Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and-

GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI; LORNE STEPHEN SILVER; COLIN DAVID PENDRITH; PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL; FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP; BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP; KINGSLAND ESTATES LIMITED; RICHARD IVAN COX; ERIC IAIN STEWART DEANE; MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON; PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY 'PRICEWATERHOUSECOOPERS'); ONTARIO PROVINCIAL POLICE; PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE; DURHAM REGIONAL POLICE SERVICE; MARTY KEARNS; JEFFERY R. VIBERT; GEORGE DMYTRUK; LAURIE RUSHBROOK; JAMES (JIM) ARTHUR VAN ALLEN; BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.; TAMARA JEAN WILLIAMSON; INVESTIGATIVE SOLUTIONS NETWORK INC.; TORONTO POLICE ASSOCIATION; JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5 JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5

Defendants

MOTION RECORD

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Counsel for the Plaintiff

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Defendants

NOTICE OF MOTION
Motion for Leave to Amend Statement of Claim
(Rule 26.01 and 26.02)

TAKE NOTICE THAT the Moving Party (Plaintiff) will apply to a judge of the Court at the Courthouse, 75 Mulcaster Street, Barrie, Ontario, on Monday, June 15, 2015 at 9:30

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a.m. or so soon thereafter as the matter can be heard for an Order amending the Statement of Claim as set out in Tab 5, Exhibit A hereto or as otherwise advised or as this Honourable Court deems just.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE GROUNDS FOR THIS MOTION ARE:

(A) HISTORY/BACKGROUND:

1. The Plaintiff had been an officer of Nelson Barbados Group Ltd ("NBGL"). NBGL commenced action in the Superior Court by Statement of Claim against Ontario and Barbados Defendants. Some of the Defendants brought a motion to contest jurisdiction, which was granted and the action was stayed by Justice Shaughnessy of the Superior Court of Justice ("SCJ") in 2008. The merits of the action were never adjudicated. The only issue remaining issue was costs.

2. When the issue of costs was being considered, the Plaintiff was deprived of counsel and compelled to act as unrepresented litigant.

3. Costs submissions were to proceed on November 2, 2009 and the Plaintiff understood that costs were going to be assessed that day against NBGL which stood ready to pay them. The Plaintiff indicated, on behalf of NBGL, that he would not be attending but leave the issue in the hands of the Court.

4. Prior to November 2, 2009 the Plaintiff was not aware that costs were being sought against him personally. There was never advanced a theory to justify this position and it was never adjudicated *inter partes*. There was no legitimate or lawful basis to seek

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costs against the Plaintiff Best. This was pursued for an improper and collateral purpose(s), to wit, an excuse to seek discovery of the Plaintiff, a means to intimidate the Plaintiff and/or a means to deter the commencement or continuation of litigation by other parties based on the same general circumstances in other jurisdictions. This ulterior or collateral purpose was repeatedly admitted to the SCJ and the OCA in the course of costs and contempt proceedings in respect of costs.

5. The lawyers, law firms and clients used an affidavit of Van Allen, described as a private investigator to demonstrate that the Plaintiff could not be served with process, and/or that the Plaintiff's actions and motivations were improper and/or suspect. This was known by the Van Allen defendants and the lawyers, law firms and clients to be false and/or misleading. This was successfully used to allow for purported service by mail, which was largely ineffective due to the improper actions of the defendants, including (but not limited to) an intentional campaign to endanger the Plaintiff, forcing him to leave the country with his family for his and their safety, and placing false information and evidence before the court. All of this resulted in the Plaintiff not getting timely notice of court motions or orders, resulting in contempt orders and costs orders against him.

6. In fact, Van Allen was a serving police officer for the OPP at the time of his investigation of the Plaintiff and the swearing of his affidavit. He was not legally allowed to act as a private investigator and his actions in doing so were illegal and void. The Defendants colluded and conspired to cover this up and that his actions were in violation of the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP

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policies. Van Allen's investigations of the Plaintiff and creation and swearing of his affidavit took place through his contract with Van Allen and/or his company and Faskens. Van Allen and the Lawyers and Law Firms, in particular but not exclusively the Faskens defendants, prepared the affidavits and redacted invoices to conceal the unlawful use of police services, resources and searches by Van Allen under the instructions and misinformation provided by other defendants. This information was used to secure substituted service orders, in the investigation of the Plaintiff for contempt and to secure an improper conviction for contempt. The information contained in an affidavit of Van Allen was later relied upon by Justice Shaughnessy in finding the Plaintiff guilty of contempt.

7. During the costs process against NBGL, the Defendant lawyers, law firms and clients brought a motion for the production of documents and examination of the Plaintiff, the President and director of NBGL, and for substituted service on the Plaintiff by mail in relation to costs against NBGL. The materials were not served on NBGL or the Plaintiff before it was returnable on November 2. Using the Van Allen affidavit, the clients, lawyers and law firms were able to convince Justice Shaughnessy on this *ex parte* application to validate service by mail and courier. In Van Allen's affidavit, Justice Shaughnessy was falsely led to believe that the Plaintiff was evading service, and/or that his motivations and actions were improper. Although no endorsement was made, the Court indicated a willingness to grant the order subject to the determination of the terms by the parties in attendance on November 2, 2009. The order was not created and signed until November 12, 2009, even though it required the Plaintiff to produce certain documents on November 10, 2009: two days before the order came into existence.

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8. There was no legitimate or lawful basis to seek the discovery of the Plaintiff in respect of costs. This was pursued for an improper and collateral purpose(s), to wit, as a means to intimidate the Plaintiff and/or a means to deter the commencement or continuation of litigation by persons and entities other than the Plaintiff, based on the same general circumstances, in other jurisdictions. This ulterior or collateral purpose was repeatedly admitted to the SCJ and the OCA in the course of costs and contempt proceedings in respect of costs.

9. A draft order which allegedly required document production on November 10 and examination in Toronto (Victory Verbatim) on November 17, 2009, was purportedly sent by courier on November 6, 2009 to the Plaintiff at the address indicated in the order for substituted service. In fact, the material was never sent by mail, courier or otherwise and as the Plaintiff later advised the Court and the parties, he did not receive the materials or any order, but first learned of the order when he called the trial coordinator to find out was ordered in respect of costs, on November 16, 2009.

10. On November 17, 2009, the Plaintiff called Victory Verbatim Reporting and spoke to the lawyers, primarily Ranking and Silver. The Plaintiff had asked that the conversation take place on the record (recorded by the Special Examiner's office). The lawyers refused. The Plaintiff indicated that he did not have the materials purportedly sent on November 6, 2009 and, in particular, he did not have the November 2 order. He did not have a copy of it. He indicated that he just found out about the order and the examination the day before. He indicated that he could not attend that day or the next. The Plaintiff asked to be examined by telephone. He agreed to answer questions. The

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lawyers refused to conduct the examination by telephone. They threatened contempt proceedings.

11. During the November 17, 2009 call to Victory Verbatim the Plaintiff refused to tell the lawyers where he was at the time. He indicated that he would not say where he was because he was concerned about his safety and the safety of his family. In fact, the Plaintiff had fled Canada with his family due to the illegal actions of the defendants, and was in the Western Pacific at the time. The Plaintiff alleged that persons, including Mr. Silver or members of his firm, had released confidential information including Identity Information about him (date of birth, drivers license information, addresses and employment records) that was put on the internet that had led to identity theft, death threats and intimidation of him. The Plaintiff is a former police officer and an undercover operator against, inter alia, organized crime and violent criminals. The Plaintiff asked questions about what Mr. Silver or his firm had done to allow this confidential information to be released onto the internet. Mr. Silver's response was a denial of responsibility and statements to the effect that he did not care and would not help the Plaintiff even if he could.

12. The dissemination and publishing of confidential information received by Van Allen and through proceedings on the earlier action did in fact take place. This caused the Plaintiff actual physical harm. He was assaulted. It caused actual damage to property and economic loss, in that, *inter alia*, he and his family were forced to flee Canada, the family car was shot up, gang members subsequently tracked him down in New Zealand and forced the Plaintiff and his family to flee that country. The Plaintiff suffered significant, visible and provable injury and long lasting mental suffering.

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13. The lawyers, law firms and clients knew about this dissemination and publishing of confidential information and, in fact, were actively involved in the dissemination and publication. They did so knowing and intending that would likely endanger the life of the Plaintiff and the life and/or safety of his family. They conspired with Van Allen and the police to injure him in this manner. Even after the Plaintiff begged them to stop distributing to the public his and his family members' private information including Identity Information, the lawyers, law firms and clients distributed and published even more of this confidential information, which they continue to do to this day. The lawyers, law firms, clients and police later conspired to cover up this unlawful activity and the unlawful nature of Van Allen's "private" investigation services while he was a police officer. They did so flagrantly and outrageously. They did so knowing that this was unlawful and criminal. They did so intentionally for the improper and collateral purposes of encouraging the Plaintiff to leave Canada or as a means to pressure him and others in respect of litigation and potential litigation in other jurisdictions. As officers of the Court, the lawyers and law firms were acting in an official state capacity. Van Allen, as a serving police officer and the police were state agents.

14. The Toronto Police Association ('TPA') owed a fiduciary duty to the Plaintiff and the other defendants knew of this fiduciary duty and the dishonest breach of trust which is explicitly described in Van Allen's affidavit. They assisted in the breach of the fiduciary duty by employing Van Allen to conduct this investigation and by distributing, publishing and disseminating the confidential information. Ranking and the other defendants knew or were willfully blind to the fact of the breach of fiduciary duty by TPA and Van Allen.

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15. It was known by the defendants that the distribution, dissemination or publishing of private and confidential information, including Identity Information as defined in the Criminal Code, described above would likely cause physical harm and/or significant mental suffering and trauma to the Plaintiff. The Plaintiff repeatedly requested that steps be taken by defendants to remedy this situation. The defendants had a legal duty to remedy the situation. The defendants to this day have failed to take any remedial action.

16. This investigation and its distribution, dissemination and publishing were also negligent contrary to standard of care owed to the Plaintiff by the lawyers, the law firms in respect of the investigation and Van Allen, the Van Allen defendants, the police and TPA and other defendants in respect of the improper dissemination and publishing of the confidential information.

17. After the November 17, 2009 telephone call, that day, Messrs. Silver and Ranking, on behalf of the clients and/or instructing agents, created a record by making a "Statement for the Record" at Victory Verbatim, in the presence of some other members of the law firms. In this Statement for the Record, they indicated, *inter alia*, that the Plaintiff had admitted to having received a copy of the Court Order dated November 2, 2009. Mr. Ranking stated that the Plaintiff had admitted that he had received the order prior to November 16, 2009 and that was why he had called the trial coordinator and that the Plaintiff had refused to answer questions. These statements by Messrs. Ranking and Silver were knowingly and deliberately grossly stating the opposite of the truth. These lies were uttered to enable the lawyers, law firms, and clients to conspire to pursue and pursue contempt proceedings against the Plaintiff, which they later did, using these lies to perpetrate a fraud on the court. They persisted in this position even when this was

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initially disputed by other counsel, Ms. Rubin, who was present for some of the conversation.

18. On November 18, 2009, a package containing, *inter alia*, a letter, the order dated November 2, 2009, a Notice of Examination requiring examination on November 25, 2009 and the Statement for the Record, was sent by mail to the Plaintiff.

19. In a December 1, 2009 letter to Mr. Ranking, copied to all lawyers, and in a letter on the same date to the Court, including the letter to Mr. Ranking, the Plaintiff indicated that he received the material referred in the previous paragraph on November 24, 2009. The letters indicated that he was outside of Canada at the time and alleged that that the "Statement for the Record" was false and that Messrs. Ranking and Silver knew that it was false. It was alleged that, *inter alia*, that:

1. the Plaintiff denied having admitted on November 17, 2009 to having received the November 6 materials, including the draft order;
2. he had not received these materials;
3. the Plaintiff denied having admitted on November 17, 2009 to knowledge of the order prior to being told by the trial coordinator on November 16, 2009;
4. he did not know of the order prior to being told by the trial coordinator on November 16, 2009;
5. he had safety concerns as a result of the actions of the Defendant lawyers, law firms and clients and some of their counsel, including Mr. Silver and his firm.

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20. The Plaintiff was not able to and did not attend in Toronto for examination on November 25, 2009.

21. A motion returnable December 2, 2009, seeking the same relief as the November 2 order (except for examination before Justice Shaughnessy) and a contempt order was purportedly served on the by mail Plaintiff, on short service.

22. In court on December 2, 2009, Messrs. Ranking and Silver disputed the truth of the December 1, 2009 letters of the Plaintiff. They called it defamation. They asserted the truth of their Statement for the Record. They falsely insisted that the Plaintiff had knowledge of the order prior to November 16, 2009. They also falsely asserted that the Plaintiff only disputed receipt of the signed order. They falsely asserted that there was no dispute that the Plaintiff had received the draft order prior to November 16, 2009. They relied on the purported service by courier on or after November 6, 2009, the November 16 letter (taken out of context, ignoring the fact that knowledge prior to November 16 was specifically denied) and the supposed admissions of the Plaintiff during the November 17, 2009 conversation (as falsely reflected in the Statement for the Record).

23. The Court accepted the facts as submitted by counsel on December 2, 2009, because they were proffered as facts under the express and implied assurances that the facts were true and reliable in accordance with the ethical obligations of the lawyers, as Officers of the Court, to tell the truth and to not mislead the Court. The Court rejected the contrary assertions by the Plaintiff in the December 1, 2009 letters because they were not under oath and did not come from an Officer of the Court. The lawyers, in lying and/or misleading the Court abused their office as Officers of the Court and abused

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process. Other lawyers, in remaining silent in the face of knowledge that statements were false and/or misleading also abused their office as Officers of the Court and abused process.

24. An order was issued on December 2, 2009 requiring the production of documents on January 8, 2010 and examination before Justice on January 15th, 2010. Failure to comply would result in a contempt hearing that day if the Plaintiff did not appear.

25. The December 2, 2009 order was sent to the Plaintiff by mail. The Plaintiff had no knowledge of any requirement to provide documents or attend to be examined in January 2010. He had no knowledge of any application to find him in contempt on January 15, 2010. The Plaintiff did not receive the December 2, 2009 order until June 2010.

26. There was no personal service of any order prior to any obligation arising and no evidence of knowledge of such an obligation until, in respect of November 17 and 25, 2009, the day prior to the obligation arising and otherwise, no knowledge of any obligation until after the deadline. The Supreme Court of Canada, in *Bhatnager,* [1990] S.C.J. No. 62 has made it clear that service that is not personal service may, in some circumstances be adequate for the conduct of civil litigation, but is legally inadequate to found civil contempt. Personal service or knowledge is a precondition for a finding of civil contempt.

27. The lawyers misled Shaughnessy, J. with respect to the facts and law regarding the adequacy of service, knowledge and notice. Contrary to the law they falsely urged

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the Court to act upon substituted service. They falsely asserted prior knowledge of the November 2, 2009 order in the "Statement for the Record". They relied upon misleading and/or false evidence and/or opinions in the Van Allen affidavit suggesting that the Plaintiff was attempting to evade service. They unreasonably asserted that notice the day before (when the person claimed to be outside of the country) was adequate (in respect of November 17 and November 25, 2009). The contempt order made on January 15, 2010 was a product of the misleading of the Court by the lawyers, law firms and clients and the Van Allen defendants, with the police and the TPA.

28. The Plaintiff did not attend on January 15, 2010.

29. On January 15, 2010 (as reflected in Reasons on January 25, 2010), the Court found the Plaintiff in contempt of court (civilly) for failure to comply with the November 2, 2009 order (production and examination), the Notice of Examination for November 25, 2009 and the December 2, 2009 order (production and examination). Based on:

1. the orders for substituted service;
2. the November 16, 2009 letter (taken out of context; without mentioning denial of prior knowledge);
3. the November call (taken out of context: without mentioning denial of knowledge prior to November 16, 2009);
4. the Statement for the Record;
5. the affidavit of Van Allen; and
6. the submissions of Messrs. Silver and Ranking that the Statement for the Record was true and the December 1, 2009 letters of the Plaintiff were false,

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the Court found that the Plaintiff had "notice". Based on the denials by the lawyers as Officers of the Court and the lack of sworn evidence, there was no consideration of safety issues. The Court found that the Plaintiff had not complied with the orders in that he did not produce the documents and did not attend for examination. Based on the lie in the Statement for the Record, the Court was misled into implicitly finding that the alleged offer to be examined on November 17 did not happen or was not compliance with the November 2, 2009 order. The Court ordered that the Plaintiff be jailed for 3 months, imposed a fine in the amount of $7,500 and ordered costs in the favour of four sets of the clients (represented by Faskens, Cassels, Miller and Stikeman Elliot LLP) in the aggregate sum of approximately $80,000.

30. In fact, had the true facts been known to the Court, there were no reasonable grounds to allege contempt, let alone constitute proof beyond a reasonable doubt. The prosecution initiated against the Plaintiff by the lawyers, law firms and clients should have been (and hopefully will be) concluded favourably for the Plaintiff. Even if it is not, the Plaintiff asserts that where this did not occur as a result of fraud by the lawyers, law firms and clients, precluding an appeal on the merits for administrative reasons, malicious prosecution and false imprisonment should still be available. There was no honest belief in guilt and there was a further improper purpose of seeking to pressure discovery and otherwise pressure the termination of litigation in other jurisdictions involving other persons and entities, not the Plaintiff or NBGL.

31. The actions, and inactions in the face of duties to act, of the lawyers, law firms, clients and other defendants resulted in the contempt order and resulting warrant of

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committal. The execution of the warrant resulted in the wrongful imprisonment of the Plaintiff in May 2013 after he returned to Canada to challenge the contempt finding, until bail pending appeal was granted in June 2013. The Plaintiff was again wrongfully imprisoned in April 2014 when his appeal was dismissed for procedural reasons (inability to pay costs) triggered by continuation of the intentional abuse of process and lying to the Court of Appeal on and before February 27, 2014.

32. In June 2010, costs of the NBGL action were settled in full. Thereafter, the only outstanding issue or costs order was the contempt and costs order of January 15, 2010. The production and examination of the Plaintiff in furtherance of costs on the action served no useful or legitimate purpose after this point in time. In fact, the lawyers, law firms and defendants had earlier access to the NBGL legal files that satisfied any legitimate purpose they might have had to examine the Plaintiff. The issues were moot. Justice Feldman later found abuse of process, based on this fact, to be an arguable ground of appeal. This and other viable grounds of appeal were never argued due to the order flowing from the February 27, 2014 decision of the Court of Appeal to dismiss the appeal as a result of the Plaintiff's inability to pay costs.

33. Before and after the June 2010 settlement, to which the Plaintiff was not a party, private and confidential information, including Identity Information as defined in the Criminal Code, about the Plaintiff was received by the defendants, including through the discovery process related to the NBGL action. Prior to use and filing in Court and contrary to the implied undertaking rule, some of this confidential information was published on the internet. This was done by and/or knowingly assisted by the clients, lawyers and law firms. The settlement included the public filing of an affidavit by Zagar

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which contained much of this private and confidential information regarding the Plaintiff. The Plaintiff did not consent to this public filing. In light of the earlier stay of the action and the settlement of the costs, this filing served no legitimate purpose. The predominant purpose of the conspiring defendants in filing was to harm the Plaintiff. It was known by the defendants that the dissemination or publishing of private and confidential information described herein would likely cause physical harm or death and/or significant mental suffering and trauma to the Plaintiff, as well as other harms including but not limited to economic and career harm. The Plaintiff has repeatedly requested that steps be taken by defendants to remedy this situation. The defendants had a legal duty to remedy the situation. The defendants to this day have failed to take any remedial action.

34. In 2012, an application was brought by the Plaintiff to set aside or vary the January 15, 2010 contempt order on a number of grounds, including the fact that the Plaintiff did not have timely knowledge of the November 2, 2009 order or the Notice of Examination and that he did not receive the December 2 materials or order or know of the January 15, 2010 hearing until June 2010. The evidence demonstrates that delay between January 15, 2010 and the application in August, 2012 was not the fault of the Plaintiff. Initially, a stay of the warrant was sought and granted to allow the Plaintiff to return to Canada to challenge the contempt order.

35. The Plaintiff in his affidavits asserted that Messrs. Ranking and Silver were material witnesses and had conflicts of interest. He asserted that they should not be acting on the application. They did not recuse themselves and the Superior Court of Justice ("SCJ") never dealt with this issue.

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36. Messrs. Ranking and Silver and their firms and other defendants opposed the application in the Superior Court of Justice. Pendrith assisted them during the appeal process and provided evidence that was misleading.

37. Ultimately, the Plaintiff was forced to be self-represented because he could not find a lawyer who would represent him. The Plaintiff repeatedly sought time to retain new counsel. He approached over 70 different lawyers. However, civil lawyers claimed that their lack of criminal law knowledge rendered them unsuitable and the criminal lawyers claimed the converse. The reality was that nobody wanted to get involved in a case in which it was alleged and proved that Messrs. Silver and Ranking and their firms had obstructed justice by lying to the Court, and where the Plaintiff possessed credible and strong evidence including his voice recordings of the November 17, 2009 phone conversation with the lawyers. The Plaintiff was able to have some funds to hire a lawyer by borrowing from friends. The Faskens and Cassels defendants opposed the Plaintiff's requests for more time to find counsel.

38. Unbeknownst to Messrs Ranking and Silver, the Plaintiff had audio-recorded the November 17, 2009 phone conversation with them. The evidence on the application included an authenticated transcript of this audio recording and the recording itself. This recording demonstrates that the "Statement for the Record" relied upon the defendants and used by Justice Shaughnessy was false insofar as it indicated that the Plaintiff 'admitted' during the November 17, 2009 conversation to having the November order and had knowledge of the order before November 16, 2009. The recording supports the truth of the Plaintiff 's December 1, 2009 letters. This meant that:

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1. the Statement for the Record filed before Justice Shaughnessy contained lies that:

(a) the Plaintiff had admitted to having received the November order;

(b) the Plaintiff had admitted to knowledge of the order before November 16, 2009;

(c) the Plaintiff had refused to answer questions over the phone;

2. the submissions of Messrs. Silver and Ranking to the Court on December 2, 2009, that the Statement for the Record was true and the December 1 letters were false, were false submissions. In other words, they lied to the Court in asserting the truth of the Statement for the Record;

3. The assertion on December 2, 2009, that the Plaintiff had only contested receipt of the signed order, but had admitted to receipt of the draft order, was a lie.

39. In addition, the affidavit evidence filed by Plaintiff was presented regarding the failure to receive the materials at all or in time, the safety concerns of the Plaintiff for himself and his family and his willingness to answer the questions addressed in the order dated November 2, 2009.

40. The Plaintiff answered questions regarding these affidavits and in relation to the November 2, 2009 and December 2, 2009 orders on January 11 and 23, 2013. During this examination, the Plaintiff made it clear that he was willing to answer all questions addressed by the November 2, 2009 order. He asked that any other questions that remained be asked. He indicated a willingness to make himself available for this

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purpose. The Faskens and Cassels defendants refused to indicate what other questions, if any, remained unanswered.

41. On January 25, 2013, the Plaintiff provided a memory stick, with some 100,000 documents on it, to the Faskens and Cassels defendants.

42. On March 14, 2013 the Plaintiff produced a document (119 pages long plus attachments) called "Answers to Undertakings, Under Advisements, Refusals" ("March 14 Answers") stemming from the January 11 and 23, 2013 examinations. In addition to answering questions in relation to the affidavits, the examinations addressed the issues for examination covered in the November 2, 2009 order. That order required examination regarding:

a. Unanswered Questions in relation to the examination of an affiant, John Knox, on November 4, 2008;
b. unanswered questions from examination of the Plaintiff on March 20, 2009;
c. unanswered questions directed to be answered on April 8, 2009;
d. Questions relating to the Plaintiff's involvement with the Plaintiff corporation NBGL; his relationship to the matters pleaded in the lawsuit and his non-privileged association with his former counsel, William McKenzie and his law firm; and
e. questions in relation to shares in KEL, to which the lawsuit was related.

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43. Many of these kinds questions were asked and answered on January 11, and 23, 2013. In relation to the January 11, 2013 examination, in the March 14 Answers, the Plaintiff answered questions that covered items (d) (Under Advisement questions number 4-6, 7-9, 17-19, 27-31, 34-35, 38-39, 44-45, 48-49, 51-52, 62) and (e) (Under Advisement questions numbers 13-15) above. In relation to the January 23, 2013 examination there were questions that were answered in the March 14 Answers in relation to items (d) (Undertaking question 12), (b) (Under Advisement questions 1-16) and (a) (Knox Questions 1-18). Accordingly, in January and March 2013, many, if not all, of the questions ordered to be answered on November 2, 2009 were asked and answered to the best of the Plaintiff's ability.

44. After receipt of the factum of the Faskens and Cassels defendants, in which it was asserted that questions had not been answered, the Plaintiff sent a letter dated April 22, 2013, asking that the Faskens and Cassels defendants identify what questions remained unanswered. In a letter dated April 26, 2013, Mr. Ranking refused to identify what further questions remained unanswered.

45. Notwithstanding the Plaintiff's offer to be further examined, between January 25 and April 30, 2013, the Faskens and Cassels defendants never moved to ask further questions on the issues identified in the November 2, 2009 and December 2, 2009 orders or regarding these documents or any other issues addressed by the November 2 and December 2 orders.

46. Notwithstanding evidence of good faith and *bona fide* efforts to find counsel, Ranking and Silver falsely asserted urgency and opposed the Plaintiff's requests for

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additional time to obtain counsel. In light of the subsequent discovery of a lawyer (Slansky) to conduct the appeal, in May 2013, additional time would have made a difference. As a direct result of actions by Faskens and Cassels defendants the Plaintiff was forced to proceed without the assistance of counsel. No pressing reasons or urgency were expressed to justify this decision.

47. At the outset of the hearing on April 30, 2013, the Plaintiff sought an adjournment to obtain counsel. This was opposed and refused. The Plaintiff was unrepresented at the hearing.

48. Near the outset of the hearing the Plaintiff presented information that he had discovered the day before in the form of an affidavit. In the affidavit, he indicated that he had been told by a Durham Regional Police officer, defendant Rushbrook, that the police and Court police had been asked to conduct an investigation of the Plaintiff prior to January 15, 2010 in anticipation of the conviction of the Plaintiff on that day. That investigation had happened approximately one month prior to January 15, 2010. The Faskens and Cassels defendants falsely denied any knowledge of this investigation. The hearing proceeded without any opportunity to gather further information regarding this investigation which was, *prima facie* an abuse of process.

49. The Plaintiff asked to present evidence in relation to his safety and security to explain why it would have been very difficult for him to come to Toronto or Whitby in 2009 or 2010. The Faskens and Cassels defendants falsely denied the legitimacy of this evidence and misled the Court into refusing to allow this issue to be explored or to allow the Plaintiff to present this evidence. Evidence of security concerns arising in November

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2009 were addressed in the Plaintiff's affidavits and in his submissions to the Court. The Court failed to address this because the Court was mistakenly led to believe that such matters had already been addressed by the Court. In fact, the only safety and security concerns dealt with by the Court were those of the Plaintiff's former counsel, McKenzie in the February 8, 2008 judgment of the Court. The Faskens and Cassels defendants misled Justice Shaughnessy into mistakenly believing that this issue had already been brought to his attention and had been dismissed it.

50. Faskens and Cassels defendants having misled the Court regarding the November 17, 2009 conversation, on April 30, 2013 and previously, caused the Court to decline to listen to the recording.

51. The Plaintiff asked that the Court deal with the fact that Messrs. Ranking and Silver were material witnesses and asked that the Court order that the Plaintiff be allowed to examine them. Messrs. Ranking and Silver refused to be examined, and this did not take place.

52. The Plaintiff asked that the audio recordings of the January 11 and 23, 2013 examinations be produced and played to the Court because it would demonstrate the abusive conduct of Messrs Ranking and Silver during the examination. Based on the denials of misconduct by Messrs. Ranking and Silver, this did not take place.

53. The Plaintiff alleged other misconduct by counsel and asked the Court to stay the contempt order as an abuse of process, citing the recent decision in *R. v. Salmon*, 2013 ONCA 203. Based on the misrepresentations of Messrs Ranking and Silver, this was not considered or was considered without regard to any of the evidence filed by the Plaintiff.

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Based on these misrepresentations, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application.

54. During the hearing on April 30, 2013, the Plaintiff was offered the opportunity to continue the stay and answer questions as a part of a draft order that also required him to accept a costs order that was disputed by the Plaintiff. The Plaintiff repeated more than once that he was not prepared to agree to such a draft order but that he was willing to cooperate with the Court and answer questions. The Faskens and Cassels defendants did not seek to take the Plaintiff up on this offer by questioning him before Justice Shaughessy on April 30 or May 3, 2013.

55. On April 30, 2013, the Faskens and Cassels defendants agreed that, subject to further exploration in examinations that they refused to conduct, they were prepared to accept that a memory stick provided on January 25, 2013 containing approximately 100,000 documents fulfilled the November 2, 2009 and December 2, 2009 orders to produce documents. Yet, they still pursued contempt on this basis.

56. The Court accepted the Faskens and Cassels defendants false submission that no new evidence had been presented on the application. The Court agreed and said that there was no new evidence since January 15, 2010. This was false. Since January 15, 2010 there was the following new evidence:

a) There was evidence of the settlement of costs on the action, rendering the November 2 and December 2, 2009 orders moot;

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b) new and conclusive proof that the Plaintiff stated on November 17, 2009 that he did NOT receive the November 2 order prior to November 17, 2009 and that he did not know of the order until the day before contrary to the Victory Verbatim 'Statement for the Record' created by Ranking and Silver and relied upon by the Court on December 2, 2009 and January 15, 2010;

c) that the Plaintiff was in the Western Pacific on November 16 when he received knowledge of the Nov. 17 examination and materials (but not the materials themselves);

d) there was evidence (recording and affidavit under oath) pursuant to 16.07 of the Rules of Civil Procedure that established that the documents did not come to his attention or only came to his attention at a later time;

e) There was proof of a legitimate offer to comply with the order by telephone on November 17, 2009 which had been falsely disputed in the Statement for the Record;

f) there was evidence that the documents ordered had been provided by memory stick on January 25, 2013 and that, subject to further answers to questions that may cast doubt upon the completeness of the documentation, the Faskens and Cassels defendants accepted on April 30, 2013 that this constituted compliance with the November 2 and December 2, 2009 orders;

g) there was evidence that the lawyers, law firms and defendants had received full access to and copies of tens of thousands pages of privileged

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documents from the NBGL law firm's files in 2010, which constituted substantial or complete compliance with the November 2 and December 2, 2009 orders;

h) there was evidence of the answers of questions addressed in the November 2, 2009 and December 2, 2009 orders in the examination of the Plaintiff in January 2013 and the March 20103 written Answers. There were offers to be examined further;

i) there was sworn evidence regarding the safety and security concerns of the Plaintiff.

Based on the misrepresentations by the Faskens and Cassels defendants, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application.

57. In dismissing the application to set aside the finding of contempt, on the issue of knowledge, based on the misrepresentations by the Faskens and Cassels defendants, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application. Accordingly, the Court was left to rely on:

a) the misleading affidavit of Van Allen

b) the false purported compliance with orders for substituted service;

c) the November 16, 2009 letter (taken out of context by the Faskens and Cassels defendants, without mentioning denial of prior knowledge);

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d) the November call (taken out of context the Faskens and Cassels defendants, without mentioning denial of knowledge prior to November 16, 2009);

e) the false Statement for the Record;

f) the false submissions of Messrs. Silver and Ranking that the Statement for the Record was true and the December 1, 2009 letters of the Plaintiff were false; and

g) the false assertion by Mr. Ranking that the Plaintiff was only disputing receipt of the signed order, but that there was no dispute about receipt of the draft order.

Accordingly, the dismissal of the motion to set aside the finding of contempt was a direct result of the recent actions of the Faskens and Cassels defendants and the earlier actions of all defendants.

58. Based on the misrepresentations by the defendants, the Court failed to conduct a trial of any disputed factual issues on *viva voce* evidence.

59. The Plaintiff, as a self-represented litigant did not raise and the Faskens and Cassels defendants did not raise the fact that the purpose of the orders upon which the contempt order was made was now moot. Faskens and Cassels defendants had an obligation to alert the Court to this fact. Accordingly, the Court did not deal with this issue.

60. The Faskens and Cassels defendants continued to assert non-compliance with the orders notwithstanding their knowledge that there had been compliance. As a result of

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them misleading the Court, aside from the offer to now examine on condition that the Plaintiff accept a contested costs order ($80,000), no opportunity to purge was offered to the Plaintiff.

61. The Court was misled into refusing to decide whether the PWCECF was a legal entity. The Faskens and Cassels defendants made the misleading submission to the Court that since PWCECF was the entity that NBGL had sued, the Plaintiff could not complain that it did not exist. This ignored the fact that NBGL had originally sued another non-entity, PricewaterhouseCoopers (Barbados), based upon earlier affidavit evidence by Atkinson, but Mr. Ranking and Hatch had advised NBGL and the Court that this was the incorrect name and had asserted that the correct name was PWCECF. As a result of this misleading submission, none of the evidence proving the non-existence of PWCECF was considered.

62. Notwithstanding the later suggestion by Faskens and Cassels defendants, the contempt order on January 15, 2010 did not include the failure to pay costs as a part of the contempt. This was appropriate since to do otherwise would to be to turn our correctional system into a debtor's prison. The May 3, 2013 order did not purport to be a new contempt order. Rather, the May 3 order dismissed the Plaintiff's application to set aside the contempt order and removed the stay of the warrant of committal thereby allowing the January 15, 2010 order to take effect. However, the May 3, 2013 order was tied to the costs of the January 15, 2010 contempt order by requiring payment of costs as a condition precedent to purging contempt.

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63. The May 3, 2013 warrant of committal specifies that there is to be "no remission" on the period of incarceration. The January 2010 order did not specify that remission did not apply to the order of imprisonment. There is no mention of remission in the May 3, 2013 order, endorsement or reasons. No mention of remission was made during the hearing on April 30 and May 3, 2013. There was no opportunity for the Plaintiff to address this issue, which he discovered only after arriving at jail on May 3, 2013. Since the May 3, 2013 decision did not result in a new contempt order, there was no jurisdiction to vary the January 15, 2010 order. This "no remission" term was inserted maliciously in the warrant by the Faskens and Cassels defendants and adopted by the Judge who relied on Senior Counsel to be candid and forthright in their dealings with the Court, which they were not.

64. The manner of the investigation and prosecution of the Plaintiff in respect of and/or for purposes of obtaining substituted service orders, contempt proceedings and to harm the Plaintiff caused harm to the Plaintiff. The Plaintiff was significantly harmed physically, emotionally, mentally, economically and with respect to his reputation.

65. This harm was caused by the manner of the investigation and prosecution including harm from the abusive and otherwise tortious manner of his prosecution described in this Statement of Claim, including, *inter alia*, improper motivations, misrepresentations and lies to the Courts, improper use of police resources, improper violations respecting private information and improper sheltering from liability (re non-entity Respondent, PWCECF) and cover up in respect of these actions.

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66. This harm results from, *inter alia*, the need for him to bring an application to set aside the contempt order, the appeal therefrom, the damage to his him in respect to his safety, physical and mental health and reputation, arrest, prosecution and incarceration in May 2013 and again in April 2014. This harm has been cumulative and continues to this day.

(B) AMENDMENTS SOUGHT

67. The Plaintiff seeks to amend the Statement of Claim to add the proper parties in respect of the OPP, the Peel Regional Police and the Durham Regional Police.

1. Ontario Provincial Police

68. The original Statement of Claim included "The Ontario Provincial Police" ("OPP"), not the present Commissioner (Hawkes) or Former Commissioner of the OPP (Lewis). The proposed amendments seek to add the latter as parties.

69. It is clear from section 50 of the *Police Services Act*, that Her Majesty the Queen is vicariously liable for the actions, inactions and negligence of the OPP. However, the SCC in *Odhavji Estate v. Woodhouse*, [2003] S.C.J. No. 74 and the OCA in *Miguna v. Toronto Police Services Board*, [2008] O.J. No. 4784 (C.A.) made it clear that the Commissioner, not Her Majesty the Queen, is personally responsible for the day-to day operations of the OPP, without any need to rely on the principle of vicarious liability.

70. In *Odhavji Estate*, the SCC said:

> 34...the **alleged failure of the Chief to ensure** that the defendant **officers cooperated with the investigation** also would **seem to constitute an unlawful**

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> **breach of duty. Under s. 41(1)(b) of the *Police Services Act*, the duties of a chief of police include ensuring that members of the police force carry out their duties in accordance with the Act.** A decision not to ensure that police officers cooperate with the SIU is **inconsistent with the statutory obligations of the office.**

and with respect to negligence:

> **58** Finally, I also believe it **noteworthy that this expectation is consistent with the statutory obligations that s. 41(1)(b) of the *Police Services Act* imposes on the Chief. Under s. 41(1)(b), the Chief is under a freestanding statutory obligation to ensure that the members of the force carry out their duties in accordance with the provisions of the *Police Services Act* and the needs of the community**. This includes an obligation to ensure that members of the police force do not injure members of the public through misconduct in the exercise of police functions. **The fact that the Chief already is under a duty to ensure compliance with an SIU investigation adds substantial weight to the position that it is neither unjust nor unfair to conclude that the Chief owed to the plaintiffs a duty of care** to ensure that the defendant officers did, in fact, cooperate with the SIU investigation.
>
> **59** In light of the above factors, I conclude that the circumstances of the case satisfy the first stage of the *Anns* test and raise a *prima facie* duty of care. **If it is reasonably foreseeable that the defendant officers' decision not to cooperate with the SIU would injure the plaintiffs, a private law obligation to ensure that the officers cooperate with the SIU is rightly imposed on the Chief.**

71. In *Miguana*, the Court of Appeal said:

> **83** As the motion judge noted, a chief of police is not vicariously liable for the acts of his or her police officers during the course of their employment: *Pringle v. London (City) Police Force*, [1997] O.J. No. 1834 (C.A.), at para. 2. **Nor is the chief responsible for policy matters relating to police operations, which are within the purview of the Police Services Board:** *Police Services Act* R.S.O. 1990 c. P.15, s. 31. **However, a chief of police *is* responsible for the day-to-day operation of the police force.** Subparagraphs 41(1)(a) and (b) of the *Police Services Act* state:
>
> 41(1) The duties of a chief of police include,
>
> (a) in the case of a municipal police force, **administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the board** under subsection 31(1);
>
> (b) **ensuring that members of the police force carry out their duties in accordance with this Act and the regulations** and in a

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> manner that reflects the needs of the community, and that discipline is maintained in the police force;
>
> **84 Therefore a claim *could* lie against Chief Fantino in negligence, if properly framed and pleaded.**
>
> **85** In paras. 40-45 of the fresh amended statement of claim the Chief is alleged, essentially, to have been negligent, reckless or wilfully blind in fulfilling his statutory responsibilities for the day-to-day operations of his police force (*Police Services Act,* s. 41). The factual basis for **this claim is said to be that he failed to exercise his supervisory and managerial authority** over the Police Defendants by failing to ensure that the Police Defendants were **adequately trained** and **did not engage in the improper conduct attributed to them in the pleading** - and particularized in para. 41, subparagraphs (a) through (kk). Chief Fantino is alleged to have been grossly negligent or negligent in failing to order a comprehensive review of this conduct, to have encouraged and condoned the creation of an environment that fostered such conduct, and to have acted "capriciously, recklessly, negligently, incompetently or he was wilfully blind regarding the negligence, negligent investigations, recklessness, racial profiling and racism of the defendant police officers". ...
>
> ...
>
> **87** Keeping in mind that pleadings are to be read generously at this stage and that the facts, as alleged, are to be taken as true, I arrive at a different conclusion. **The assertion is that the Chief was reckless or wilfully blind in his approach to what is said to have been going on and, indeed, that he was motivated by extraneous considerations in not taking steps to intervene or to correct the alleged misconduct. Of course these serious allegations are merely allegations at this stage, and nothing has been proved. *If* they are established, however, they *could* give rise to personal liability on the part of Chief Fantino, as opposed to a vicarious liability claim based on the conduct of the Police Defendants. This is not one of those clear cases where it can be said to be plain and obvious that the claim cannot succeed.**

72. The nature of the Claim against the OPP is primarily that members of the OPP engaged in intentional torts and that those members were liable and others were institutionally liable in negligence:

- an OPP officer, James Van Allen, was allowed to pursue secondary employment as a private investigator contrary to the *Police Services Act* and other legislation;

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- the former O.P.P. Commissioner (Lewis) and the present Commissioner of the OPP (Hawkes), who were directly in the chain of command and reporting, and as such in charge of Van Allen's unit at the time, and were aware or should, in accordance with their assigned duties, have been aware of the circumstances and have been personally negligent in allowing or failing to detect and prevent such secondary employment;

- OPP officers Kearns and Vibert, as part of the Professional Standards Unit were obliged to investigate unlawful and unethical behaviour by OPP officers. When facts were brought to their attention that Van Allen had acted as a private investigator when he was a serving OPP officer, they not only failed to investigate, but lied to the complainant (the Plaintiff) and covered up Van Allen's misdeeds. The former O.P.P. Commissioner (Lewis) and the present Commissioner of the OPP (Hawkes), who were directly in the chain of command and reporting, were aware or should, in accordance with their assigned duties, have been aware of the circumstances This was part of the day-to-day operations of the OPP and therefore the responsibility of the named officers and the former Commissioner and the present Commissioner of the OPP, not the responsibility of Her Majesty the Queen. It is alleged that they were negligent in performing these statutory duties.

73. The proposed amendment does not change any factual allegations, alleged torts or particulars. It merely identifies the proper parties in relation to vicarious liability for day-to-day operations, instead of the OPP or Her Majesty the Queen, as the Commissioner of the OPP. Further, counsel for the OPP, Mr. Moten, of Crown Law Office, Civil, brought

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these concerns to the attention of the Plaintiff. The proposed Amended Statement of Claim was served 2 months ago, 3-4 months after service of the initial Statement of Claim. There is no prejudice that is not compensible in costs.

2. <u>Peel Regional Police</u>

74. The original Statement of Claim included "The Peel Regional Police Service" ("PRPS"), not the Peel Regional Police Services Board or the Chief of Police. The proposed amendments seek to add the latter as parties.

75. It is clear that section 50 of the *Police Services Act*, makes the Police Board vicariously liable for the actions, inactions and negligence of the Peel Regional police. However the SCC in *Odhavji Estate* (*supra*) and the OCA in *Miguna* (*supra*) made it clear that the Chief of Police, not the Board, is responsible for the day-to day operations of Municipal Police Forces.

76. The nature of the Claim against the Peel police is primarily that members of the Peel Regional Police engaged in intentional torts and that those members were liable and others were institutionally liable in negligence:

- the Peel Police reported a warrant on CPIC without any paperwork for the arrest of the Plaintiff and failed to seek a change when the Plaintiff was released on bail, causing the Plaintiff to be unlawfully arrested and detained;

- The Peel Police initiated an investigation into the Plaintiff's situation. The Peel police failed to keep records or institute systems to prevent misuse of the arrest and CPIC process. There was no connection between the Plaintiff's case and Peel.

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There was no reason for Peel police to have engaged itself in this case or to have transmitted the information to other police forces. This is alleged to have been done in furtherance of corrupt efforts to harass and detain the Plaintiff by some or all of the defendants, at least Van Allen;

- these actions or inactions were either part of the vicarious liability of the Board (systemic negligence) or personal liability of the Chief of Police (in respect of the day-to-day operations of the police). In respect of the latter, the Chief of Police was directly in the chain of command and reporting, were aware or should, in accordance with her assigned duties, have been aware of the circumstances. This was part of the day-to-day operations of the PRPS and therefore the responsibility of the named officers and the Chief.

77. The proposed amendment does not change any factual allegations, alleged torts or particulars. It merely identifies the proper parties in relation to vicarious liability, instead of the PRPS, the Board and the Chief of police are the proper parties. Further, previous counsel for the PRPS Board, Blainey McMurtry recognized this and brought these concerns to the attention of the Plaintiff. The proposed Amended Statement of Claim was served 2 months ago, 3-4 months after service of the initial Statement of Claim. There is no prejudice that is not compensible in costs.

3. <u>Durham Regional Police</u>

78. The original Statement of Claim included "The Durham Regional Police Service" ("DRPS"), not the Durham Regional Police Services Board or the Chief of Police or the Former Chief of Police. The proposed amendments seek to add the latter as parties.

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79. It is clear that section 50 of the *Police Services Act*, makes the Police Board vicariously liable for the actions, inactions and negligence of the Durham Regional Police. However, the SCC in *Odhavji Estate* (*supra*) and the OCA in *Miguna* (*supra*) made it clear that the Chief of Police, not the Board, is responsible for the day-to day operations of Municipal Police Forces.

80. The nature of the Claim against the Durham Police is primarily that:

- The Durham Regional Police conducted a secret investigation against the Plaintiff on behalf of the Durham Superior Court of Justice, in anticipation of his conviction for civil contempt. This was discovered in 2013. Thereafter Durham Regional Police officers, including Detectives Rushbrook and Dmytruk, engaged in a cover up in respect of this investigation;

- The Durham Regional Police cooperated with some or all of the other defendants, at least Van Allen, in pursuing an investigation of the Plaintiff;

- These actions or inactions were either part of the vicarious liability of the Board (systemic negligence) or vicarious liability of the Chief of Police (in respect of the day-to-day operations of the police). These actions or inactions were either part of the vicarious liability of the Board (systemic negligence) or personal liability of the Chief of Police (in respect of the day-to-day operations of the police). In respect of the latter, the Chief of Police was directly in the chain of command and reporting, were aware or should, in accordance with her assigned duties, have been aware of the circumstances. This was part of the day-to-day

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operations of the DRPS and therefore the responsibility of the named officers and the Chief.

81. The proposed amendment does not change any factual allegations, alleged torts or particulars. It merely identifies the proper parties in relation to vicarious liability, instead of the DRPS, the Board and the Chief of police and the Former Chief of Police are the proper parties. The proposed Amended Statement of Claim was served 2 months ago, 3-4 months after service of the initial Statement of Claim. There is no prejudice that is not compensible in costs.

(C) GROUNDS TO GRANT LEAVE

82. At such an early stage of proceedings, there is no real prejudice that arises in respect of the amendments sought. The nature of the allegations are in clear in the original Statement of Claim and have not changed. The police defendants have known of the allegations since the original service of the original Statement of Claim.

83. The allegations are made with great particularity. They are not new allegations. The initial allegations are the same but the legal significance of the allegations require an adjustment of perspective in respect of the properly named parties.

84. These issues are clearly worthy of trial and have *prima facie* merit. Taking the Statement of Claim at its highest, it is not plain and obvious that the original allegations in respect of the new parties cannot succeed.

85. Any prejudice or injustice is clearly compensable in costs.

(D) SERVICE AND CONFIDENTIALITY

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86. The former Commissioner of the OPP (Lewis) and the former Durham Chief of Police (Ewles) likely have knowledge of the proposed Amendments. Yet, no counsel representing the DRPS or the OPP have agreed to accept service on their behalf.

87. To date, their physical address has not been determined.

88. If and when their addresses are determined, the usual process is to indicate where they were served. This would reveal their location and in light of their previous positions, this might place them at risk of harassment or physical harm. If no counsel is willing to accept service on their behalf, the Plaintiff asks for an order for substituted service and/or ratification of service and leave to not identify the address in the affidavit of service.

89. Such further grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this Motion:

1. Affidavit of Donald Best, sworn December 22, 2014;
2. Such further material as counsel may advise and this Honourable Court may permit.

DATED AT TORONTO, this 22nd day of December, 2014.

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c/o Lenczner Slaght LLP

AND TO: John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, and Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and-

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE;
MARTY KEARNS: JEFFERY R. VIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

AFFIDAVIT OF DONALD BEST

I, Donald Best, of the County of Simcoe, Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Plaintiff in this case.

1. I am a former deep undercover police officer, Sergeant (Detective) with the Toronto Police and investigator of organized crime with about three decades of service in the police and private undercover law enforcement.

2. This affidavit is sworn in support of a motion for leave to amend the Statment of Claim filed on my behalf.

NATURE OF THE AMENDMENTS SOUGHT

3. I seek to amend the Statement of Claim to add the proper parties in respect of the OPP, the Peel Regional Police and the Durham Regional Police.

1. **Ontario Provincial Police**

4. The original Statement of Claim included "The Ontario Provincial Police" ("OPP"), not the present Commissioner (Hawkes) or Former Commissioner of the OPP (Lewis). The proposed amendments seek to add the latter as parties.

5. The nature of the Claim against the OPP is primarily that members of the OPP engaged in intentional torts and that those members were liable and others were institutionally liable in negligence:
   - an OPP officer, James Van Allen, was allowed to pursue secondary employment as a private investigator contrary to the *Police Services Act* and other legislation;
   - the former O.P.P. Commissioner (Lewis) and the present Commissioner of the OPP (Hawkes), who were directly in the chain of command and reporting, and as such in charge of Van Allen's unit at the time, and were aware or should, in

accordance with their assigned duties, have been aware of the circumstances and have been personally negligent in allowing or failing to detect and prevent such secondary employment;

- OPP officers Kearns and Vibert, as part of the Professional Standards Unit were obliged to investigate unlawful and unethical behaviour by OPP officers. When facts were brought to their attention that Van Allen had acted as a private investigator when he was a serving OPP officer, they not only failed to investigate, but lied to the complainant (the Plaintiff) and covered up Van Allen's misdeeds. The former O.P.P. Commissioner (Lewis) and the present Commissioner of the OPP (Hawkes), who were directly in the chain of command and reporting, were aware or should, in accordance with their assigned duties, have been aware of the circumstances This was part of the day-to-day operations of the OPP and therefore the responsibility of the named officers and the former Commissioner and the present Commissioner of the OPP, not the responsibility of Her Majesty the Queen. It is alleged that they were negligent in performing these statutory duties.

6. The proposed amendment does not change any factual allegations, alleged torts or particulars. It merely identifies the proper parties in relation to vicarious liability for day-to-day operations, instead of the OPP or Her Majesty the Queen, as the Commissioner of the OPP. Further, counsel for the OPP, Mr. Moten, of Crown Law Office, Civil, brought these concerns to the attention of the Plaintiff. Copies of letters from Mr. Moten on this issue are collectively marked as Exhibit "A" of this affidavit. The proposed Amended Statement of Claim was served 2 months ago, 3-4 months after service of the initial Statement of Claim. There is no prejudice that is not compensible in costs.

2. Peel Regional Police

7. The original Statement of Claim included "The Peel Regional Police Service" ("PRPS"), not the Peel Regional Police Services Board or the Chief of Police. The proposed amendments seek to add the latter as parties.

8. The nature of the Claim against the Peel police is primarily that members of the Peel Regional Police engaged in intentional torts and that those members were liable and others were institutionally liable in negligence:

    - the Peel Police reported a warrant on CPIC without any paperwork for the arrest of the Plaintiff and failed to seek a change when the Plaintiff was released on bail, causing the Plaintiff to be unlawfully arrested and detained;

    - The Peel Police initiated an investigation into the Plaintiff's situation. The Peel police failed to keep records or institute systems to prevent misuse of the arrest and CPIC process. There was no connection between the Plaintiff's case and Peel. There was no reason for Peel police to have engaged itself in this case or to have transmitted the information to other police forces. This is alleged to have been done in furtherance of corrupt efforts to harass and detain the Plaintiff by some or all of the defendants, at least Van Allen;

    - these actions or inactions were either part of the vicarious liability of the Board (systemic negligence) or personal liability of the Chief of Police (in respect of the

day-to-day operations of the police). In respect of the latter, the Chief of Police was directly in the chain of command and reporting, were aware or should, in accordance with her assigned duties, have been aware of the circumstances. This was part of the day-to-day operations of the PRPS and therefore the responsibility of the named officers and the Chief.

9. The proposed amendment does not change any factual allegations, alleged torts or particulars. It merely identifies the proper parties in relation to vicarious liability, instead of the PRPS, the Board and the Chief of police are the proper parties. Further, previous counsel for the PRPS Board, Blainey McMurtry recognized this and brought these concerns to the attention of the Plaintiff. A copy of a letter from Blainey McMurtry on this issue is marked as Exhibit "B" of this affidavit. The proposed Amended Statement of Claim was served 2 months ago, 3-4 months after service of the initial Statement of Claim. There is no prejudice that is not compensible in costs.

3. <u>Durham Regional Police</u>

10. The original Statement of Claim included "The Durham Regional Police Service" ("DRPS"), not the Durham Regional Police Services Board or the Chief of Police or the Former Chief of Police. The proposed amendments seek to add the latter as parties.

11. The nature of the Claim against the Durham Police is primarily that members of the Durham Regional Police engaged in intentional torts and that those members were liable and others were institutionally liable in negligence:

    - The Durham Regional Police conducted a secret investigation against the Plaintiff on behalf of the Durham Superior Court of Justice, in anticipation of his

conviction for civil contempt. This was discovered in 2013. Thereafter Durham Regional Police officers, including Detectives Rushbrook and Dmytruk, engaged in a cover up in respect of this investigation;

- The Durham Regional Police cooperated with some or all of the other defendants, at least Van Allen, in pursuing an investigation of the Plaintiff;

- These actions or inactions were either part of the vicarious liability of the Board (systemic negligence) or vicarious liability of the Chief of Police (in respect of the day-to-day operations of the police). These actions or inactions were either part of the vicarious liability of the Board (systemic negligence) or personal liability of the Chief of Police (in respect of the day-to-day operations of the police). In respect of the latter, the Chief of Police was directly in the chain of command and reporting, were aware or should, in accordance with her assigned duties, have been aware of the circumstances. This was part of the day-to-day operations of the DRPS and therefore the responsibility of the named officers and the Chief.

12. The proposed amendment does not change any factual allegations, alleged torts or particulars. It merely identifies the proper parties in relation to vicarious liability, instead of the DRPS, the Board and the Chief of police and the Former Chief of Police are the proper parties. The proposed Amended Statement of Claim was served 2 months ago, 3-4 months after service of the initial Statement of Claim. There is no prejudice that is not compensible in costs.

SERVICE AND CONFIDENTIALITY

13. The former Commissioner of the OPP (Lewis) and the former Durham Chief of Police (Ewles) likely have knowledge of the proposed Amendments. Yet, no counsel representing the DRPS or the OPP have agreed to accept service on their behalf.

14. To date, their physical address has not been determined.

15. If and when their addresses are determined, the usual process is to indicate where they were served. This would reveal their location and in light of their previous positions, this might place them at risk of harassment or physical harm. If no counsel is willing to accept service on their behalf, the Plaintiff asks for an order for substituted service and/or ratification of service and leave to not identify the address in the affidavit of service.

Sworn before me in Barrie)
December 15, 2014)

[redacted]

A Commissioner for Taking Oaths

Ann Cecelia Rankin, a Commissioner, etc., Province of Ontario, for the Government of Ontario, Ministry of the Attorney General.

[redacted]

Donald Best

THIS IS **EXHIBIT "A"**
REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS
15th DAY
OF December, 2014

[redacted]

A Commissioner etc.

From: Paul Slansky [mailto:paul.slansky@bellnet.ca]
Sent: Thursday, October 09, 2014 6:40 PM
To: 'Moten, Asad (MAG)'
Subject: RE: Best v. Ranking et al

Asad:

I confirm my previous undertaking to not use this time in arguing against a motion to set aside the default notice.

Again, thanks.

Paul

From: Moten, Asad (MAG) [mailto:Asad.Moten@ontario.ca]
Sent: Thursday, October 09, 2014 5:41 PM
To: Paul Slansky
Cc: Moten, Asad (MAG)
Subject: RE: Best v. Ranking et al

Dear Paul,

I agree to give you until Tuesday if you confirm your previous undertaking to not use this time in arguing against a motion to set aside the default notice, should it come to that.

Thanks,

Asad

From: Paul Slansky [mailto:paul.slansky@bellnet.ca]
Sent: Thursday, October 09, 2014 5:16 PM
To: 'Paul Slansky'; Moten, Asad (MAG)
Subject: RE: Best v. Ranking et al

Asad:

I am sorry. I am still trying to iron out something with my client. I am trying to obviate the need for a motion.

However, I need to sit down and talk with him. We can't do this until Tuesday.

Would you please grant me the indulgence of allowing me to provide my proposal to you on Tuesday afternoon?

Paul

From: Paul Slansky [mailto:paul.slansky@bellnet.ca]
Sent: Wednesday, October 08, 2014 3:15 PM
To: 'Moten, Asad (MAG)'
Subject: RE: Best v. Ranking et al

Thanks.

From: Moten, Asad (MAG) [mailto:Asad.Moten@ontario.ca]
Sent: Wednesday, October 08, 2014 2:52 PM
To: Paul Slansky
Cc: Moten, Asad (MAG)
Subject: RE: Best v. Ranking et al

Thank you Paul for the update.

I agree to extend the deadline for your response until the end of day tomorrow.

I look forward to hearing from you, and wish you well in court tomorrow morning.

Sincerely,

Asad

From: Paul Slansky [mailto:paul.slansky@bellnet.ca]
Sent: Wednesday, October 08, 2014 2:36 PM
To: Moten, Asad (MAG)
Subject: RE: Best v. Ranking et al

Asad:

I am optimistic that we can settle this issue without the need to litigate it.

I appreciate you providing the case that you have provided. I have done some further research. I have discussed it with my client and we were in the process of putting together something for you for today. Unfortunately, my client had to deal with an urgent medical appointment.

I would appreciate it if you could extend your deadline until tomorrow. I am in Court in the am. We should have something for you before the end of business tomorrow. If we can't come to an agreement, and you must bring a motion I undertake to not argue that your motion was untimely.

By the way, the 3 sets of defendants who did have motions returnable yesterday had them adjourned to allow me to file responding materials and to conduct cross-

examinations, etc.. Their motion is now returnable on March 13, 2015 (the 1st available date for a ½ day motion).

Paul

From: Moten, Asad (MAG) [mailto:Asad.Moten@ontario.ca]
Sent: Wednesday, October 01, 2014 10:28 AM
To: paul.slansky@bellnet.ca
Cc: Moten, Asad (MAG)
Subject: RE: Best v. Ranking et al

Dear Paul,

Your letter of September 24, 2014 suggests that you would like to discuss terms based on which we may agree to have the noting in default set aside. I have tried to call you last Thursday, and yesterday. It appears your voicemail is still full.

I would like to resolve this matter quickly, and I encourage you to call me as soon as possible. You may reach me at 416-212-0563 or if after hours, at 416-844-1951.

Thank you,

Asad

From: Moten, Asad (MAG)
Sent: Thursday, September 25, 2014 10:15 AM
To: paul.slansky@bellnet.ca
Cc: Moten, Asad (MAG)
Subject: Best v. Ranking et al

Hi Paul,

I received a letter from you this morning. I have tried to call you but it appears your voicemail is full. Please call me at your first opportunity.

Thanks,

Asad

| Asad Ali Moten, Counsel
Ministry of the Attorney General
Crown Law Office Civil
720 Bay St., 8th Floor,
Toronto, ON M7A 2S9

T: 416-212-0563 F: 416-326-4181

E: Asad.Moten@ontario.ca

Ministry of the Attorney General

Crown Law Office
Civil Law

720 Bay Street
8th Floor
Toronto ON M5G 2K1

Ministère de la Procureure générale

Bureau des avocats
de la Couronne Droit civil

720 rue Bay
8e étage
Toronto ON M7A 2S9

Asad Ali Moten
Tel/Tél: (416) 212-0563
Email: asad.moten@ontario.ca

Maggie Chau (Assistant)
Tel/Tél: (416) 326-4134
Email: maggie.chau@ontario.ca

Fax/Téléc.: (416) 326-4181

FAX COVER SHEET

	NAME	Company	FAX#
To:	Paul Slansky	Barrister & Solicitor	(416) 536-8842

FROM: **Asad Ali Moten, Crown Counsel**
TEL: 416 212 0563
FAX: 416 326 4181
Email: asad.moten@ontario.ca

TOTAL NUMBER OF PAGES TRANSMITTED (Including cover page:) * 4 *

ORIGINAL TO FOLLOW: No

If there are any transmission problems, please contact Maggie Chau at 416 326-4134

MESSAGE:

Re: Gerald Lancaster Rex Ranking et al. ats Donald Best (Court File.: 14-0815)

Please see attached correspondence.

Ministry of the Attorney General

Crown Law Office
Civil Law

720 Bay Street
8th Floor
Toronto ON M7A 2S9

Asad Ali Moten
Tel/Tél: (416) 212-0563
Email: Asad.Moten@ontario.ca
Fax/Téléc.: (416) 326-4181

Ministère de la Procureure générale

Bureau des avocats de la Couronne Droit civil

720 rue Bay
8e étage
Toronto ON M7A 2S9

Ontario

October 6, 2014 **VIA MAIL, FAX AND EMAIL paul.slansky@bellnet.ca**

Paul Slansky
Barrister and Solicitor
1062 College Street, lower Level
Toronto. Ontario M6H 1A9

Tel: (416) 536-1220
Fax: (416) 536-8842

Dear Mr. Slansky:

Re: Gerald Lancaster Rex Ranking et al. ats Donald Best (Court File.: 14-0815)

I am writing to follow up on my letter of October 3, 2014. As of writing this letter, I have not heard from you with respect to consenting to set aside the noting in default of the Crown.

In your letter dated September 24, 2014, you advise that you are prepared to consent to setting aside the noting in default if the Crown provides some idea of the nature of its defence and a timeline for receipt of the Statement of Defence. As stated in my earlier correspondence, we will not be providing you with a "theory of our defence" in exchange for your consent to set aside the improper noting in default. With respect to my clients' Statement of Defence, we will not be providing a defence until all pleading issues with the Statement of Claim are resolved.
I advised you of some of the issues with the claim in our phone call in late August. The following is a list of some of the deficiencies in the Statement of Claim:

- The OPP is not a legal entity, and therefore cannot be sued in its own right. In *Gravelle v. Ontario*, 2012 ONSC 5149, Justice Quigley provides a succinct statement with respect to the suability of the OPP at para 145:

> There is one other point that ought to be made here that seems to add further support to this conclusion. That is the consent of the plaintiff, both in written and oral submissions, to drop his action against the OPP. The reason that consent decision was appropriate is because the OPP is an unincorporated emanation of the Crown, Her Majesty the Queen in right of Ontario. There is no separate entity or legal person against which this claim for damages can be brought, because a claim against the OPP is necessarily a claim against the Crown. As such, plainly the OPP can have no vicarious liability in this case for actions of its officers and

was improperly named. That conclusion also necessarily means that OPP officers are employees of the Crown.

- The Statement of Claim contains no allegations or facts whatsoever with respect to John Doe #3 and Jane Doe #3, who are purported to be officers with the OPP. The action cannot succeed as against these two officers unless material facts are plead, allowing a defendant to identify who a misnomer may be.[1]
- Even if the OPP were a suable entity, the Statement of Claim contains deficiencies that make it plain and obvious that the claim could not succeed against the OPP:
    - The claim makes bald allegations unsupported by material facts with respect to the OPP. For instance, under several causes of action, you list the 'police', which the Statement of Claim purports to include the OPP. You do not provide any particulars with respect to which police service you allege is responsible for which cause of action.
    - Causes of action against the OPP are baldly plead and without material facts. Furthermore, many of the paragraphs supporting each cause of action are repetitive and plead conclusions of law. Rule 25.06 of the *Rules of Civil Procedure* requires pleadings to contain concise statements of the material facts relied upon, and does not permit a party to plead a conclusion of law unless the material facts supporting a conclusion of law are plead. A pleading without material facts is scandalous, frivolous and vexatious, and may be struck.
- The claim alleges a number of torts that do not exist at law. One such example is the claim for 'negligent infliction of mental suffering.'

If you choose not to amend the Statement of Claim to correct the numerous deficiencies, then I anticipate receiving instructions to commence a motion to strike the claim. Until the pleadings issues are addressed, it would be inappropriate for the Crown to file a statement of defence (see Rule 21.01(2)). If a motion to strike is necessary, then we will seek costs against your client for the motion.

It is my hope that after reviewing this letter as well as our correspondence from October 3, 2014, that you will see the wisdom in consenting to setting aside the noting in default. As indicated earlier, we would ask for your position on this not later than Wednesday October 8, 2014. If we do not hear from you before then, we will assume that you do not consent to the motion and will be seeking solicitor-client costs on the motion.

---

[1] *Freedom International Brokerage Co. v. Tullett Prebon Canda Ltd.*, 2012 ONSC 5544, at para. 19; *Dukoff et al. v. Toronto General Hospital et al.*, (1986), 54 O.R. (2d) 58, at para. 10.

I remain available to discuss this at your earliest convenience.

Sincerely,

[redacted]

Asad Ali Motala, *Counsel*
Crown Law Office – Civil

B

THIS IS **EXHIBIT "B"**
REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS
15th DAY
OF December, 2014

[redacted]

A Commissioner etc.

Blaney McMurtry
BARRISTERS & SOLICITORS LLP

EXHIBIT B

EXPECT THE BEST

August 15, 2014

VIA FAX

2 Queen Street East
Suite 1500
Toronto, Canada M5C 3G5
416.593.1221 TEL
416.593.5437 FAX
www.blaney.com

Eugene G. Mazzuca
416.593.3946
emazzuca@blaney.com

Mr. Paul Slansky
Barrister and Solicitor
1062 College Street, Lower Level
Toronto, ON M6H 1A9

Dear Mr. Slansky:

Re: Peel Police Services Board *ats* Best (Donald)
Court File No. 14-0815 (Barrie)
Your Client: Plaintiff, Donald Best
Our File No. TBA

Further to my recent voicemail message, we have been retained to defend the interests of the Regional Municipality of Peel Police Services Board (the **"Board"**). We note that you have improperly named the Board as the "Peel Regional Police Service a.k.a. Peel Regional Police". Pursuant to s. 50(1) of the *Police Services Act*, the Board is liable for torts allegedly committed by its members in the course of their employment. At this time, I am prepared to recommend that the claim be amended to properly name the Board on consent.

I have reviewed the lengthy claim and note that there have been no specific allegations made against my client. My client has no information upon which to properly investigate the allegations made in the claim. To date, my client has been unable to find anything to indicate any involvement.

I would kindly ask that if you have any particulars in relation to the involvement of the Peel Police in this matter, you provide them at this time.

Once we have particulars, we will conduct an investigation and deliver a Statement of Defence upon completion of our investigation. I look forward to hearing from you in this regard.

I would also appreciate it if you can advise who defence counsel are for the various other Defendants once you become aware of same.

I will be away on holidays until September 2, 2014. In the meantime, you may contact my colleague, Rafal Szymanski, who will be assisting me on this matter.

Yours very truly,

Blaney McMurtry LLP

[redacted]

Eugene G. Mazzuca
EGM/ctm

c Rafal Szymanski (via e-mail)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and-

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP; KINGSLAND
ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
FORMER ONTARIO PROVINCIAL POLICE COMMISSIONER, CHRIS LEWIS;
ONTARIO PROVINCIAL POLICE COMMISSIONER, VINCE HAWKES;
MARTY KEARNS; JEFFERY R. VIBERT;
PEEL REGIONAL POLICE SERVICES a.k.a. PEEL REGIONAL POLICE
REGIONAL MUNICIPALITY OF PEEL POLICE SERVICES BOARD
PEEL REGIONAL POLICE SERVICE, CHIEF OF POLICE, JENNIFER EVANS
DURHAM REGIONAL POLICE SERVICES
DURHAM REGIONAL POLICE SERVICES BOARD
FORMER DURHAM REGIONAL POLICE SERVICE, CHIEF OF POLICE, MIKE EWLES;
DURHAM REGIONAL POLICE SERVICE, CHIEF OF POLICE, PAUL MARTIN;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

Court File No. **14 -0815**

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and-

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE;
MARTY KEARNS; JEFFERY R. VIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

AFFIDAVIT OF SERVICE

I, Steve Lewis, process server MAKE OATH AND SAY:

1. I served the following Defendants a copy of the Statement of Claim and the Jury Notice on the date, at the location and by the method as listed below. Annexed hereto as Exhibits A and B are true copies of the Statement of Claim and the Jury Notice.

2. On Friday, July 25, 2014, I served the Peel Regional Police at 7750 Hurontario Street, Brampton, Ontario by handing a copy of the Statement of Claim and the Jury Notice to Leanne Reynolds who admitted Service on behalf of the Peel Regional Police.

3. On Friday, July 25, 2014, I served Ma'anit Tzipora Zemel at 39 Clovelly Avenue, Toronto, Ontario, apparently a Residence, by placing a copy of the Statement of Claim and the Jury Notice in plain view between the inner and outer doors of the main entrance.

4. On Friday, July 25, 2014, I served Blake, Cassels and Graydon LLP, and Paul Barker Schabas at 199 Bay Street, Suite 4000, Toronto, Ontario, by handing a copy of the Statement of Claim and the Jury Notice for each of them to Wanda Marshall who admitted Service on behalf of Blake, Cassels and Graydon LLP, and Paul Barker Schabas.

5. On Friday, July 25, 2014, I served Miller Thomson LLP at 40 King Street West, Suite 5800, Toronto, Ontario, by handing a copy of the Statement of Claim and the Jury Notice to Brittany Murphy, who admitted Service on behalf of Miller Thomson LLP.

6. On Friday, July 25, 2014, I served Cassels Brock & Blackwell LLP, Lorne Stephen Silver & Colin David Pendrith at 199 Bay Street Suite 4000, Toronto, Ontario, as directed by Reception, by handing a copy of the Statement of Claim and the Jury Notice for each of them to Michael in the Mail Room who admitted Service on behalf of Cassels Brock & Blackwell LLP, Lorne Stephen Silver & Colin David Pendrith.

7. On Friday, July 25, 2014, I served Andrew John Roman at 333 Bay Street, Suite 99, Toronto, Ontario, by handing a copy of the Statement of Claim and the Jury Notice to Dan Winer who admitted Service on behalf of Andrew John Roman.

8. On Friday, July 25, 2014, I served Fasken Martineau DuMoulin LLP, Gerald Lancaster Rex Ranking and Sebastien Jean Kwidzinski at 333 Bay Street, Suite 2400, Toronto, Ontario, as directed by Reception, by handing a copy of the Statement of Claim and the Jury Notice for each of them to Timur Malik in the mail room who admitted Service on behalf of Fasken Martineau DuMoulin LLP, Gerald Lancaster Rex Ranking and Sebastien Jean Kwidzinski.

9. On Friday, July 25, 2014, I served Investigative Solutions Network Inc. at I099 Kingston Road, Suite 237, Pickering, Ontario, by handing a copy of the Statement of Claim and the Jury Notice to Sara Mask, who admitted Service on behalf of Investigative Solutions Network Inc.

10. On Monday, July 28, 2014 I served Tamara Jean Williamson at Cottage C, 700 Memorial Avenue, Orillia, Ontario by handing a copy of the Statement of Claim and the Jury Notice to her.

11. On Monday, July 28, 2014 I served the Ontario Provincial Police, Marty Kearns and Jeffrey R. Vibert at 777 Memorial Avenue, Orillia, Ontario, by handing a copy of the Statement of Claim and the Jury Notice for each of them to Karla Rolston who admitted Service on behalf of the Ontario Provincial Police, Marty Kearns and Jeffrey R. Vibert.

12. On Monday, July 28, 2014 I served Behavioural Science Solutions Group Inc. at 26 Jordan Crescent, Orillia, Ontario, apparently a Residence, by placing a copy of the Statement of Claim and the Jury Notice in plain view in the mailbox adjacent to the main entrance.

13. On Tuesday, July 29, 2014 I served the Toronto Police Association at 2075 Kennedy Road, Suite 200, Toronto, Ontario by handing a copy of the Statement of Claim and the Jury Notice to Racquel Morrison who admitted service on behalf of the Toronto Police Association.

14. On Tuesday, July 29, 2014, I served James (Jim) Arthur Van Allen at Investigative Solutions Network Inc. at 1099 Kingston Road, Suite 237, Pickering, Ontario, his place of employment as shown by the attached pages from the Company Website as Exhibit C, by handing a copy of the Statement of Claim and the Jury Notice to Sara Mask, who admitted Service on behalf James (Jim) Arthur Van Allen

15. On Tuesday, July 29, 2014, I served the Durham Regional Police at 605 Rossland Road East, Whitby, Ontario, by handing a copy of the Statement of Claim and the Jury Notice to Claudia Tarasio who admitted Service on behalf of the Durham Regional Police.

16. On Tuesday, July 29, 2014, I served George Dmytruk at 77 Centre Street North, Oshawa, Ontario, by handing a copy of the Statement of Claim and the Jury Notice to Anna Newman who admitted service on behalf of George Dmytruk.

17. On Monday, August 11, 2014, I served Laurie Rushbrook with a copy of the Statement of Claim and the Jury Notice at 605 Rossland Road East, Whitby, Ontario, by Purolator Courier. A true copy of the courier bill of lading is attached as Exhibit D.

Sworn before me at the City of Barrie)
IN THE County of Simcoe, this)
26th Day of August, 2014)

[redacted]
Steve Lewis

[redacted]
A Commissioner, etc.

Kyle Schertzer
a Commissioner etc., Province of
Ontario, for the Government of Ontario,
Ministry of the Attorney General.

Exhibit A

This is Exhibit A
to the Affidavit of
Steve Lewis
Sworn August 14, 2014

Court File No. 14-0315

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and -

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE;
MARTY KEARNS; JEFFERY R. VIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

(Court seal)

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date [redacted] Issued by [redacted]
Local registrar

75 Mulcaster Street,
Barrie ON L4M 3P2

TO Gerald Lancaster Rex Ranking
Barrister and Solicitor
Fasken Martineau DuMoulin LLP
333 Bay St.
Suite 2400
Toronto, ON
M5H2T6
Tel: (416) 865-4419
Fax: (416) 364-7813

AND TO Sebastien Jean Kwidzinski
Barrister and Solicitor
Fasken Martineau DuMoulin LLP
333 Bay St.
Suite 2400
Toronto, ON
M5H2T6
Tel: (416) 868-3431
Fax: (416) 364-7813

AND TO: Lorne Stephen Silver
Barrister and Solicitor
Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King St. West
Toronto, ON
MSH3C2
Tel: (416) 869-5490
Fax: (416) 640-3018

AND TO: Colin David Pendrith
Barrister and Solicitor
Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King St. West
Toronto, ON
MSH3C2
Tel: (416) 860-6765
Fax: (647) 259-7987

AND TO: Paul Barker Schabas
Barrister and Solicitor
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9
Tel: (416) 863-4274
Fax: (416) 863-2653

AND TO: Andrew John Roman
Barrister and Solicitor
Andrew John Roman Professional Corporation
900-333 Bay Street
Toronto, ON M5H 2T4
Tel. (416) 848-0203 x2234
Fax: (416) 850-5316

AND TO: Ma'anit Tzipora Zemel
MTZ Law Professional Corporation
39 Clovelly Ave
Toronto, Ontario
M6C 1Y2
Tel: (416) 937-9321

AND TO: Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6
Tel: (416) 366-8381
Fax: (416) 364-7813

AND TO: Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON
M5H 3C2
Tel: (416) 869-5300
Fax: (416) 360-8877

AND TO: Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9
Canada
Tel: (416) 863-2400
Fax: (416) 863-2653

AND TO: Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto, ON
M5H 3S1
Tel: (416) 595-8500
Fax: (416) 595-8695

AND TO: Kingsland Estates Limited
c o Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Eric Iain Stewart Deane
6 Augustines Way,
Haywards Heath,
West Sussex
RH16 3HH, England

AND TO: Marcus Andrew Hatch
'West Shore Lodge'
Greenidge Drive
Paynes Bay, St. James,
Barbados, West Indies

AND TO: Philip St. Eval Atkinson
'Random'
Waterford, St. Michael
Barbados, West Indies

AND TO: PricewaterhouseCoopers East Caribbean
(Formerly 'PricewaterhouseCoopers', prior to June 23, 2011)
The Financial Services Centre
Bishop's Court Hill
St. Michael
BB 14004
Barbados, West Indies
Tel: (246) 626-6700
Faxes: (246) 436-1275 and (246) 429-3747

AND TO: Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: Peel Regional Police Service a.k.a. Peel Regional Police
General Headquarters
7750 Hurontario Street,
Brampton, ON, L6V 3W6
Tel: (905) 453-3311

AND TO: Durham Regional Police Service
General Headquarters
605 Rossland Rd. E.
Whitby, ON, L1N 0B8
Tel: (905) 579-1520

AND TO: Marty Kearns
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: Jeffery R. Vibert
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: George Dmytruk
Central East Division
Durham Regional Police Service
77 Centre St. N.
Oshawa, ON L1G 4B7
Tel: (905) 579-1520

AND TO: Laurie Rushbrook
Durham Regional Police Service
General Headquarters
605 Rossland Rd. E.
Whitby, ON, L1N 0B8
Tel: (905) 579-1520

AND TO: James (Jim) Arthur Van Allen
6450 199 Street
Suite 15
Langley, British Columbia
V2Y 2X1

AND TO: Behavioural Science Solutions Group Inc.
26 Jordon Crescent
Orillia, Ontario
L3V 8A9
Tel: (604) 626-9572
Fax: (604) 371-1649

AND TO: Tamara Jean Williamson
Probation and Parole Services,
Cottage C,
700 Memorial Avenue,
2nd floor,
Orillia, Ontario L3V 6H1
Tel: (705) 329-6010

AND TO: Investigative Solutions Network Inc.
1099 Kingston Road, Suite 237
Pickering, Ontario L1V 1B5
Tel: (905) 421-0046
Fax: (905) 421-0048

AND TO: Toronto Police Association
200-2075 Kennedy Rd
Toronto, ON M1T 3V3
Tel: (416) 491-4301
Fax: (416) 494-4948

AND TO: John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, and Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5

CLAIM

(I) CLAIM: REMEDIES

1. The Plaintiff claims damages in the amount of **$20,000,000** and other relief as follows:

(A)	For General Compensatory damages in the amount of	$6,300,000
(B)	For aggravated damages in the amount of	$3,150,000
(C)	For punitive/Exemplary Damages in the amount of	$9,500,000

(D) IN RESPECT OF COSTS orders and fees.

(1) Special damages (in the alternative in respect of a category of general damages) in respect of costs orders made against the Plaintiff and fees paid to counsel for the Plaintiff in respect of contempt proceedings ($650,000);

(2) Damages reflecting unjust enrichment of defendants in legal fees purportedly or actually paid to lawyers $1,000,000

(3) For a mandatory Order that ANY OR ALL OF the Defendants or any of them are prohibited from taking any actions to collect any cost Orders presently outstanding against the Plaintiff until the final resolution of this action including any appeals.

(4) For a mandatory Order that, in the event that any other Court has or will require the Plaintiff to pay costs, they shall be set off against the damages and costs to be awarded in this action after trial.

(5) For an Order that any and all costs Orders to be paid by the Plaintiff to any of the Defendants shall be stayed until the disposition of this action and that such costs shall be deducted from the award of damages and costs that the Plaintiff seeks to recover in this action.

(E) For such INTERLOCUTORY AND OR FINAL injunctions and other orders as are appropriate to protect the safety and security of the Plaintiff including but not limited to:

(1) an injunction that the Defendants may not directly or indirectly question or present evidence regarding the personal information of the Plaintiff, except to the extent ordered by the court or required by law in these proceedings and with such protective orders that can be made to provide such protection; and

(2) The Plaintiff resides in Simcoe County. For reasons of safety and security, which are discussed below, he wishes that his residence information not be disclosed.

(F) The Plaintiff seeks a tracing and accounting of the funds that were paid to:

(1) the Fasken Martineau DuMoulin LLP law firm ('Faskens') and-Gerald Lancaster Rex Ranking ('Ranking') allegedly for the account of the fictional entity/business called PricewaterhouseCoopers East Caribbean Firm or any individuals instructing counsel:

(2) Lorne Stephen Silver ('Silver'), Cassels Brock & Blackwell LLP ('Cassels') regarding Kingsland Estates Limited ('KEL') or any of its principals.

(G) For injunctive relief that will require the Defendants to take all necessary actions to de-identify or otherwise effect the removal of all defamatory, private, threatening, and untrue information, Identity Information and documentation relating to the Plaintiff from the internet. And where reasonable, to retrieve from clients and members of the public such information that was illegally/improperly distributed, and to account to the court for each distribution and retrieval or attempted retrieval.

(H) Full indemnity costs.

(II) THE LIABILITY OF THE DEFENDANTS

A. TERMINOLOGY AND NATURE OF LIABILITY:

2 The following defendants and groups of defendants are jointly and severally liable

(A) "The Lawyers" refers to one or more of Gerald Lancaster Rex Ranking ('Ranking'), Sebastien Jean Kwidzinski ('Kwidzinski'), Lorne Stephen Silver ('Silver'), Colin David Pendrith ('Pendrith'), Paul Barker Schabas ('Schabas'), Andrew John Roman ('Roman'), Ma'anit Tzipora Zemel ('Zemel'), who are all licensed by the Law Society of Upper Canada to practice law in Ontario.

(B) "The Law Firms" are one or more of the partnerships that the Lawyers worked for, as partners or employees and who are responsible and liable for everything that the Lawyers did or did not do as described in this document. They are Fasken Martineau DuMoulin LLP ('Faskens'), Cassels Brock & Blackwell LLP ('Cassels'), Blake, Cassels & Graydon LLP ('Blakes'), Miller Thomson LLP ('Miller'). These law firms knew, were willfully blind, reckless and/or negligent in permitting and encouraging the Lawyers to commit the tortious conduct described herein.

(C) "The clients" refers to the clients of the lawyers and law firms, including Kingsland Estates Limited ('KEL'), Eric Iain Stewart Deane ('Deane'), Richard Ivan Cox ('Cox'), Marcus Andrew Hatch ('Hatch'), Philip St. Eval Atkinson ('Atkinson') and, in the manner and extent described below, PricewaterhouseCoopers East Caribbean ("PWCEC") and Jane Doe #1 and John Doe #1. Ranking, Kwidzinski and Faskens claimed to represent PricewaterhouseCoopers East Caribbean Firm ("PWCECF"). This entity does not and never has existed. Yet the pleadings and documents filed clearly and

repeatedly declared that the full legal name of their client was PWCECF, not PWCEC or any other entity using "PricewaterhouseCoopers" as a part of its name. This PWCECF defendant was added to the original lawsuit brought by Nelson Barbados Group Ltd based on the false representation by Gerald Ranking that this was the proper name of the their client, the relevant auditor. These lawyers and firm fraudulently claimed to represent this non-entity and in the face of accusations to that effect, refused to provide proof to contradict clear evidence that PWCECF did not and does not exist. Instead, they repeatedly bluffed, misled and lied to the Superior Court, the Court of Appeal for Ontario and the Supreme Court of Canada, insisting that PWCECF did and does exist. They went so far as to twice present documents in the course of examinations showing a name change of a partnership to PWCEC as of June 2011, long after the fraud had begun, while falsely asserting that they were presenting partnership documents of their client, PWCECF, even though the documents clearly referred to PWCEC. PWCEC is included as a defendant on the basis that Messrs. Ranking and Kwidzinski and Faskens insisted that this was their client and because this is, as of 2011, a legal entity. However, it is unclear whether PWCEC was ever their client.

(D) "The police" refers to Regional Police Forces, Durham Regional Police Service ("DRPS") and Peel Regional Police Service ("PRPS") and the following specific persons employed by them: George Dmytruk (DRPS); Laurie Rushbrook (DRPS); and the Provincial Police, the Ontario Provincial Police ("O.P.P.") and the following specific persons: Marty Kearns (OPP); Jeffery R. Vibert (OPP); James (Jim) Arthur Van Allen ("Van Allen") (pre-retirement). Police officers John Doe #2 and John Doe #3 and Jane Doe #2 and Jane Doe #3, as yet unknown were also involved.

(E) The "Van Allen Defendants" refers to Van Allen (pre and post-retirement), Tamara Jean Williamson ("Williamson"), Behavioural Science Solutions Group Inc ("BSSG") and Investigative Solutions Network Inc.("ISN").

(F) The "Toronto Police Association" ("TPA") refers to the incorporated Toronto Police Association and any individuals dealing with the Plaintiff's case who provided information to Van Allen or others in respect of the Plaintiff, the identities not yet known (Jane Doe #4 and John Doe #4).

(G) The term "defendants" refers to all of the defendants in the style of cause, including those whose identities and or culpable involvement are not yet known, (John Doe #5 and Jane Doe #5).

3. The defendants knew, were willfully blind, reckless and or negligent in perpetrating the tortious conduct against the Plaintiff described herein. The natural persons had such knowledge and intent Corporate persons had such knowledge and intent through their directing minds. Based, *inter alia*, on the bad faith and lack of factual and/or legal authority, the Plaintiff seeks the piecing of the corporate veil in respect of these corporations.

4. The defendants knew (in fact or constructively), intended, (in fact or constructively), were reckless and or foresaw, as would any reasonable person, that their actions would significantly cause real harm, damage and/or endanger the Plaintiff, physically, emotionally, economically and in respect of his reputation

5. The defendants acted flagrantly, outrageously, in bad faith, maliciously, fraudulently, contrary to their fiduciary duty and or dishonestly.

6. The defendants targeted the Plaintiff knowing that their actions would directly and indirectly cause him substantial harm in breach of their well-known and generally recognized legal, fiduciary and or ethical duties and the legal, fiduciary and/or ethical duties of others. They negligently failed to act in accordance with their legal and ethical duties and thereby failed to act in accordance with the applicable common law and statutory rules and standards of care. They acted in such a way as to create an unreasonable risk of substantial harm.

7. The defendants acted in their private capacity and in their official capacities as prosecutors, investigators, peace officers, probation and parole officers and or labour officials pursuant to statute and common law authority and as officers of the Court.

8. The defendants conspired to do so collectively in pursuit of an agreement, between one or more of them and others, with the predominant purpose of harming the Plaintiff and/or knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff, using lawful and unlawful means, which caused compensable damage to the Plaintiff.

B. CAUSES OF ACTION

9. The defendants are liable on the following bases are all jointly severally liable on the following general causes of action:

(1) IN RESPECT OF CIVIL CONTEMPT PROCEEDINGS AGAINST THE PLAINTIFF:

(a) Abuse of Process (Common law and/or s.7 of the Canadian Charter of Rights and Freedoms (the"Charter'))

(b) Negligent Investigation (Common law and ss.7 and 9 of the Charter)

(c) False Imprisonment (Common law and ss.7 and 9 of the Charter)

(d) Intentional and/or Negligent Infliction of Harm and/or Mental Suffering

(e) Misfeasance and/or Malfeasance of Public Office and/or Abuse of Authority

(f) Malicious Prosecution

(g) Conspiracy to Injure the Plaintiff

(2) IN RESPECT OF INFRINGEMENT OF PRIVACY OF THE PLAINTIFF (in the course of an action by Nelson Barbados Group Ltd ("NBGL"), which continued during civil contempt proceedings against the Plaintiff):

(a) Breach of Common Law Privacy Rights (intrusion on secrecy)

(b) Breach of ss. 7 and/or 8 of *the Charter*

(c) Misfeasance and/or Malfeasance and/or Nonfeasance of Public Office/Abuse of Authority

(d) Abuse of Process (common law and/or s.7 of the charter)

(e) Intentional or Reckless Endangerment (by the infliction of harm and/or mental suffering) and/or Negligent Endangerment

(f) Negligent Investigation (common law and ss.7 and 9 of the charter)

(g) Negligent Regulation/Performance of Statutory Duty (common law and/or s. 7 of the charter)

(h) Breach of Fiduciary Duty/Negligence in Respect of Fiduciary duty

(i) Conspiracy to Injure and/or Conspiracy to do Unlawful Act and/or Causing Loss by Unlawful Means

(3) IN RESPECT OF EVIDENCE GATHERING BY JAMES VAN ALLEN AND THE POLICE

(a) Misfeasance and/or Malfeasance and/or Nonfeasance of Public Office/Abuse of Authority

(b) Abuse of Process (common law and/or s.7 of the charter)

(c) Negligent Regulation/Performance of Statutory Duty (common law and/or ss. 7 and/or 8 of the charter)

(d) Negligent Investigation (common law and ss.7 and 8 of the charter)

(e) Invasion of Privacy (Intrusion on Secrecy)

(f) Conspiracy to Injure and/or Conspiracy to do Unlawful Act and/or Causing Loss by Unlawful Means

(4) IN RESPECT OF FRAUD ON THE COURT IN CIVIL CONTEMPT PROCEEDINGS RE PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM ("PWCECF")

(a) Abuse of Process (common law and/or s. 7 of the charter)

(b) Breach of Fiduciary Duty to the Court

(c) Misfeasance and/or Malfeasance of Public Office/ Abuse of Authority

(d) Conspiracy to Injure and/or Conspiracy to do Unlawful Act and/or Causing Loss by Unlawful Means

C. GROUPINGS OF DEFENDANTS REGARDING LIABILITY

10. The following defendants are primarily jointly and severally liable in respect of the following causes of action, without limiting the generality of the foregoing:

(1) FASKENS DEFENDANTS:

11. Ranking, and Kwidzinski are lawyers in Toronto. Their law firm is Faskens. Their purported client, PWCECF, does not exist. However, PWCEC was later purportedly created and or identified as the client and individuals instructed counsel at Faskens. Hatch and Atkinson are accountants who work in Barbados and other locations. The partnership PWCEC may have been a client of the Faskens Defendants. These defendants, along with others named as John Doe Defendants (John Doe #1 and Jane Doe #1), concocted a non-existent entity to carry out the activities set out in this claim: 'PricewaterhouseCoopers East Caribbean Firm' (PWCECF) is a fictitious name used by them and other more persons who are known to some or all of the other Defendants. They are all jointly and severally liable for all damages and costs and other relief in respect of all causes of action.

(2) CASSELS DEFENDANTS

12. Silver and Pendrith are lawyers in Toronto. Their law firm is Cassels. Their client is KEL and Cox. They are jointly and severally liable for all damages and costs and other relief in respect of all causes of action.

(3) BLAKES DEFENDANTS

13 Schabas is a lawyer in Toronto. His law firm is Blakes. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3)

(4) MILLER DEFENDANTS

14. Roman and Zemel are lawyers in Toronto. Their law firm is or was Miller. Their client is Eric Iain Stewart Deane. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(5) REGIONAL POLICE DEFENDANTS

15 The DRPS and PRPS are Police Services constituted according to the *Police Services Act*, R.S.O. 1990, c. P-15. George Dmytruk and Laurie Rushbrook were police officers employed by or on behalf of the DRPS. John Doe #2 and Jane Doe #2 were police officers employed by or on behalf of the DRPS and/or the PRPS. These persons spoke on behalf of their police service and conducted illegal and unnecessary investigations of the Plaintiff and also provided the fruits of these investigations to the lawyers, law firms and clients, primarily, but not exclusively the Faskens and Cassels Defendants, through Van Allen and the Van Allen Defendants. They also conspired with these defendants to injure the Plaintiff and/or to cover up for their own and the Van Allen defendants' unlawful activities. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3)

(6) PROVINCIAL POLICE DEFENDANTS

16. The OPP is a Police Force constituted according to the *Police Services Act*, R.S.O. 1990, c. P-15. Marty Kearns, Jeffery R. Vibert, James (Jim) Arthur Van Allen, John Doe #3 and Jane Doe #3 were police officers employed by or on behalf of the OPP, spoke on behalf of their respective police services and conducted illegal and unnecessary investigations of the Plaintiff

over and above and/or in violation of their normal duties and responsibilities and also provided the fruits of these investigations to the lawyers, law firms and clients, primarily, but not exclusively the Faskens and Cassels Defendants, through Van Allen and the Van Allen Defendants. They also conspired with these defendants to injure the Plaintiff and or to cover up for their own and the Van Allen defendants' unlawful activities. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3). Marty Kearns, Jeffery R. Vibert, James (Jim) Arthur Van Allen, John Doe #3 and Jane Doe #3 are personally responsible for their actions pleaded herein.

(7) VAN ALLEN DEFENDANTS

17. James Van Allen was an OPP police officer. He was at the same time purportedly and unlawfully acting as a private investigator for the defendants. His investigation used police resources directly or indirectly, with the knowing or negligent cooperation of the police (DRPS, PRPS and OPP) and the TPA. Van Allen and/or the police conducted an unlawful secret investigation of the Plaintiff premised on his conviction for civil contempt before this conviction had occurred. This investigation was then reflected in a misleading affidavit filed by the Faskens defendants on behalf of the non-existent PWCECF. The Van Allen defendants also recklessly and illegally distributed to the public, the Plaintiff's Identity Information and other private information. Van Allen did so in a personal capacity and as an officer and director of his company, Behavioural Science Solutions Group Inc., Van Allen's and Williamson's company (as Directors and/or Shareholders) and Van Allen's then girlfriend or common law spouse, Tamara Jean Williamson are also liable for Van Allen's action carried out in his personal and/or corporate capacities. Investigative Solutions Network Inc. acted with knowledge of Van Allen's

status as a serving police officer and assisted him in respect of his tortious conduct. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(8) TORONTO POLICE ASSOCIATION DEFENDANTS

18. The Defendant Police Association is an incorporated entity which represents active and retired police officers and others which are its members. The TPA and Jane Doe #4 and John Doe #4 provided confidential information regarding the Plaintiff, a former police officer, whose identity and location, if revealed would place his life and safety in danger as a former undercover officer. It indeed had this effect. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(9) OTHER DEFENDANTS

19. The reference to the Defendants as "defendants" or 'they' herein refers to all persons or groups of the Defendants who are known among themselves but not to the Plaintiff and conspirators, known or unknown. They include John Doe #5 and Jane Doe #5. Particulars will be provided following full discovery.

III. PARTICULARS OF THE CLAIM

A. CHRONOLOGY AND LIABILITY

20. The Plaintiff had been an officer of Nelson Barbados Group Ltd ("NBGL"). NBGL commenced action in the Superior Court by Statement of Claim against Ontario and Barbados Defendants. Some of the Defendants brought a motion to contest jurisdiction, which was granted and the action was stayed by Justice Shaughnessy of the Superior Court of Justice ("SCJ") in 2008. The merits of the action were never adjudicated. The only issue remaining issue was costs.

21. When the issue of costs was being considered, the Plaintiff was deprived of counsel and compelled to act as unrepresented litigant.

22. Costs submissions were to proceed on November 2, 2009 and the Plaintiff understood that costs were going to be assessed that day against NBGL, which stood ready to pay them. The Plaintiff indicated, on behalf of NBGL, that he would not be attending but leave the issue in the hands of the Court.

23. Prior to November 2, 2009 the Plaintiff was not aware that costs were being sought against him personally. There was never advanced a theory to justify this position and it was never adjudicated *inter partes*. There was no legitimate or lawful basis to seek costs against the Plaintiff Best. This was pursued for an improper and collateral purpose(s), to wit, an excuse to seek discovery of the Plaintiff, a means to intimidate the Plaintiff and/or a means to deter the commencement or continuation of litigation by other parties based on the same general circumstances in other jurisdictions. This ulterior or collateral purpose was repeatedly admitted to the SCJ and the OCA in the course of costs and contempt proceedings in respect of costs.

24. The lawyers, law firms and clients used an affidavit of Van Allen, described as a private investigator to demonstrate that the Plaintiff could not be served with process, and/or that the Plaintiff's actions and motivations were improper and or suspect. This was known by the Van Allen defendants and the lawyers, law firms and clients to be false and/or misleading. This was successfully used to allow for purported service by mail, which was largely ineffective due to the improper actions of the defendants, including (but not limited to) an intentional campaign to endanger the Plaintiff, forcing him to leave the country with his family for his and their safety, and placing false information and evidence before the court. All of this resulted in the Plaintiff not getting timely notice of court motions or orders, resulting in contempt orders and costs orders against him.

25 In fact, Van Allen was a serving police officer for the OPP at the time of his investigation of the Plaintiff and the swearing of his affidavit. He was not legally allowed to act as a private investigator and his actions in doing so were illegal and void. The Defendants colluded and conspired to cover this up and that his actions were in violation of the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c F-31 and OPP policies. Van Allen's investigations of the Plaintiff and creation and swearing of his affidavit took place through his contract with Van Allen and or his company and Faskens. Van Allen and the Lawyers and Law Firms, in particular but not exclusively the Faskens defendants, prepared the affidavits and redacted invoices to conceal the unlawful use of police services, resources and searches by Van Allen under the instructions and misinformation provided by other defendants. This information was used to secure substituted service orders, in the investigation of the Plaintiff for contempt and to secure an improper

conviction for contempt. The information contained in an affidavit of Van Allen was later relied upon by Justice Shaughnessy in finding the Plaintiff guilty of contempt.

26. During the costs process against NBGL, the Defendant lawyers, law firms and clients brought a motion for the production of documents and examination of the Plaintiff, the President and director of NBGL, and for substituted service on the Plaintiff by mail in relation to costs against NBGL. The materials were not served on NBGL or the Plaintiff before it was returnable on November 2. Using the Van Allen affidavit, the clients, lawyers and law firms were able to convince Justice Shaughnessy on this *ex parte* application to validate service by mail and courier. In Van Allen's affidavit, Justice Shaugnessy was falsely led to believe that the Plaintiff was evading service, and/or that his motivations and actions were improper. Although no endorsement was made, the Court indicated a willingness to grant the order subject to the determination of the terms by the parties in attendance on November 2, 2009. The order was not created and signed until November 12, 2009, even though it required the Plaintiff to produce certain documents on November 10, 2009: two days before the order came into existence.

27. There was no legitimate or lawful basis to seek the discovery of the Plaintiff in respect of costs. This was pursued for an improper and collateral purpose(s), to wit, as a means to intimidate the Plaintiff and/or a means to deter the commencement or continuation of litigation by persons and entities other than the Plaintiff, based on the same general circumstances, in other jurisdictions. This ulterior or collateral purpose was repeatedly admitted to the SCJ and the OCA in the course of costs and contempt proceedings in respect of costs.

28. A draft order which allegedly required document production on November 10 and examination in Toronto (Victory Verbatim) on November 17, 2009, was purportedly sent by

courier on November 6, 2009 to the Plaintiff at the address indicated in the order for substituted service. In fact, the material was never sent by mail, courier or otherwise and as the Plaintiff later advised the Court and the parties, he did not receive the materials or any order, but first learned of the order when he called the trial coordinator to find out was ordered in respect of costs, on November 16, 2009.

29. On November 17, 2009, the Plaintiff called Victory Verbatim Reporting and spoke to the lawyers, primarily Ranking and Silver. The Plaintiff had asked that the conversation take place on the record (recorded by the Special Examiner's office). The lawyers refused. The Plaintiff indicated that he did not have the materials purportedly sent on November 6, 2009 and, in particular, he did not have the November 2 order. He did not have a copy of it. He indicated that he just found out about the order and the examination the day before. He indicated that he could not attend that day or the next. The Plaintiff asked to be examined by telephone. He agreed to answer questions. The lawyers refused to conduct the examination by telephone. They threatened contempt proceedings.

30. During the November 17, 2009 call to Victory Verbatim the Plaintiff refused to tell the lawyers where he was at the time. He indicated that he would not say where he was because he was concerned about his safety and the safety of his family. In fact, the Plaintiff had fled Canada with his family due to the illegal actions of the defendants, and was in the Western Pacific at the time. The Plaintiff alleged that persons, including Mr Silver or members of his firm, had released confidential information including Identity Information about him (date of birth, drivers license information, addresses and employment records) that was put on the internet that had led to identity theft, death threats and intimidation of him. The Plaintiff is a former police officer and an undercover operator against, inter alia, organized crime and violent criminals. The

Plaintiff asked questions about what Mr. Silver or his firm had done to allow this confidential information to be released onto the internet. Mr. Silver's response was a denial of responsibility and statements to the effect that he did not care and would not help the Plaintiff even if he could.

31. The dissemination and publishing of confidential information received by Van Allen and through proceedings on the earlier action did in fact take place. This caused the Plaintiff actual physical harm. He was assaulted. It caused actual damage to property and economic loss, in that, *inter alia*, he and his family were forced to flee Canada, the family car was shot up, gang members subsequently tracked him down in New Zealand and forced the Plaintiff and his family to flee that country. The Plaintiff suffered significant, visible and provable injury and long lasting mental suffering.

32. The lawyers, law firms and clients knew about this dissemination and publishing of confidential information and, in fact, were actively involved in the dissemination and publication. They did so knowing and intending that would likely endanger the life of the Plaintiff and the life and/or safety of his family. They conspired with Van Allen and the police to injure him in this manner. Even after the Plaintiff begged them to stop distributing to the public his and his family members' private information including Identity Information, the lawyers, law firms and clients distributed and published even more of this confidential information, which they continue to do to this day. The lawyers, law firms, clients and police later conspired to cover up this unlawful activity and the unlawful nature of Van Allen's "private" investigation services while he was a police officer. They did so flagrantly and outrageously. They did so knowing that this was unlawful and criminal. They did so intentionally for the improper and collateral purposes of encouraging the Plaintiff to leave Canada or as a means to pressure him and others in respect of litigation and potential litigation in

other jurisdictions. As officers of the Court, the lawyers and law firms were acting in an official state capacity. Van Allen, as a serving police officer and the police were state agents.

33. The Toronto Police Association ("TPA") owed a fiduciary duty to the Plaintiff and the other defendants knew of this fiduciary duty and the dishonest breach of trust which is explicitly described in Van Allen's affidavit. They assisted in the breach of the fiduciary duty by employing Van Allen to conduct this investigation and by distributing, publishing and disseminating the confidential information. Ranking and the other defendants knew or were willfully blind to the fact of the breach of fiduciary duty by TPA and Van Allen.

34. It was known by the defendants that the distribution, dissemination or publishing of private and confidential information, including Identity Information as defined in the Criminal Code, described above would likely cause physical harm and/or significant mental suffering and trauma to the Plaintiff. The Plaintiff repeatedly requested that steps be taken by defendants to remedy this situation. The defendants had a legal duty to remedy the situation. The defendants to this day have failed to take any remedial action.

35. This investigation and its distribution, dissemination and publishing were also negligent contrary to standard of care owed to the Plaintiff by the lawyers, the law firms in respect of the investigation and Van Allen, the Van Allen defendants, the police and TPA and other defendants in respect of the improper dissemination and publishing of the confidential information.

36. After the November 17, 2009 telephone call, that day, Messrs. Silver and Ranking, on behalf of the clients and or instructing agents, created a record by making a "Statement for the Record" at Victory Verbatim, in the presence of some other members of the law firms. In this Statement for the Record, they indicated, *inter alia*, that the Plaintiff had admitted to having

received a copy of the Court Order dated November 2, 2009. Mr. Ranking stated that the Plaintiff had admitted that he had received the order prior to November 16, 2009 and that was why he had called the trial coordinator and that the Plaintiff had refused to answer questions. These statements by Messrs. Ranking and Silver were knowingly and deliberately grossly stating the opposite of the truth. These lies were uttered to enable the lawyers, law firms, and clients to conspire to pursue and pursue contempt proceedings against the Plaintiff, which they later did, using these lies to perpetrate a fraud on the court. They persisted in this position even when this was initially disputed by other counsel, Ms. Rubin, who was present for some of the conversation.

37. On November 18, 2009, a package containing, *inter alia*, a letter, the order dated November 2, 2009, a Notice of Examination requiring examination on November 25, 2009 and the Statement for the Record, was sent by mail to the Plaintiff.

38. In a December 1, 2009 letter to Mr. Ranking, copied to all lawyers, and in a letter on the same date to the Court, including the letter to Mr. Ranking, the Plaintiff indicated that he received the material referred in the previous paragraph on November 24, 2009. The letters indicated that he was outside of Canada at the time and alleged that that the "Statement for the Record" was false and that Messrs. Ranking and Silver knew that it was false. It was alleged that, *inter alia*, that:

1. the Plaintiff denied having admitted on November 17, 2009 to having received the November 6 materials, including the draft order;
2. he had not received these materials;

3. the Plaintiff denied having admitted on November 17, 2009 to knowledge of the order prior to being told by the trial coordinator on November 16, 2009;
4. he did not know of the order prior to being told by the trial coordinator on November 16, 2009;
5. he had safety concerns as a result of the actions of the Defendant lawyers, law firms and clients and some of their counsel, including Mr. Silver and his firm.

39. The Plaintiff was not able to and did not attend in Toronto for examination on November 25, 2009.

40. A motion returnable December 2, 2009, seeking the same relief as the November 2 order (except for examination before Justice Shaughnessy) and a contempt order was purportedly served on the by mail Plaintiff, on short service.

41. In court on December 2, 2009, Messrs. Ranking and Silver disputed the truth of the December 1, 2009 letters of the Plaintiff. They called it defamation. They asserted the truth of their Statement for the Record. They falsely insisted that the Plaintiff had knowledge of the order prior to November 16, 2009. They also falsely asserted that the Plaintiff only disputed receipt of the signed order. They falsely asserted that there was no dispute that the Plaintiff had received the draft order prior to November 16, 2009. They relied on the purported service by courier on or after November 6, 2009, the November 16 letter (taken out of context, ignoring the fact that knowledge prior to November 16 was specifically denied) and the supposed admissions of the Plaintiff during the November 17, 2009 conversation (as falsely reflected in the Statement for the Record).

42. The Court accepted the facts as submitted by counsel on December 2, 2009, because they were proffered as facts under the express and implied assurances that the facts were true and reliable in accordance with the ethical obligations of the lawyers, as Officers of the Court, to tell the truth and to not mislead the Court. The Court rejected the contrary assertions by the Plaintiff in the December 1, 2009 letters because they were not under oath and did not come from an Officer of the Court. The lawyers, in lying and/or misleading the Court abused their office as Officers of the Court and abused process. Other lawyers, in remaining silent in the face of knowledge that statements were false and/or misleading also abused their office as Officers of the Court and abused process.

43. An order was issued on December 2, 2009 requiring the production of documents on January 8, 2010 and examination before Justice on January 15th, 2010. Failure to comply would result in a contempt hearing that day if the Plaintiff did not appear.

44. The December 2, 2009 order was sent to the Plaintiff by mail. The Plaintiff had no knowledge of any requirement to provide documents or attend to be examined in January 2010. He had no knowledge of any application to find him in contempt on January 15, 2010. The Plaintiff did not receive the December 2, 2009 order until June 2010.

45. There was no personal service of any order prior to any obligation arising and no evidence of knowledge of such an obligation until, in respect of November 17 and 25, 2009, the day prior to the obligation arising and otherwise, no knowledge of any obligation until after the deadline. The Supreme Court of Canada, in *Bhatnager*, [1990] S.C.J. No. 62 has made it clear that service that is not personal service may, in some circumstances be adequate for the conduct

of civil litigation, but is legally inadequate to found civil contempt. Personal service or knowledge is a precondition for a finding of civil contempt

46. The lawyers misled Shaughnessy, J. with respect to the facts and law regarding the adequacy of service, knowledge and notice. Contrary to the law they falsely urged the Court to act upon substituted service. They falsely asserted prior knowledge of the November 2, 2009 order in the "Statement for the Record". They relied upon misleading and/or false evidence and/or opinions in the Van Allen affidavit suggesting that the Plaintiff was attempting to evade service. They unreasonably asserted that notice the day before (when the person claimed to be outside of the country) was adequate (in respect of November 17 and November 25, 2009). The contempt order made on January 15, 2010 was a product of the misleading of the Court by the lawyers, law firms and clients and the Van Allen defendants, with the police and the TPA.

47. The Plaintiff did not attend on January 15, 2010.

48. On January 15, 2010 (as reflected in Reasons on January 25, 2010), the Court found the Plaintiff in contempt of court (civilly) for failure to comply with the November 2, 2009 order (production and examination), the Notice of Examination for November 25, 2009 and the December 2, 2009 order (production and examination). Based on:

1. the orders for substituted service;
2. the November 16, 2009 letter (taken out of context; without mentioning denial of prior knowledge);
3. the November call (taken out of context, without mentioning denial of knowledge prior to November 16, 2009);
4. the Statement for the Record;

5. The affidavit of Van Allen; and
6. the submissions of Messrs. Silver and Ranking that the Statement for the Record was true and the December 1, 2009 letters of the Plaintiff were false.

the Court found that the Plaintiff had "notice". Based on the denials by the lawyers as Officers of the Court and the lack of sworn evidence, there was no consideration of safety issues. The Court found that the Plaintiff had not complied with the orders in that he did not produce the documents and did not attend for examination. Based on the lie in the Statement for the Record, the Court was misled into implicitly finding that the alleged offer to be examined on November 17 did not happen or was not compliance with the November 2, 2009 order. The Court ordered that the Plaintiff be jailed for 3 months, imposed a fine in the amount of $7,500 and ordered costs in the favour of four sets of the clients (represented by Faskens, Cassels, Miller and Stikeman Elliot LLP) in the aggregate sum of approximately $80,000.

49. In fact, had the true facts been known to the Court, there were no reasonable grounds to allege contempt, let alone constitute proof beyond a reasonable doubt. The prosecution initiated against the Plaintiff by the lawyers, law firms and clients should have been (and hopefully will be) concluded favourably for the Plaintiff. Even if it is not, the Plaintiff asserts that where this did not occur as a result of fraud by the lawyers, law firms and clients, precluding an appeal on the merits for administrative reasons, malicious prosecution and false imprisonment should still be available. There was no honest belief in guilt and there was a further improper purpose of seeking to pressure discovery and otherwise pressure the termination of litigation in other jurisdictions involving other persons and entities, not the Plaintiff or NBGL.

50. The actions, and inactions in the face of duties to act, of the lawyers, law firms, clients and other defendants resulted in the contempt order and resulting warrant of committal. The execution of the warrant resulted in the wrongful imprisonment of the Plaintiff in May 2013 after he returned to Canada to challenge the contempt finding, until bail pending appeal was granted in June 2013. The Plaintiff was again wrongfully imprisoned in April 2014 when his appeal was dismissed for procedural reasons (inability to pay costs) triggered by continuation of the intentional abuse of process and lying to the Court of Appeal on and before February 27, 2014.

51. In June 2010, costs of the NBGL action were settled in full. Thereafter, the only outstanding issue or costs order was the contempt and costs order of January 15, 2010. The production and examination of the Plaintiff in furtherance of costs on the action served no useful or legitimate purpose after this point in time. In fact, the lawyers, law firms and defendants had earlier access to the NBGL legal files that satisfied any legitimate purpose they might have had to examine the Plaintiff. The issues were moot. Justice Feldman later found abuse of process, based on this fact, to be an arguable ground of appeal. This and other viable grounds of appeal were never argued due to the order flowing from the February 27, 2014 decision of the Court of Appeal to dismiss the appeal as a result of the Plaintiff's inability to pay costs.

52. Before and after the June 2010 settlement, to which the Plaintiff was not a party, private and confidential information, including Identity Information as defined in the Criminal Code, about the Plaintiff was received by the defendants, including through the discovery process related to the NBGL action. Prior to use and filing in Court and contrary to the implied undertaking rule, some of this confidential information was published on the internet. This was done by and/or knowingly assisted by the clients, lawyers and law firms. The settlement included the public filing of an affidavit by Zagar which contained much of this private and

confidential information regarding the Plaintiff. The Plaintiff did not consent to this public filing. In light of the earlier stay of the action and the settlement of the costs, this filing served no legitimate purpose. The predominant purpose of the conspiring defendants in filing was to harm the Plaintiff. It was known by the defendants that the dissemination or publishing of private and confidential information described herein would likely cause physical harm or death and/or significant mental suffering and trauma to the Plaintiff, as well as other harms including but not limited to economic and career harm. The Plaintiff has repeatedly requested that steps be taken by defendants to remedy this situation. The defendants had a legal duty to remedy the situation. The defendants to this day have failed to take any remedial action.

53. In 2012, an application was brought by the Plaintiff to set aside or vary the January 15, 2010 contempt order on a number of grounds, including the fact that the Plaintiff did not have timely knowledge of the November 2, 2009 order or the Notice of Examination and that he did not receive the December 2 materials or order or know of the January 15, 2010 hearing until June 2010. The evidence demonstrates that delay between January 15, 2010 and the application in August, 2012 was not the fault of the Plaintiff. Initially, a stay of the warrant was sought and granted to allow the Plaintiff to return to Canada to challenge the contempt order.

54. The Plaintiff in his affidavits asserted that Messrs. Ranking and Silver were material witnesses and had conflicts of interest. He asserted that they should not be acting on the application. They did not recuse themselves and the Superior Court of Justice ("SCJ") never dealt with this issue.

55. Messrs. Ranking and Silver and their firms and other defendants opposed the application in the Superior Court of Justice. Pendrith assisted them during the appeal process and provided evidence that was misleading.

56. Ultimately, the Plaintiff was forced to be self-represented because he could not find a lawyer who would represent him. The Plaintiff repeatedly sought time to retain new counsel. He approached over 70 different lawyers. However, civil lawyers claimed that their lack of criminal law knowledge rendered them unsuitable and the criminal lawyers claimed the converse. The reality was that nobody wanted to get involved in a case in which it was alleged and proved that Messrs. Silver and Ranking and their firms had obstructed justice by lying to the Court, and where the Plaintiff possessed credible and strong evidence including his voice recordings of the November 17, 2009 phone conversation with the lawyers. The Plaintiff was able to have some funds to hire a lawyer by borrowing from friends. The Faskens and Cassels defendants opposed the Plaintiff's requests for more time to find counsel.

57. Unbeknownst to Messrs Ranking and Silver, the Plaintiff had audio-recorded the November 17, 2009 phone conversation with them. The evidence on the application included an authenticated transcript of this audio recording and the recording itself. This recording demonstrates that the "Statement for the Record" relied upon the defendants and used by Justice Shaughnessy was false insofar as it indicated that the Plaintiff 'admitted' during the November 17, 2009 conversation to having the November order and had knowledge of the order before November 16, 2009. The recording supports the truth of the Plaintiff 's December 1, 2009 letters. This meant that:

1. the Statement for the Record filed before Justice Shaughnessy contained lies that:

(a) the Plaintiff had admitted to having received the November order;

(b) the Plaintiff had admitted to knowledge of the order before November 16, 2009;

(c) the Plaintiff had refused to answer questions over the phone;

2. the submissions of Messrs. Silver and Ranking to the Court on December 2, 2009, that the Statement for the Record was true and the December 1 letters were false, were false submissions. In other words, they lied to the Court in asserting the truth of the Statement for the Record;

3. The assertion on December 2, 2009, that the Plaintiff had only contested receipt of the signed order, but had admitted to receipt of the draft order, was a lie.

58. In addition, the affidavit evidence filed by Plaintiff was presented regarding the failure to receive the materials at all or in time, the safety concerns of the Plaintiff for himself and his family and his willingness to answer the questions addressed in the order dated November 2, 2009.

59. The Plaintiff answered questions regarding these affidavits and in relation to the November 2, 2009 and December 2, 2009 orders on January 11 and 23, 2013. During this examination, the Plaintiff made it clear that he was willing to answer all questions addressed by the November 2, 2009 order. He asked that any other questions that remained be asked. He indicated a willingness to make himself available for this purpose. The Faskens and Cassels defendants refused to indicate what other questions, if any, remained unanswered.

60. On January 25, 2013, the Plaintiff provided a memory stick, with some 100,000 documents on it, to the Faskens and Cassels defendants.

61. On March 14, 2013 the Plaintiff produced a document (119 pages long plus attachments) called "Answers to Undertakings, Under Advisements, Refusals" ("March 14 Answers") stemming from the January 11 and 23, 2013 examinations. In addition to answering questions in relation to the affidavits, the examinations addressed the issues for examination covered in the November 2, 2009 order. That order required examination regarding:

a. Unanswered Questions in relation to the examination of an affiant, John Knox, on November 4, 2008;

b. unanswered questions from examination of the Plaintiff on March 20, 2009;

c. unanswered questions directed to be answered on April 8, 2009;

d. Questions relating to the Plaintiff's involvement with the Plaintiff corporation NBGL; his relationship to the matters pleaded in the lawsuit and his non-privileged association with his former counsel, William McKenzie and his law firm; and

e. questions in relation to shares in KEL, to which the lawsuit was related.

62. Many of these kinds questions were asked and answered on January 11, and 23, 2013. In relation to the January 11, 2013 examination, in the March 14 Answers, the Plaintiff answered questions that covered items (d) (Under Advisement questions number 4-6, 7-9, 17-19, 27-31, 34-35, 38-39, 44-45, 48-49, 51-52, 62) and (e) (Under Advisement questions numbers 13-15) above. In relation to the January 23, 2013 examination there were questions that were answered in the March 14 Answers in relation to items (d) (Undertaking question 12), (b) (Under Advisement questions 1-16) and (a) (Knox Questions 1-18). Accordingly, in January and March

2013, many, if not all, of the questions ordered to be answered on November 2, 2009 were asked and answered to the best of the Plaintiff's ability.

63. After receipt of the factum of the Faskens and Cassels defendants, in which it was asserted that questions had not been answered, the Plaintiff sent a letter dated April 22, 2013, asking that the Faskens and Cassels defendants identify what questions remained unanswered. In a letter dated April 26, 2013, Mr. Ranking refused to identify what further questions remained unanswered.

64. Notwithstanding the Plaintiff's offer to be further examined, between January 25 and April 30, 2013, the Faskens and Cassels defendants never moved to ask further questions on the issues identified in the November 2, 2009 and December 2, 2009 orders or regarding these documents or any other issues addressed by the November 2 and December 2 orders.

65. Notwithstanding evidence of good faith and *bona fide* efforts to find counsel, Ranking and Silver falsely asserted urgency and opposed the Plaintiff's requests for additional time to obtain counsel. In light of the subsequent discovery of a lawyer (Slansky) to conduct the appeal, in May 2013, additional time would have made a difference. As a direct result of actions by Faskens and Cassels defendants the Plaintiff was forced to proceed without the assistance of counsel. No pressing reasons or urgency were expressed to justify this decision.

66. At the outset of the hearing on April 30, 2013, the Plaintiff sought an adjournment to obtain counsel. This was opposed and refused. The Plaintiff was unrepresented at the hearing.

67. Near the outset of the hearing the Plaintiff presented information that he had discovered the day before in the form of an affidavit. In the affidavit, he indicated that he had been told by a Durham Regional Police officer, defendant Rushbrook, that the police and Court police had been

asked to conduct an investigation of the Plaintiff prior to January 15, 2010 in anticipation of the conviction of the Plaintiff on that day. That investigation had happened approximately one month prior to January 15, 2010. The Faskens and Cassels defendants falsely denied any knowledge of this investigation. The hearing proceeded without any opportunity to gather further information regarding this investigation which was, *prima facie* an abuse of process.

68. The Plaintiff asked to present evidence in relation to his safety and security to explain why it would have been very difficult for him to come to Toronto or Whitby in 2009 or 2010. The Faskens and Cassels defendants falsely denied the legitimacy of this evidence and misled the Court into refusing to allow this issue to be explored or to allow the Plaintiff to present this evidence. Evidence of security concerns arising in November 2009 were addressed in the Plaintiff's affidavits and in his submissions to the Court. The Court failed to address this because the Court was mistakenly led to believe that such matters had already been addressed by the Court. In fact, the only safety and security concerns dealt with by the Court were those of the Plaintiff's former counsel, McKenzie in the February 8, 2008 judgment of the Court. The Faskens and Cassels defendants misled Justice Shaughnessy into mistakenly believing that this issue had already been brought to his attention and had been dismissed it.

69. Faskens and Cassels defendants having misled the Court regarding the November 17, 2009 conversation, on April 30, 2013 and previously, caused the Court to decline to listen to the recording.

70. The Plaintiff asked that the Court deal with the fact that Messrs. Ranking and Silver were material witnesses and asked that the Court order that the Plaintiff be allowed to examine them. Messrs. Ranking and Silver refused to be examined, and this did not take place.

71. The Plaintiff asked that the audio recordings of the January 11 and 23, 2013 examinations be produced and played to the Court because it would demonstrate the abusive conduct of Messrs Ranking and Silver during the examination. Based on the denials of misconduct by Messrs. Ranking and Silver, this did not take place.

72. The Plaintiff alleged other misconduct by counsel and asked the Court to stay the contempt order as an abuse of process, citing the recent decision in *R. v. Salmon*, 2013 ONCA 203. Based on the misrepresentations of Messrs Ranking and Silver, this was not considered or was considered without regard to any of the evidence filed by the Plaintiff. Based on these misrepresentations, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application.

73. During the hearing on April 30, 2013, the Plaintiff was offered the opportunity to continue the stay and answer questions as a part of a draft order that also required him to accept a costs order that was disputed by the Plaintiff. The Plaintiff repeated more than once that he was not prepared to agree to such a draft order but that he was willing to cooperate with the Court and answer questions. The Faskens and Cassels defendants did not seek to take the Plaintiff up on this offer by questioning him before Justice Shaughessy on April 30 or May 3, 2013.

74. On April 30, 2013, the Faskens and Cassels defendants agreed that, subject to further exploration in examinations that they refused to conduct, they were prepared to accept that a memory stick provided on January 25, 2013 containing approximately 100,000 documents fulfilled the November 2, 2009 and December 2, 2009 orders to produce documents. Yet, they still pursued contempt on this basis.

75 The Court accepted the Faskens and Cassels defendants false submission that no new evidence had been presented on the application. The Court agreed and said that there was no new evidence since January 15, 2010. This was false Since January 15, 2010 there was the following new evidence:

a) There was evidence of the settlement of costs on the action, rendering the November 2 and December 2, 2009 orders moot;

b) new and conclusive proof that the Plaintiff stated on November 17, 2009 that he did NOT receive the November 2 order prior to November 17, 2009 and that he did not know of the order until the day before contrary to the Victory Verbatim 'Statement for the Record' created by Ranking and Silver and relied upon by the Court on December 2, 2009 and January 15, 2010;

c) that the Plaintiff was in the Western Pacific on November 16 when he received knowledge of the Nov. 17 examination and materials (but not the materials themselves);

d) there was evidence (recording and affidavit under oath) pursuant to 16.07 of the Rules of Civil Procedure that established that the documents did not come to his attention or only came to his attention at a later time;

e) There was proof of a legitimate offer to comply with the order by telephone on November 17, 2009 which had been falsely disputed in the Statement for the Record;

f) there was evidence that the documents ordered had been provided by memory stick on January 25, 2013 and that, subject to further answers to questions that may cast doubt upon the completeness of the documentation, the Faskens and

Cassels defendants accepted on April 30, 2013 that this constituted compliance with the November 2 and December 2, 2009 orders:

g) there was evidence that the lawyers, law firms and defendants had received full access to and copies of tens of thousands pages of privileged documents from the NBGL law firm's files in 2010, which constituted substantial or complete compliance with the November 2 and December 2, 2009 orders;

h) there was evidence of the answers of questions addressed in the November 2, 2009 and December 2, 2009 orders in the examination of the Plaintiff in January 2013 and the March 20103 written Answers. There were offers to be examined further;

i) there was sworn evidence regarding the safety and security concerns of the Plaintiff.

Based on the misrepresentations by the Faskens and Cassels defendants, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application.

76. In dismissing the application to set aside the finding of contempt, on the issue of knowledge, based on the misrepresentations by the Faskens and Cassels defendants, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application. Accordingly, the Court was left to rely on:

a) the misleading affidavit of Van Allen

b) the false purported compliance with orders for substituted service;

c) the November 16, 2009 letter (taken out of context by the Faskens and Cassels defendants, without mentioning denial of prior knowledge);

d) the November call (taken out of context the Faskens and Cassels defendants, without mentioning denial of knowledge prior to November 16, 2009);

e) the false Statement for the Record;

f) the false submissions of Messrs. Silver and Ranking that the Statement for the Record was true and the December 1, 2009 letters of the Plaintiff were false; and

g) the false assertion by Mr. Ranking that the Plaintiff was only disputing receipt of the signed order, but that there was no dispute about receipt of the draft order.

Accordingly, the dismissal of the motion to set aside the finding of contempt was a direct result of the recent actions of the Faskens and Cassels defendants and the earlier actions of all defendants.

77. Based on the misrepresentations by the defendants, the Court failed to conduct a trial of any disputed factual issues on *viva voce* evidence.

78. The Plaintiff, as a self-represented litigant did not raise and the Faskens and Cassels defendants did not raise the fact that the purpose of the orders upon which the contempt order was made was now moot. Faskens and Cassels defendants had an obligation to alert the Court to this fact. Accordingly, the Court did not deal with this issue.

79. The Faskens and Cassels defendants continued to assert non-compliance with the orders notwithstanding their knowledge that there had been compliance. As a result of them misleading the Court, aside from the offer to now examine on condition that the Plaintiff accept a contested costs order ($80,000), no opportunity to purge was offered to the Plaintiff.

80. The Court was misled into refusing to decide whether the PWCECF was a legal entity. The Faskens and Cassels defendants made the misleading submission to the Court that since

PWCECF was the entity that NBGL had sued, the Plaintiff could not complain that it did not exist. This ignored the fact that NBGL had originally sued another non-entity, PricewaterhouseCoopers (Barbados), based upon earlier affidavit evidence by Atkinson, but Mr Ranking and Hatch had advised NBGL and the Court that this was the incorrect name and had asserted that the correct name was PWCECF. As a result of this misleading submission, none of the evidence proving the non-existence of PWCECF was considered.

81. Notwithstanding the later suggestion by Faskens and Cassels defendants, the contempt order on January 15, 2010 did not include the failure to pay costs as a part of the contempt. This was appropriate since to do otherwise would to be to turn our correctional system into a debtor's prison. The May 3, 2013 order did not purport to be a new contempt order. Rather, the May 3 order dismissed the Plaintiff's application to set aside the contempt order and removed the stay of the warrant of committal thereby allowing the January 15, 2010 order to take effect. However, the May 3, 2013 order was tied to the costs of the January 15, 2010 contempt order by requiring payment of costs as a condition precedent to purging contempt.

82. The May 3, 2013 warrant of committal specifies that there is to be "no remission" on the period of incarceration. The January 2010 order did not specify that remission did not apply to the order of imprisonment. There is no mention of remission in the May 3, 2013 order, endorsement or reasons. No mention of remission was made during the hearing on April 30 and May 3, 2013. There was no opportunity for the Plaintiff to address this issue, which he discovered only after arriving at jail on May 3, 2013. Since the May 3, 2013 decision did not result in a new contempt order, there was no jurisdiction to vary the January 15, 2010 order. This "no remission" term was inserted maliciously in the warrant by the Faskens and Cassels

defendants and adopted by the Judge who relied on Senior Counsel to be candid and forthright in their dealings with the Court, which they were not.

83. The manner of the investigation and prosecution of the Plaintiff in respect of and/or for purposes of obtaining substituted service orders, contempt proceedings and to harm the Plaintiff caused harm to the Plaintiff. The Plaintiff was significantly harmed physically, emotionally, mentally, economically and with respect to his reputation.

84. This harm was caused by the manner of the investigation and prosecution including harm from the abusive and otherwise tortious manner of his prosecution described in this Statement of Claim, including, *inter alia*, improper motivations, misrepresentations and lies to the Courts, improper use of police resources, improper violations respecting private information and improper sheltering from liability (re non-entity Respondent, PWCECF) and cover up in respect of these actions.

85. This harm results from, *inter alia*, the need for him to bring an application to set aside the contempt order, the appeal therefrom, the damage to his him in respect to his safety, physical and mental health and reputation, arrest, prosecution and incarceration in May 2013 and again in April 2014. This harm has been cumulative and continues to this day.

B. FURTHER PARTICULARS REGARDING EACH CAUSE OF ACTION

(1) CONTEMPT:

(a) Abuse of process (common law and s. 7 of the *Charter*):

86. There are several instances of abuse of process in respect of the contempt proceedings initiated against the Plaintiff:

(i) seeking costs against the Plaintiff re NBGL suit as ruse to get discovery and to pressure discontinuance re other jurisdictions;

(ii) seeking discovery against the Plaintiff as means to obtain advantage in litigation in other jurisdictions;

(iii) seeking contempt against the Plaintiff: ulterior motive re pressure to discontinue and punish for exposing professional misconduct;

(iv) contempt by defendants (implied undertaking rule/failure to correct);

(v) lies and misleading court re receipt of documents;

87. The defendants initiated and/or assisted in costs proceedings, discovery proceedings in respect of costs and contempt proceedings against the Plaintiff. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the continuation of litigation in other jurisdictions by other persons and entities, not the Plaintiff or NBGL. This was a common law abuse of process. The defendants commenced the proceedings to this end by proceeding *ex parte*, unlawfully gathering facts regarding the Plaintiff, dissemination and

publishing of private facts, including by violating the implied undertaking rule, presenting misleading facts regarding the Plaintiff and outright lying to secure a finding of contempt in the face of real issues of timely notice.

88. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. In proceeding for improper purposes and the use of misleading, unlawfully obtained and knowingly false evidence the lawyers and law firms breached their Barrister's Oath and the actions of the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(b) Negligent investigation

89. The investigation by the defendants directly and through agents, including the Van Allen defendants, the police and the TPA caused false and misleading facts to be presented in the motions for substituted service, examination motions and contempt application, which led to the prosecution and incarceration of the Plaintiff which caused him significant harm.

90. The investigation by the defendants directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information by a serving

police officer and the other defendants that otherwise could not have been lawfully obtained and otherwise led to the discovery and dissemination and publishing of such information which caused the Plaintiff significant harm.

91. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing their agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

92. The actions of the lawyers, law firms and clients described in this Statement of Claim violation constitute a breach of the standard of care in respect of the ethical duties of lawyers, as set out in Rules of Professional Conduct.

93. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

94. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies, all of which preclude a serving police officer acting as or being hired as a private investigator.

95. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

96. The Van Allen defendants, the police and the TPA and the other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

97. The Van Allen defendants, the police and the TPA and the other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA))

98. The actions of the Van Allen defendants, the police and the TPA and the other defendants described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

99. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme (the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting or being hired as a private investigator. This largely informs the standard of care.

100. The Van Allen defendants, the police and the TPA knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(c) False imprisonment

101. The Plaintiff was imprisoned for 63 days as a result of the finding of contempt, the dismissal of the motion to set aside the contempt and the administrative dismissal of the appeal

as a result of the inability to pay costs. He was jailed in solitary confinement because he is a former police officer.

102. The Plaintiff was falsely arrested and detained by the police for a half day while on bail pending appeal.

103. The Plaintiff did not agree to be arrested, detained or incarcerated.

104. The defendants caused the Plaintiff to be arrested, detained or incarcerated by commencing contempt proceedings against him and/or by pursuing contempt proceedings in an abusive or misleading manner and by assisting in the investigation leading to the contempt order and warrant of committal and also by mistakenly arresting him due to their failures to use proper administrative procedures respecting arrest warrants and bail records.

105. There were not reasonable and probable grounds to believe that the Plaintiff was in contempt or that he had violated his bail.

106. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. In proceeding for improper purposes and the use of misleading, unlawfully obtained and knowingly false evidence the lawyers and law firms breached their Barrister's Oath and the actions of the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). Since there were no reasonable and probable grounds to believe that the Plaintiff was in contempt or

that he had violated his bail, his arrest, detention and incarceration were arbitrary (contrary to s. 9 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(d) Intentional and/or Negligent Infliction of Harm and/or Mental Suffering

107. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in respect of the conduct of contempt proceedings were flagrant and outrageous. They were calculated to harm the Plaintiff (intentional or willfully blind) or reckless regarding harm. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

108. In the alternative in respect of any defendant who did not intend harm as set out in the previous paragraph, such defendants were negligent in causing compensable actual, visible and provable injury (physical and mental harm and suffering).

109. The actions and/or inactions of the defendants, directly and through agents, including but not limited to the Van Allen defendants, the police and the TPA caused false and misleading facts to be presented in the motions for substituted service, examination motions and contempt application, which led to the prosecution and incarceration of the Plaintiff which caused him significant harm.

110. The actions and/or inactions of the defendants, directly and through agents, including but not limited to the Van Allen defendants, the police and the TPA allowed the improper access to information as a serving police officer that he otherwise could not have lawfully obtained and

otherwise led to the discovery and dissemination and publishing of such information which caused him significant harm.

111. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

112. The actions of the lawyers, law firms and clients described in this Statement of Claim constitute a breach of the standard of care in respect of the ethical duties of lawyers, as set out in Rules of Professional Conduct.

113. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

114. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended: *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies, all of which preclude a serving police officer acting as or being hired as a private investigator.

115. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

116. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

117. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

118. The actions of the Van Allen defendants, the police and the TPA and the other defendants described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

119. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator. This largely informs the standard of care.

120. The Van Allen defendants, the police and the TPA and the other defendants knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(e) Misfeasance of public office/Abuse of Authority

121. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were

acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions.

122. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in respect of the contempt proceedings were performed in bad faith and were deliberately unlawful or outside the scope of their authority in the exercise of the public functions of (a) a prosecutor or Officer of the Court; (b) a peace officer; (c) a labour official of the TPA; and (d) a probation and parole officer. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

(f) Malicious Prosecution

123. The defendant lawyers, law firms and clients initiated criminal or quasi criminal proceedings against the Plaintiff, to wit, an application to have him found in civil contempt.

124. The Proceedings are not complete. The Plaintiff is awaiting a response from the Supreme Court of Canada on an application for leave to appeal the dismissal of his appeal, found to be arguable, due to the inability to pay costs orders in the Court of Appeal. If leave is granted and the appeal succeeds, the civil contempt finding should be set aside.

125. In the alternative, it will be argued that where a conviction was obtained by fraud or fresh evidence exists, and where an appeal was unavailable due to lack of financial resources, the lack of a favourable result should not be a bar to sue for malicious prosecution.

126. There were not reasonable and probable grounds to believe that the Plaintiff was in contempt or that he had violated his bail.

127. For the reasons otherwise described in this Statement of Claim, the prosecution of the Plaintiff by the lawyers, law firms and clients, assisted by the other defendants, was performed maliciously and/or exercised for an improper purpose. The defendants did not have an honest belief that the Plaintiff was guilty. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the continuation of litigation in other jurisdictions.

(g) Conspiracy to injure

128. As detailed otherwise described in this Statement of Claim, two or more of the defendants made an agreement the predominant purpose of which was to injure the Plaintiff through lawful and/or unlawful means. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering), incarceration, damage to reputation, loss of future income and loss of time and money required to litigate these issues and the costs orders made against him.

(2) PRIVACY

(a) Invasion of privacy /intrusion on secrecy

129. The defendants invaded the Plaintiff's privacy and intruded on his secrecy by accessing, disseminating and publishing his private and confidential information. They did so by:

(i) discovering private information and then distributing it, including by publishing it and/or by other means, without its filing in Court contrary to the implied undertaking rule;

(ii) filing such material in an affidavit sworn by Zagar after the settlement of the case for the improper purpose of damaging the plaintiff and for no legitimate purpose;

(iii) accessing private information in the possession of Government for limited regulatory purposes and including the information to prepare affidavits and filing the information;

(iv) disseminating the information referred to in (i)-(iii) and other private information on the internet and by other means.

130. These acts were done directly and/or indirectly by the defendants. They were done intentionally, maliciously and/or recklessly. The accessing, filing and dissemination/publishing of this private information intruded upon the informational seclusion of the plaintiff and/or his private affairs and/or concerns.

131. These invasions would be highly offensive to a reasonable person because, *inter alia*, the accessing and publishing served no useful and/or proper purpose; it was known by the defendants that as a former undercover police officer and undercover private investigator, the

Plaintiff had many enemies who would want to kill or harm him or otherwise seek revenge, some of whom were involved in organized crime; the dissemination and publishing took place in such a way as to encourage harm to the Plaintiff; to the extent any of the information was relevant, the details, including addresses, driver's license information, etc. need not have been included or could easily have been edited or redacted. There was and is a great risk of identity theft from the release of the information. The release of the information in fact resulted in criminal activity being directed at the Plaintiff, directly and through his family, to wit, criminal harassment, assault; death threats; identity theft and other criminal activities. This was the intent. It caused the Plaintiff to flee Canada. Similar criminal acts were inflicted by some of the defendants during the litigation of the NBGL case leading up to these events. The timing was such as cause the Plaintiff to flee around the time of the attempts to attack the Plaintiff in Court (through direct costs applications; discovery; and contempt). The timing was intentional to facilitate this attack on the Plaintiff using the legal system for ulterior motives. Further, the Plaintiff raised concerns about this issue several times and was mocked and dismissed and was told by Mr. Silver on November 17, 2009 (recorded) that he would not help the Plaintiff if he could. The defendants had and have a duty to correct the situation and have failed to do so to this day. In fact, the defendants continue to distribute and publish the Plaintiff's private information, including his Identity Information as defined in the Criminal Code.

132. The following legislation reinforces the fact that this would be seen to be highly offensive to a reasonable person: *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, c11-8, as amended; Ministry of

Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(b) ss. 7 and/or 8 of the Charter (re Gov. actors/agents)

133. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. In accessing, disseminating and publishing the Plaintiff's private and confidential information as described in the previous section **(III. B. 2. (a))**, the defendants invaded the Plaintiff's reasonable expectation of privacy in his personal electronic (or other) information (see *R. v. Spencer*, [2014] S.C.J. No. 43). In particular, the SCC has just made it clear that personal information given to the police for one purpose cannot be used in for a different purpose or in a different case (*R. v. Quesnelle*, [2014] S.C.J. No. 46).

134. The use of such information for a purpose different than it was originally obtained constitutes a new seizure or a conversion of a lawful seizure into an unreasonable one seizure and publishing of this information (see *Colarusso* (SCC); *Dyment* (SCC) and *Quesnelle* (SCC)). Accordingly, the misuse and dissemination constituted a search and seizure.

135. The search and seizure was not lawful according to the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and*

Protection of Privacy Act, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A, *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

136. As detailed in this Statement of Claim, the seizure by conversion for another purpose and its dissemination significantly damaged the Plaintiff, physically, emotionally, mentally, economically and with respect to the plaintiff's reputation. It also contributed to the Plaintiff being found in contempt. There are no public policy reasons to deny remedies including damages.

(c) Misfeasance of Public Office/Abuse of Authority/

137. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions.

138. For the reasons otherwise described in this Statement of Claim, the actions of the defendants invading the privacy of the Plaintiff were performed in bad faith and were deliberately unlawful or outside the scope of their authority in the exercise of the public functions of (a) a prosecutor or Officer of the Court; (b) a peace officer; (c) a labour official of the TPA; and (d) a probation and parole officer. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering)

(d) Abuse of process (common law and s. 7 of the Charter)

139. The defendants initiated and/or assisted in costs proceedings, discovery proceedings in respect of costs and contempt proceedings against the Plaintiff. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the continuation of litigation in other jurisdictions. This was a common law abuse of process. The defendants abused process by unlawfully gathering facts regarding the Plaintiff and by dissemination and publishing of private facts, including by violating the implied undertaking rule.

140. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully accessing and disseminating private information, the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(e) Intentional or Reckless Endangerment (Infliction of Harm/Mental suffering)/Negligent Endangerment

141. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in accessing, filing and disseminating the private information were flagrant and outrageous. They were calculated to harm the Plaintiff (intentional or willfully blind) or reckless regarding harm. These actions caused actual, visible and provable injury (physical and mental harm and suffering). In addition to intending and causing harm (physical and mental suffering), defendants intended or were reckless in seeking to endanger the Plaintiff's life by releasing his private information.

142. In the alternative in respect of any defendant who did not intend to harm or endanger as set out in the previous paragraph, such defendants were negligent in causing compensable actual, visible and provable injury (physical and mental harm and suffering).

143. The actions and/or inactions of the defendants, directly and through agents, including the Van Allen defendants, the police and the TPA allowed improper access to information that otherwise could not have lawfully obtained and led to the discovery and dissemination and publishing of confidential information which caused the Plaintiff significant harm.

144. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of

that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA))

145. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

146. In respect of retaining a private investigator, the standard of care is informed largely by the the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies. which preclude a serving police officer acting as or being hired as a private investigator.

147. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

148. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him and other defendants. The legislative scheme created a private duty of care. The legislative scheme contemplated that the

harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

149. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

150. The actions of the Van Allen defendants, the police and the TPA described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

151. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator. This largely informs the standard of care.

152. The Van Allen defendants, the police and the TPA knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff would not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-

15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, c11-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(f) Negligent Investigation re Privacy

153. The investigation by the defendants directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information by a serving police officer that otherwise could not have lawfully obtained and otherwise led to the discovery and dissemination and publishing of such information which caused the Plaintiff significant harm.

154. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

155. The actions of the lawyers, law firms and clients and other defendants described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

156. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator.

157. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

158. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him or the other defendants. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

159. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a

private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

160. The actions of the Van Allen defendants, the police and the TPA and other defendants as described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

161. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which as a serving police officer acting or being hired as a private investigator. This largely informs the standard of care.

162. The Van Allen defendants, the police and the TPA and the other defendants knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, c11-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(g) Negligence re Regulation and/or Negligent performance of Statutory duty and/or s. 7 of the Charter

163. The actions and/or inactions of the defendants, directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information as a serving police officer that he otherwise could not have lawfully obtained and otherwise led to the discovery and dissemination and publishing of such information which caused him significant harm.

164. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given.

165. The legislative scheme in respect of whether a serving police officer can act as a private investigator is set out in the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator. This scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

166. The legislative scheme in respect of privacy is set out in the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56. This scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons whose private information was improperly accessed and disseminated. This is especially so when the facts of the case involve such accessing and dissemination in the context of the Plaintiff being targeted in investigations (see *Hill* (SCC) and *Taylor* (OCA)).

167. The actions of the lawyers, law firms and clients and other defendants described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

168. In respect of retaining a private investigator, the standard of care is informed largely by the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator.

169. In respect of invasion of privacy, the standard of care is informed largely by the legislative scheme referred to above (*Criminal Code*; PIPEDA; etc.) which seeks to preclude access to and dissemination of private information.

170. The Van Allen defendants, the police and the TPA and other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him and other defendants. The legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

171. The Van Allen defendants, the police and the TPA and other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme referred to above (*Criminal Code*; PIPEDA; etc.) which seeks to preclude access to and dissemination of private information created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

172. The actions of the Van Allen defendants, the police and the TPA and other defendants described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the violation of privacy rights.

173. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting or being hired as a private investigator.

174. The Van Allen defendants, the police and the TPA and the other defendants knew or were negligent in failing to protect the Plaintiff's statutory privacy rights ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the legislative scheme referred to above (*Criminal Code*; PIPEDA; etc.) which seeks to preclude access to and dissemination of private information.

175. The OPP was also negligent in failing to create a regulatory and/or record keeping and/or compliance scheme to ensure that secondary employment by OPP police officers, like Van Allen, was being conducted in accordance with the law.

176. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the

prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully accessing and disseminating private information, the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(h) Breach of fiduciary duty/Negligence in Respect of Fiduciary duty

177. The TPA had a fiduciary duty towards the Plaintiff as a member or former member of that Association. Like any labour organization, the TPA has a fiduciary duty to protect the private information of its members. By voluntarily releasing that information to Van Allen, the TPA breached that fiduciary duty. This was done dishonestly or fraudulently. The TPA and its administrators knew that they could not release such information except through court order or warrant or with the permission of the Plaintiff; none of which they possessed.

178. The lawyers, law firms and clients who saw and used information from TPA in Van Allen's affidavit, although not parties to the fiduciary relationship, were aware of the fiduciary duty, the dishonest or fraudulent breach of that duty and by retaining and instructing Van Allen and using and filing that information, assisted in the breach.

179. The Van Allen defendants also knew of the fiduciary duty and knew of and were parties to the dishonest or fraudulent breach of that duty.

180. The police knew or willfully blind to the existence of the fiduciary duty, the dishonest or fraudulent breach of that duty and, by assisting Van Allen, assisted in the breach.

(i) Conspiracy to Injure/Conspiracy to do Unlawful Act/ Causing Loss by unlawful means

181. As detailed otherwise in this Statement of Claim, two or more of the defendants made an agreement the predominant purpose of which was to injure the Plaintiff through lawful and/or unlawful means. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment though the release of private information.

182. As detailed otherwise in this Statement of Claim, two or more of the defendants made an agreement to act unlawfully knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff. The unlawful means was the violation of the Plaintiff's common law, Charter and Statutory privacy rights, as described above. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment though the release of private information.

183. One or more of the defendants also caused loss to the Plaintiff by unlawful means through a third party, to wit, the violation of the Plaintiff's common law, Charter and Statutory privacy rights, as described above. The lawyers, law firms and clients caused loss to the Plaintiff through the unlawful acts of Van Allen and the police. The Van Allen defendants, other than Van Allen himself, and the police caused loss to the Plaintiff through the unlawful acts of Van

Allen. All of the Van Allen defendants caused loss to the Plaintiff through the unlawful acts of the police. The TPA caused loss to the Plaintiff through the unlawful acts of Van Allen and visa versa.

(3) PRIVATE INVESTIGATION

(a) Misfeasance and/or Nonfeasance of Public Office/Abuse of Authority

184. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions.

185. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in retaining, instructing and assisting Van Allen in acting as a private investigator when he was a serving police officer were performed in bad faith and were deliberately unlawful or outside the scope of their authority in the exercise of the public functions of (a) a prosecutor or Officer of the Court; (b) a peace officer; (c) a labour official of the TPA; and (d) a probation and parole officer. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

(h) Abuse of Process (mislead Court) common law and/or ss. 7 and 8 of the Charter

186. The defendants initiated and/or assisted in costs proceedings, discovery proceedings in respect of costs and contempt proceedings against the Plaintiff. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the initiation or continuation of litigation in other jurisdictions. This was a common law abuse of process. The defendants abused process by unlawfully gathering facts regarding the Plaintiff and by dissemination and publishing of private facts and misleading the Court regarding the background of Van Allen. Van Allen was presented as an experienced and neutral private investigator. Had the Court known that he was acting unlawfully as a private investigator while also serving as a police officer and thereby obtaining information he should not have been able to access this would likely have affected the Court's acceptance of this evidence.

187. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully accessing and private information and presenting that information before the Court, the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). By unlawfully acting as a private investigator, when Van Allen was a serving police officer, the gathering of information was an unlawful (see *Colarusso* (SCC)) seizure and therefore unreasonable contrary to section 8 of the *Charter*. These actions damaged the Plaintiff by

finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(c) Negligent Regulation/Negligent Performance of Statutory duty and/or ss. 7 and/or 8 of the Charter

188. The actions and/or inactions of the defendants, directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information as a serving police officer that he otherwise could not have lawfully obtained.

189. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing their agents.

190. The legislative scheme in respect of whether a serving police officer can act as a private investigator is set out in the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator. This scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

191 The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining private investigators.

192. In respect of retaining a private investigator, the standard of care is informed largely by the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator.

193. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him. The legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

194. The actions of the Van Allen defendants, the police and the TPA described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators.

195. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the

Criminal Code, R.S.C. 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting or being hired as a private investigator.

196. The OPP was also negligent in failing to create a regulatory and/or record keeping and/or compliance scheme to ensure that secondary employment by OPP police officers, like Van Allen, was being conducted in accordance with the law.

197. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully using a serving police officer as a private investigator, the independence of the police services is fundamental compromised and increased access to private information is made available contrary to the public function of the police. These violations of the police process violated principles of fundamental justice (contrary to s. 7 of the Charter). The unlawful gathering of private information by a public official is unlawful and a violation of s. 8 of the Charter. These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(d) Negligent Investigation and/or s. 7 of the Charter

198. The Plaintiff suspected that something was not right in respect of the gathering of information through Van Allen and the police in this case. The plaintiff made inquiries of the police. In April 2013, he learned that there had been secret police investigation by at least the DRPS in contemplation of him being convicted at his hearing on January 15, 2010. He also initially learned in late 2013 (and later confirmed in 2014) that Van Allen was a serving police officer when he swore his affidavit as a private investigator in October, 2009.

199. When the secret investigation came to light, Detective Rushbrook revealed that she could not or would not reveal who conducted it and at whose behest, except that an unnamed Durham Police Court Officer was one of the persons involved. It was brought to the attention of the SCJ and the Faskens and Cassels defendants in Court and on the record on April 30, 2013. Messrs. Ranking and Silver denied knowledge of it.

200. As prosecutors, this was a serious allegation, based on reliable information from the DRPS itself that warranted investigation. The failure of the Faskens and Cassels defendants to request time to investigate this situation was negligent. As prosecutors and Officers of the Court in a criminal or quasi-criminal case of a self-represented person, it was foreseeable that this secret investigation could impact on the issues being litigated on April 30, 2013. They owed a duty to stop and cause an inquiry or investigation to be conducted. The failure to do so breached the standard of care expected of prosecutors.

201. The secret investigation itself, that was premised on the Plaintiff being convicted, before he had been found guilty, was itself a negligent investigation. If the court itself was involved

(not Justice Shaughnessy who denied knowledge of it, but court administration), this suggested a possible institutional bias. If initiated by the lawyers, law firms and/or clients, this suggested that the police were involved in the civil contempt proceeding, which would be extraordinary and suggested bias or corruption by the police. If initiated by Van Allen defendants, this suggested further abuse of power by a serving police officer as a private investigator on behalf of private interests. One way or the other, this secret investigation was illegal and corrupt. The fact that a police and Court police investigation is premised on a person being found guilty before he is found guilty is offensive. The fact that it is being done in secret suggests that there is something to hide. Such an investigation is inherently negligent. As is clear from *Hill* (SCC) and *Taylor* (OCA), the duty of care in relation to criminal investigations inherently create a duty of care because of the targeting of the suspect. The DRPS owed a duty to the Plaintiff having targeted him. The conduct of a secret investigation with a presumption of conviction creates an unreasonable risk of substantial harm and does not meet the standard of care. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5.

202. In late 2012 the Plaintiff still believed that Van Allen was at the time of his October, 2009 affidavit, a civilian, a retired OPP police officer operating as private investigator, who had improperly accessed confidential police information about the Plaintiff through Van Allen's friends still serving with the police. The Plaintiff therefore requested that the professional standards units of the OPP and the DRPS investigate the 'secret police investigation' to determine *inter alia* which serving police personnel had in 2009 supplied 'retired' Van Allen with confidential police information.

203. During their investigations in January through April, 2013, the OPP and Kearns and Vibert and the DRPS and Dmytruk and Rushbrook discovered that at the time Van Allen swore

his October 2009 affidavit and investigated the Plaintiff. Van Allen was in fact a serving police officer, a Detective Sergeant with the OPP, and remained so until he retired in about October of 2010. The OPP and Kearns and Vibert and the DRPS and Dmytruk and Rushbrook also knew that as a serving police officer acting as a private investigator, Van Allen had broken various laws including the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, and other laws and regulations.

204. The OPP, Kearns, Vibert, the DRPS, Dmytruk and Rushbrook had copies of Van Allen's October 2009 affidavit, his invoices to Ranking and Faskens, and other court documents and information regarding the Plaintiff's January 15, 2010 conviction *in absentia* for Contempt of Court. They knew that the Plaintiff was facing 3 months in jail, and was in hearings before Justice Shaughnessy in January through May, 2013. They knew that Van Allen's affidavit was illegal and deceptive, and that the court had used the Van Allen evidence to convict the Plaintiff. They knew that neither the court nor the Plaintiff was aware that Van Allen had been a serving police officer at the time he investigated the Plaintiff and swore the affidavit. They knew that the court had been deceived.

205. The OPP, Kearns, Vibert, the DRPS, Dmytruk and Rushbrook knew that as a serving police officer Van Allen had illegally performed an investigation of the Plaintiff, for the corrupt purpose of benefiting one side's private interests in a civil case costs hearing. They knew that Van Allen had done this for money and employment.

206. They knew or should have known that the truth about Van Allen was vital evidence to the Court in considering a just outcome in the Plaintiff's contempt of court hearing. They knew, or should have known that had the Court been aware of the truth about Van Allen, his deceptive

affidavit and improper secret police investigation of the Plaintiff, that the Court might not have convicted the Plaintiff in 2010, and might set him free in 2013. The police deliberately withheld this important evidence from both the Plaintiff and the Court.

207. The Plaintiff was lied to by the OPP and specifically, Kearns and Vibert and the DRPS, specifically Dmytruk and Rushbrook. The police falsely told the Plaintiff that Van Allen had retired in 2008, instead of the truth that he retired in October 2010. Instead of investigating Van Allen, who committed criminal and quasi-criminal offences while a serving Detective Sergeant with the Ontario Provincial Police, the police covered it up. This was a negligent investigation. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5.

208. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding.

209. By failing to investigate the secret investigation, the police acted negligently. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5. These actions damaged the Plaintiff by contributing to finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

210. By failing to investigate the Van Allen issue when it was brought to their attention by the Plaintiff, the police acted negligently. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5. These actions damaged the Plaintiff by contributing to finding him in contempt, ruining his

professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(e) Invasion of privacy (intrusion on secrecy)

211. The defendants invaded the Plaintiff's privacy and intruded on his secrecy by accessing, disseminating, filing and publishing his private and confidential information. They did so by unlawfully utilizing a serving police officer, who had greater access to information, as a private investigator.

212. These acts were done directly and/or indirectly by the defendants. They were done intentionally and/or recklessly. The use of a serving police officer to access otherwise inaccessible private information intruded upon the informational seclusion of the plaintiff and/or his private affairs and/or concerns.

213. These invasions would be highly offensive to a reasonable person because, *inter alia*, the accessing and publishing served no useful purpose; it was known by the defendants that as a former undercover police officer and undercover private investigator, the Plaintiff had many enemies who would want to kill or harm him or otherwise seek revenge, some of whom were involved in organized crime; the dissemination and publishing took place in such a way as to encourage harm to the Plaintiff; to the extent any of the information was relevant, the details, including addresses, driver's license information, etc. need not have been included or could easily have been edited or redacted. There was and is a great risk of identity theft from the release of the information, and that risk continues to this day. The release of the information in fact resulted in criminal activity being directed at the Plaintiff, directly and through his family, to

wit, criminal harassment, assault; death threats and other criminal activities. This was the intent. It caused the Plaintiff to flee Canada. Similar criminal acts were inflicted by some of the defendants during the litigation of the NBGL case leading up to these events. The timing was such as cause the Plaintiff to flee around the time of the attempts to attack the Plaintiff in Court (through direct costs applications; discovery; and contempt). The timing was intentional to facilitate this attack on the Plaintiff using the legal system for ulterior motives. Further, the Plaintiff raised concerns about this issue several times and was mocked and dismissed and was told by Mr. Silver on November 17, 2009 (recorded) that he would not help the Plaintiff if he could. The defendants had and have a duty to correct the situation and have failed to do so to this day.

214. The following legislation which precludes a serving police officer from acting as a private investigator reinforces the fact that this would be seen to be highly offensive to a reasonable person: *Criminal Code*, R.S.C, 1985, c. C-46, as amended: *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator.

(f) Conspiracy to do unlawful act (cover up re Van Allen)

215. As detailed otherwise in this Statement of Claim, two or more of the defendants made an agreement to act unlawfully knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff. The unlawful means was the

violation of the Plaintiff's common law, *Charter* and Statutory privacy rights, as described above. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment though the release of private information.

216. Further, as detailed in respect of Negligent Investigation, when this was brought to the attention of the OPP and the DRPS, the police failed to investigate the criminal or quasi-criminal acts of Van Allen and lied to the Plaintiff. The Plaintiff was lied to by the OPP and specifically, Kearns and Vibert and the DRPS, specifically Dmytruk and Rushbrook about Van Allen.

(4) FRAUD ON COURT RE PWCECF

(a) Abuse of Process (Common law and s. 7 of the Charter)

217. The continued active representation of a client that does not exist and the false assertion to the Court that the client does exist is the perpetration of a fraud on the Court. This is contempt of court. Contempt of court is a form of abuse of process. The improper and collateral purpose was to hide the true identity of the auditor and to prevent costs being ordered against his real client. By representing a non-entity, a costs order against that "entity" could never be effective It also raises a real concern about where funds payable to the 'client' were going. It also allowed for the Faskens defendants to act with the need for constraints of acting in accordance with instruction. The Plaintiff was harmed by the unrestrained conduct of the Faskens defendants, in

particular Ranking, who could and did act abusively in respect of contempt proceedings (see Causes of Actions, **III., B., 1.**)

218. PWCECF was put forward by the Faskens defendants as the auditor of KEL in respect of the NBGL case. KEL had to know the true identity of the auditor. Their lawyers and law firms must have known as well. light of the close and interactive manner in which the Cassels defendants worked on the NBGL case and the contempt proceedings, it is reasonable to infer knowledge by the Cassels defendants.

219. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. In proceeding on behalf of a client that did not exist and thereby perpetrating a fraud on the Court, the violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(b) Breach of fiduciary Duty to the Court

220. Ranking, Silver, Kwydzinski, Pendrith and their law firms, Cassels and Faskens owed a fiduciary duty to the SCJ, as Officers of the Court, to not lie to the Court. This duty was breached by asserting that PWCECF existed. This was dishonest and fraudulent. This breach

damaged the Plaintiff by freeing Ranking and Kydzinski and Faskens from the constraints of adverse costs consequence and the need for instructions from clients. This facilitated his abusive conduct of the contempt proceedings.

221. The Cassels defendants had their own fiduciary duty to report on the fraud by Ranking, Kwydzinski and Faskens. In the alternative, the Cassels defendants were aware of the fiduciary duty, its breach and the dishonesty and or fraud. By acquiescing in this lie they assisted it and are liable.

(c) Misfeasance of Public Office/Abuse of Authority

222. As prosecutors, the Faskens and Cassels defendants were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors.

223. The actions of the the Faskens and Cassels defendants lying to the Court about PWCECF was in bad faith and was deliberately unlawful or outside the scope of their authority in the exercise of the public functions of a prosecutor and/or an Officer of the Court. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering) as a result of the contempt proceedings.

224. Two or more of the Faskens and/or Cassels defendants made an agreement to act unlawfully knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff. The unlawful means was the lie to the Court about PWCECF existing. As detailed otherwise described in this Statement of Claim, these defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment though the contempt proceedings.

IV. SERVICE OUTSIDE OF ONTARIO PER 17.02 (G)(H)(O);

225. Kingsland Estates Limited is a company operating in Barbados. As one of the main prosecutors in respect of contempt, KEL is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

226. Richard Ivan Cox resides in Barbados. As one of the directing mind of the main prosecutors in respect of contempt, Cox is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

227. Eric Iain Stewart Deane resides in the [illegible] Jurisdiction. As one of the directing minds of one of prosecutors in respect of contempt, Deane is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

228. Marcus Andrew Hatch resides in Barbados. Since PWCECF was supposed to be one the main prosecutors in respect of contempt, but it does not exist, Hatch, one of the auditors is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

229. Philip St. Eval Atkinson resides in Barbados. Since PWCECF was supposed to be one the main prosecutors in respect of contempt, but it does not exist, Atkinson, one of the auditors is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

230. PricewaterhouseCoopers East Caribbean (formerly "PricewaterhouseCoopers") is a partnership operating in Barbados. Since PWCECI was supposed to be one the main prosecutors in respect of contempt, but it does not exist, PWCEC, asserted to be the client by counsel for "PWCECF", is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

231. James Arthur Van Allen resides in British Columbia. Van Allen resided and worked in Ontario at the time and is one of the central defendants in the case. He is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

232. The torts are all torts committed in Ontario. Therefore, pursuant to Rule 17.02(g) leave is not required for service on these persons.

233. The damage was for tort was sustained in Ontario. Therefore, pursuant to Rule 17.02(h) leave is not required for service on these persons

234. Such further grounds and/or claims as may become apparent from discovery or otherwise.

July 18, 2014

Paul Slansky
Barrister and Solicitor
1062 College Street, Lower Level
Toronto, Ontario
M6H 1A9

Tel: (416) 536-1220;
Fax (416) 536-8842
LSUC #259981

Counsel for the Plaintiff

Donald Best (Plaintiff) v Gerald Ranking et.al (Defendants)

Court File No /4 [illegible]

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

STATEMENT OF CLAIM

Paul Slansky
Barrister and Solicitor
1062 College Street, Lower Level
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Tel (416) 536-1220
Fax (416) 536-8832
LSUC #25998I

Counsel for the Plaintiff

Exhibit B

This is Exhibit B
to the Affidavit of
Steve Lewis
sworn August 14, 2014

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and-

GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MAYANE IZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP STEVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE;
MARTY KEARNS; JEFFERY R. AIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5

Defendants

JURY NOTICE
(Form 47A)

THE Plaintiff REQUIRES that this action be tried by a jury.

JULY 23, 2014

[redacted]

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LSUC #25998I

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Barrister and Solicitor
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Fax: (416) 863-2653

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Barrister and Solicitor
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AND TO: Ma'anit Tzipora Zemel
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AND TO: Fasken Martineau DuMoulin LLP
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Canada
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Fax: (416) 863-2653

AND TO: Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto, ON
M5H 3S1
Tel: (416) 595-8500
Fax: (416) 595-8695

AND TO: Kingsland Estates Limited
c/o Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Eric Iain Stewart Deane
6 Augustines Way,
Haywards Heath,
West Sussex
RH-116311, England

AND TO: Marcus Andrew Hatch
'West Shore Lodge'
Greenidge Drive
Paynes Bay, St. James,
Barbados, West Indies

AND TO: Philip St. Eval Atkinson
'Random'
Waterford, St. Michael
Barbados, West Indies

AND TO: PricewaterhouseCoopers East Caribbean
(Formerly 'PricewaterhouseCoopers', prior to June 23, 2011)
The Financial Services Centre
Bishop's Court Hill
St. Michael
BB 14004
Barbados, West Indies
Tel: (246) 626-6700
Faxes: (246) 436-1275 and (246) 429-3747

AND TO: Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: Peel Regional Police Service a.k.a. Peel Regional Police
General Headquarters
7750 Hurontario Street,
Brampton, ON, L6V 3W6
Tel. (905) 453-3311

AND TO: Durham Regional Police Service
General Headquarters
605 Rossland Rd. E.
Whitby, ON, L1N 0B8
Tel (905) 579-1520

AND TO: Marty Kearns
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: Jeffery R. Vibert
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: George Dmytruk
Central East Division
Durham Regional Police Service
77 Centre St. N.
Oshawa, ON L1G 4B7
Tel: (905) 579-1520

AND TO: Laurie Rushbrook
Durham Regional Police Service
General Headquarters
605 Rossland Rd. E.
Whitby, ON, L1N 0B8
Tel: (905) 579-1520

AND TO: James (Jim) Arthur Van Allen
6450 199 Street
Suite 15
Langley, British Columbia
V2Y 2X1

AND TO: Behavioural Science Solutions Group Inc.
26 Jordon Crescent
Orillia, Ontario
L3V 8A9
Tel: (604) 626-9572
Fax: (604) 371-1649

AND TO: Tamara Jean Williamson
Probation and Parole Services,
Cottage C,
700 Memorial Avenue,
2nd floor,
Orillia, Ontario L3V 6H1
Tel: (705) 329-6010

AND TO: Investigative Solutions Network Inc,
1099 Kingston Road, Suite 237
Pickering, Ontario L1V 1B5
Tel: (905) 421-0046
Fax: (905) 421-0048

AND TO: Toronto Police Association
200-2075 Kennedy Rd
Toronto, ON M1T 3V3
Tel: (416) 491-4301
Fax: (416) 494-4948

AND TO: John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, and Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

JURY NOTICE

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Fax (416) 536-8842
LSUC #25998I

Counsel for the Plaintiff

ISN

ISN empowers our clients with strategic investigative and training solutions, using the Best People, the Best Methods, achieving the Best Results

This is Exhibit C
to the Affidavit of
Steve Lewis
Sworn August 14, 2014

ABOUT ISN

OUR TEAM

MEDIA RESOURCE

DAVE PERRY MEDIA APPEARANCES

RON WRETHAM MEDIA APPEARANCES

MIKE HARVEY MEDIA APPEARANCES

NEWS & ARTICLES

TESTIMONIALS

Our Team

STAY CONNECTED

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ISN empowers our clients with strategic investigative and training solutions using the Best People, the Best Methods, achieving the Best Results

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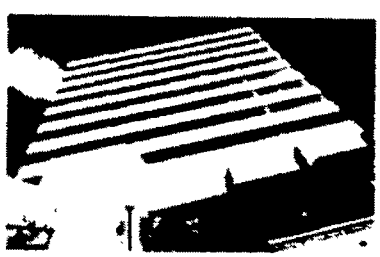

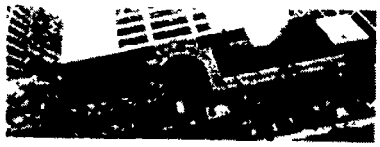

Shipment Receipt

Purolator

FROM/DE

Barrister and Solicitor
135 Murphy RD

ORILLIA, ON L3V 0B6
(416) 536-1220

TO/A

Laurie Rushbrook
Durham Regional Police Service

605 Rossland RD E

Whitby, ON L1N 0B8
(905) 579-1520
Canada

Total Cost
$22.02

DATE	PIECES	WEIGHT/POIDS
11 Aug 2014	1 of/de 1	1.00 kg.

PIN	330220438668
Package Type	Express Pack
Premium Service	Purolator Express Pack

Declared Value	
Adjusted Weight	1.00 kg.
Transit Time	1 Day
Cost	$19.49
Tax	$2.53
Total	$22.02

Payment Method

Credit Card
- ☐ Visa
- ☐ MasterCard
- ☐ Amex

☐ Debit
☐ Cash
☐ Business Cheque

Customer's Signature

For Shipment tracking information, please go to
www.purolator.com or contact 1-888-SHIP-123

Exhibit D

This is Exhibit D
to the Affidavit of
Steve Lewis
sworn August 14, 2014

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

AFFIDAVIT OF SERVICE

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LSUC #25998I

Counsel for the Plaintiff

Court File No. **14 -0815**

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and-

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE;
MARTY KEARNS; JEFFERY R. VIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

AFFIDAVIT OF SERVICE

I, Steve Lewis, Process Server MAKE OATH AND SAY:

1. I served the following lawyers of record a Draft copy of the Revised Statement of Claim on the date, at the location and by the method listed below. Annexed hereto as Exhibit A is a true copy of the Revised Statement of Claim.

2. On Tuesday, October 21, 2014, I served Stieber Berlach LLP, Counsel for the Defendants (PEEL REGIONAL POLICE SERVICES a.k.a. PEEL REGIONAL POLICE; REGIONAL MUNICIPALITY OF PEEL POLICE SERVICES BOARD; PEEL REGIONAL POLICE SERVICE, CHIEF OF POLICE, JENNIFER EVANS) a Draft copy of the Revised Statement of Claim by facsimile at 416-366-1466. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit B.

3. On Tuesday, October 21, 2014, I served Lerners LLP, Counsel for the Defendants (DURHAM REGIONAL POLICE SERVICE; DURHAM REGIONAL POLICE SERVICES; DURHAM REGIONAL POLICE SERVICES BOARD; DURHAM REGIONAL POLICE SERVICE, CHIEF OF POLICE, PAUL MARTIN; GEORGE DMYTRUK; LAURIE RUSHBROOK) a Draft copy of the Revised Statement of Claim by facsimile at 416-867-9192. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit C.

4. On Tuesday, October 21, 2014, I served Norman Groot, Counsel for the Defendants (INVESTIGATIVE SOLUTIONS NETWORK INC.) a Draft copy of the Revised Statement of Claim by facsimile at 416-637-3445. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit D.

5. On Tuesday, October 21, 2014, I served Johnstone & Cowling LLP, Counsel for the Defendants (JAMES (JIM) ARTHUR VAN ALLEN; BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.; TAMARA JEAN WILLIAMSON) a Draft copy of the Revised Statement of Claim by facsimile at 416-546-2104. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit E.

6. On Tuesday, October 21, 2014, I served Wardle Daley Berstein Bieber LLP, Counsel for the Defendants (GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI; LORNE STEPHEN SILVER; COLIN DAVID PENDRITH; PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL; FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP; BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP) a Draft copy of the Revised Statement of Claim by facsimile at 416-351-9196. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit F.

7. On Tuesday, October 21, 2014, I served Lenczner Slaght LLP, Counsel for the Defendants (TORONTO POLICE ASSOCIATION) a Draft copy of the Revised Statement of Claim by facsimile at 416-865-9010. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit G.

8. On Wednesday, October 22, 2014, I served Asad Ali Moten, Ministry of the Attorney General, Counsel for the Defendants (ONTARIO PROVINCIAL POLICE; FORMER ONTARIO PROVINCIAL POLICE COMMISSIONER, CHRIS LEWIS; ONTARIO PROVINCIAL POLICE COMMISSIONER, VINCE HAWKES; MARTY KEARNS: JEFFERY R. VIBERT) a Draft copy of the Revised Statement of Claim by facsimile at 416-326-4181. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit H.

9. I did not serve the following defendants who have been noted in default (ERIC IAIN STEWART DEANE; KINGSLAND ESTATES LIMITED; RICHARD IVAN COX; MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON; PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY 'PRICEWATERHOUSECOOPERS'))

10. I did not personally serve FORMER DURHAM REGIONAL POLICE SERVICE, CHIEF OF POLICE, MIKE EWLES as I was unable to locate his home address, which is apparently unlisted as I would expect. Further, even if I knew his home address I would be hesitant to approach and serve Mr. Ewles at his home because a/ He does not know me and I acknowledge that as a former high-ranking officer, Mr. Ewles would have concerns for his and his family's safety and well-being, and b/ Out of respect for Mr. Ewles' security and privacy, I would not wish to make public his home address in my affidavit to be filed with the court.

11. I did not personally serve FORMER ONTARIO PROVINCIAL POLICE COMMISSIONER, CHRIS LEWIS as I was unable to locate his home address, which is apparently unlisted as I would expect. Further, even if I knew his home address I would be hesitant to approach and serve Mr. Lewis at his home because a/ He does not know me and I acknowledge that as a former high-ranking officer, Mr. Lewis would have concerns for his and his family's safety and well-being, and b/ Out of respect for Mr. Lewis' security and privacy, I would not wish to make public his home address in my affidavit to be filed with the court. I was able to locate a website called Lighthouse Leadership Services at http://lighthouseleadershipservices.com/contact.html which appears to belong to Mr. Lewis. On Thursday, December 11, 2014, I emailed a request for contact to the website, but did not receive a response.

12. On Thursday, December 11, 2014, I served the Defendant OPP Commissioner, Vince Hawkes a Draft copy of the Revised Statement of Claim by facsimile at 705-329-6195. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit I.

13. On Thursday, December 11, 2014, I served the Defendant Peel Regional Police Services Board a Draft copy of the Revised Statement of Claim by facsimile at 905-458-7278. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit J.

14. On Thursday, December 11, 2014, I served the Defendant Durham Regional Police Services Board a Draft copy of the Revised Statement of Claim by facsimile at 905-721-4249. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit K.

15. On Friday, December 12, 2014, I served the Defendant Peel Regional Police Chief, Jennifer Evans a Draft copy of the Revised Statement of Claim by facsimile at 905-458-7278. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit L.

16. On Friday, December 12, 2014, I served the Defendant D.R.P.S. Chief of Police, Paul Martin a Draft copy of the Revised Statement of Claim by facsimile at 905-721-4249. A true copy of the Facsimile Transmission Report is attached hereto as Exhibit M.

8. On Monday December 15, 2014 I served Asad Ali Moten, Ministry of the Attorney General, Counsel for the Defendants (ONTARIO PROVINCIAL POLICE; FORMER ONTARIO PROVINCIAL POLICE COMMISSIONER, CHRIS LEWIS; ONTARIO PROVINCIAL POLICE COMMISSIONER, VINCE HAWKES; MARTY KEARNS: JEFFERY R. VIBERT) with a Draft copy of a Motion Record re Deane Default and a Motion Record to Amend Pleadings by facsimile at 416-326-4181.

9. On Monday December 15, 2014 I served the following Defendants personally with a Draft copy of a Motion Record re Deane Default and a Motion Record to Amend Pleadings on the date, at the location and by the method listed below. Annexed hereto as Exhibit A is a true copy of the Motion Record re the Deane Default, and as Exhibit B the Motion Record to Amend Pleadings.

10. On Monday December 15, 2014 I served Defendant OPP Commissioner, Vince Hawkes with a Draft copy of a Motion Record re Deane Default and a Motion Record to Amend Pleadings by facsimile at 705-329-6195.

11. On Monday December 15, 2014 I served Defendant Peel Regional Police Services Board with a Draft copy of a Motion Record re Deane Default and a Motion Record to Amend Pleadings by facsimile at 905-458-7278.

12. On Monday December 15, 2014 I served Defendant Durham Regional Police Services Board with a Draft copy of a Motion Record re Deane Default and a Motion Record to Amend Pleadings by facsimile at 905-721-4249.

13. On Monday December 15, 2014 I served Defendant Peel Regional Police Chief, Jennifer Evans with a Draft copy of a Motion Record re Deane Default and a Motion Record to Amend Pleadings by facsimile at 905-458-7278.

14. On Monday December 15, 2014 I served Defendant D.R.P.S. Chief of Police, Paul Martin with a Draft copy of a Motion Record re Deane Default and a Motion Record to Amend Pleadings by facsimile at 905-721-4249.

Sworn before me at the City of Barrie)

in the County of Simcoe)

this 15th day of December, 2014)

[redacted]

A Commissioner, etc.

Francine Beaulieu, a Commissioner, etc., Province of Ontario, for the Government of Ontario, Ministry of the Attorney General. Expires June 9, 2014.

[redacted]

Steve Lewis

Exhibit A

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and-

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
FORMER ONTARIO PROVINCIAL POLICE COMMISSIONER, CHRIS LEWIS;
ONTARIO PROVINCIAL POLICE COMMISSIONER, VINCE HAWKES;
MARTY KEARNS; JEFFERY R. VIBERT;
PEEL REGIONAL POLICE SERVICES a.k.a. PEEL REGIONAL POLICE
REGIONAL MUNICIPALITY OF PEEL POLICE SERVICES BOARD
PEEL REGIONAL POLICE SERVICE, CHIEF OF POLICE, JENNIFER EVANS
DURHAM REGIONAL POLICE SERVICES
DURHAM REGIONAL POLICE SERVICES BOARD
FORMER DURHAM REGIONAL POLICE SERVICE, CHIEF OF POLICE, MIKE EWLES;
DURHAM REGIONAL POLICE SERVICE, CHIEF OF POLICE, PAUL MARTIN;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

(Court seal)

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date ..... July 18, 2014..... Issued by.... J. Stevens.....
Local registrar
75 Mulcaster Street,
Barrie ON L4M 3P2

TO: Gerald Lancaster Rex Ranking
Barrister and Solicitor
Fasken Martineau DuMoulin LLP
333 Bay St.
Suite 2400
Toronto, ON
M5H2T6
Tel: (416) 865-4419
Fax: (416) 364-7813
c/o Wardle Daley Berstein Bieber, LLP

AND TO: Sebastien Jean Kwidzinski
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333 Bay St.
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Toronto, ON
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Fax: (416) 364-7813
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AND TO: Lorne Stephen Silver
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MSH3C2
Tel: (416) 869-5490
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c/o Wardle Daley Berstein Bieber, LLP

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c/o Wardle Daley Berstein Bieber, LLP

AND TO: Paul Barker Schabas
Barrister and Solicitor
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9
Tel: (416) 863-4274
Fax: (416) 863-2653
c/o Wardle Daley Berstein Bieber, LLP

AND TO: Andrew John Roman
Barrister and Solicitor
Andrew John Roman Professional Corporation
900-333 Bay Street
Toronto, ON M5H 2T4
Tel: (416) 848-0203 x2234
Fax: (416) 850-5316
c/o Wardle Daley Berstein Bieber, LLP

AND TO: Ma'anit Tzipora Zemel
MTZ Law Professional Corporation
39 Clovelly Ave
Toronto, Ontario
M6C 1Y2
Tel: (416) 937-9321
c/o Wardle Daley Berstein Bieber, LLP

AND TO: Fasken Martineau DuMoulin LLP
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Canada
Tel: (416) 863-2400
Fax: (416) 863-2653
c/o Wardle Daley Berstein Bieber, LLP

AND TO: Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto, ON
M5H 3S1
Tel: (416) 595-8500
Fax: (416) 595-8695
c/o Wardle Daley Berstein Bieber, LLP

AND TO: Kingsland Estates Limited
c/o Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Eric Iain Stewart Deane
6 Augustines Way,
Haywards Heath,
West Sussex
R1-1163111, England

AND TO: Marcus Andrew Hatch
'West Shore Lodge'
Greenidge Drive
Paynes Bay, St. James,
Barbados, West Indies

AND TO: Philip St. Eval Atkinson
'Random'
Waterford, St. Michael
Barbados, West Indies

AND TO: PricewaterhouseCoopers East Caribbean
(Formerly 'PricewaterhouseCoopers', prior to June 23, 2011)
The Financial Services Centre
Bishop's Court Hill
St. Michael
BB 14004
Barbados, West Indies
Tel: (246) 626-6700
Faxes: (246) 436-1275 and (246) 429-3747

AND TO: Former Ontario Provincial Police Commissioner, Chris Lewis
Address withheld to protect privacy

AND TO: Ontario Provincial Police Commissioner, Vince Hawkes
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: Marty Kearns
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111
c/o Asad Moten
Crown Law Office Civil

AND TO: Jeffery R. Vibert
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111
c/o Asad Moten
Crown Law Office Civil

AND TO: Regional Municipality of Peel Police Services Board
Regional Municipality of Peel
10 Peel Centre Drive
Brampton, ON, L6T 4B9
Tel: (905) 458-1340
Fax: (905) 458-7278
c/o Stieber Berlach LLP

AND TO: Peel Regional Police Chief, Jennifer Evans
Peel Regional Police
7750 Hurontario Street,
Brampton, ON, L6V 3W6
(905) 453-3311

AND TO: Former Durham Regional Police Chief of Police, Mike Ewles
Address withheld to protect privacy

AND TO: Durham Regional Police Chief of Police, Paul Martin
605 Rossland Rd. E, Box 911
Whitby, Ontario
L1N 0B8
Tel: (905) 579-1520

AND TO: Durham Regional Police Services Board
General Headquarters
605 Rossland Rd. E,
Whitby, Ontario
L1N 0B8
Tel: (905) 579-1520
c/o Lerners LLP

AND TO: George Dmytruk
Central East Division
Durham Regional Police Service
77 Centre St. N.
Oshawa, ON L1G 4B7
Tel: (905) 579-1520
c/o Lerners LLP

AND TO: Laurie Rushbrook
Durham Regional Police Service
General Headquarters
605 Rossland Rd. E,
Whitby, ON, L1N 0B8
Tel: (905) 579-1520
c/o Lerners LLP

AND TO: James (Jim) Arthur Van Allen
6450 199 Street
Suite 15
Langley, British Columbia
V2Y 2X1
c/o Johnstone and Cowling LLP

AND TO: Behavioural Science Solutions Group Inc.
26 Jordon Crescent
Orillia, Ontario
L3V 8A9
Tel: (604) 626-9572
Fax: (604) 371-1649
c/o Johnstone and Cowling LLP

AND TO: Tamara Jean Williamson
Probation and Parole Services,
Cottage C,
700 Memorial Avenue,
2nd floor,
Orillia, Ontario L3V 6H1
Tel: (705) 329-6010
c/o Johnstone and Cowling LLP

AND TO: Investigative Solutions Network Inc.
1099 Kingston Road, Suite 237
Pickering, Ontario L1V 1B5
Tel: (905) 421-0046
Fax: (905) 421-0048
c/o Norman Groot
Investigation Counsel P.C.

AND TO: Toronto Police Association
200-2075 Kennedy Rd
Toronto, ON M1T 3V3
Tel: (416) 491-4301
Fax: (416) 494-4948
c/o Lenczner Slaght LLP

AND TO: John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, and Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5

CLAIM

(I) CLAIM: REMEDIES

1. The Plaintiff claims damages in the amount of **$20,000,000** and other relief as follows:

(A) For General Compensatory damages in the amount of $6,300,000

(B) For aggravated damages in the amount of $3,150,000

(C) For punitive/Exemplary Damages in the amount of $9,500,000

(D) IN RESPECT OF COSTS orders and fees:

(1) Special damages (in the alternative in respect of a category of general damages) in respect of costs orders made against the Plaintiff and fees paid to counsel for the Plaintiff in respect of contempt proceedings ($650,000);

(2) Damages reflecting unjust enrichment of defendants in legal fees purportedly or actually paid to lawyers $1,000,000

(3) For a mandatory Order that ANY OR ALL OF the Defendants or any of them are prohibited from taking any actions to collect any cost Orders presently outstanding against the Plaintiff until the final resolution of this action including any appeals.

(4) For a mandatory Order that, in the event that any other Court has or will require the Plaintiff to pay costs, they shall be set off against the damages and costs to be awarded in this action after trial.

(5) For an Order that any and all costs Orders to be paid by the Plaintiff to any of the Defendants shall be stayed until the disposition of this action and that such costs shall be deducted from the award of damages and costs that the Plaintiff seeks to recover in this action.

(E) For such INTERLOCUTORY AND/OR FINAL injunctions and other orders as are appropriate to protect the safety and security of the Plaintiff including but not limited to:

(1) an injunction that the Defendants may not directly or indirectly question or present evidence regarding the personal information of the Plaintiff, except to the extent ordered by the court or required by law in these proceedings and with such protective orders that can be made to provide such protection; and

(2) The Plaintiff resides in Simcoe County. For reasons of safety and security, which are discussed below, he wishes that his residence information not be disclosed.

(F) The Plaintiff seeks a tracing and accounting of the funds that were paid to:

(1) the Fasken Martineau DuMoulin LLP law firm ('Faskens') and-Gerald Lancaster Rex Ranking ('Ranking') allegedly for the account of the fictional entity/business called PricewaterhouseCoopers East Caribbean Firm or any individuals instructing counsel;

(2) Lorne Stephen Silver ('Silver'), Cassels Brock & Blackwell LLP ('Cassels') regarding Kingsland Estates Limited ('KEL') or any of its principals.

(G) For injunctive relief that will require the Defendants to take all necessary actions to de-identify or otherwise effect the removal of all defamatory, private, threatening, and untrue information, Identity Information and documentation relating to the Plaintiff from the internet. And where reasonable, to retrieve from clients and members of the public such information that was illegally/improperly distributed, and to account to the court for each distribution and retrieval or attempted retrieval.

(H) Full indemnity costs.

(II) THE LIABILITY OF THE DEFENDANTS

A. TERMINOLOGY AND NATURE OF LIABILITY:

2. The following defendants and groups of defendants are jointly and severally liable:

(A) "The Lawyers" refers to one or more of Gerald Lancaster Rex Ranking ('Ranking'), Sebastien Jean Kwidzinski ('Kwidzinski'), Lorne Stephen Silver ('Silver'), Colin David Pendrith ('Pendrith'), Paul Barker Schabas ('Schabas'), Andrew John Roman ('Roman'), Ma'anit Tzipora Zemel ('Zemel'), who are all licensed by the Law Society of Upper Canada to practice law in Ontario.

(B) "The Law Firms" are one or more of the partnerships that the Lawyers worked for, as partners or employees and who are responsible and liable for everything that the Lawyers did or did not do as described in this document. They are Fasken Martineau DuMoulin LLP ('Faskens'), Cassels Brock & Blackwell LLP ('Cassels'), Blake, Cassels & Graydon LLP ('Blakes'), Miller Thomson LLP ('Miller'). These law firms knew, were willfully blind, reckless and/or negligent in permitting and encouraging the Lawyers to commit the tortious conduct described herein.

(C) "The clients" refers to the clients of the lawyers and law firms, including Kingsland Estates Limited ('KEL'), Eric Iain Stewart Deane ('Deane'), Richard Ivan Cox ('Cox'), Marcus Andrew Hatch ('Hatch'), Philip St. Eval Atkinson ('Atkinson') and, in the manner and extent described below, PricewaterhouseCoopers East Caribbean ("PWCEC") and Jane Doe #1 and John Doe #1. Ranking, Kwidzinski and Faskens claimed to represent PricewaterhouseCoopers East Caribbean Firm ("PWCECF"). This entity does not and never has existed. Yet the pleadings and documents filed clearly and

repeatedly declared that the full legal name of their client was PWCECF, not PWCEC or any other entity using "PricewaterhouseCoopers" as a part of its name. This PWCECF defendant was added to the original lawsuit brought by Nelson Barbados Group Ltd based on the false representation by Gerald Ranking that this was the proper name of the their client, the relevant auditor. These lawyers and firm fraudulently claimed to represent this non-entity and in the face of accusations to that effect, refused to provide proof to contradict clear evidence that PWCECF did not and does not exist. Instead, they repeatedly bluffed, misled and lied to the Superior Court, the Court of Appeal for Ontario and the Supreme Court of Canada, insisting that PWCECF did and does exist. They went so far as to twice present documents in the course of examinations showing a name change of a partnership to PWCEC as of June 2011, long after the fraud had begun, while falsely asserting that they were presenting partnership documents of their client, PWCECF, even though the documents clearly referred to PWCEC. PWCEC is included as a defendant on the basis that Messrs. Ranking and Kwidzinski and Faskens insisted that this was their client and because this is, as of 2011, a legal entity. However, it is unclear whether PWCEC was ever their client.

(D) "The police" refers to Regional Police Forces, Durham Regional Police Services Board, Former DRPS Chief of Police Mike Ewles, DRPS Chief of Police Paul Martin (collectively "DRPS") and Regional Municipality of Peel Police Services Board, PRPS Chief of Police Jennifer Evans (collectively "PRPS")) and the following specific persons employed by them: George Dmytruk (DRPS); Laurie Rushbrook (DRPS); and the Provincial Police, the Former Ontario Provincial Police Commissioner, Chris Lewis and Ontario Provincial Police Commissioner, Vince Hawkes (collectively "O.P.P.") and the

following specific persons: Marty Kearns (OPP); Jeffery R. Vibert (OPP); James (Jim) Arthur Van Allen ('Van Allen') (pre-retirement). Police officers John Doe #2 and John Doe #3 and Jane Doe #2 and Jane Doe #3, as yet unknown were also involved.

(E) The "Van Allen Defendants" refers to Van Allen (pre and post-retirement), Tamara Jean Williamson ('Williamson'), Behavioural Science Solutions Group Inc. ('BSSG') and Investigative Solutions Network Inc.('ISN').

(F) The "Toronto Police Association" ("TPA") refers to the incorporated Toronto Police Association and any individuals dealing with the Plaintiff's case who provided information to Van Allen or others in respect of the Plaintiff, the identities not yet known (Jane Doe #4 and John Doe #4).

(G) The term "defendants" refers to all of the defendants in the style of cause, including those whose identities and/or culpable involvement are not yet known, (John Doe #5 and Jane Doe #5).

3. The defendants knew, were willfully blind, reckless and/or negligent in perpetrating the tortious conduct against the Plaintiff described herein. The natural persons had such knowledge and intent. Corporate persons had such knowledge and intent through their directing minds. Based, *inter alia*, on the bad faith and lack of factual and/or legal authority, the Plaintiff seeks the piercing of the corporate veil in respect of these corporations.

4. The defendants knew (in fact or constructively), intended, (in fact or constructively), were reckless and/or foresaw, as would any reasonable person, that their actions would

significantly cause real harm, damage and/or endanger the Plaintiff, physically, emotionally, economically and in respect of his reputation.

5. The defendants acted flagrantly, outrageously, in bad faith, maliciously, fraudulently, contrary to their fiduciary duty and/or dishonestly.

6. The defendants targeted the Plaintiff knowing that their actions would directly and indirectly cause him substantial harm in breach of their well-known and generally recognized legal, fiduciary and/or ethical duties and the legal, fiduciary and/or ethical duties of others. They negligently failed to act in accordance with their legal and ethical duties and thereby failed to act in accordance with the applicable common law and statutory rules and standards of care. They acted in such a way as to create an unreasonable risk of substantial harm.

7. The defendants acted in their private capacity and in their official capacities as prosecutors, investigators, peace officers, probation and parole officers and/or labour officials pursuant to statute and common law authority and as officers of the Court.

8. The defendants conspired to do so collectively in pursuit of an agreement, between one or more of them and others, with the predominant purpose of harming the Plaintiff and/or knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff, using lawful and unlawful means, which caused compensable damage to the Plaintiff.

B. CAUSES OF ACTION

9. The defendants are liable on the following bases are all jointly severally liable on the following general causes of action:

(1) IN RESPECT OF CIVIL CONTEMPT PROCEEDINGS AGAINST THE PLAINTIFF:

(a) Abuse of Process (Common law and/or s.7 of the Canadian Charter of Rights and Freedoms (the"Charter'))

(b) Negligent Investigation (Common law and ss.7 and 9 of the Charter)

(c) False Imprisonment (Common law and ss.7 and 9 of the Charter)

(d) Intentional and/or Negligent Infliction of Harm and/or Mental Suffering

(e) Misfeasance and/or Malfeasance of Public Office and/or Abuse of Authority

(f) Malicious Prosecution

(g) Conspiracy to Injure the Plaintiff

(2) IN RESPECT OF INFRINGEMENT OF PRIVACY OF THE PLAINTIFF (in the course of an action by Nelson Barbados Group Ltd ("NBGL"), which continued during civil contempt proceedings against the Plaintiff):

(a) Breach of Common Law Privacy Rights (intrusion on secrecy)

(b) Breach of ss. 7 and/or 8 of *the Charter*

(c) Misfeasance and/or Malfeasance and/or Nonfeasance of Public Office/Abuse of Authority

(d) Abuse of Process (common law and/or s.7 of the charter)

(e) Intentional or Reckless Endangerment (by the infliction of harm and/or mental suffering) and/or Negligent Endangerment

(f) Negligent Investigation (common law and ss.7 and 9 of the charter)

(g) Negligent Regulation/Performance of Statutory Duty (common law and/or s. 7 of the charter)

(h) Breach of Fiduciary Duty/Negligence in Respect of Fiduciary duty

(i) Conspiracy to Injure and/or Conspiracy to do Unlawful Act and/or Causing Loss by Unlawful Means

(3) IN RESPECT OF EVIDENCE GATHERING BY JAMES VAN ALLEN AND THE POLICE

(a) Misfeasance and/or Malfeasance and/or Nonfeasance of Public Office/Abuse of Authority

(b) Abuse of Process (common law and/or s.7 of the charter)

(c) Negligent Regulation/Performance of Statutory Duty (common law and/or ss. 7 and/or 8 of the charter)

(d) Negligent Investigation (common law and ss.7 and 8 of the charter)

(e) Invasion of Privacy (Intrusion on Secrecy)

(f) Conspiracy to Injure and/or Conspiracy to do Unlawful Act and/or Causing Loss by Unlawful Means

(4) IN RESPECT OF FRAUD ON THE COURT IN CIVIL CONTEMPT PROCEEDINGS RE PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM ("PWCECF")

(a) Abuse of Process (common law and/or s. 7 of the charter)

(b) Breach of Fiduciary Duty to the Court

(c) Misfeasance and/or Malfeasance of Public Office/ Abuse of Authority

(d) Conspiracy to Injure and/or Conspiracy to do Unlawful Act and/or Causing Loss by Unlawful Means

C. GROUPINGS OF DEFENDANTS REGARDING LIABILITY

10. The following defendants are primarily jointly and severally liable in respect of the following causes of action, without limiting the generality of the foregoing:

(1) FASKENS DEFENDANTS:

11. Ranking, and Kwidzinski are lawyers in Toronto. Their law firm is Faskens. Their purported client, PWCECF, does not exist. However, PWCEC was later purportedly created and/or identified as the client and individuals instructed counsel at Faskens. Hatch and Atkinson

are accountants who work in Barbados and other locations. The partnership PWCEC may have been a client of the Faskens Defendants. These defendants, along with others named as John Doe Defendants (John Doe #1 and Jane Doe #1), concocted a non-existent entity to carry out the activities set out in this claim: 'PricewaterhouseCoopers East Caribbean Firm' (PWCECF) is a fictitious name used by them and other more persons who are known to some or all of the other Defendants. They are all jointly and severally liable for all damages and costs and other relief in respect of all causes of action.

(2) CASSELS DEFENDANTS

12. Silver and Pendrith are lawyers in Toronto. Their law firm is Cassels. Their client is KEL and Cox. They are jointly and severally liable for all damages and costs and other relief in respect of all causes of action.

(3) BLAKES DEFENDANTS

13. Schabas is a lawyer in Toronto. His law firm is Blakes. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(4) MILLER DEFENDANTS

14. Roman and Zemel are lawyers in Toronto. Their law firm is or was Miller. Their client is Eric Iain Stewart Deane. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(5) REGIONAL POLICE DEFENDANTS

15. The Former Durham Regional Police Services, Chief of Police Mike Ewles is vicariously and otherwise responsible for the day-to-day operations of the DRPS during his tenure. The DRPS Chief of Police Paul Martin is vicariously and otherwise responsible for the day-to-day operations of the DRPS during his tenure and at present. The DRPS Board is vicariously and otherwise liable for the actions of its officers and employees pursuant to s. 50(1) of the *Police Services Act*, R.S.O. 1990, c. P-15. The Peel Regional Police Services Chief of Police Jennifer Evans is vicariously and otherwise responsible for the day-to-day operations of the PRPS during her tenure and at present. The Regional Municipality of Peel Police Services Board is vicariously and otherwise liable for the actions of its officers and employees pursuant to s. 50(1) of the *Police Services Act*. George Dmytruk and Laurie Rushbrook were police officers employed by or on behalf of the DRPS. John Doe #2 and Jane Doe #2 were police officers employed by or on behalf of the DRPS and/or the PRPS. These persons spoke on behalf of their police service and conducted illegal and unnecessary investigations of the Plaintiff and also provided the fruits of these investigations to the lawyers, law firms and clients, primarily, but not exclusively the Faskens and Cassels Defendants, through Van Allen and the Van Allen Defendants. They also conspired with these defendants to injure the Plaintiff and/or to cover up for their own and the Van Allen defendants' unlawful activities. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(6) PROVINCIAL POLICE DEFENDANTS

16. The OPP is a Police Force constituted according to the *Police Services Act*, R.S.O. 1990, c. P-15. The Former OPP Commissioner Chris Lewis is vicariously and otherwise responsible for the day-to-day operations of the OPP during his tenure. The OPP Commissioner, Vince Hawkes is vicariously and otherwise responsible for the day-to-day operations of the OPP during his tenure and at present, including his responsibility in a supervisory capacity prior to his tenure. Marty Kearns, Jeffery R. Vibert, James (Jim) Arthur Van Allen, John Doe #3 and Jane Doe #3 were police officers employed by or on behalf of the OPP, spoke on behalf of their respective police services and conducted illegal and unnecessary investigations of the Plaintiff over and above and/or in violation of their normal duties and responsibilities and also provided the fruits of these investigations to the lawyers, law firms and clients, primarily, but not exclusively the Faskens and Cassels Defendants, through Van Allen and the Van Allen Defendants. They also conspired with these defendants to injure the Plaintiff and/or to cover up for their own and the Van Allen defendants' unlawful activities. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3). Marty Kearns, Jeffery R. Vibert, James (Jim) Arthur Van Allen, John Doe #3 and Jane Doe #3 are personally responsible for their actions pleaded herein.

(7) VAN ALLEN DEFENDANTS

17. James Van Allen was an OPP police officer. He was at the same time purportedly and unlawfully acting as a private investigator for the defendants. His investigation used police resources directly or indirectly, with the knowing or negligent cooperation of the police (DRPS, PRPS and OPP) and the TPA. Van Allen and/or the police conducted an unlawful secret

investigation of the Plaintiff premised on his conviction for civil contempt before this conviction had occurred. This investigation was then reflected in a misleading affidavit filed by the Faskens defendants on behalf of the non-existent PWCECF. The Van Allen defendants also recklessly and illegally distributed to the public, the Plaintiff's Identity Information and other private information. Van Allen did so in a personal capacity and as an officer and director of his company. Behavioural Science Solutions Group Inc., Van Allen's and Williamson's company (as Directors and/or Shareholders) and Van Allen's then girlfriend or common law spouse, Tamara Jean Williamson are also liable for Van Allen's action carried out in his personal and/or corporate capacities. Investigative Solutions Network Inc. acted with knowledge of Van Allen's status as a serving police officer and assisted him in respect of his tortious conduct. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(8) TORONTO POLICE ASSOCIATION DEFENDANTS

18. The Defendant Police Association is an incorporated entity which represents active and retired police officers and others which are its members. The TPA and Jane Doe #4 and John Doe #4 provided confidential information regarding the Plaintiff, a former police officer, whose identity and location, if revealed would place his life and safety in danger as a former undercover officer. It indeed had this effect. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(9) OTHER DEFENDANTS

19. The reference to the Defendants as "defendants" or 'they' herein refers to all persons or groups of the Defendants who are known among themselves but not to the Plaintiff and conspirators, known or unknown. They include John Doe #5 and Jane Doe #5. Particulars will be provided following full discovery.

III. PARTICULARS OF THE CLAIM

A. CHRONOLOGY AND LIABILITY

20. The Plaintiff had been an officer of Nelson Barbados Group Ltd ("NBGL"). NBGL commenced action in the Superior Court by Statement of Claim against Ontario and Barbados Defendants. Some of the Defendants brought a motion to contest jurisdiction, which was granted and the action was stayed by Justice Shaughnessy of the Superior Court of Justice ("SCJ") in 2008. The merits of the action were never adjudicated. The only issue remaining issue was costs.

21. When the issue of costs was being considered, the Plaintiff was deprived of counsel and compelled to act as unrepresented litigant.

22. Costs submissions were to proceed on November 2, 2009 and the Plaintiff understood that costs were going to be assessed that day against NBGL which stood ready to pay them. The Plaintiff indicated, on behalf of NBGL, that he would not be attending but leave the issue in the hands of the Court.

23. Prior to November 2, 2009 the Plaintiff was not aware that costs were being sought against him personally. There was never advanced a theory to justify this position and it was

never adjudicated *inter partes*. There was no legitimate or lawful basis to seek costs against the Plaintiff Best. This was pursued for an improper and collateral purpose(s), to wit, an excuse to seek discovery of the Plaintiff, a means to intimidate the Plaintiff and/or a means to deter the commencement or continuation of litigation by other parties based on the same general circumstances in other jurisdictions. This ulterior or collateral purpose was repeatedly admitted to the SCJ and the OCA in the course of costs and contempt proceedings in respect of costs.

24. The lawyers, law firms and clients used an affidavit of Van Allen, described as a private investigator to demonstrate that the Plaintiff could not be served with process, and/or that the Plaintiff's actions and motivations were improper and/or suspect. This was known by the Van Allen defendants and the lawyers, law firms and clients to be false and/or misleading. This was successfully used to allow for purported service by mail, which was largely ineffective due to the improper actions of the defendants, including (but not limited to) an intentional campaign to endanger the Plaintiff, forcing him to leave the country with his family for his and their safety, and placing false information and evidence before the court. All of this resulted in the Plaintiff not getting timely notice of court motions or orders, resulting in contempt orders and costs orders against him.

25. In fact, Van Allen was a serving police officer for the OPP at the time of his investigation of the Plaintiff and the swearing of his affidavit. He was not legally allowed to act as a private investigator and his actions in doing so were illegal and void. The Defendants colluded and conspired to cover this up and that his actions were in violation of the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies. Van Allen's investigations of the Plaintiff and

creation and swearing of his affidavit took place through his contract with Van Allen and/or his company and Faskens. Van Allen and the Lawyers and Law Firms, in particular, but not exclusively, the Faskens defendants, prepared the affidavits and redacted invoices to conceal the unlawful use of police services, resources and searches by Van Allen under the instructions and misinformation provided by other defendants. This information was used to secure substituted service orders, in the investigation of the Plaintiff for contempt and to secure an improper conviction for contempt. The information contained in an affidavit of Van Allen was later relied upon by Justice Shaughnessy in finding the Plaintiff guilty of contempt.

26. During the costs process against NBGL, the Defendant lawyers, law firms and clients brought a motion for the production of documents and examination of the Plaintiff, the President and director of NBGL, and for substituted service on the Plaintiff by mail in relation to costs against NBGL. The materials were not served on NBGL or the Plaintiff before it was returnable on November 2. Using the Van Allen and Kwydzinski affidavits, the clients, lawyers and law firms were able to convince Justice Shaughnessy on this *ex parte* application to validate service by mail and courier. In Van Allen's affidavit, Justice Shaughnessy was falsely led to believe that the Plaintiff was evading service, and/or that his motivations and actions were improper. Although no endorsement was made, the Court indicated a willingness to grant the order subject to the determination of the terms by the parties in attendance on November 2, 2009. The order was not created and signed until November 12, 2009, even though it required the Plaintiff to produce certain documents on November 10, 2009: two days before the order came into existence.

27. There was no legitimate or lawful basis to seek the discovery of the Plaintiff in respect of costs. This was pursued for an improper and collateral purpose(s). to wit, as a means to

intimidate the Plaintiff and/or a means to deter the commencement or continuation of litigation by persons and entities other than the Plaintiff, based on the same general circumstances, in other jurisdictions. This ulterior or collateral purpose was repeatedly admitted to the SCJ and the OCA in the course of costs and contempt proceedings in respect of costs.

28. A draft order which allegedly required document production on November 10 and examination in Toronto (Victory Verbatim) on November 17, 2009, was purportedly sent by courier on November 6, 2009 to the Plaintiff at the address indicated in the order for substituted service. In fact, the material was never sent by mail, courier or otherwise and as the Plaintiff later advised the Court and the parties, he did not receive the materials or any order, but first learned of the order when he called the trial coordinator to find out was ordered in respect of costs, on November 16, 2009.

29. On November 17, 2009, the Plaintiff called Victory Verbatim Reporting and spoke to the lawyers, primarily Ranking and Silver. The Plaintiff had asked that the conversation take place on the record (recorded by the Special Examiner's office). The lawyers refused. The Plaintiff indicated that he did not have the materials purportedly sent on November 6, 2009 and, in particular, he did not have the November 2 order. He did not have a copy of it. He indicated that he just found out about the order and the examination the day before. He indicated that he could not attend that day or the next. The Plaintiff asked to be examined by telephone. He agreed to answer questions. The lawyers refused to conduct the examination by telephone. They threatened contempt proceedings.

30. During the November 17, 2009 call to Victory Verbatim the Plaintiff refused to tell the lawyers where he was at the time. He indicated that he would not say where he was because he

was concerned about his safety and the safety of his family. In fact, the Plaintiff had fled Canada with his family due to the illegal actions of the defendants, and was in the Western Pacific at the time. The Plaintiff alleged that persons, including Mr. Silver or members of his firm, had released confidential information including Identity Information about him (date of birth, drivers license information, addresses and employment records) that was put on the internet that had led to identity theft, death threats and intimidation of him. The Plaintiff is a former police officer and an undercover operator against, inter alia, organized crime and violent criminals. The Plaintiff asked questions about what Mr. Silver or his firm had done to allow this confidential information to be released onto the internet. Mr. Silver's response was a denial of responsibility and statements to the effect that he did not care and would not help the Plaintiff even if he could.

31. The dissemination and publishing of confidential information received by Van Allen and through proceedings on the earlier action did in fact take place. This caused the Plaintiff actual physical harm. He was assaulted. It caused actual damage to property and economic loss, in that, *inter alia*, he and his family were forced to flee Canada, the family car was shot up, gang members subsequently tracked him down in New Zealand and forced the Plaintiff and his family to flee that country. The Plaintiff suffered significant, visible and provable injury and long lasting mental suffering.

32. The lawyers, law firms and clients knew about this dissemination and publishing of confidential information and, in fact, were actively involved in the dissemination and publication. They did so knowing and intending that would likely endanger the life of the Plaintiff and the life and/or safety of his family. They conspired with Van Allen and the police to injure him in this manner. Even after the Plaintiff begged them to stop distributing to the public his and his family members' private information including Identity Information, the

lawyers, law firms and clients distributed and published even more of this confidential information, which they continue to do to this day. The lawyers, law firms, clients and police later conspired to cover up this unlawful activity and the unlawful nature of Van Allen's "private" investigation services while he was a police officer. They did so flagrantly and outrageously. They did so knowing that this was unlawful and criminal. They did so intentionally for the improper and collateral purposes of encouraging the Plaintiff to leave Canada or as a means to pressure him and others in respect of litigation and potential litigation in other jurisdictions. As officers of the Court, the lawyers and law firms were acting in an official state capacity. Van Allen, as a serving police officer and the police were state agents.

33. The Toronto Police Association ('TPA') owed a fiduciary duty to the Plaintiff and the other defendants knew of this fiduciary duty and the dishonest breach of trust which is explicitly described in Van Allen's affidavit. They assisted in the breach of the fiduciary duty by employing Van Allen to conduct this investigation and by distributing, publishing and disseminating the confidential information. Ranking and the other defendants knew or were willfully blind to the fact of the breach of fiduciary duty by TPA and Van Allen.

34. It was known by the defendants that the distribution, dissemination or publishing of private and confidential information, including Identity Information as defined in the *Criminal Code*, described above would likely cause physical harm and/or significant mental suffering and trauma to the Plaintiff. The Plaintiff repeatedly requested that steps be taken by defendants to remedy this situation. The defendants had a legal duty to remedy the situation. The defendants to this day have failed to take any remedial action.

35. This investigation and its distribution, dissemination and publishing were also negligent contrary to standard of care owed to the Plaintiff by the lawyers, the law firms in respect of the investigation and Van Allen, the Van Allen defendants, the police and TPA and other defendants in respect of the improper dissemination and publishing of the confidential information.

36. After the November 17, 2009 telephone call, that day, Messrs. Silver and Ranking, on behalf of the clients and/or instructing agents, created a record by making a "Statement for the Record" at Victory Verbatim, in the presence of some other members of the law firms. In this Statement for the Record, they indicated, *inter alia*, that the Plaintiff had admitted to having received a copy of the Court Order dated November 2, 2009. Mr. Ranking stated that the Plaintiff had admitted that he had received the order prior to November 16, 2009 and that was why he had called the trial coordinator and that the Plaintiff had refused to answer questions. These statements by Messrs. Ranking and Silver were knowingly and deliberately grossly stating the opposite of the truth. These lies were uttered to enable the lawyers, law firms, and clients to conspire to pursue and pursue contempt proceedings against the Plaintiff, which they later did, using these lies to perpetrate a fraud on the court. They persisted in this position even when this was initially disputed by other counsel, Ms. Rubin, who was present for some of the conversation.

37. On November 18, 2009, a package containing, *inter alia*, a letter, the order dated November 2, 2009, a Notice of Examination requiring examination on November 25, 2009 and the Statement for the Record, was sent by mail to the Plaintiff.

38. In a December 1, 2009 letter to Mr. Ranking, copied to all lawyers, and in a letter on the same date to the Court, including the letter to Mr. Ranking, the Plaintiff indicated that he

received the material referred in the previous paragraph on November 24, 2009. The letters indicated that he was outside of Canada at the time and alleged that that the "Statement for the Record" was false and that Messrs. Ranking and Silver knew that it was false. It was alleged that, *inter alia*, that:

1. the Plaintiff denied having admitted on November 17, 2009 to having received the November 6 materials, including the draft order;
2. he had not received these materials;
3. the Plaintiff denied having admitted on November 17, 2009 to knowledge of the order prior to being told by the trial coordinator on November 16, 2009;
4. he did not know of the order prior to being told by the trial coordinator on November 16, 2009;
5. he had safety concerns as a result of the actions of the Defendant lawyers, law firms and clients and some of their counsel, including Mr. Silver and his firm.

39. The Plaintiff was not able to and did not attend in Toronto for examination on November 25, 2009.

40. A motion returnable December 2, 2009, seeking the same relief as the November 2 order (except for examination before Justice Shaughnessy) and a contempt order was purportedly served on the by mail Plaintiff, on short service.

41. In court on December 2, 2009, Messrs. Ranking and Silver disputed the truth of the December 1, 2009 letters of the Plaintiff. They called it defamation. They asserted the truth of their Statement for the Record. They falsely insisted that the Plaintiff had knowledge of the order prior to November 16, 2009. They also falsely asserted that the Plaintiff only disputed

receipt of the signed order. They falsely asserted that there was no dispute that the Plaintiff had received the draft order prior to November 16, 2009. They relied on the purported service by courier on or after November 6, 2009, the November 16 letter (taken out of context, ignoring the fact that knowledge prior to November 16 was specifically denied) and the supposed admissions of the Plaintiff during the November 17, 2009 conversation (as falsely reflected in the Statement for the Record).

42. The Court accepted the facts as submitted by counsel on December 2, 2009, because they were proffered as facts under the express and implied assurances that the facts were true and reliable in accordance with the ethical obligations of the lawyers, as Officers of the Court, to tell the truth and to not mislead the Court. The Court rejected the contrary assertions by the Plaintiff in the December 1, 2009 letters because they were not under oath and did not come from an Officer of the Court. The lawyers, in lying and/or misleading the Court abused their office as Officers of the Court and abused process. Other lawyers, in remaining silent in the face of knowledge that statements were false and/or misleading also abused their office as Officers of the Court and abused process.

43. An order was issued on December 2, 2009 requiring the production of documents on January 8, 2010 and examination before Justice on January 15th, 2010. Failure to comply would result in a contempt hearing that day if the Plaintiff did not appear.

44. The December 2, 2009 order was sent to the Plaintiff by mail. The Plaintiff had no knowledge of any requirement to provide documents or attend to be examined in January 2010. He had no knowledge of any application to find him in contempt on January 15, 2010. The Plaintiff did not receive the December 2, 2009 order until June 2010.

45. There was no personal service of any order prior to any obligation arising and no evidence of knowledge of such an obligation until, in respect of November 17 and 25, 2009, the day prior to the obligation arising and otherwise, no knowledge of any obligation until after the deadline. The Supreme Court of Canada, in *Bhatnager,* [1990] S.C.J. No. 62 has made it clear that service that is not personal service may, in some circumstances be adequate for the conduct of civil litigation, but is legally inadequate to found civil contempt. Personal service or knowledge is a precondition for a finding of civil contempt.

46. The lawyers misled Shaughnessy, J. with respect to the facts and law regarding the adequacy of service, knowledge and notice. Contrary to the law they falsely urged the Court to act upon substituted service. They falsely asserted prior knowledge of the November 2, 2009 order in the "Statement for the Record". They relied upon misleading and/or false evidence and/or opinions in the Van Allen affidavit suggesting that the Plaintiff was attempting to evade service. They unreasonably asserted that notice the day before (when the person claimed to be outside of the country) was adequate (in respect of November 17 and November 25, 2009). The contempt order made on January 15, 2010 was a product of the misleading of the Court by the lawyers, law firms and clients and the Van Allen defendants, with the police and the TPA.

47. The Plaintiff did not attend on January 15, 2010.

48. On January 15, 2010 (as reflected in Reasons on January 25, 2010), the Court found the Plaintiff in contempt of court (civilly) for failure to comply with the November 2, 2009 order (production and examination), the Notice of Examination for November 25, 2009 and the December 2, 2009 order (production and examination). Based on:

1. the orders for substituted service;

2. the November 16, 2009 letter (taken out of context; without mentioning denial of prior knowledge);
3. the November call (taken out of context: without mentioning denial of knowledge prior to November 16, 2009);
4. the Statement for the Record;
5. The affidavit of Van Allen; and
6. the submissions of Messrs. Silver and Ranking that the Statement for the Record was true and the December 1, 2009 letters of the Plaintiff were false,

the Court found that the Plaintiff had "notice". Based on the denials by the lawyers as Officers of the Court and the lack of sworn evidence, there was no consideration of safety issues. The Court found that the Plaintiff had not complied with the orders in that he did not produce the documents and did not attend for examination. Based on the lie in the Statement for the Record, the Court was misled into implicitly finding that the alleged offer to be examined on November 17 did not happen or was not compliance with the November 2, 2009 order. The Court ordered that the Plaintiff be jailed for 3 months, imposed a fine in the amount of $7,500 and ordered costs in the favour of four sets of the clients (represented by Faskens, Cassels, Miller and Stikeman Elliot LLP) in the aggregate sum of approximately $80,000.

49. In fact, had the true facts been known to the Court, there were no reasonable grounds to allege contempt, let alone constitute proof beyond a reasonable doubt. The prosecution initiated against the Plaintiff by the lawyers, law firms and clients should have been concluded favourably for the Plaintiff. However, the Plaintiff asserts that where this did not occur as a result of fraud by the lawyers, law firms and clients, precluding an appeal on the merits for administrative

reasons, malicious prosecution and false imprisonment should still be available. There was no honest belief in guilt and there was a further improper purpose of seeking to pressure discovery and otherwise pressure the termination of litigation in other jurisdictions involving other persons and entities, not the Plaintiff or NBGL.

50. The actions, and inactions in the face of duties to act, of the lawyers, law firms, clients and other defendants resulted in the contempt order and resulting warrant of committal. The execution of the warrant resulted in the wrongful imprisonment of the Plaintiff in May 2013 after he returned to Canada to challenge the contempt finding, until bail pending appeal was granted in June 2013. The Plaintiff was again wrongfully imprisoned in April 2014 when his appeal was dismissed for procedural reasons (inability to pay costs) triggered by continuation of the intentional abuse of process and lying to the Court of Appeal on and before February 27, 2014.

51. In June 2010, costs of the NBGL action were settled in full. Thereafter, the only outstanding issue or costs order was the contempt and costs order of January 15, 2010. The production and examination of the Plaintiff in furtherance of costs on the action served no useful or legitimate purpose after this point in time. In fact, the lawyers, law firms and defendants had earlier access to the NBGL legal files that satisfied any legitimate purpose they might have had to examine the Plaintiff. The issues were moot. Justice Feldman later found abuse of process, based on this fact, to be an arguable ground of appeal. This and other viable grounds of appeal were never argued due to the order flowing from the February 27, 2014 decision of the Court of Appeal to dismiss the appeal as a result of the Plaintiff's inability to pay costs.

52. Before and after the June 2010 settlement, to which the Plaintiff was not a party, private and confidential information, including Identity Information as defined in the Criminal Code,

about the Plaintiff was received by the defendants, including through the discovery process related to the NBGL action. Prior to use and filing in Court and contrary to the implied undertaking rule, some of this confidential information was published on the internet. This was done by and/or knowingly assisted by the clients, lawyers and law firms. The settlement included the public filing of an affidavit by Zagar which contained much of this private and confidential information regarding the Plaintiff. The Plaintiff did not consent to this public filing. In light of the earlier stay of the action and the settlement of the costs, this filing served no legitimate purpose. The predominant purpose of the conspiring defendants in filing was to harm the Plaintiff. It was known by the defendants that the dissemination or publishing of private and confidential information described herein would likely cause physical harm or death and/or significant mental suffering and trauma to the Plaintiff, as well as other harms including but not limited to economic and career harm. The Plaintiff has repeatedly requested that steps be taken by defendants to remedy this situation. The defendants had a legal duty to remedy the situation. The defendants to this day have failed to take any remedial action.

53. In 2012, an application was brought by the Plaintiff to set aside or vary the January 15, 2010 contempt order on a number of grounds, including the fact that the Plaintiff did not have timely knowledge of the November 2, 2009 order or the Notice of Examination and that he did not receive the December 2 materials or order or know of the January 15, 2010 hearing until June 2010. The evidence demonstrates that delay between January 15, 2010 and the application in August, 2012 was not the fault of the Plaintiff. Initially, a stay of the warrant was sought and granted to allow the Plaintiff to return to Canada to challenge the contempt order.

54. The Plaintiff in his affidavits asserted that Messrs. Ranking and Silver were material witnesses and had conflicts of interest. He asserted that they should not be acting on the

application. They did not recuse themselves and the Superior Court of Justice ("SCJ") never dealt with this issue.

55. Messrs. Ranking and Silver and their firms and other defendants opposed the application in the Superior Court of Justice. Pendrith assisted them during the appeal process and provided evidence that was misleading.

56. Ultimately, the Plaintiff was forced to be self-represented because he could not find a lawyer who would represent him. The Plaintiff repeatedly sought time to retain new counsel. He approached over 70 different lawyers. However, civil lawyers claimed that their lack of criminal law knowledge rendered them unsuitable and the criminal lawyers claimed the converse. The reality was that nobody wanted to get involved in a case in which it was alleged and proved that Messrs. Silver and Ranking and their firms had obstructed justice by lying to the Court, and where the Plaintiff possessed credible and strong evidence including his voice recordings of the November 17, 2009 phone conversation with the lawyers. The Plaintiff was able to have some funds to hire a lawyer by borrowing from friends. The Faskens and Cassels defendants opposed the Plaintiff's requests for more time to find counsel.

57. Unbeknownst to Messrs Ranking and Silver, the Plaintiff had audio-recorded the November 17, 2009 phone conversation with them. The evidence on the application included an authenticated transcript of this audio recording and the recording itself. This recording demonstrates that the "Statement for the Record" relied upon the defendants and used by Justice Shaughnessy was false insofar as it indicated that the Plaintiff 'admitted' during the November 17, 2009 conversation to having the November order and had knowledge of the order before

November 16, 2009. The recording supports the truth of the Plaintiff 's December 1, 2009 letters. This meant that:

1. the Statement for the Record filed before Justice Shaughnessy contained lies that:

(a) the Plaintiff had admitted to having received the November order;

(b) the Plaintiff had admitted to knowledge of the order before November 16, 2009;

(c) the Plaintiff had refused to answer questions over the phone;

2. the submissions of Messrs. Silver and Ranking to the Court on December 2, 2009, that the Statement for the Record was true and the December 1 letters were false, were false submissions. In other words, they lied to the Court in asserting the truth of the Statement for the Record;

3. The assertion on December 2, 2009, that the Plaintiff had only contested receipt of the signed order, but had admitted to receipt of the draft order, was a lie.

58. In addition, the affidavit evidence filed by Plaintiff was presented regarding the failure to receive the materials at all or in time, the safety concerns of the Plaintiff for himself and his family and his willingness to answer the questions addressed in the order dated November 2, 2009.

59. The Plaintiff answered questions regarding these affidavits and in relation to the November 2, 2009 and December 2, 2009 orders on January 11 and 23, 2013. During this examination, the Plaintiff made it clear that he was willing to answer all questions addressed by the November 2, 2009 order. He asked that any other questions that remained be asked. He indicated a willingness to make himself available for this purpose. The Faskens and Cassels defendants refused to indicate what other questions, if any, remained unanswered.

60. On January 25, 2013, the Plaintiff provided a memory stick, with some 100,000 documents on it, to the Faskens and Cassels defendants.

61. On March 14, 2013 the Plaintiff produced a document (119 pages long plus attachments) called "Answers to Undertakings, Under Advisements, Refusals" ("March 14 Answers") stemming from the January 11 and 23, 2013 examinations. In addition to answering questions in relation to the affidavits, the examinations addressed the issues for examination covered in the November 2, 2009 order. That order required examination regarding:

a. Unanswered Questions in relation to the examination of an affiant, John Knox, on November 4, 2008;
b. unanswered questions from examination of the Plaintiff on March 20, 2009;
c. unanswered questions directed to be answered on April 8, 2009;
d. Questions relating to the Plaintiff's involvement with the Plaintiff corporation NBGL; his relationship to the matters pleaded in the lawsuit and his non-privileged association with his former counsel, William McKenzie and his law firm; and
e. questions in relation to shares in KEL, to which the lawsuit was related.

62. Many of these kinds questions were asked and answered on January 11, and 23, 2013. In relation to the January 11, 2013 examination, in the March 14 Answers, the Plaintiff answered questions that covered items (d) (Under Advisement questions number 4-6, 7-9, 17-19, 27-31, 34-35, 38-39, 44-45, 48-49, 51-52, 62) and (e) (Under Advisement questions numbers 13-15) above. In relation to the January 23, 2013 examination there were questions that were answered

in the March 14 Answers in relation to items (d) (Undertaking question 12), (b) (Under Advisement questions 1-16) and (a) (Knox Questions 1-18). Accordingly, in January and March 2013, many, if not all, of the questions ordered to be answered on November 2, 2009 were asked and answered to the best of the Plaintiff's ability.

63. After receipt of the factum of the Faskens and Cassels defendants, in which it was asserted that questions had not been answered, the Plaintiff sent a letter dated April 22, 2013, asking that the Faskens and Cassels defendants identify what questions remained unanswered. In a letter dated April 26, 2013, Mr. Ranking refused to identify what further questions remained unanswered.

64. Notwithstanding the Plaintiff's offer to be further examined, between January 25 and April 30, 2013, the Faskens and Cassels defendants never moved to ask further questions on the issues identified in the November 2, 2009 and December 2, 2009 orders or regarding these documents or any other issues addressed by the November 2 and December 2 orders.

65. Notwithstanding evidence of good faith and *bona fide* efforts to find counsel, Ranking and Silver falsely asserted urgency and opposed the Plaintiff's requests for additional time to obtain counsel. In light of the subsequent discovery of a lawyer (Slansky) to conduct the appeal, in May 2013, additional time would have made a difference. As a direct result of actions by Faskens and Cassels defendants the Plaintiff was forced to proceed without the assistance of counsel. No pressing reasons or urgency were expressed to justify this decision.

66. At the outset of the hearing on April 30, 2013, the Plaintiff sought an adjournment to obtain counsel. This was opposed and refused. The Plaintiff was unrepresented at the hearing.

67. Near the outset of the hearing the Plaintiff presented information that he had discovered the day before in the form of an affidavit. In the affidavit, he indicated that he had been told by a Durham Regional Police officer, defendant Rushbrook, that the police and Court police had been asked to conduct an investigation of the Plaintiff prior to January 15, 2010 in anticipation of the conviction of the Plaintiff on that day. That investigation had happened approximately one month prior to January 15, 2010. The Faskens and Cassels defendants falsely denied any knowledge of this investigation. The hearing proceeded without any opportunity to gather further information regarding this investigation which was, *prima facie* an abuse of process.

68. The Plaintiff asked to present evidence in relation to his safety and security to explain why it would have been very difficult for him to come to Toronto or Whitby in 2009 or 2010. The Faskens and Cassels defendants falsely denied the legitimacy of this evidence and misled the Court into refusing to allow this issue to be explored or to allow the Plaintiff to present this evidence. Evidence of security concerns arising in November 2009 were addressed in the Plaintiff's affidavits and in his submissions to the Court. The Court failed to address this because the Court was mistakenly led to believe that such matters had already been addressed by the Court. In fact, the only safety and security concerns dealt with by the Court were those of the Plaintiff's former counsel, McKenzie in the February 8, 2008 judgment of the Court. The Faskens and Cassels defendants misled Justice Shaughnessy into mistakenly believing that this issue had already been brought to his attention and had been dismissed it.

69. Faskens and Cassels defendants having misled the Court regarding the November 17, 2009 conversation, on April 30, 2013 and previously, caused the Court to decline to listen to the recording.

70. The Plaintiff asked that the Court deal with the fact that Messrs. Ranking and Silver were material witnesses and asked that the Court order that the Plaintiff be allowed to examine them. Messrs. Ranking and Silver refused to be examined, and this did not take place.

71. The Plaintiff asked that the audio recordings of the January 11 and 23, 2013 examinations be produced and played to the Court because it would demonstrate the abusive conduct of Messrs Ranking and Silver during the examination. Based on the denials of misconduct by Messrs. Ranking and Silver, this did not take place.

72. The Plaintiff alleged other misconduct by counsel and asked the Court to stay the contempt order as an abuse of process, citing the recent decision in *R. v. Salmon*, 2013 ONCA 203. Based on the misrepresentations of Messrs Ranking and Silver, this was not considered or was considered without regard to any of the evidence filed by the Plaintiff. Based on these misrepresentations, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application.

73. During the hearing on April 30, 2013, the Plaintiff was offered the opportunity to continue the stay and answer questions as a part of a draft order that also required him to accept a costs order that was disputed by the Plaintiff. The Plaintiff repeated more than once that he was not prepared to agree to such a draft order but that he was willing to cooperate with the Court and answer questions. The Faskens and Cassels defendants did not seek to take the Plaintiff up on this offer by questioning him before Justice Shaughnessy on April 30 or May 3, 2013.

74. On April 30, 2013, the Faskens and Cassels defendants agreed that, subject to further exploration in examinations that they refused to conduct, they were prepared to accept that a memory stick provided on January 25, 2013 containing approximately 100,000 documents

fulfilled the November 2, 2009 and December 2, 2009 orders to produce documents. Yet, they still pursued contempt on this basis.

75. The Court accepted the Faskens and Cassels defendants false submission that no new evidence had been presented on the application. The Court agreed and said that there was no new evidence since January 15, 2010. This was false. Since January 15, 2010 there was the following new evidence:

a) There was evidence of the settlement of costs on the action, rendering the November 2 and December 2, 2009 orders moot;
b) new and conclusive proof that the Plaintiff stated on November 17, 2009 that he did NOT receive the November 2 order prior to November 17, 2009 and that he did not know of the order until the day before contrary to the Victory Verbatim 'Statement for the Record' created by Ranking and Silver and relied upon by the Court on December 2, 2009 and January 15, 2010;
c) that the Plaintiff was in the Western Pacific on November 16 when he received knowledge of the Nov. 17 examination and materials (but not the materials themselves);
d) there was evidence (recording and affidavit under oath) pursuant to 16.07 of the Rules of Civil Procedure that established that the documents did not come to his attention or only came to his attention at a later time;
e) There was proof of a legitimate offer to comply with the order by telephone on November 17, 2009 which had been falsely disputed in the Statement for the Record;

f) there was evidence that the documents ordered had been provided by memory stick on January 25, 2013 and that, subject to further answers to questions that may cast doubt upon the completeness of the documentation, the Faskens and Cassels defendants accepted on April 30, 2013 that this constituted compliance with the November 2 and December 2, 2009 orders;

g) there was evidence that the lawyers, law firms and defendants had received full access to and copies of tens of thousands pages of privileged documents from the NBGL law firm's files in 2010, which constituted substantial or complete compliance with the November 2 and December 2, 2009 orders;

h) there was evidence of the answers of questions addressed in the November 2, 2009 and December 2, 2009 orders in the examination of the Plaintiff in January 2013 and the March 20103 written Answers. There were offers to be examined further;

i) there was sworn evidence regarding the safety and security concerns of the Plaintiff.

Based on the misrepresentations by the Faskens and Cassels defendants, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application.

76. In dismissing the application to set aside the finding of contempt, on the issue of knowledge, based on the misrepresentations by the Faskens and Cassels defendants, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application. Accordingly, the Court was left to rely on:

a) the misleading affidavit of Van Allen

b) the false purported compliance with orders for substituted service;

c) the November 16, 2009 letter (taken out of context by the Faskens and Cassels defendants, without mentioning denial of prior knowledge);

d) the November call (taken out of context the Faskens and Cassels defendants, without mentioning denial of knowledge prior to November 16, 2009);

e) the false Statement for the Record;

f) the false submissions of Messrs. Silver and Ranking that the Statement for the Record was true and the December 1, 2009 letters of the Plaintiff were false; and

g) the false assertion by Mr. Ranking that the Plaintiff was only disputing receipt of the signed order, but that there was no dispute about receipt of the draft order.

Accordingly, the dismissal of the motion to set aside the finding of contempt was a direct result of the recent actions of the Faskens and Cassels defendants and the earlier actions of all defendants.

77. Based on the misrepresentations by the defendants, the Court failed to conduct a trial of any disputed factual issues on *viva voce* evidence.

78. The Plaintiff, as a self-represented litigant did not raise and the Faskens and Cassels defendants did not raise the fact that the purpose of the orders upon which the contempt order was made was now moot. Faskens and Cassels defendants had an obligation to alert the Court to this fact. Accordingly, the Court did not deal with this issue.

79. The Faskens and Cassels defendants continued to assert non-compliance with the orders notwithstanding their knowledge that there had been compliance. As a result of them misleading

the Court, aside from the offer to now examine on condition that the Plaintiff accept a contested costs order ($80,000), no opportunity to purge was offered to the Plaintiff.

80. The Court was misled into refusing to decide whether the PWCECF was a legal entity. The Faskens and Cassels defendants made the misleading submission to the Court that since PWCECF was the entity that NBGL had sued, the Plaintiff could not complain that it did not exist. This ignored the fact that NBGL had originally sued another non-entity, PricewaterhouseCoopers (Barbados), based upon earlier affidavit evidence by Atkinson, but Mr. Ranking and Hatch had advised NBGL and the Court that this was the incorrect name and had asserted that the correct name was PWCECF. As a result of this misleading submission, none of the evidence proving the non-existence of PWCECF was considered.

81. Notwithstanding the later suggestion by Faskens and Cassels defendants, the contempt order on January 15, 2010 did not include the failure to pay costs as a part of the contempt. This was appropriate since to do otherwise would to be to turn our correctional system into a debtor's prison. The May 3, 2013 order did not purport to be a new contempt order. Rather, the May 3 order dismissed the Plaintiff's application to set aside the contempt order and removed the stay of the warrant of committal thereby allowing the January 15, 2010 order to take effect. However, the May 3, 2013 order was tied to the costs of the January 15, 2010 contempt order by requiring payment of costs as a condition precedent to purging contempt.

82. The May 3, 2013 warrant of committal specifies that there is to be "no remission" on the period of incarceration. The January 2010 order did not specify that remission did not apply to the order of imprisonment. There is no mention of remission in the May 3, 2013 order, endorsement or reasons. No mention of remission was made during the hearing on April 30 and

May 3, 2013. There was no opportunity for the Plaintiff to address this issue, which he discovered only after arriving at jail on May 3, 2013. Since the May 3, 2013 decision did not result in a new contempt order, there was no jurisdiction to vary the January 15, 2010 order. This "no remission" term was inserted maliciously in the warrant by the Faskens and Cassels defendants and adopted by the Judge who relied on Senior Counsel to be candid and forthright in their dealings with the Court, which they were not.

83. The manner of the investigation and prosecution of the Plaintiff in respect of and/or for purposes of obtaining substituted service orders, contempt proceedings and to harm the Plaintiff caused harm to the Plaintiff. The Plaintiff was significantly harmed physically, emotionally, mentally, economically and with respect to his reputation.

84. This harm was caused by the manner of the investigation and prosecution including harm from the abusive and otherwise tortious manner of his prosecution described in this Statement of Claim, including, *inter alia*, improper motivations, misrepresentations and lies to the Courts, improper use of police resources, improper violations respecting private information and improper sheltering from liability (re non-entity Respondent, PWCECF) and cover up in respect of these actions.

85. This harm results from, *inter alia*, the need for him to bring an application to set aside the contempt order, the appeal therefrom, the damage to his him in respect to his safety, physical and mental health and reputation, arrest, prosecution and incarceration in May 2013 and again in April 2014. This harm has been cumulative and continues to this day.

B. FURTHER PARTICULARS REGARDING EACH CAUSE OF ACTION

(1) CONTEMPT:

(a) Abuse of process (common law and s. 7 of the *Charter*):

86. There are several instances of abuse of process in respect of the contempt proceedings initiated against the Plaintiff:

(i) seeking costs against the Plaintiff re NBGL suit as ruse to get discovery and to pressure discontinuance re other jurisdictions;

(ii) seeking discovery against the Plaintiff as means to obtain advantage in litigation in other jurisdictions;

(iii) seeking contempt against the Plaintiff: ulterior motive re pressure to discontinue and punish for exposing professional misconduct;

(iv) contempt by defendants (implied undertaking rule/failure to correct);

(v) lies and misleading court re receipt of documents;

87. The defendants initiated and/or assisted in costs proceedings, discovery proceedings in respect of costs and contempt proceedings against the Plaintiff. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the continuation of litigation in other jurisdictions by other persons and entities, not the Plaintiff or NBGL. This was a common law abuse of process. The defendants commenced the proceedings to this end by proceeding *ex parte*, unlawfully gathering facts regarding the Plaintiff, dissemination and

publishing of private facts, including by violating the implied undertaking rule, presenting misleading facts regarding the Plaintiff and outright lying to secure a finding of contempt in the face of real issues of timely notice.

88. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. In proceeding for improper purposes and the use of misleading, unlawfully obtained and knowingly false evidence the lawyers and law firms breached their Barrister's Oath and the actions of the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(b) Negligent investigation

89. The investigation by the defendants directly and through agents, including the Van Allen defendants, the police and the TPA caused false and misleading facts to be presented in the motions for substituted service, examination motions and contempt application, which led to the prosecution and incarceration of the Plaintiff which caused him significant harm.

90. The investigation by the defendants directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information by a serving

police officer and the other defendants that otherwise could not have been lawfully obtained and otherwise led to the discovery and dissemination and publishing of such information which caused the Plaintiff significant harm.

91. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing their agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

92. The actions of the lawyers, law firms and clients described in this Statement of Claim violation constitute a breach of the standard of care in respect of the ethical duties of lawyers, as set out in Rules of Professional Conduct.

93. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

94. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies, all of which preclude a serving police officer acting as or being hired as a private investigator.

95. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

96. The Van Allen defendants, the police and the TPA and the other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

97. The Van Allen defendants, the police and the TPA and the other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

98. The actions of the Van Allen defendants, the police and the TPA and the other defendants described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

99. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting or being hired as a private investigator. This largely informs the standard of care.

100. The Van Allen defendants, the police and the TPA knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(c) False imprisonment

101. The Plaintiff was imprisoned for 63 days as a result of the finding of contempt, the dismissal of the motion to set aside the contempt and the administrative dismissal of the appeal

as a result of the inability to pay costs. He was jailed in solitary confinement because he is a former police officer.

102. The Plaintiff was falsely arrested and detained by the police for a half day while on bail pending appeal.

103. The Plaintiff did not agree to be arrested, detained or incarcerated.

104. The defendants caused the Plaintiff to be arrested, detained or incarcerated by commencing contempt proceedings against him and/or by pursuing contempt proceedings in an abusive or misleading manner and by assisting in the investigation leading to the contempt order and warrant of committal and also by mistakenly arresting him due to their failures to use proper administrative procedures respecting arrest warrants and bail records.

105. There were not reasonable and probable grounds to believe that the Plaintiff was in contempt or that he had violated his bail.

106. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. In proceeding for improper purposes and the use of misleading, unlawfully obtained and knowingly false evidence the lawyers and law firms breached their Barrister's Oath and the actions of the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). Since there were no reasonable and probable grounds to believe that the Plaintiff was in contempt or

that he had violated his bail, his arrest, detention and incarceration were arbitrary (contrary to s. 9 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(d) Intentional and/or Negligent Infliction of Harm and/or Mental Suffering

107. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in respect of the conduct of contempt proceedings were flagrant and outrageous. They were calculated to harm the Plaintiff (intentional or willfully blind) or reckless regarding harm. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

108. In the alternative in respect of any defendant who did not intend harm as set out in the previous paragraph, such defendants were negligent in causing compensable actual, visible and provable injury (physical and mental harm and suffering).

109. The actions and/or inactions of the defendants, directly and through agents, including but not limited to the Van Allen defendants, the police and the TPA caused false and misleading facts to be presented in the motions for substituted service, examination motions and contempt application, which led to the prosecution and incarceration of the Plaintiff which caused him significant harm.

110. The actions and/or inactions of the defendants, directly and through agents, including but not limited to the Van Allen defendants, the police and the TPA allowed the improper access to information as a serving police officer that he otherwise could not have lawfully obtained and

otherwise led to the discovery and dissemination and publishing of such information which caused him significant harm.

111. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

112. The actions of the lawyers, law firms and clients described in this Statement of Claim constitute a breach of the standard of care in respect of the ethical duties of lawyers, as set out in Rules of Professional Conduct.

113. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

114. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies, all of which preclude a serving police officer acting as or being hired as a private investigator.

115. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

116. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

117. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

118. The actions of the Van Allen defendants, the police and the TPA and the other defendants described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

119. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator. This largely informs the standard of care.

120. The Van Allen defendants, the police and the TPA and the other defendants knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(e) Misfeasance of public office/Abuse of Authority

121. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were

acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions.

122. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in respect of the contempt proceedings were performed in bad faith and were deliberately unlawful or outside the scope of their authority in the exercise of the public functions of (a) a prosecutor or Officer of the Court; (b) a peace officer; (c) a labour official of the TPA; and (d) a probation and parole officer. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

(f) Malicious Prosecution

123. The defendant lawyers, law firms and clients initiated criminal or quasi criminal proceedings against the Plaintiff, to wit, an application to have him found in civil contempt.

124. The application for Leave to Appeal was dismissed by the Supreme Court of Canada.

125. It will be argued that where a conviction was obtained by fraud or fresh evidence exists, and where an appeal was unavailable due to lack of financial resources, the lack of a favourable result should not be a bar to sue for malicious prosecution.

126. There were not reasonable and probable grounds to believe that the Plaintiff was in contempt or that he had violated his bail.

127. For the reasons otherwise described in this Statement of Claim, the prosecution of the Plaintiff by the lawyers, law firms and clients, assisted by the other defendants, was performed

maliciously and/or exercised for an improper purpose. The defendants did not have an honest belief that the Plaintiff was guilty. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the continuation of litigation in other jurisdictions.

(g) Conspiracy to injure

128. As detailed otherwise described in this Statement of Claim, two or more of the defendants made an agreement the predominant purpose of which was to injure the Plaintiff through lawful and/or unlawful means. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering), incarceration, damage to reputation, loss of future income and loss of time and money required to litigate these issues and the costs orders made against him.

(2) PRIVACY

(a) Invasion of privacy /intrusion on secrecy

129. The defendants invaded the Plaintiff's privacy and intruded on his secrecy by accessing, disseminating and publishing his private and confidential information. They did so by:

(i) discovering private information and then distributing it, including by publishing it and/or by other means, without its filing in Court contrary to the implied undertaking rule;

(ii) filing such material in an affidavit sworn by Zagar after the settlement of the case for the improper purpose of damaging the plaintiff and for no legitimate purpose;

(iii) accessing private information in the possession of Government for limited regulatory purposes and including the information to prepare affidavits and filing the information;

(iv) disseminating the information referred to in (i)-(iii) and other private information on the internet and by other means.

130. These acts were done directly and/or indirectly by the defendants. They were done intentionally, maliciously and/or recklessly. The accessing, filing and dissemination/publishing of this private information intruded upon the informational seclusion of the plaintiff and/or his private affairs and/or concerns.

131. These invasions would be highly offensive to a reasonable person because, *inter alia*, the accessing and publishing served no useful and/or proper purpose; it was known by the defendants that as a former undercover police officer and undercover private investigator, the Plaintiff had many enemies who would want to kill or harm him or otherwise seek revenge, some of whom were involved in organized crime; the dissemination and publishing took place in such a way as to encourage harm to the Plaintiff; to the extent any of the information was relevant, the details, including addresses, driver's license information, etc. need not have been included or could easily have been edited or redacted. There was and is a great risk of identity theft from the release of the information. The release of the information in fact resulted in criminal activity being directed at the Plaintiff, directly and through his family, to wit, criminal harassment, assault; death threats; identity theft and other criminal activities. This was the intent. It caused the Plaintiff to flee Canada. Similar criminal acts were inflicted by some of the defendants during the litigation of the NBGL case leading up to these events. The timing was such as cause

the Plaintiff to flee around the time of the attempts to attack the Plaintiff in Court (through direct costs applications; discovery; and contempt). The timing was intentional to facilitate this attack on the Plaintiff using the legal system for ulterior motives. Further, the Plaintiff raised concerns about this issue several times and was mocked and dismissed and was told by Mr. Silver on November 17, 2009 (recorded) that he would not help the Plaintiff if he could. The defendants had and have a duty to correct the situation and have failed to do so to this day. In fact, the defendants continue to distribute and publish the Plaintiff's private information, including his Identity Information as defined in the Criminal Code.

132. The following legislation reinforces the fact that this would be seen to be highly offensive to a reasonable person: *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(b) ss. 7 and/or 8 of the Charter (re Gov. actors/agents)

133. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. In accessing, disseminating and

publishing the Plaintiff's private and confidential information as described in the previous section **(III. B. 2. (a))**, the defendants invaded the Plaintiff's reasonable expectation of privacy in his personal electronic (or other) information (see *R. v. Spencer*, [2014] S.C.J. No. 43). In particular, the SCC has just made it clear that personal information given to the police for one purpose cannot be used in for a different purpose or in a different case (*R. v. Quesnelle*, [2014] S.C.J. No. 46).

134. The use of such information for a purpose different than it was originally obtained constitutes a new seizure or a conversion of a lawful seizure into an unreasonable one seizure and publishing of this information (see *Colarusso* (SCC); *Dyment* (SCC) and *Quesnelle* (SCC)). Accordingly, the misuse and dissemination constituted a search and seizure.

135. The search and seizure was not lawful according to the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

136. As detailed in this Statement of Claim, the seizure by conversion for another purpose and its dissemination significantly damaged the Plaintiff, physically, emotionally, mentally, economically and with respect to the plaintiff's reputation. It also contributed to the Plaintiff being found in contempt. There are no public policy reasons to deny remedies including damages.

(c) Misfeasance of Public Office/Abuse of Authority/

137. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions.

138. For the reasons otherwise described in this Statement of Claim, the actions of the defendants invading the privacy of the Plaintiff were performed in bad faith and were deliberately unlawful or outside the scope of their authority in the exercise of the public functions of (a) a prosecutor or Officer of the Court; (b) a peace officer; (c) a labour official of the TPA; and (d) a probation and parole officer. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

(d) Abuse of process (common law and s. 7 of the Charter)

139. The defendants initiated and/or assisted in costs proceedings, discovery proceedings in respect of costs and contempt proceedings against the Plaintiff. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the continuation of litigation in other jurisdictions. This was a common law abuse of process. The defendants abused process by unlawfully gathering facts regarding the Plaintiff and by dissemination and publishing of private facts, including by violating the implied undertaking rule.

140. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen

defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully accessing and disseminating private information, the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(e) Intentional or Reckless Endangerment (Infliction of Harm/Mental suffering)/Negligent Endangerment

141. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in accessing, filing and disseminating the private information were flagrant and outrageous. They were calculated to harm the Plaintiff (intentional or willfully blind) or reckless regarding harm. These actions caused actual, visible and provable injury (physical and mental harm and suffering). In addition to intending and causing harm (physical and mental suffering), defendants intended or were reckless in seeking to endanger the Plaintiff's life by releasing his private information.

142. In the alternative in respect of any defendant who did not intend to harm or endanger as set out in the previous paragraph, such defendants were negligent in causing compensable actual, visible and provable injury (physical and mental harm and suffering).

143. The actions and/or inactions of the defendants, directly and through agents, including the Van Allen defendants, the police and the TPA allowed improper access to information that

otherwise could not have lawfully obtained and led to the discovery and dissemination and publishing of confidential information which caused the Plaintiff significant harm.

144. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

145. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

146. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies, which preclude a serving police officer acting as or being hired as a private investigator.

147. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and*

Protection of Privacy Act, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

148. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him and other defendants. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

149. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

150. The actions of the Van Allen defendants, the police and the TPA described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

151. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the

Criminal Code, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator. This largely informs the standard of care.

152. The Van Allen defendants, the police and the TPA knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff would not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(f) Negligent Investigation re Privacy

153. The investigation by the defendants directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information by a serving police officer that otherwise could not have lawfully obtained and otherwise led to the discovery and dissemination and publishing of such information which caused the Plaintiff significant harm.

154. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably

foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

155. The actions of the lawyers, law firms and clients and other defendants described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

156. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator.

157. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

158. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him or the other defendants. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

159. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

160. The actions of the Van Allen defendants, the police and the TPA and other defendants as described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

161. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which as a serving police officer acting or being hired as a private investigator. This largely informs the standard of care.

162. The Van Allen defendants, the police and the TPA and the other defendants knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(g) Negligence re Regulation and/or Negligent performance of Statutory duty and/or s. 7 of the Charter

163. The actions and/or inactions of the defendants, directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information as a serving police officer that he otherwise could not have lawfully obtained and otherwise led to the discovery and dissemination and publishing of such information which caused him significant harm.

164. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given.

165. The legislative scheme in respect of whether a serving police officer can act as a private investigator is set out in the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator. This scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

166. The legislative scheme in respect of privacy is set out in the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56. This scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons whose private information was improperly accessed and disseminated. This is especially so when the facts of the case involve such accessing and dissemination in the context of the Plaintiff being targeted in investigations (see *Hill* (SCC) and *Taylor* (OCA)).

167. The actions of the lawyers, law firms and clients and other defendants described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in

respect of retaining and instruction private investigators and the use of the fruits of such investigations.

168. In respect of retaining a private investigator, the standard of care is informed largely by the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator.

169. In respect of invasion of privacy, the standard of care is informed largely by the legislative scheme referred to above (*Criminal Code*; PIPEDA; etc.) which seeks to preclude access to and dissemination of private information.

170. The Van Allen defendants, the police and the TPA and other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him and other defendants. The legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

171. The Van Allen defendants, the police and the TPA and other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme referred to above (*Criminal Code*; PIPEDA; etc.) which seeks to preclude

access to and dissemination of private information created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

172. The actions of the Van Allen defendants, the police and the TPA and other defendants described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the violation of privacy rights.

173. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting or being hired as a private investigator.

174. The Van Allen defendants, the police and the TPA and the other defendants knew or were negligent in failing to protect the Plaintiff's statutory privacy rights ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the legislative scheme referred to above (*Criminal Code*; PIPEDA; etc.) which seeks to preclude access to and dissemination of private information.

175. The OPP was also negligent in failing to create a regulatory and/or record keeping and/or compliance scheme to ensure that secondary employment by OPP police officers, like Van Allen, was being conducted in accordance with the law.

176. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully accessing and disseminating private information, the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(h) Breach of fiduciary duty/Negligence in Respect of Fiduciary duty

177. The TPA had a fiduciary duty towards the Plaintiff as a member or former member of that Association. Like any labour organization, the TPA has a fiduciary duty to protect the private information of its members. By voluntarily releasing that information to Van Allen, the TPA breached that fiduciary duty. This was done dishonestly or fraudulently. The TPA and its administrators knew that they could not release such information except through court order or warrant or with the permission of the Plaintiff; none of which they possessed.

178. The lawyers, law firms and clients who saw and used information from TPA in Van Allen's affidavit, although not parties to the fiduciary relationship, were aware of the fiduciary duty, the dishonest or fraudulent breach of that duty and by retaining and instructing Van Allen and using and filing that information, assisted in the breach.

179. The Van Allen defendants also knew of the fiduciary duty and knew of and were parties to the dishonest or fraudulent breach of that duty.

180. The police knew or willfully blind to the existence of the fiduciary duty, the dishonest or fraudulent breach of that duty and, by assisting Van Allen, assisted in the breach.

(i) Conspiracy to Injure/Conspiracy to do Unlawful Act/ Causing Loss by unlawful means

181. As detailed otherwise in this Statement of Claim, two or more of the defendants made an agreement the predominant purpose of which was to injure the Plaintiff through lawful and/or unlawful means. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment though the release of private information.

182. As detailed otherwise in this Statement of Claim, two or more of the defendants made an agreement to act unlawfully knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff. The unlawful means was the violation of the Plaintiff's common law, Charter and Statutory privacy rights, as described above. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment though the release of private information.

183. One or more of the defendants also caused loss to the Plaintiff by unlawful means through a third party, to wit, the violation of the Plaintiff's common law, Charter and Statutory

privacy rights, as described above. The lawyers, law firms and clients caused loss to the Plaintiff through the unlawful acts of Van Allen and the police. The Van Allen defendants, other than Van Allen himself, and the police caused loss to the Plaintiff through the unlawful acts of Van Allen. All of the Van Allen defendants caused loss to the Plaintiff through the unlawful acts of the police. The TPA caused loss to the Plaintiff through the unlawful acts of Van Allen and visa versa.

(3) PRIVATE INVESTIGATION

(a) Misfeasance and/or Nonfeasance of Public Office/Abuse of Authority

184. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions.

185. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in retaining, instructing and assisting Van Allen in acting as a private investigator when he was a serving police officer were performed in bad faith and were deliberately unlawful or outside the scope of their authority in the exercise of the public functions of (a) a prosecutor or Officer of the Court; (b) a peace officer; (c) a labour official of the TPA; and (d) a probation and parole officer. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

(b) Abuse of Process (mislead Court) common law and/or ss. 7 and 8 of the Charter

186. The defendants initiated and/or assisted in costs proceedings, discovery proceedings in respect of costs and contempt proceedings against the Plaintiff. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the initiation or continuation of litigation in other jurisdictions. This was a common law abuse of process. The defendants abused process by unlawfully gathering facts regarding the Plaintiff and by dissemination and publishing of private facts and misleading the Court regarding the background of Van Allen. Van Allen was presented as an experienced and neutral private investigator. Had the Court known that he was acting unlawfully as a private investigator while also serving as a police officer and thereby obtaining information he should not have been able to access this would likely have affected the Court's acceptance of this evidence.

187. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully accessing and private information and presenting that information before the Court, the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). By unlawfully acting as a private investigator, when Van Allen was a serving police officer, the gathering of information was an unlawful (see *Colarusso* (SCC)) seizure and therefore

unreasonable contrary to section 8 of the *Charter*. These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(c) Negligent Regulation/Negligent Performance of Statutory duty and/or ss. 7 and/or 8 of the Charter

188. The actions and/or inactions of the defendants, directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information as a serving police officer that he otherwise could not have lawfully obtained.

189. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing their agents.

190. The legislative scheme in respect of whether a serving police officer can act as a private investigator is set out in the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator. This scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

191. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining private investigators.

192. In respect of retaining a private investigator, the standard of care is informed largely by the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator.

193. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him. The legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

194. The actions of the Van Allen defendants, the police and the TPA described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators.

195. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the

Criminal Code, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting or being hired as a private investigator.

196. The OPP was also negligent in failing to create a regulatory and/or record keeping and/or compliance scheme to ensure that secondary employment by OPP police officers, like Van Allen, was being conducted in accordance with the law.

197. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully using a serving police officer as a private investigator, the independence of the police services is fundamental compromised and increased access to private information is made available contrary to the public function of the police. These violations of the police process violated principles of fundamental justice (contrary to s. 7 of the Charter). The unlawful gathering of private information by a public official is unlawful and a violation of s. 8 of the Charter. These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(d) Negligent Investigation and/or s. 7 of the Charter

198. The Plaintiff suspected that something was not right in respect of the gathering of information through Van Allen and the police in this case. The plaintiff made inquiries of the police. In April 2013, he learned that there had been secret police investigation by at least the DRPS in contemplation of him being convicted at his hearing on January 15, 2010. He also initially learned in late 2013 (and later confirmed in 2014) that Van Allen was a serving police officer when he swore his affidavit as a private investigator in October, 2009.

199. When the secret investigation came to light, Detective Rushbrook revealed that she could not or would not reveal who conducted it and at whose behest, except that an unnamed Durham Police Court Officer was one of the persons involved. It was brought to the attention of the SCJ and the Faskens and Cassels defendants in Court and on the record on April 30, 2013. Messrs. Ranking and Silver denied knowledge of it.

200. As prosecutors, this was a serious allegation, based on reliable information from the DRPS itself that warranted investigation. The failure of the Faskens and Cassels defendants to request time to investigate this situation was negligent. As prosecutors and Officers of the Court in a criminal or quasi-criminal case of a self-represented person, it was foreseeable that this secret investigation could impact on the issues being litigated on April 30, 2013. They owed a duty to stop and cause an inquiry or investigation to be conducted. The failure to do so breached the standard of care expected of prosecutors.

201. The secret investigation itself, that was premised on the Plaintiff being convicted, before he had been found guilty, was itself a negligent investigation. If the court itself was involved

(not Justice Shaughnessy who denied knowledge of it, but court administration), this suggested a possible institutional bias. If initiated by the lawyers, law firms and/or clients, this suggested that the police were involved in the civil contempt proceeding, which would be extraordinary and suggested bias or corruption by the police. If initiated by Van Allen defendants, this suggested further abuse of power by a serving police officer as a private investigator on behalf of private interests. One way or the other, this secret investigation was illegal and corrupt. The fact that a police and Court police investigation is premised on a person being found guilty before he is found guilty is offensive. The fact that it is being done in secret suggests that there is something to hide. Such an investigation is inherently negligent. As is clear from *Hill* (SCC) and *Taylor* (OCA), the duty of care in relation to criminal investigations inherently create a duty of care because of the targeting of the suspect. The DRPS owed a duty to the Plaintiff having targeted him. The conduct of a secret investigation with a presumption of conviction creates an unreasonable risk of substantial harm and does not meet the standard of care. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5.

202. In late 2012 the Plaintiff still believed that Van Allen was at the time of his October, 2009 affidavit, a civilian, a retired OPP police officer operating as private investigator, who had improperly accessed confidential police information about the Plaintiff through Van Allen's friends still serving with the police. The Plaintiff therefore requested that the professional standards units of the OPP and the DRPS investigate the 'secret police investigation' to determine *inter alia* which serving police personnel had in 2009 supplied 'retired' Van Allen with confidential police information.

203. During their investigations in January through April, 2013, the OPP and Kearns and Vibert and the DRPS and Dmytruk and Rushbrook discovered that at the time Van Allen swore

his October 2009 affidavit and investigated the Plaintiff, Van Allen was in fact a serving police officer, a Detective Sergeant with the OPP, and remained so until he retired in about October of 2010. The OPP and Kearns and Vibert and the DRPS and Dmytruk and Rushbrook also knew that as a serving police officer acting as a private investigator, Van Allen had broken various laws including the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act; Private Security and Investigative Services Act*, and other laws and regulations.

204. The OPP, Kearns, Vibert, the DRPS, Dmytruk and Rushbrook had copies of Van Allen's October 2009 affidavit, his invoices to Ranking and Faskens, and other court documents and information regarding the Plaintiff's January 15, 2010 conviction *in abstentia* for Contempt of Court. They knew that the Plaintiff was facing 3 months in jail, and was in hearings before Justice Shaughnessy in January through May, 2013. They knew that Van Allen's affidavit was illegal and deceptive, and that the court had used the Van Allen evidence to convict the Plaintiff. They knew that neither the court nor the Plaintiff was aware that Van Allen had been a serving police officer at the time he investigated the Plaintiff and swore the affidavit. They knew that the court had been deceived.

205. The OPP, Kearns, Vibert, the DRPS, Dmytruk and Rushbrook knew that as a serving police officer Van Allen had illegally performed an investigation of the Plaintiff, for the corrupt purpose of benefiting one side's private interests in a civil case costs hearing. They knew that Van Allen had done this for money and employment.

206. They knew or should have known that the truth about Van Allen was vital evidence to the Court in considering a just outcome in the Plaintiff's contempt of court hearing. They knew, or should have known that had the Court been aware of the truth about Van Allen, his deceptive

affidavit and improper secret police investigation of the Plaintiff, that the Court might not have convicted the Plaintiff in 2010, and might set him free in 2013. The police deliberately withheld this important evidence from both the Plaintiff and the Court.

207. The Plaintiff was lied to by the OPP and specifically, Kearns and Vibert and the DRPS, specifically Dmytruk and Rushbrook. The police falsely told the Plaintiff that Van Allen had retired in 2008, instead of the truth that he retired in October 2010. Instead of investigating Van Allen, who committed criminal and quasi-criminal offences while a serving Detective Sergeant with the Ontario Provincial Police, the police covered it up. This was a negligent investigation. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5.

208. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding.

209. By failing to investigate the secret investigation, the police acted negligently. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5. These actions damaged the Plaintiff by contributing to finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

210. By failing to investigate the Van Allen issue when it was brought to their attention by the Plaintiff, the police acted negligently. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5. These actions damaged the Plaintiff by contributing to finding him in contempt, ruining his

professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(e) Invasion of privacy (intrusion on secrecy)

211. The defendants invaded the Plaintiff's privacy and intruded on his secrecy by accessing, disseminating, filing and publishing his private and confidential information. They did so by unlawfully utilizing a serving police officer, who had greater access to information, as a private investigator.

212. These acts were done directly and/or indirectly by the defendants. They were done intentionally and/or recklessly. The use of a serving police officer to access otherwise inaccessible private information intruded upon the informational seclusion of the plaintiff and/or his private affairs and/or concerns.

213. These invasions would be highly offensive to a reasonable person because, *inter alia*, the accessing and publishing served no useful purpose; it was known by the defendants that as a former undercover police officer and undercover private investigator, the Plaintiff had many enemies who would want to kill or harm him or otherwise seek revenge, some of whom were involved in organized crime; the dissemination and publishing took place in such a way as to encourage harm to the Plaintiff; to the extent any of the information was relevant, the details, including addresses, driver's license information, etc. need not have been included or could easily have been edited or redacted. There was and is a great risk of identity theft from the release of the information, and that risk continues to this day. The release of the information in fact resulted in criminal activity being directed at the Plaintiff, directly and through his family, to

wit, criminal harassment, assault; death threats and other criminal activities. This was the intent. It caused the Plaintiff to flee Canada. Similar criminal acts were inflicted by some of the defendants during the litigation of the NBGL case leading up to these events. The timing was such as cause the Plaintiff to flee around the time of the attempts to attack the Plaintiff in Court (through direct costs applications; discovery; and contempt). The timing was intentional to facilitate this attack on the Plaintiff using the legal system for ulterior motives. Further, the Plaintiff raised concerns about this issue several times and was mocked and dismissed and was told by Mr. Silver on November 17, 2009 (recorded) that he would not help the Plaintiff if he could. The defendants had and have a duty to correct the situation and have failed to do so to this day.

214. The following legislation which precludes a serving police officer from acting as a private investigator reinforces the fact that this would be seen to be highly offensive to a reasonable person: *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator.

(f) Conspiracy to do unlawful act (cover up re Van Allen)

215. As detailed otherwise in this Statement of Claim, two or more of the defendants made an agreement to act unlawfully knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff. The unlawful means was the violation of the Plaintiff's common law, *Charter* and Statutory privacy rights, as described above. As detailed otherwise described in this Statement of Claim, the defendants acted in

furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment though the release of private information.

216. Further, as detailed in respect of Negligent Investigation, when this was brought to the attention of the OPP and the DRPS, the police failed to investigate the criminal or quasi-criminal acts of Van Allen and lied to the Plaintiff. The Plaintiff was lied to by the OPP and specifically, Kearns and Vibert and the DRPS, specifically Dmytruk and Rushbrook about Van Allen.

(4) FRAUD ON COURT RE PWCECF

(a) Abuse of Process (Common law and s. 7 of the Charter)

217. The continued active representation of a client that does not exist and the false assertion to the Court that the client does exist is the perpetration of a fraud on the Court. This is contempt of court. Contempt of court is a form of abuse of process. The improper and collateral purpose was to hide the true identity of the auditor and to prevent costs being ordered against his real client. By representing a non-entity, a costs order against that "entity" could never be effective. It also raises a real concern about where funds payable to the 'client' were going. It also allowed for the Faskens defendants to act with the need for constraints of acting in accordance with instruction. The Plaintiff was harmed by the unrestrained conduct of the Faskens defendants, in particular Ranking, who could and did act abusively in respect of contempt proceedings (see Causes of Actions, **III., B., 1.**)

218. PWCECF was put forward by the Faskens defendants as the auditor of KEL in respect of the NBGL case. KEL had to know the true identity of the auditor. Their lawyers and law firms must have known as well. light of the close and interactive manner in which the Cassels defendants worked on the NBGL case and the contempt proceedings, it is reasonable to infer knowledge by the Cassels defendants.

219. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. In proceeding on behalf of a client that did not exist and thereby perpetrating a fraud on the Court, the violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(b) Breach of fiduciary Duty to the Court

220. Ranking, Silver, Kwydzinski, Pendrith and their law firms, Cassels and Faskens owed a fiduciary duty to the SCJ, as Officers of the Court, to not lie to the Court. This duty was breached by asserting that PWCECF existed. This was dishonest and fraudulent. This breach damaged the Plaintiff by freeing Ranking and Kwydzinski and Faskens from the constraints of adverse costs consequence and the need for instructions from clients. This facilitated his abusive conduct of the contempt proceedings.

221. The Cassels defendants had their own fiduciary duty to report on the fraud by Ranking, Kwydzinski and Faskens. In the alternative, the Cassels defendants were aware of the fiduciary duty, its breach and the dishonesty and/or fraud. By acquiescing in this lie they assisted it and are liable.

(c) Misfeasance of Public Office/Abuse of Authority

222. As prosecutors, the Faskens and Cassels defendants were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors.

223. The actions of the Faskens and Cassels defendants lying to the Court about PWCECF was in bad faith and was deliberately unlawful or outside the scope of their authority in the exercise of the public functions of a prosecutor and/or an Officer of the Court. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering) as a result of the contempt proceedings.

224. Two or more of the Faskens and/or Cassels defendants made an agreement to act unlawfully knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff. The unlawful means was the lie to the Court about PWCECF existing. As detailed otherwise described in this Statement of Claim, these defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment though the contempt proceedings.

IV. SERVICE OUTSIDE OF ONTARIO PER 17.02 (G)(H)(O);

225. Kingsland Estates Limited is a company operating in Barbados. As one of the main prosecutors in respect of contempt. KEL is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

226. Richard Ivan Cox resides in Barbados. As one of the directing mind of the main prosecutors in respect of contempt. Cox is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

227. Eric Iain Stewart Deane resides in the United Kingdom. As one of the directing minds of one of prosecutors in respect of contempt. Deane is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

228. Marcus Andrew Hatch resides in Barbados. Since PWCECF was supposed to be one the main prosecutors in respect of contempt, but it does not exist, Hatch, one of the auditors is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

229. Philip St. Eval Atkinson resides in Barbados. Since PWCECF was supposed to be one the main prosecutors in respect of contempt, but it does not exist. Atkinson, one of the

auditors is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

230. PricewaterhouseCoopers East Caribbean (formerly 'PricewaterhouseCoopers') is a partnership operating in Barbados. Since PWCECF was supposed to be one the main prosecutors in respect of contempt, but it does not exist, PWCEC, asserted to be the client by counsel for "PWCECF", is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

231. James Arthur Van Allen resides in British Columbia. Van Allen resided and worked in Ontario at the time and is one of the central defendants in the case. He is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

232. The torts are all torts committed in Ontario. Therefore, pursuant to Rule 17.02(g) leave is not required for service on these persons.

233. The damage was for tort was sustained in Ontario. Therefore, pursuant to Rule 17.02(h) leave is not required for service on these persons.

234. Such further grounds and/or claims as may become apparent from discovery or otherwise.

October 15, 2014

[redacted]

Paul Slansky
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1062 College Street, Lower Level
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LSUC #25998I

Counsel for the Plaintiff

Exhibit B

Dear Steve,

Re: UNKNOWN

The 95 page fax you sent through MetroFax.com to 14163661466 was successfully transmitted at 2014-10-21 18:33:22 (GMT).

The length of transmission was 145 seconds

The receiving machine's fax ID:

If you need assistance, please visit our online help center at http://www.metrofax.com/support.

Thank you for using the MetroFax.com service.

Best Regards,
MetroFax.com

Exhibit C

Dear Steve,

Re: UNKNOWN

The 92 page fax you sent through MetroFax.com to 14168679192 was successfully transmitted at 2014-10-21 18:22:39 (GMT).

The length of transmission was 2575 seconds

The receiving machine's fax ID: 4168679192

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Thank you for using the MetroFax.com service.

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MetroFax.com

Exhibit D

Dear Steve,

Re: UNKNOWN

The 92 page fax you sent through MetroFax.com to 14166373445 was successfully transmitted at 2014-10-21 18:14:24 (GMT).

The length of transmission was 2565 seconds

The receiving machine's fax ID: 8665813608

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Thank you for using the MetroFax.com service.

Best Regards,
MetroFax.com

Exhibit E

Dear Steve,

Re: UNKNOWN

The 92 page fax you sent through MetroFax.com to 14165462104 was successfully transmitted at 2014-10-21 18:14:26 (GMT).

The length of transmission was 3025 seconds

The receiving machine's fax ID: 4165462104

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Thank you for using the MetroFax.com service.

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MetroFax.com

Exhibit F

Dear Steve,

Re: UNKNOWN

The 92 page fax you sent through MetroFax.com to 14163519196 was successfully transmitted at 2014-10-21 18:03:47 (GMT).

The length of transmission was 2986 seconds

The receiving machine's fax ID: +416 351 9196

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MetroFax.com

Exhibit G

Dear Steve,

Re: UNKNOWN

The 96 page fax you sent through MetroFax.com to 14168659010 was successfully transmitted at 2014-10-21 19:00:19 (GMT).

The length of transmission was 5528 seconds

The receiving machine's fax ID: 416 865 9010

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MetroFax.com

Exhibit H

Dear Steve,

Re: Re: Best v Ranking et al

The 92 page fax you sent through MetroFax.com to 14163264181 was successfully transmitted at 2014-10-22 09:46:57 (GMT).

The length of transmission was 2593 seconds

The receiving machine's fax ID:

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Best Regards,
MetroFax.com

Exhibit I

FAX COVER SHEET

TO	OPP Commissioner Vince Hawkes
COMPANY	
FAX NUMBER	17053296195
FROM	Steve Lewis
DATE	2014-12-11 10:51:45 GMT
RE	Best v. Ranking et. al.; Court File No. 14-0815

COVER MESSAGE

Please find attached a Draft Amended Statement of Claim.

FAX COVER SHEET

TO	P.R.P.S. Board
COMPANY	
FAX NUMBER	19054587278
FROM	Steve Lewis
DATE	2014-12-11 10:51:46 GMT
RE	Best v. Ranking et. al.; Court File No. 14-0815

COVER MESSAGE

Please find attached a Draft Amended Statement of Claim.

FAX COVER SHEET

TO	Durham Regional Police Services Board
COMPANY	
FAX NUMBER	19057214249
FROM	Steve Lewis
DATE	2014-12-11 11:51:32 GMT
RE	Best v. Ranking et. al.; Court File No. 14-0815

COVER MESSAGE

Please find attached a Draft Amended Statement of Claim.

Exhibit L

FAX COVER SHEET

TO	Peel Regional Police Chief
COMPANY	Jennifer Evans
FAX NUMBER	19054587278
FROM	Steve Lewis
DATE	2014-12-12 22:54:56 GMT
RE	Best v. Ranking et. al.; Court File No. 14-0815

COVER MESSAGE

ﻲﺑ Draft Amended Statement of Claim

Exhibit M

FAX COVER SHEET

TO	D.R.P.S. Chief of Police
COMPANY	Paul Martin
FAX NUMBER	19057214249
FROM	Steve Lewis
DATE	2014-12-12 22:54:13 GMT
RE	Best v. Ranking et. al.; Court File No. 14-0815

COVER MESSAGE

Draft Amended Statement of Claim

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

AFFIDAVIT OF SERVICE

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LSUC #25998I

Counsel for the Plaintiff

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

MOTION RECORD

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