

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HER MAJESTY THE QUEEN

Respondent

and

J. DAVID LIVINGSTON

Applicant/Appellant

NOTICE OF APPEAL**PARTICULARS OF CONVICTION**

1. Place of conviction: Toronto, Ontario
2. Name of judge: Mr Justice Timothy Lipson, Ontario Court of Justice
3. Offences of which accused convicted: Unauthorized use of a computer system
4. Sections of *Criminal Code* under which accused convicted: s. 342.1
5. Plea at trial: Not guilty
6. Length of trial: 21 days of evidence and submissions; 1 day for reasons; 1 day for sentencing evidence and argument; 1 day for sentencing decision – total 24 days
7. Sentence imposed: April 11, 2018
8. Date of conviction: Reasons for finding of guilt delivered January 19, 2018; conviction imposed April 11, 2018
9. If accused in custody, place of incarceration: N/A

The Appellant, J. David Livingston, appeals against his conviction upon grounds involving a question of law alone, applies for leave to appeal his conviction upon grounds involving a question of fact alone or a question of mixed fact and law, and if leave be granted hereby appeals against the conviction; and applies for leave to appeal against sentence, and if leave be granted hereby appeals against the sentence.

The grounds for appeal are:

Appeal against conviction

1. The learned trial judge erred in law by misapplying the burden and standard of proof;

2. The learned trial judge erred in law by making findings of fact that were inconsistent with the Appellant's acquittal in relation to the offence under s. 122 of the *Criminal Code* (Breach of Trust);
3. The learned trial judge erred in law by misapprehending the evidence and thereby finding that the Appellant intended to delete files that were required by law to be retained and were not also retained elsewhere, and not, by contrast, personal documents (including political documents); alternatively, the judge made an error of mixed fact and law by so finding;
4. The learned trial judge erred in law by finding that the Appellant's dealings with Cabinet Office amounted to "other fraudulent means" for the purposes of the requirement of "fraudulently" in s. 342.1 of the *Criminal Code*;
5. The learned trial judge erred in law by failing to recognize that an absence of evidence can give rise to a reasonable doubt and thus failing to give effect to the evidence that the Appellant was dealing with Steen Hume of the Cabinet Office, whom the Crown failed to call; alternatively, the judge made an error of mixed fact and law by so finding;
6. The learned trial judge erred in law by using Peter Wallace's evidence of Mr Hume's statements about his dealings with the Appellant for a hearsay purpose to benefit the Crown but refusing to give that evidence any effect to benefit the Appellant; alternatively, the judge made an error of mixed fact and law by so finding;
7. The learned trial judge erred in law by, on one hand, declining to infer that the Appellant conveyed certain information to his co-accused, but, on the other hand, inferring that the co-accused conveyed information to the Appellant; and
8. Any other grounds raised by the Appellant and allowed by the Court.

Appeal against sentence

9. The sentence imposed by the learned trial judge is unfit in the circumstances of the offence and the offender;
10. The learned trial judge erred by disregarding the evidence of the Appellant's prior good character;
11. The learned trial judge erred by finding as an aggravating factor that the Appellant abused a position of trust or authority in relation to the victim; and
12. Any other grounds raised by the Appellant and allowed by the Court.

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AND
TO: The Registrar of this Honourable Court
Court of Appeal for Ontario
130 Queen Street West
Toronto, Ontario M5H 2N5

HER MAJESTY THE QUEEN

and J. DAVID LIVINGSTON

Court File No.

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