judges have allowed it. In most
26 cases, the Crown doesn't even try to stop me. I've appeared
27 in front of many judges and, and not been opposed, so, so if
28 I can do that and judge, and judges who should be expected to
29 know law haven't stopped me, then why would the Crown try to
30 use that to say, well, now I can't argue Ms. Nguyen's ticket
31 here.

32 And I -- and, and -- there's no Charter motion for
33 Ms. Nguyen's ticket; there's no abuse of process motion.
34 There, there's none of that. This case is way simpler than

1 cases I've already done. By the Crown's own submission, I've
2 already done way more complex cases. And I've done those
3 complex cases, why would I not be authorized to go to the 4A
4 program and ask the Crown for a reduction, and if they agree,
5 go to 4C and dispose of the matter in five minutes, instead
6 of taking up all this time and this courtroom as the Crown's
7 insisted we have to do?

8 Okay, I've already argued about the fact that
9 Lawrie and Pollock have already found -- they both -- Lawrie
10 found pre-emptively that non-lawyers are allowed to be
11 allowed to do tickets if we had -- even for a fee if we had
12 the Ontario legislation, and Pollock said that we've now
13 mirrored the Ontario legislation and at least in the case of
14 not for compensation it's allowed. Pollock's already said
15 it. It's been ruled on.

16 Now, I'll say that the Crown has also talked about
17 The Legal Professions Act applying to me because I'm a law
18 student. Doesn't matter. The fact I'm a law student -- I
19 think I said this earlier. Doesn't matter I'm a law student.
20 I happen to be a law student. I don't fall under the Law
21 Society act or Legal Profession Act all because I walk into
22 law school. I'd have to join the Law Society. Most of my
23 professors are not part of the Law Society.

24 You have to choose to join the Law Society. I did
25 for a brief period when I was working for legal help centre,
26 and at which point, I then left again. I left the Law Society.
27 I was part of it for a very brief period, so -- and the Crown
28 -- I'll just -- I should probably put this on the record
29 because I have personal knowledge of this. The Crown filed a
30 Law Society complaint arguing about a lot of the thing -- our
31 cases I've done in court. I met with the Law Society; Law
32 Society itself has acknowledged the only jurisdiction they
33 have over me is if I'm practising law unauthorized, which is
34 their jurisdiction over everybody on the street that's not

1 part of the Law Society, so the Law Society themselves have,
2 have acknowledged. It's -- I'm not part of the Law Society
3 because I'm -- all because I happen to be a law student is no
4 different than if I happened to work at Walmart.

5 Okay. And as the Crown said about 20(3) not being
6 exhaustive, I, I agree. 20(3) doesn't even apply to the
7 litigation. 20(3) is stuff outside the courtroom.
8 Renumeration matters outside the courtroom. Renumeration
9 would also matter if I fell into the category of paid agents
10 only for traffic tickets, which I don't, so it's not relevant.

11 I'm almost through. Lot of this stuff I actually
12 already argued.

13 Oh, the -- I just want to put this on the record
14 because the Crown is adamant on repeating this line and it's
15 completely false. The Crown keeps on repeating that I have
16 attempted to have a Provincial Court judge overturn Manitoba
17 Court of Appeal jurisprudence. That never happened. I never
18 argued that.

19 THE COURT: No, I don't think the Crown argued that.
20 I think that they argued that you tried to have Provincial
21 Crown -- or a provincial judge overturn a Provincial Court
22 decision.

23 MR. SWERYDA: No, they said --

24 THE COURT: Wasn't it?

25 MR. SWERYDA: -- Court of Appeal.

26 THE COURT: Thought it was -- wasn't that the
27 decision -- is that Judge Krahn's decision?

28 UNIDENTIFIED PERSON: (Inaudible).

29 THE COURT: Oh, I thought that was the one you were
30 referring to. No?

31 MR. SWERYDA: Well, let's just put on the record,
32 then, that I've never asked a Provincial Court judge to do
33 that.

34 MS. MALAVIYA: No, I think -- and I, I don't want

1 to misspeak, but I think that the case that's being referred
2 to is Gray in the Manitoba Court of Appeal, and I don't know
3 that we -- I don't know whether or not we used the term
4 overturn. I think what he's been asking the court to do is
5 to ignore, essentially, the, the principles that came out of
6 that case.

7 THE COURT: Okay.

8 MS. MALAVIYA: But it's, it's not a --

9 MR. SWERYDA: I'm not sure what principles would be
10 relevant to this, though. This is an issue of whether or not
11 a non-lawyer can help somebody on a photo enforcement ticket.

12 MS. MALAVIYA: Well, I mean, again, this isn't a
13 case that we're relying on in support of our motion --

14 MR. SWERYDA: Okay.

15 MS. MALAVIYA: -- in this case. Two twenty-nine
16 was the issue in Gray, Section 229 of the Highway Traffic
17 Act, and at the time, as I recall it -- and, of course, you
18 know, having read a million transcripts, I can't recall
19 specifically. As I understand it, Mr. Sweryda was trying to
20 argue that Gray had no application in that particular case,
21 and so for all intents and purposes, our position was that he
22 was asking Provincial Court to ignore the decision that was
23 made on that particular provision --

24 MR. SWERYDA: Well --

25 THE COURT: But that's not before --

26 MS. MALAVIYA: -- in, in the --

27 THE COURT: -- this court today --

28 MS. MALAVIYA: -- Court of Appeal. That has nothing
29 --

30 THE COURT: So --

31 MS. MALAVIYA: -- to do --

32 MR. SWERYDA: Well, Crown did --

33 MS. MALAVIYA: -- with this --

34 MR. SWERYDA: -- make it in --

1 THE COURT: Okay.

2 MR. SWERYDA: -- verbal submissions, and I would
3 say that even what Ms. Malaviya just stated is, is a complete
4 misdirection. I never asked that. I said that the Gray case
5 didn't -- that there was a area --

6 THE COURT: Well, here's what --

7 MR. SWERYDA: -- of law that --

8 THE COURT: -- I'll say, Mr. Sweryda --

9 MR. SWERYDA: -- the Gray case didn't decide.

10 THE COURT: -- just in respect, Crown's saying that
11 they haven't raised that as an issue --

12 MR. SWERYDA: Okay, so --

13 THE COURT: -- so you've put --

14 MR. SWERYDA: -- we, we'll --

15 THE COURT: -- your point on record and it's not
16 something that I'm taking into consideration.

17 MR. SWERYDA: Okay, I appreciate that, then. I'm
18 fine with that, then.

19 The Crown also said that I'm not acting on -- that
20 I, I'm carrying this over and above friends and family. The
21 Crown submitted no evidence to that effect. Ms. Nguyen here
22 has testified that we're friends, that she -- we -- she's
23 been to my place two weeks ago. We had a party with a whole
24 bunch of people, and I actually know her through Ms. Yung,
25 who's the other defendant that I'm arguing with today, who
26 I've known for three years.

27 So the Crown's saying that I'm not -- I, I haven't
28 provided evidence that I'm act -- not -- that I'm acting for
29 friends or family. I'm going to submit I don't have to
30 provide that evidence. Well, we actually, well, we actually
31 have. Even, even though we have led it, Crown's making a
32 broad statement that they have no evidence of. I'm acting
33 for a friend. She, she's already testified to that. So I'm
34 not sure what relevance that is.

1 Now, the Crown also said that this is more important
2 than a civil case because this is regulatory matter and as
3 things go awry, they said that -- the Crown submitted that
4 there -- the accused would have no protection. I'm not sure
5 what protections the accused needs here over and above --
6 this is a photo radar ticket. The worst that could happen is
7 the accused gets convicted and gets charged the same amount
8 of money that, that they're -- that they would have had to
9 pay if they came in and paid their ticket. There's -- I don't
10 know what more prejudice there is, and this certainly isn't
11 anywhere near as important as civil matters and how, and how
12 -- because civil matters can be over tens of thousands of
13 dollars. This is over a \$200 ticket.

14 THE COURT: I'm just going to ask you --

15 MR. SWERYDA: Yeah.

16 THE COURT: -- one question, though, with respect
17 to that because you're referring to this particular ticket
18 and we're, we're dealing with a motion barring you maybe
19 specifically from this particular ticket.

20 MR. SWERYDA: Um-hum.

21 THE COURT: However, again, have you ever
22 represented somebody on something outside of a photo
23 enforcement ticket where there's consequences to the
24 individual's licence (inaudible) --

25 MR. SWERYDA: Yes, I have and --

26 THE COURT: Okay.

27 MR. SWERYDA: -- I actually haven't been stopped
28 from doing it. The --

29 THE COURT: Okay.

30 MR. SWERYDA: -- Quigley case was -- actually, the
31 Charter motion I referred to that I did -- we'll use the term
32 win -- that, that did go to litigation, Judge Leanne Martin
33 ruled in my favour, that was a stop sign ticket.

34 THE COURT: Okay.

1 MR. SWERYDA: So if anything, actually, yes, I have
2 argued more serious matters and, and not been opposed arguing
3 them.

4 But we're here to decide this case here today, and
5 this, this case in particular is a photo enforcement ticket.
6 I would say main thing it would go in my favour that judges
7 have allowed me to argue tickets that have -- and, and the
8 Judge Sandhu case. That's the case where the Crown submits
9 that Judge Sandhu individually ruled I could represent Ms.
10 Eisbrenner. Well, Ms. Eisbrenner's case was a passing a
11 school bus ticket. That's probably the most serious matter
12 I've ever done, and Ms. Eisbrenner has not once yet had to
13 appear for that matter. She's never appeared for it, and Ms.
14 Eisbrenner's never been in the courtroom for that matter,
15 and, and the Crown, the Crown -- so, so if anything -- if
16 anybody should have to be in the courtroom, wouldn't it have
17 been Ms. Eisbrenner for a school bus ticket that carries much
18 more points on her licence than anything else? And she's
19 never been asked to appear. Crown's never even asked for her
20 to appear.

21 So if I could, if I could do a school bus ticket in
22 front of multiple judges involving Charter motion, as the
23 Crown's pointed out, abuse of process motion, regardless of
24 where it went, why would I not be allowed to come to this
25 court and just ask for a reduction on a photo enforcement
26 ticket? If anything, that supports my case.

27 Because what we're, what we're here for today is a
28 photo enforcement ticket. The Crown wants to make an issue
29 over a cop-issued ticket, we'll come here over a cop-issued
30 ticket if I do one one day.

31 THE COURT: Okay. Anything further?

32 MR. SWERYDA: I -- no, I don't think -- oh, I'd
33 just like to conclude, though.

34 The Legal Professions Act -- oh, yes, actually, I

1 should make one more thing about barring of a representative.
2 I'd like to draw your attention, Your Honour, to a case called
3 Allahyar. It is tab 32 in Your Honour's materials, and that
4 is a case where the Ontario Court of Appeal dealt with a
5 representative that had been excluded from arguing a cop-
6 issued ticket in the Superior Court. That's a lot more
7 important than dealing with a photo radar ticket in, in a
8 Provincial Court, and the Ontario Court of Appeal overturned
9 that judge or justice from not allowing that representative,
10 and they, and they cited their own case from Romanowicz and
11 I'd like to -- there's one specific quote I'd like to read
12 into the record.

13 And I apologize, Your Honour, but I do not have my
14 copy of Allahyar with me. I've got virtually everything else.
15 Would I -- would my learned friend be willing to lend me the,
16 the copy of my brief so I can read that into the record,
17 because I do think it's critically important.

18 In tab 32 of -- which is Allahyar, the court cited
19 itself -- Ontario Court of Appeal, from Romanowicz, which is
20 the 1999 case. And they said:

21
22 Disqualification is justified only
23 where representation would be
24 inconsistent with the proper
25 administration of justice. It is
26 not enough that the trial judge
27 believes the accused would be better
28 off with other representation or the
29 process would operate more smoothly
30 and effectively if the accused were
31 represented by someone else.

32
33 And then they've underlined it:
34

1 Disqualification of an accused's
2 chosen representative is a serious
3 matter and warranted only where it
4 is necessary to protect the proper
5 administration of justice.

6

7 And then they, they go on ... At paragraph 18,
8 they, they cite themselves again from Romanowicz, talking
9 about how ...

10

11 The power to disqualify, like any
12 other facet of the court's power to
13 control its process, must be
14 exercised judicially on the basis of
15 the circumstances in a given case.

16

17 That includes the seriousness of the charge, complexity of
18 the issues.

19

20 A presumption that all agents are
21 incompetent to represent accused
22 persons charged with certain
23 summary conviction offences is not
24 a basis to exercise that discretion.

25

26 Well, we're here for the most simple of matters.
27 We're here for the most simple matters. It's a photo
28 enforcement ticket. It's one that we didn't even intend to
29 go to trial with to begin with, if the Crown would have
30 discussed with me the matter. It's as simple as it gets.
31 And as the Ontario Court of Appeal has said, and they're --
32 and this is a direct application of 53(2) and it's consistent
33 with what Judge Sandhu said: 53(2) is there for a judge to
34 judicially exercise the court's ability to control its own

1 process, as Judge Sandhu said, when somebody disrespects the
2 court or does scambly work. It's the, it's the incompetent
3 clause. It can't be used, as the Crown is submitting here,
4 that I'm not allowed to be here under the other laws so you
5 must use your discretionary clause to exclude me. If I'm not
6 allowed to be here, I'm not allowed be here. Discretionary
7 clause is about incompetence or disrespect to the courts.
8 That's where it ends.

9 And, and choosing to exclude. Ms. Nguyen has come
10 to the court here. She has said that she wants me to speak
11 on her behalf. Excluding me from doing so is a very serious
12 matter. As the Ontario Court of Appeal said, it is
13 undermining the accused's right to control their own defence
14 and their own response to the court. It can only be done
15 judicially with proper reasons, and it's when the court has
16 to control its own process.

17 If I was in here disrespecting the court or didn't
18 know what I was doing or anything like that, that is the only
19 time the court could exclude me, is to protect itself. It
20 can't exclude me simply because it doesn't want me or thinks
21 Ms. Nguyen would be better off with somebody else. That's
22 not -- that's Ms. Nguyen's choice to control her own defence,
23 and the Ontario Court of Appeal has ruled that and they
24 overruled a Superior Court justice who actually already
25 excluded a representative in Ontario.

26 So in my final submission, it would not be right to
27 exclude me simply based on the Crown's assertions that I can't
28 be here, and their assertions go completely against common
29 practice in the courts. They've admitted it on record in
30 cases. They -- non-lawyers are coming in here for photo
31 enforcement tickets and cop-issued tickets all the time. The
32 Crown doesn't oppose them. I showed you the Halohey case.

33 So I would say this is a targeted attack. Why else
34 would the Crown have introduced a representative on January

1 14th and not said boo to them being here, or insist on the
2 accused being present? Never said -- they never did any of
3 that, but yet somehow I'm being opposed.

4 So that's where I'd like to, for the most part, end
5 that, is that -- just in final submission, the Crown
6 submissions here are just so convoluted that it's -- it is
7 hard to untangle, but I, I say, in your analysis, Your Honour,
8 we first need to untangle whether or not I'm allowed to be
9 here. I submit that I am under Pollock, under Lawrie, under
10 the statutes, under common practice in the courts. Once I'm
11 allowed to be here, we can't use 53(2) to circle back on that;
12 and once we reach 53(2), we need a finding of fact of that
13 I'm incompetent or disrespecting the court. I -- Crown has
14 submitted no evidence of such.

15 And, and as stated, Ms. Nguyen's here. She wants
16 me to represent her. So, thank you, Your Worship.

17 THE COURT: Thank you. Anything briefly in
18 response?

19 MS. MALAVIYA: I have a very, very, very brief
20 response, unless Your Worship wishes to hear us on a
21 particular point.

22 THE COURT: There's, there's a couple of things,
23 but I'll let you go ahead first in terms --

24 MS. MALAVIYA: Okay.

25 THE COURT: -- of (inaudible).

26 MS. MALAVIYA: I want to start just by asking
27 whether or not --

28 Can I get the pronunciation of your last name,
29 please?

30 MS. NGUYEN: Nguyen.

31 MS. MALAVIYA: Nguyen? Okay.

32 I'm, I'm left a little bit confused because I'm,
33 I'm perhaps misunderstanding Mr., Mr. Sweryda. I originally
34 understood that Ms. Yung wish -- wished to admit the ticket

1 and, and discuss some resolution of it. I'm not sure whether
2 or not I'm now hearing that Ms. Nguyen also wished to do that
3 and not proceed to a hearing. And, and I am -- I'm going to
4 stop Mr. Sweryda before he says anything, because if that's
5 not the case or if there's been any discussion in that regard,
6 then we shouldn't be hearing about it. I just wish to say
7 that if that were the case, we could have avoided all of this
8 and just had a conversation with her first thing in the
9 morning.

10 THE COURT: Well, that's why I raised that earlier,
11 because --

12 MS. MALAVIYA: Well, I know with Ms. Yung that was
13 clearer.

14 THE COURT: I know that was with Ms. Yung. I didn't
15 know if that was with Ms. Nguyen as well. Again, that's kind
16 of why I raised the issue in terms of, you know, the court is
17 left here with these motions that are before it and, again,
18 if it was a simple wanting to admit to an offence and have
19 consultation with the Crown, then ...

20 What I'm going to say in terms of Mr. Sweryda being
21 -- it's correct, in Manitoba, the process that we have is the
22 only way somebody gets to now discuss something with the Crown
23 is by way of virtually disputing a hearing and that, you know,
24 sort of -- goes against what other jurisdictions have, where
25 if somebody -- anything -- if they're, if they're taking the
26 matter beyond just simply admitting and paying the fine,
27 there's other jurisdictions in Canada where you have to make
28 an arrangement to see a Crown because ultimately it's the
29 Crown who has conduct of every ticket and should have input
30 on every ticket.

31 We don't do that in Manitoba for, basically, I would
32 think, semantics. The volume of tickets for everybody who
33 simply wanted to talk would be -- I mean, if I take just the
34 volume that appears in 4C that don't see the Crown, we're

1 talking about 150, sometimes plus, tickets a day, as opposed
2 to what the Crown sees that we don't even see. So I understand
3 that. So --

4 MS. MALAVIYA: Well, and in terms of the court's -
5 - I mean, we're always open to addressing them and I think
6 that we've come a long way in, in -- or the court has --

7 THE COURT: Yeah.

8 MS. MALAVIYA: -- come a long way in doing so.

9 THE COURT: The new process certainly is more
10 streamlined and it's certainly helped contested hearings.

11 MS. MALAVIYA: Um-hum.

12 THE COURT: Again, but doesn't do much for the --
13 again, the admissions where people might have circumstances
14 that are beyond the scope of what a justice can and can't
15 take into consideration because the law only speaks to what
16 a justice can and can't do on an admission, whereas the Crown
17 has its own independent discretion as to what they can and
18 can't suggest to a court with respect to (inaudible).

19 MS. MALAVIYA: Well, I mean, again, I want to be
20 cautious because this, this process isn't as, isn't as --

21 THE COURT: Um-hum.

22 MS. MALAVIYA: -- familiar to me as it is to some,
23 but there's certainly, again, nothing -- there's no --
24 there's nothing preventing anyone from speaking to a Crown,
25 whether it's an opinions Crown or to attend to 4A just to
26 discuss resolution whether or not they're disputing the
27 ticket.

28 THE COURT: Right.

29 MS. MALAVIYA: Or making a phone call or, again, as
30 I said, sending an email. Those options were always
31 available.

32 MR. SWERYDA: Your, Your Honour --

33 THE COURT: Just one second.

34 MR. SWERYDA: Sorry.

1 THE COURT: Let's let --

2 MR. SWERYDA: Okay.

3 THE COURT: -- Ms. Malaviya finish off.

4 MS. MALAVIYA: Again, very, very briefly. And, and
5 I only -- I'm not wanting to belabour this point. It's just
6 it's concerning to me because Mr. Sweryda seems to be relying
7 on some belief that the Crown is so intimidated by his success
8 rate that that's the reason why we're doing all this.

9 I, I appreciate the clarification in terms of what
10 he was referring to on the Charter motion. What I will say
11 is that Jordan was released in July of 2016. In the time
12 subsequent to that, as Your Worship is no doubt well aware,
13 we received any number -- numerous delay motions. I know at
14 one point we were dealing with a hundred having been filed
15 within a period of time. We, we reviewed and stayed numerous
16 of those tickets as a result of the criteria set out in
17 Jordan, and that included those which were brought by
18 unrepresented accused or ones where they hadn't even raised
19 the issue. We had just determined that in the interests of
20 justice, we couldn't justify the delay that existed in those
21 cases. So if that's the time period in which the matter's
22 being discussed, then I just want to be clear on that.

23 The, the one thing that I want to respond to -- and
24 again, I'm not -- I want to just qualify that by saying I'm
25 not 100 percent sure I understand the argument. I think that
26 Mr. Sweryda's suggesting that, that we're taking the position
27 he should be barred as a result of our belief that he comes
28 under the Law Society act. We're not saying that. That's
29 not our business. That's the Law Society's business. They
30 have their rules. My reference to that was, was twofold,
31 again just because I wanted to be sure that the comments made
32 by Justice Cuthbert-Buchanan the other day weren't
33 misconstrued. If, if he does come under the Law Society
34 rules, then having said that, what, what -- is inaccurate.

1 And the other is just, again, about the reason for
2 which those rules exist and the inherent jurisdiction of this
3 court and the responsibility of every judicial officer,
4 including justices of the peace, judges, and Crowns, to ensure
5 that the fair administration of justice and the interests of
6 the public are protected.

7 I would never go so far as to say that Mr. Sweryda's
8 incompetent because that has huge implications in our
9 profession, and I've never -- we've never used that word,
10 certainly. But there is more to the, to the assessment than,
11 you know, at its most base level in competence. We're not
12 arguing that, that he isn't competent. We're arguing that
13 his conduct brings the administration of justice into
14 disrepute, and that's the reason for which we're taking the
15 position.

16 So again, the Law Society can do whatever it's going
17 to do. That's not our concern.

18 THE COURT: Okay. Just two questions in terms of
19 ... There's a lot of talk today about compensation for
20 something.

21 MS. MALAVIYA: Um-hum.

22 THE COURT: And I think that the actual definition
23 deals with either some sort of paid compensation or reward.
24 Does the Crown have a position on what is considered reward?

25 MS. MALAVIYA: I ... No, I mean, ultimately we
26 don't, because I think that that, that can't be -- I don't
27 think that lends itself to sort of a definition of any kind.
28 I don't -- we're not taking -- and Mr. -- we've been clear,
29 I think, back and forth this morning, on the fact that the
30 Crown's not taking a position -- this position on the basis
31 of, of that suggestion. We don't know what, if any, sort of
32 reward or -- we're not suggesting he's getting a fee, we're
33 not suggesting he's getting compensation directly of any
34 kind, so we're certainly not asserting that. Whether or not

1 there's any benefit to him ultimately in sort of a grander
2 sort of more ambiguous sense, I don't know, but that's, again,
3 not something that we're arguing.

4 THE COURT: Okay. And the other thing in terms of
5 Mr. Sweryda's argued with respect to being a law student,
6 that he doesn't fall under The Legal Professions Act, there
7 is a section that deals with -- or that they can make
8 regulations with respect to law students --

9 MS. MALAVIYA: Right, and --

10 THE COURT: -- under the act. Is there any sort of
11 regulations that the Crown is relying on with respect ...

12 MS. MALAVIYA: I didn't see any --

13 THE COURT: Okay.

14 MS. MALAVIYA: -- regulations specific. However,
15 there are provisions -- because there are a number of
16 different pieces of legislation that deal with the regulation
17 of students, lawyers, articling students, et cetera, within
18 the profession.

19 Okay, I'm going to try and read --

20 THE COURT: I just --

21 MS. MALAVIYA: -- what I've typed out here.

22 We ... the Law Society rules at Section 516(2)
23 indicate, as, as Your Worship has indicated -- or, well, is
24 the one that specifically says that a law student can practise
25 under the supervision of a lawyer. The wording being, a law
26 student may practise law pursuant to Section 21 of the act,
27 the, The Legal Profession Act under the supervision of a
28 lawyer. The Legal Profession Act does indicate that it makes
29 rules permitting and regulating the practice of law. I did
30 take a brief look to see whether or not I could identify any
31 such rules. There aren't any.

32 THE COURT: Okay.

33 MS. MALAVIYA: But having regard to the two of them
34 together and understanding the definition of student, law --

1 and law student in the definition section of -- I think it's
2 The Legal Profession Act, a student that's enrolled in the
3 faculty of law is automatically considered a student for these
4 purposes. That's the way we've interpreted it.

5 THE COURT: Thank you. Anything --

6 MR. SWERYDA: Yeah.

7 THE COURT: Quickly.

8 MR. SWERYDA: Okay. I would say that, no, I don't
9 fall under that category. I do agree that I'm a law student,
10 but that's because the term -- calling yourself a lawyer or
11 law student are regulated terms under The Legal Profession
12 Act, but practise by law students is when a law student would
13 practise under a lawyer in areas of law that they otherwise
14 wouldn't be allowed to, to argue for. Like, if I was under
15 a lawyer, as a law student I could, I could go in and do a
16 civil case like the Moss case, but I'm not practising as a
17 law student. I'm not claiming to be in here to have any more
18 privileges than any other person off the street all because
19 I happen to be a law student.

20 That's where the regulation by law students kicks
21 in. It kicks in once you go under a lawyer and try to exercise
22 that right to do more than what a normal citizen would be
23 able to do, because it would just, it would just be absurd to
24 say that the day I walked into law school, now I've got more
25 restrictions on who I can help for traffic tickets than
26 anybody else in any other faculty off the street. That just
27 doesn't make any sense. It's -- the, the practise by law
28 students is regarding going under -- is signing -- and I've
29 gone through the process. I'm not part of it anymore, but
30 I've gone through it so I'm very well aware of it. I have -
31 - you have to sign onto the Law Society, you have to sign a
32 membership --

33 THE COURT: Not the Law Society. The, The Legal
34 Professions Act. Because I'm reading the definition of law

1 student --

2 MR. SWERYDA: Um-hum.

3 THE COURT: -- and it says:

4

5 "... means a person enrolled in a
6 law degree program and registered in
7 the student register as a law
8 student."

9

10 MR. SWERYDA: Yes, I, I would --

11 THE COURT: Are you -- you fall under that
12 definition?

13 MR. SWERYDA: I do in that, in that --

14 THE COURT: Okay.

15 MR. SWERYDA: -- category, but I don't believe that
16 I fall under the category of practise by law students under
17 Section -- I think Ms. Malaviya said 21. I'm not practising
18 law as a law student. I am arguing as a representative.
19 Practise by law students is when you -- is when a law student
20 chooses to exercise -- the purpose of that -- you see, Ms.
21 Nguyen here couldn't come to this court and say to you, Your
22 Honour, I'm a law student. But I could say -- other terms
23 are not regulated. I could come in here and say I'm a
24 sociologist, I'm a scientist --

25 THE COURT: I understand how it ties into what the
26 section is. I'm just --

27 MR. SWERYDA: Yeah.

28 THE COURT: For the purposes of where it is deemed
29 that an individual is practising law, that if they are a law
30 student that it would have to be under the supervision of a
31 lawyer basically. That's what I'm looking at.

32 MS. MALAVIYA: Yeah, and I mean, I don't want to
33 make too much of the point for the --

34 THE COURT: Yeah.

1 MS. MALAVIYA: -- reasons that I've already stated,
2 but the reality is, even as a lawyer, if I go and I do
3 something somewhere in the community and I don't necessarily
4 do it in my role as lawyer, it does not absolve me of my
5 obligations under the Law Society rules. There are
6 limitations to what I can do, just by virtue of just, just
7 the fact itself that I am a member of the legal profession.

8 MR. SWERYDA: But that's different because --

9 MS. MALAVIYA: No, it's not.

10 MR. SWERYDA: -- Ms. Malaviya's chose to sign on to
11 the Law Society. I, I am not a member of the Law Society.
12 All because I happen to be a law student doesn't make this
13 the practice of law by a law student, because I, I -- this
14 would be practice of law by a law student if I were asking
15 Your Honour to grant me permission to represent Ms. Nguyen as
16 a law student. I'm not here as a law student. I am here as
17 a layperson that just --

18 THE COURT: No, no, and --

19 MR. SWERYDA: -- happens --

20 THE COURT: -- I'm not suggesting that you're --
21 and again, Mr. --

22 MR. SWERYDA: Yeah.

23 THE COURT: -- Sweryda, just so there's
24 clarification, I'm not suggesting that you're, you're
25 practising as a law student. I'm just asking whether or not
26 under the, the legislation, the definition for what a law
27 student is, whether or not --

28 MR. SWERYDA: Yeah.

29 THE COURT: -- you fall under that definition.

30 MR. SWERYDA: Well, well, yes, yes, I am --

31 THE COURT: Okay.

32 MR. SWERYDA: -- a law student.

33 THE COURT: That's all I'm asking.

34 MR. SWERYDA: Yeah, yeah, I do agree that I'm a law

1 student --

2 THE COURT: Okay.

3 MR. SWERYDA: -- for that definition, but I'm not
4 practising as a law student. I don't fall under the category
5 of 21 because --

6 THE COURT: I understand that that's what your
7 argument is.

8 MR. SWERYDA: And --

9 THE COURT: Anything further?

10 MR. SWERYDA: Yeah, I'll say that Section 21, I
11 (inaudible) is critically important.

12 Section 21, as Ms. Malaviya discussed here, of the
13 Law Society -- or Legal Profession Act, talks about
14 (inaudible) ...

15

16 Benchers may make rules permitting
17 and regulating the practice of law
18 students.

19

20 They're talking here about how a person -- okay, I
21 don't have the exact section off the top of my head, but talks
22 about how a person may practise law as a law student. Well,
23 to interpret -- if anybody were to try to interpret that as
24 a law student there'd be more restrictions on me than there
25 would be if I'm not a law student would, would be undermining
26 the use of the word may.

27 May, under our Interpretation Act, Section 15, is
28 permissive and empowering. So we can't use something that -
29 - where the law says a law student may practise law and then
30 use it to restrict something that I would be allowed to do if
31 I weren't a law student. That would be contradicting Section
32 50 of The Interpretation Act by using may as may only, and
33 that would be -- that'd be making a permissive statute a
34 prohibitive statute and that's not allowed.

1 THE COURT: Okay.

2 MR. SWERYDA: At the start of this -- at the
3 conclusion here, Your Honour, you talked about the background
4 in this matter. What happened with the Crown is -- in this
5 matter, I went to the Crown in, I believe, September --

6 THE COURT: You know what, it's not -- that's not
7 really relevant to the motion, I don't think so --

8 MR. SWERYDA: Well, well -- okay, well, what you
9 asked -- well, without -- what I should say is relevant is
10 that if Ms. -- if the Crown would discuss with me this matter
11 and reduce the fine, we are willing to --

12 THE COURT: I understand --

13 MR. SWERYDA: -- enter a --

14 THE COURT: -- we wouldn't have been here.

15 MR. SWERYDA: We wouldn't have been here, yes.

16 THE COURT: Right. So I mean, we're here and what
17 I can say in terms of in any proceedings motion, considered
18 or not considered at any time, again, anything can, can
19 change. So as I say, it's -- this is what we're dealing with
20 today, though.

21 Nothing further?

22 MS. MALAVIYA: No.

23 THE COURT: Okay. I'm going to -- I think we're
24 going to adjourn to about maybe two o'clock and we'll come
25 back at that time.

26 MR. SWERYDA: Your Honour, would, would it be okay
27 if Ms. Nguyen would be -- could be excused if she has to go
28 to work? I think she anticipated -- I'll let her say for
29 herself, but if that's the case, would it be allowed --
30 because we're going to adjourn it anyways, I'm assuming, so
31 I could just report to her what your decision is.

32 THE COURT: Well, and that's my, my concern is in
33 terms of if we do adjourn it, if I, if I do grant the Crown's
34 motion, if we adjourn it for the hearing, I don't know, does

1 the Crown have any --

2 MS. MALAVIYA: Well, I suppose that first, first we
3 need -- if, if Your Worship were to grant our motion -- well,
4 either way --

5 THE COURT: I mean, it's up to Ms. --

6 MS. MALAVIYA: Either way, she need -- what we need
7 to know is whether or not she's -- you know, at this point
8 she's indicated that she's disputing the ticket.

9 THE COURT: Right.

10 MS. MALAVIYA: If that were to change, there's
11 absolutely, again, nothing preventing us from having that
12 conversation --

13 THE COURT: That's right.

14 MS. MALAVIYA: -- and avoiding the need to adjourn.

15 THE COURT: Okay. So in terms of Ms. Nguyen, with
16 respect to Mr. Sweryda's raised the issue that you have to,
17 to go to work, adjourning till two o'clock just gives me time
18 to prepare a decision, review a few more things. So
19 ultimately what's going to take place when I come back is
20 I'll be giving my decision, so that decision will either allow
21 Mr. Sweryda to continue to represent you or no longer be able
22 to represent you as far as this matter goes. Is that
23 something that you want to be present for or are you wanting
24 ...

25 MS. NGUYEN: (Inaudible) --

26 THE COURT: Because ultimately -- and I can
27 appreciate you need to go to work, and this is sometimes what
28 happens with respect to these type of hearings. I mean, it's
29 -- when you're in a, in a court process, this is, you know,
30 again, your choice to be -- have Mr. Sweryda represent you,
31 to be following these motions. Again -- or filing this
32 motions, or responding to these motions, specifically on this
33 one. So you have to take into consideration that, you know,
34 you're ultimately -- when you go to court, court doesn't go,

1 you know, for two hours and then we're done. It's, it's till
2 it's done, so ...

3 MS. NGUYEN: (Inaudible).

4 THE COURT: What I'll do, as I say, like, two
5 o'clock, and as I say, it's ultimately up to you. It's your
6 ticket, so my only concern, again, is if I come back and
7 there's -- Mr. Sweryda's not -- you're okay with him advising
8 you. And if -- I can say as much as this: In terms of
9 setting a date, we would probably adjourn to set a date. I'm
10 just --

11 UNIDENTIFIED PERSON: Sorry ...

12 THE COURT: Is that what we would do, adjourn to
13 set a date anyways? Like, would we give, like, a week to
14 have somebody appear to set a date or would you want to set
15 a date in this court?

16 MS. CHEYS: It's preferable to have a date set, but
17 if need be, we can have it remanded to the front counter for
18 a date to be set.

19 THE COURT: Okay. So that means that you would
20 have to come in and set a date at some other time if we do
21 remand it to the counter, because we want to make sure it's
22 a date that's somewhere where you could attend or that you
23 would have time if you want to seek some other sort of
24 counsel. All right?

25 So we'll adjourn till two o'clock.

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

27

28 (LUNCHEON RECESS)

29

30 THE CLERK: Court is re-opened; you may be seated.

31 THE COURT: Be seated.

32 So before I begin, we're at the same stage, no
33 resolutions or anything been reached at all? No?

34 MR. SWERYDA: No, because I'd be the one speaking

1 to them and the Crown won't acknowledge me until this is
2 decided --

3 THE COURT: Thank you.

4 MR. SWERYDA: -- unfortunately.

5 THE COURT: All right.

6 Crown's filed two motions for two defendants today
7 on separate photo enforcement tickets. Point of issue is
8 whether Mr. Sweryda should be barred from acting as a
9 representative for the defendants on the Highway Traffic
10 matters that they appear on. It's not lost on the court the
11 irony of Mr. Sweryda arguing as to whether or not he should
12 be representing somebody in -- as a matter of defendant, for
13 the defendant themselves.

14 Section 53 of The Highway Traffic Act does state
15 that -- by wording, it's:

16

17 "A defendant may appear and act
18 personally or by representative in
19 any proceeding."

20

21 There are other sections that the court has to take
22 into -- with respect to the whole included sections.

23

24 "A justice may bar a person from
25 appearing as a representative if the
26 justice finds that the person is not
27 able to properly represent or advise
28 the person for whom they appear."

29

30 The exception with respect to the court can't bar
31 anybody that is legally allowed to practise law under The
32 Legal Professions Act, and there's the section with respect
33 to compelling the defendant to the courtroom to appear
34 personally with respect to that.

1 My interpretation of the section when it was put in
2 place was so that individuals could seek the assistance of
3 family or friends in a supportive or informational matter,
4 and it would allow for people who were not, for example, a
5 registered owner of the vehicle to appear to take
6 responsibility for an offence. In other words, the photo
7 enforcement legislation allows for -- there should be a
8 mechanism put in place for somebody to be able to appear to
9 accept responsibility for an offence so that if the registered
10 owner wasn't present in order to be able to argue a case or
11 something along those lines.

12 Again, the section wasn't put in place to allow
13 individuals to have full conduct of a case nor make it a
14 practice of appearing on behalf of numerous individuals. In
15 other words, the idea of having that case -- that section put
16 there wasn't to just give anybody the ability now to start
17 representing numerous individuals on different Highway
18 Traffic matters, because if it was -- that was the case, we'd
19 probably have chaos in the courtroom in terms of the, the
20 practices and the proceedings.

21 On the face of the legislation, Mr. Sweryda, if I
22 was just to read the section itself, it does authorize you
23 to, to act on behalf of an individual as a family member or
24 friend, and I don't think that we would be here today if you
25 had just acted on behalf of one family member or two family
26 members or friends. The reason we're here today is because,
27 again, the Crown's motion that's before the court. You've
28 taken it upon yourself to represent at least 17 individuals
29 with respect to different -- or multiple matters of varying
30 degrees of complexity with respect to The Highway Traffic
31 Act.

32 Given that, Mr. Sweryda, you've taken such actions,
33 the Crown has raised concerns that you are, in fact,
34 practising law contrary to The Legal Professions Act, and in

1 doing so, you're bringing the administration of justice into
2 disrepute as you're acting with sort of no supervision, not
3 being bonded, insured, the things that are provided for with
4 respect to agents and what would be considered what a lawyer
5 would be permitted to pursue in terms of representing people
6 in court. In other words, there's no protection for
7 individuals that you're representing.

8 After considering the documents that were filed and
9 the verbal submissions of both the Crown and defence, I find
10 that, Mr. Sweryda, that your involvement in these matters
11 exceeds the scope of Section 53(1) of The Highway Traffic Act
12 and, given that, it is tantamount to, to practising law. So
13 I would find that that would be a violation of The Legal
14 Professions Act.

15 I mean, despite that, Mr. Sweryda, you were being
16 permitted to act on behalf of defendants in other matters,
17 and as well as Judge Sandhu's decision to permit you to act
18 on the Eisbrenner matter, just something that was admitted -
19 - Judge Sandhu's decision's not binding in this courtroom
20 and, quite honestly, I was surprised in terms of when I read
21 that decision that, given the permission, what should have
22 taken place in that matter is that Judge Sandhu should have
23 maintained conduct of that hearing. He should not have said
24 that this individual is -- that you're able to represent
25 somebody and then further put that into another courtroom
26 because, ultimately, a judge of Provincial Court has no
27 authority over a justice of the peace. We're at the same
28 level with respect to court in terms of decision making. It's
29 not -- the Provincial Court, in terms of judges, are not at
30 a higher level than a justice of the peace. It's not a
31 decision as if it came from the Court of Queen's Bench where
32 that would be binding on the court.

33 So with respect to that, I am satisfied, based again
34 on the, the arguments made by the Crown ...

1 And I also want to just also say in terms of -- I
2 have -- being aware of the fact that similar motions were put
3 before the court earlier this week with respect to Justice of
4 the Peace Her Worship Cuthbert-Buchanan, I have -- I accept
5 in terms of her decisions that she's made based on the
6 arguments that she's heard with respect to the same set of
7 circumstances.

8 So under the circumstances today I'm going to be
9 exercising my authority under Section 52 -- 53(2) of the POA
10 and I will be barring Mr. Sweryda from appearing the Cecilia
11 Nguyen matter, as well as the May Shiu Yung matter, and
12 approving or granting the Crown's motion.

13 MS. CHEYS: I'm not sure if at this point it's
14 preferable to have Madam Clerk canvass available dates.

15
16 (OTHER MATTER SPOKEN TO)
17

18 MS. CHEYS: And then perhaps we can have Ms. Yung's
19 matter remanded to the front counter, and I can undertake to
20 send her a letter.

21 THE COURT: Okay. I would imagine we have matters
22 that are coming up within the next three months -- or dates.

23 THE CLERK: We have a March 28 date, and April 23rd
24 date, as well as one in June (inaudible).

25 THE COURT: Okay, do you need some time to do that
26 or ...

27 THE CLERK: I'd like to double-check.

28 THE COURT: Yeah, you can.

29 MS. CHEYS: And perhaps we'll have Ms. Yung's matter
30 remanded two weeks from today, to the front counter.

31 THE COURT: So that would put us at -- what are we
32 today, the 1st? So ...

33 MS. CHEYS: Fifteenth.

34 THE CLERK: February 15.

1 THE COURT: Fifteen.

2 MS. CHEYS: And it's always available to Ms. Yung
3 to contact the Crown's office if it is, indeed, her intention
4 to resolve the matter. I can certainly facilitate that
5 process --

6 THE COURT: Okay.

7 MS. CHEYS: -- with her.

8

9 (OTHER MATTER SPOKEN TO)

10

11 THE COURT: I believe that concludes the matters.

12 THE CLERK: All rise. Court is closed.

13 THE COURT: Thank you.

14 MS. MALAVIYA: Good afternoon.

15 THE COURT: Good afternoon.

16

17 (PROCEEDINGS CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I hereby certify the foregoing pages of printed matter, numbered 1 to 100, are a true and accurate transcript of the proceedings, transcribed by me to the best of my skill, ability, and understanding.

VELMA DOERKSEN
COURT TRANSCRIBER

THE PROVINCIAL COURT OF MANITOBA

BETWEEN:

HER MAJESTY THE QUEEN

- and -

MAY SHIU YUNG,

Accused.

TRANSCRIPT OF PROCEEDINGS before Judicial Justice
of the Peace Lischenski, held at the Provincial Court, 373
Broadway, in the City of Winnipeg, Province of Manitoba, on
the 1st day of February, 2019.

APPEARANCES:

MS. R. MALAVIYA and MS. A. CHEYS, for the Crown

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