

COURT OF ONTARIO  
(Superior Court of Justice)  
(Central East Region)

FILED  
DEPOSE

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

-and-

DEAN DEL MASTRO

Appellant

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NOTICE OF APPEAL

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TAKE NOTICE that Dean Del Mastro (the Appellant) appeals against the conviction and sentence made by Her Honour Judge L. Cameron of the Ontario Court of Justice at Lindsay (re: Judgment) and Peterborough (re: Sentencing) on the 31<sup>st</sup> day of October, 2014 (re: Judgment) and on the 25<sup>th</sup> day of June, 2015 (re: Sentencing).

THE DATES UPON WHICH THE SUMMARY CONVICTION COURT HEARD EVIDENCE ARE AS FOLLOWS: May 15, 16, 2014; June 23, 24, 25, 26, 27, 2014; July 2, 3, 4, 7, 8, 9, 10, 11, 14,; September 2, 4, 2014; October 31, 2014; January 27, 2015; February 19, 2015; April 28, 2015; June 25, 2015.

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to obtain and/or preserve key evidence, such as Frank Hall's long-distance phone records.<sup>2</sup>

13. After the conviction, the Appellant changed lawyers and Mr. Adler was retained. Counsel's review of the Judgment caused him to file an Application for mistrial based primarily on Her Honour's failure to determine how much actual work was done and what its true value was – especially in light of Hall's "accepted" evidence in chief. The trial judge erred in failing to grant the mistrial.
14. With respect to the sentence; jurisprudence with regards to these offences virtually uniformly refers to fines and probation as being the appropriate sentence. In this case, the total sentencing was harsh, excessive and failed to properly take into account both the fact that this was an isolated incident, despite the Appellant's many years in politics without a blemish, and the public humiliation and excoriation that he had undergone.
15. In short, the trial judge failed to properly consider the sentencing principles applicable to a first offender.
16. Counsel may also rely upon such further and other grounds as may be advanced and as this Honourable Court may permit.

**ON THE HEARING OF THIS APPEAL, THE APPELLANT WILL RELY UPON THE FOLLOWING:**

1. The transcripts of the evidence and submissions,
2. The exhibits filed during the trial and sentencing,
3. The submissions of counsel, and
4. Such further and other materials or arguments or grounds as counsel may advise and this Honourable Court may permit.

**THE RELIEF SOUGHT IS:**

1. An Order allowing the appeal and entering an acquittal, or
2. An Order allowing the appeal and ordering a new trial, or
3. An Order allowing the appeal against sentence and ordering a lesser sentence, or
4. Such further and other Order as this Honourable Court deems appropriate.

**THE APPELLANT MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPEAL:**

1. By service in accordance with Rule 5, through Leo Adler c/o Adler Bytensky Prutschi Shikhman – Criminal Litigation, at 5000 Yonge Street, Suite 1708, Toronto, Ontario M2N 7E9, 416. [REDACTED] (phone); 416. [REDACTED] (fax) or [REDACTED].com

<sup>2</sup> Mr. Hall, during the investigation, had stated that these records would corroborate his testimony.

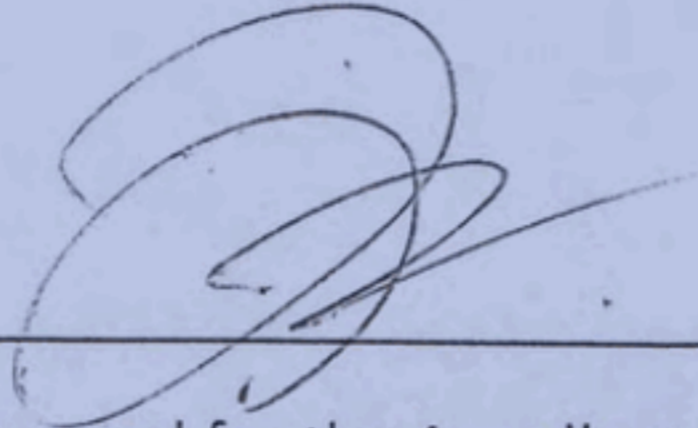
THE GROUNDS FOR THE APPEAL ARE:

1. Counts 3 and 4,<sup>1</sup> as far as they pertain to the Appellant, are offences that are of no application to the Appellant – even as an alleged party – and those convictions ought to be quashed.
2. The learned trial judge, in assessing the meaning and significance of “*commercial value*” erred in finding that the term does not apply to expenses such as the conduct of election surveys or voter ID or “get out the vote” (“GOTV”) telephone calls to voters, per: s.407(3)(e) of the *Canada Elections Act* (“Act”).
3. She therefore further erred in finding that the concept of “*commercial value*” only applies to non-monetary contributions.
4. As a result, the judge erred in her decision to completely ignore the evidence of defence witnesses: Ellis, Parrin, Horrigan, Humphries or Berry.
5. The trial judge also erred in her ruling as to the admissibility and reliability of the electronic documentary evidence, both as evidence and as corroboration of the testimony of Frank Hall – the Crown’s key witness.
6. In that regard, the trial judge specifically erred in calling the Crown’s electronic witness an “expert,” when there was no such ruling. The defence witness, on the other hand, was tendered as an expert, and was so found.
7. The learned trial judge, in assessing the credibility of the two main witnesses (Frank Hall and the Appellant), erred in the way that she differentiated her evaluation of the testimony of both witnesses, effectively placing a greater burden upon the defence.
8. More specifically, she especially erred in analyzing the Appellant’s testimony in the light of her drawing an adverse inference based on witnesses not called – something that she did not do with respect to Hall.
9. This error is particularly egregious given that it was done at the Crown’s request, at the end of the trial and despite an apparent agreement between counsel that John McNutt, one of the key “missing” witnesses referred to by the judge, would not testify at the trial.
10. Her error vis-à-vis Hall’s credibility is further magnified by the fact that she acknowledged “*reservations about his evidence*”.
11. Nevertheless, despite her credibility finding, the trial judge also erred in failing to specifically find – as a fact – that the Appellant actually spent \$20,000 on voter ID calling and GOTV calling during the election writ period, thus exceeding the statutory limit. This was an essential element and at no point did the judge make a finding of the amount actually spent, as opposed to her finding that \$20,000 had been paid as a contract.
12. Compounding the error pertaining to credibility was Her Honour’s failure to consider the fact that the Crown’s investigation was fraught with incompetence, including the failure

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<sup>1</sup> Count 4 was stayed on the *Kienapple* principle at the end of the trial.

DATED at Toronto, this 3<sup>rd</sup> day of June, 2015.



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Leo Adler – Counsel for the Appellant

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