

**David John Sykes  
1204 Mowat Lane  
Milton Ontario  
L9T 5R2**

April 10<sup>th</sup>, 2006

Chief of Police Michael Metcalf  
Peel Regional Police  
7750 Hurontario Street  
BRAMPTON, ONTARIO  
L6V 3W6  
Tel: (905) 453-3311  
Fax: (905) 451-1638

- AND -

The Attorney General for Ontario  
The Honourable Michael Bryant  
720 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2K1

Dear Chief Metcalf.:

**RE: Obstruction of Justice and unprofessional conduct by Court Officers on duty at the Brampton, Ontario Court.**

It is my intent to issue a formal complaint against two officers for whom I believe you would be accountable for in relation to what constitutes an unlawful act (obstruction of justice) and unprofessional conduct (intimidating behavior, threat of arrest and derogatory remarks). This incident occurred at entrance to the Brampton court on the morning of April 6, 2006. The officers involved were:

- 1) Officer with badge #70788**
- 2) Officer with badge #373 who identified himself as Roberts**

On April 6, 2006. I attended the Brampton courthouse for my own scheduled court appearance, scheduled to be held in court room 205 before Mr. Justice O'Connor at 2 p.m.

At the security entrance to the court, I was met by a court security officer (**badge number 70788**) who after checking my personal belongings, stated to me that I was not permitted to bring my personal recording device into the courthouse. He told me that it was unlawful to bring any recording equipment into the court building because recording was illegal. I directed this officer to the Courts of Justice Act s.136(2) which provides citizens the right under law to record their own court hearings and that it is only illegal for members of the public to record someone else's court matter. I advised the officer that it was perfectly legal under the Courts of Justice Act for a person to record their own court hearing for the purpose of supplementing notes as is outlined in the Courts of Justice Act.

Evidently, the officer was unaware of this and he did not want to be informed about it. He said that he did not care and that as far as he was concerned I was not bringing my own recording device into the court. The officer became agitated and his actions and mannerisms made it clear that he was becoming angry at me.

Officer 70788 then summoned his supervising officer (Badge number 373 – Roberts, whom I understand is a Sergeant) and stated that I was being **“an asshole”**, despite my courteous and polite conduct with the officer.

Sergeant Roberts supported his subordinate's position that the recording device was not permitted in the court despite me further directing him to the Courts of Justice Act section 136(2).

At this time, Sergeant Roberts apologized for the insult of his subordinate officer and told me that court officers used the word “asshole” in place of uncooperative. Even though I was demonstrating my respect of the officers and in a non-confrontational manner simply seeking to exercise my legal right as provided under law, I was described as being uncooperative in their minds. It was clear to me that the officers were seeking to create an incident.

Constable Roberts further noticed I was wearing a personal ID badge around my neck as provided by my employer. He reached over and pulled my head towards him by grabbing my ID badge and in reading the badge he stated, “So you work for the Ministry of Education do you?”

Officer Roberts then stated that if I had the Judge's approval he would permit me to bring my recording past security and into the court house, but said that in the meantime I would have to return to my car and leave the recording device outside. Sergeant Roberts stated that if I did not follow his orders to return my recorder to my car that I would have to leave the building or that he would have me arrested and charged with an offense. I was given an ultimatum to either leave my recording device outside or be denied entry to the court building to attend my own court hearing.

I advised Sergeant Roberts that as an officer of the court, it was his duty to uphold the law and not to obstruct my legal rights, but Sergeant Roberts was unmoved. In my view, Sergeant Robert's actions constitute an obstruction of Justice and a failure on his part to act in accordance with his position as an officer of the court, notwithstanding the demeaning and insulting remarks of his subordinate.

As a senior officer and an officer of the court, Sergeant Roberts and his colleagues must be knowledgeable of the law. It is clear to me that he was not properly trained for the specific duties he is assigned at the court.

Enclosed, please find a copy of a practice direction (1 page) issued by the Chief Justice of Ontario and approved by Ontario Courts Advisory Council in which it clearly indicates the following

**“... the unobtrusive use of a recording device... may be considered as being approved without an oral or written application to the presiding judge...”**

The Courts of Justice Act is clear about recording of a hearing by a party. Its interpretation has been clarified for those at the courts by the highest authority. Clearly, Sergeant Roberts and his colleague are obstructing justice by denying me my right to take my recording device into the court and then telling me that I will be arrested if I do not take my recorder out to my vehicle. Clearly, citizens have the right under law to record their own court hearing and clearly officers of the court are supposed to obey the spirit and intent of law and ensure that the rights of citizens under the law are protected.

At this time I would request that the Peel Regional Police investigate this matter and take corrective action to prevent a reoccurrence, not only with me, but with any citizen of Ontario who should have business at the Brampton courthouse. Officers should not be obstructing citizens from bringing in recording devices into the court for the purpose of recording their own court hearings.

To avoid a reoccurrence of this, I respectfully suggest the following:

- 1) All officers with the Peel Regional Police who are assigned to any court to be properly trained in the provisions of the Courts of Justice Act, particularly in respect of section 136(2).
- 2) All officers be issued a memorandum indicating that they can only inform citizens that it is illegal to record proceedings other than their own and that parties to a hearing are allowed to use their tape recorder for recording purposes. Members of the public should be properly informed, not misled by officers.
- 3) All officers be required to carry shoulder operated audio recording devices to record their conversations with citizens anywhere in the court building in the event of a dispute or altercation. Not only would this help to protect citizens from overly zealous police officers, but also protect police officers from having false allegations

made against them by members of the public. If police are doing their jobs in a professional and accountable manner then they should have no concern with what they say to members of the public while on duty.

Please be advised that because of the threats and intimidation by these officers that I now fear that court officers may harass me or make false allegations to have me arrested and detained the next time I go to the Brampton Court. I have other court business at the same court.

I would think that as a minimum, these officers should be removed from duties at the Brampton courthouse and assigned elsewhere pending an investigation into this matter.

It should also be of utmost urgency that steps are taken immediately to ensure that officers on duty at the courts are properly trained as to the most important provisions of the Courts of Justice Act, especially in regards to the use of recording devices. The citizens of Ontario should not be obstructed from exercising their rights under the law by court or other officers who it would appear do not know the law, nor wish to uphold it when directed to the law.

Hopefully, if steps are taken to educate such officers and to correct this abuse of power and authority by officers with Peel Regional Police, the citizens of Peel will not have their faith further eroded in their local police force and in the administration of Justice in general. Should court officers continue to place barriers to citizens in exercising their legal rights to record their own court hearings, then there will only be growing public distrust of the police and the courts. These actions of Peel Police officers at the Brampton Court are bringing the Administration of Justice into disrepute.

In closing, I quote a few of the points which were made in the transcripts of the public inquiry headed by Justice Thomas J. Graham, investigating the practices of the Kitchener, Ontario police force:

**“In Ontario, as elsewhere in Canada, the relationship between the police and the public is such that the police cannot successfully perform the task of maintaining Law and order without the support and confidence of the public. Law and Order are the cornerstones of a responsible society. Where one fails, both fail. Respect for the law in a responsible society and protection the citizen under the law is a commitment of that society.**

**It needs to be stated and emphasized that police officers, irrespective of rank, location or assigned police duty, are servants of both the public and the law, they do not make the law, they serve it. While police are empowered with great and wide discretion they must at all times function within the law.”**

I hope that the next time I attend the Brampton, Ontario Court, that my entrance will be without incident and that court officers and police will treat me with respect and appreciate their role as guardians of the law, in protecting the rights of citizens to exercise their rights under law.

Your prompt action to address this issue and your written response would be most greatly appreciated.

Yours very truly,

DAVID J. SYKES,

**Attachments:**

- 1) Copy of the Courts of Justice Act with directive from then Ontario Chief Justice Howland dated April 10, 1989 in regards to recording in the courts. (1 page). Note that this directive was approved by the Ontario Courts Advisory Council as well.

cc:

The Honourable Michael Bryant, Attorney General of Ontario