

PROVINCIAL COURT FOR SASKATCHEWAN
AT PRINCE ALBERT, SASKATCHEWAN

BETWEEN:

HER MAJESTY THE QUEEN

VS

WILLIAM GARY WHATCOTT

**SUBMISSION OF WILLIAM GARY WHATCOTT
RE CHARGE OF MISCHIEF PURSUANT TO SECTION 430 OF THE *CRIMINAL CODE*
AND
STUNTING PURSUANT TO SECTION 45(2) OF *THE HIGHWAY TRAFFIC ACT***

1. William Gary Whatcott is a pro-life activist who has a campaign which he entitles "Show the Truth". The campaign shows large pictures of aborted pre-born children. His signs are normally held in high traffic areas in order to maximize the publicity.
2. In the summer of 2001, Whatcott was charged by the Prince Albert police under the *Criminal Code* with obscenity for displaying pictures of aborted fetuses alongside the roadway. His signs were seized. He was placed in jail for the evening. He entered a not guilty plea. Ultimately, the charges were dropped and the signs were returned to him. It is clearly an inconvenience for Whatcott to travel from Regina to Prince Albert in order to answer to charges.
3. On July 2, 2002 Whatcott and other parties held their signs at an intersection in Prince Albert. His signs were removed and he once again was arrested, only this time for stunting and for obstruction because of his refusal to stop showing the signs.
4. S.45(2) states:

No person, whether as a pedestrian, passenger or driver, shall, whether or not with the use or aid of any vehicle or other thing, perform or engage in any stunt or other activity on a highway that is likely to distract, startle or interfere with other users of the highway.

ⒶHighwayⒸ is defined in Paragraph 2(1)(i) to mean roads Ⓐintended for or used by the general public for the passage of vehicles. Ⓒ

5. It is expected to be established that at no time was Whatcott standing Ⓐon a highwayⒸ. The prosecutor is aware of our position and it is not anticipated that they will be able to provide any witnesses to indicate that Whatcott was standing Ⓐon a highwayⒸ.

6. When Whatcott returned for his Court appearance on July 24, 2002, he decided to distribute flyers door-to-door which had pictures of aborted pre-born children. He was subsequently charged with mischief pursuant to s.430(4) of the *Criminal Code* and once again, with obstruction, and had his material removed from him. It is respectfully submitted that if stuffing information that is unwanted in a person=s mailbox is mischief because it interferes with the lawful use of the person=s home, then holding a poster on a public sidewalk in front of their home would be mischief as well. Indeed, the poster would be interfering with the lawful use of a person=s car as he drove by and he could be charged with mischief for showing it to vehicles.

If placing unwanted material in a mailbox is interfering with the lawful use or enjoyment of property, then surely it would be reasonable to assume that there is other Ⓐjunk mailⒸ that individuals will be offended in receiving. Furthermore, there are numerous television programs that offend people. The dead are shown all the time on television programs, sometimes with warnings, sometimes not. Sometimes it is a child receiving the warning who proceeds to watch programming

that his parents may object to. If written material in a mailbox can interfere with the loss of use or enjoyment of property, surely television programming would be in the same boat.

7. The decision of *R. vs Drapeau* [1995], 96 CCC(3rd) 554 is referred to the Court. In that case a person was acquitted based on his conduct in watching or staring at his neighbours and by making objectionable noises. The Court held that there was a doubt the accused intended to interfere with their enjoyment of property, and that the term "enjoyment" must be restricted to the entitlement or exercise of a right in relation to the property. It could not apply to conduct which merely diminishes the pleasure derived from the property by its owner. It is respectfully submitted that the facts will establish that at no time did Whatcott intend to interfere with the "use, enjoyment or operation of property". Indeed, Whatcott's sole objective was to enhance the person's enjoyment of their property by providing them with information that they may not have as of yet received. The charge under s.430(4) is expected to be withdrawn.
8. However, in the event that the Court does find based upon the facts that Whatcott has violated s.45(2) of *The Highway Traffic Act* and s.430(1)(c) of the *Criminal Code*, it is respectfully submitted that insofar as Whatcott was simply exercising his right of free speech, it is not possible to convict Whatcott as the convictions would be contrary to the *Charter of Rights and Freedoms* and the *Saskatchewan Human Rights Code*, and both Acts render inoperative any legislation that interferes with guaranteed rights. It is submitted that the legislation ought to be interpreted in such a way so as not to cause a violation of the latter Acts. However, if the Court finds that there has been a violation, then the latter Acts render the sections invalid, at least for actions that are done on a sidewalk.
9. It is submitted that s.2(b) of the Charter protects the activities of the accused. The latter reads:
 2. *Everyone has the following fundamental freedoms:*

- (b) *freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication...*

Section 7 of the Charter was also breached when Whatcott was jailed.

In addition, the right to freedom of expression through all means of communication as protected by s.5 of *The Saskatchewan Human Rights Code*, which reads:

- 5 *Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device.*

Section 44 of *The Saskatchewan Human Rights Code* states:

- 44 *Every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless it falls within an exemption provided by this Act or unless it is expressly declared by an Act of the Legislature to operate notwithstanding this Act.*

Although the Charter applies to both charges, *The Saskatchewan Human Rights Code* would only apply to *The Highway Traffic Act* offence.

The Decision of *Whatcott and Her Majesty the Queen and the University of Regina*, a Judgment delivered by Justice Ball in the Court of Queen=s Bench on October 9, 2002, is submitted in support of the accused=s position. In particular, reference is made to the Judgment at paragraph 29 where Justice Ball states in relation to the material distributed by the accused as follows:

As disturbing as the material may have been to those who received it, there is no suggestion that the context of the pamphlets and photos were prohibited by other legislation, or that they could not have been lawfully distributed outside the University campus.

10. It is respectfully submitted that the police of the City of Prince Albert clearly did not like the pictures which Whatcott displayed. They clearly took a political interest in stopping Whatcott from showing his pictures and distributing information that exposed people to the reality of abortion. That is not the job of the police. Indeed, it is the job of the police to protect the civil rights of citizens of Canada.

11. S.24(1) of the *Charter* reads as follows:

Any one whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Whatcott has incurred substantial legal costs in preparing for his defence even though he may appear unrepresented. In addition, he has suffered the humiliation of being placed in jail on more than one occasion. He was simply holding pictures and expressing himself on what has been one of the most pressing social issues of our time.

The account Whatcott with our firm to date is \$2,512.64 for the matters arising out of Prince Albert. I anticipate I will be spending at least two more hours lining up Mr. Whatcott or another lawyer for the trial of this matter.

Our account is attached with the second attachment showing in detail how it is calculated.

12. The actions of the Prince Albert police force denied Whatcott=s freedom of speech and expression. Furthermore, their actions in dropping the charges initially, and then charging and jailing him again when he returned was humiliating and caused financial loss and difficulties for Whatcott, without ever bringing him before the Court. The dropping of the charge under s.340(4) (Mischief), after jailing Whatcott, represented the second time that Whatcott had the criminal process used against him and to penalize Whatcott and deprive him of his freedom and materials without bringing him before the Courts for a trial.

An acquittal of *The Highway Traffic Act* charge would be a third strike against Whatcott who was simply exercising his constitutional right. Freedom of speech and expression is one of the most basic and cherished freedoms that Canadians enjoy. It is not to be lightly interfered with.

It is submitted that this case is a most appropriate case for an award of costs. The costs are not awarded to punish anyone, but to compensate Whatcott because fairness demands it, and because the constitutional right of free speech is too important to have it denied without compensation.

13. Although 14 days notice has not been granted to the Crown, it is hoped that the Crown will consent to short notice and if they do not, it is requested that the Court order an abridgement of the time for service pursuant to s.8(5) of the *Constitutional Questions Act* or adjourn to another date the issue of damages under s.24(1) of the Charter. We do not believe that it is necessary for the Court to strike down either of the sections that Whatcott was charged under in order to acquit Whatcott as the sections ought to be interpreted in such a way as to recognize the constitutional rights of the citizens of Canada.

All of which is respectfully submitted.

DATED at the City of Weyburn, in the Province of Saskatchewan, this ____day of November, 2002.

NIMEGEERS, SCHUCK,
WORMSBECKER & BOBBITT

Per: _____
Solicitors for the Defendant
William Gary Whatcott

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