Court File No. 14-0815

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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 AND 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

(For the motion to set aside noting in default returnable March 13, 2015)

January 22, 2015

POLLEY FAITH LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto, ON M5H 2A4

Mark Polley (44413O)
mpolley@polleyfaith.com

Jessica Prince (59924Q)
jprince@polleyfaith.com

Tel: 416.365.1600
Fax: 416.365.1601

Lawyers for the Defendants, PricewaterhouseCoopers East Caribbean (Formerly ' PricewaterhouseCoopers'), Kingsland Estates Limited, Philip St. Eval Atkinson, Richard Ivan Cox and Marcus Andrew Hatch

TO:

SLANSKY LAW PROFESSIONAL CORPORATION
1062 College Street
Lower Level
Toronto ON M6H 1A9

Paul Slansky
paul.slansky@bellnet.ca

Tel: 416.536.1220
Fax: 416.536.8842

Lawyers for the Plaintiff

Court File No. 14-0815

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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 AND 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

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Court File No. 14-0815

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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 AND 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

NOTICE OF MOTION

PricewaterhouseCoopers East Caribbean, Marcus Andrew Hatch, Philip St. Eval Atkinson, Kingsland Estates Limited and Richard Ivan Cox (collectively, "the Caribbean Defendants") will make a motion on March 13, 2015 pursuant to rule 19.03(1) of the Rules of Civil Procedure to set aside the noting of default of the Caribbean Defendants.

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

THE MOTION IS FOR

(a) an Order setting aside the noting in default of the Caribbean Defendants; and

(b) the costs of this motion on a substantial indemnity basis.

THE GROUNDS FOR THE MOTION ARE

(a) Having been served with the statement of claim, the Caribbean Defendants gave notice of their intention to defend the action by a challenge to jurisdiction;

(b) Counsel for the Caribbean Defendants reasonably proposed that any disagreement as to scheduling the motion be dealt with by the case management judge, Justice McCarthy;

(c) Counsel for the plaintiff refused to discuss any such dispute with Justice McCarthy before noting the Caribbean Defendants in default on December 3, 2014;

(d) Three of the five Caribbean Defendants were defendants in an earlier related protracted proceeding commenced by Nelson Barbados Group Ltd. (the "First Ontario Proceeding"), in which Justice Shaughnessy concluded the Court did not have jurisdiction;

(e) The statement of claim reveals the plaintiff to be re-litigating the very same issues that were already litigated in every forum within the First Ontario Proceeding;

(f) Before the Carribean Defendants began exchanging correspondence with plaintiff's counsel in this action, a motion was already scheduled for June 15-17, 2015 for a motion to strike the claim in this matter;

(g) On December 16, 2014, Justice McCarthy set the hearing of the Caribbean Defendants' jurisdiction motion for June 18 and 19, 2015;

(h) The factual matrix, including the reasonable conduct of the Caribbean Defendants, the unreasonable conduct of the plaintiff, the absence of any delay in commencing this motion, and the complexity and value of the claim favours the Court exercising its discretion to set aside the noting in default; and

(i) Rules 1.04, 17.06, 19.03, 21.01(3), 37, and 57 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

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

(a) The Affidavit of Jennifer Gambin affirmed January 22, 2015 and attachments.

January 22, 2015

POLLEY FAITH LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto, ON M5H 2A4

Mark Polley (44413O)
mpolley@polleyfaith.com

Jessica Prince (59924Q)
jprince@polleyfaith.com

Tel: 416.365.1600
Fax: 416.365.1601

Lawyers for the Defendants,
PricewaterhouseCoopers East Caribbean
(Formerly 'PricewaterhouseCoopers'),
Kingsland Estates Limited,
Philip St. Eval Atkinson, Richard Ivan Cox
and Marcus Andrew Hatch

TO: **SLANSKY LAW PROFESSIONAL CORPORATION**
1062 College Street
Lower Level
Toronto ON M6H 1A9

Paul Slansky
paul.slansky@bellnet.ca

Tel: 416.536.1220
Fax: 416.536.8842

Lawyers for the Plaintiff

DONALD BEST

Plaintiff

-and-

PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY 'PRICEWATERHOUSECOOPERS') et al.

Defendants

Court File No. 14-0815

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT BARRIE

NOTICE OF MOTION

POLLEY FAITH LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto, ON M5H 2A4

Mark Polley (44413O)
mpolley@polleyfaith.com

Jessica Prince (59924Q)
jprince@polleyfaith.com

Tel: 416.365.1600
Fax: 416.365.1601

Lawyers for the Defendants, PricewaterhouseCoopers East Caribbean (Formerly 'PricewaterhouseCoopers'), Kingsland Estates Limited, Philip St. Eval Atkinson, Richard Ivan Cox and Marcus Andrew Hatch

Court File No. 14-0815

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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 AND 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 JENNIFER GAMBIN

I, **JENNIFER GAMBIN**, of the City of Toronto, in the Province of Ontario, **AFFIRM**:

1. I am employed as a legal assistant with Polley Faith LLP, counsel to PricewaterhouseCoopers East Caribbean, Marcus Andrew Hatch, Philip St. Eval Atkinson, Kingsland Estates Limited and Richard Ivan Cox (collectively, "the Caribbean Defendants") in this matter and as such, I have knowledge of the following matters.

2. It is apparent from the style of cause in this case that three of the Caribbean Defendants were defendants in an earlier proceeding commenced by Nelson Barbados Ltd. (the "First Ontario

Proceeding"). In the First Ontario Proceeding, Justice Shaughnessy noted in reasons that the plaintiff – Donald Best – was the President of Nelson Barbados Ltd. Attached as Exhibits "A" through "F" are copies of the following decisions from the First Ontario Proceeding, as well as the statement of claim in this action:

- *Nelson Barbados Group Ltd. v. Cox*, 2009 CarswellOnt 2466 – Exhibit "A";
- *Nelson Barbados Group Ltd. v. Cox*, 2010 ONSC 569 – Exhibit "B";
- *Nelson Barbados Group Inc. v. Cox*, 2013 ONSC 8025 – Exhibit "C";
- *Best v. Cox*, 2014 ONCA 167, 2014 CarswellOnt 6936 – Exhibit "D";
- *Best v. Kingsland Estates Ltd.* [Application / Notice of Appeal], 2014 CarswellOnt 6988 – Exhibit "E"; and
- Statement of Claim (court file no. 14-0815) in this action – Exhibit "F".

3. Between October 24 and December 1, 2014, our firm on behalf of the Caribbean Defendants and Paul Slansky on behalf of the plaintiff exchanged correspondence in this matter. Copies of those letters with the following dates are attached as exhibits:

- October 24, 2014 – letter from Mark Polley to Paul Slansky – Exhibit "G";
- November 6, 2014 – with no response from Mr. Slansky, letter from Jessica Prince to Paul Slansky – Exhibit "H";
- November 6, 2014 – letter from Paul Slansky to Mark Polley – Exhibit "I";
- November 14, 2014 – letter from Paul Slansky to the Court, referring to pending scheduling of "a jurisdictional challenge by 5 Barbados defendants" – Exhibit "J";
- November 17, 2014 – letter from Mark Polley to Paul Slansky – Exhibit "K";
- November 20, 2014 – letter from Paul Slansky to Mark Polley – Exhibit "L"; and
- December 1, 2014 – letter from Mark Polley to Paul Slansky – Exhibit "M".

4. By letter dated December 11, 2014, a copy of which is attached as Exhibit "N", Mr. Polley told plaintiff's counsel that he would be raising the fact that his clients had been noted in default with the Court on the case conference scheduled for December 16, 2014.

5. On December 17, 2014, Jennifer Hunter of Lerners LLP sent a letter to all counsel confirming the content of the recent case conference. Attached as Exhibit "O" is a copy of the December 17, 2014 letter.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on January 22, 2015

[redacted]

Commissioner for Taking Affidavits
(or as may be)
Sabina Lakhani

[redacted]

JENNIFER GAMBIN

[redacted]

January 22, 2015

POLLEY FAITH LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto, ON M5H 2A4

Mark Polley (44413O)
mpolley@polleyfaith.com

Jessica Prince (59924Q)
jprince@polleyfaith.com

Tel: 416.365.1600
Fax: 416.365.1601

Lawyers for the Defendants,
PricewaterhouseCoopers East Caribbean
(Formerly 'PricewaterhouseCoopers'),
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Marcus Andrew Hatch

TO: **SLANSKY LAW PROFESSIONAL CORPORATION**
1062 College Street
Lower Level
Toronto ON M6H 1A9

Paul Slansky
paul.slansky@bellnet.ca

Tel: 416.536.1220
Fax: 416.536.8842

Lawyers for the Plaintiff

This is Exhibit "**A**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

2009 CarswellOnt 2466
Ontario Superior Court of Justice

Nelson Barbados Group Ltd. v. Cox

2009 CarswellOnt 2466, 177 A.C.W.S. (3d) 104, 75 C.P.C. (6th) 58

Nelson Barbados Group Ltd. (Plaintiff) and Richard Ivan Cox, Gerard Cox, Alan Cox, Philip Vernon Nicholls, Eric Ashby Bentham Deane, Owen Basil Keith Deane, Marjorie Ilma Knox, David Simmons, Elneth Kentish, Glyne Bannister, Glyne B. Bannister, Philip Greaves a.k.a. Philip Greaves, Gittens Clyde Turney, R.G. Mandeville & Co., Cottle, Catford & Co., Keble Worrell Ltd., Eric Iain Stewart Deane, Estate of Colin Deane, Lee Deane, Errie Deane, Keith Deane, Malcolm Deane, Lionel Nurse, Leonard Nurse, Edward Bayley, Francis Deher, David Shorey, Owen Seymour Arthur, Mark Cummins, Graham Brown, Brian Edward Turner, G.S. Brown Associates Limited, Golf Barbados Inc., Kingsland Estates Limited, Classic Investments Limited, Thornbrook International Consultants Inc., Thornbrook International Inc., S.B.G. Development Corporation, The Barbados Agricultural Credit Trust, Phoenix Artists Management Limited, David C. Shorey and Company, C. Shorey and Company Ltd., First Caribbean International Bank (Barbados) Ltd., Price Waterhouse Coopers (Barbados), Attorney General of Barbados, the Country of Barbados, and John Does 1-25, Philip Greaves, Estate of Vivian Gordon Lee Deane, David Thompson, Edmund Bayley, Peter Simmons, G.S. Brown and Associates Ltd., GBI Golf (Barbados) Inc., Owen Gordon Finlay Deane, Classic Investments Limited and Life of Barbados Limited c.o.b. as Life of Barbados Holdings, Life of Barbados Limited, David Carmichael Shorey, Price Waterhouse Coopers East Caribbean Firm, Veco Corporation, Commonwealth Construction Canada Ltd., and Commonwealth Construction Inc. (Defendants)

J.B. Shaughnessy J.

Heard: April 6-8, 2009
Judgment: May 4, 2009
Docket: 07-0141

Counsel: K. William McKenzie for Plaintiff
Lorne S. Silver for Defendants, Richard Ivan Cox, Gerard Cox, Alan Cox, Gittens Clyde Turney, R.G. Mandeville & Co., Kingsland Estates Limited, Classic Investments Limited
Paul Schabas for Defendants, David Shorey, David C. Shorey and Company
Andrew Roman for Defendants, Eric Ian Stewart Deane, Estate of Colin Ian Estwick Deane
David Conklin for Defendants, Veco Corporation, Commonwealth Construction Canada Ltd.,

2009 CarswellOnt 2466, 177 A.C.W.S. (3d) 104, 75 C.P.C. (6th) 58

Commonwealth Construction Inc.
Gerald L.R. Ranking for Defendant, PricewaterhouseCoopers East Caribbean Firm

Subject: Civil Practice and Procedure

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Civil practice and procedure --- Disposition without trial — Stay or dismissal of action — Grounds — Lack of jurisdiction

Plaintiff NBG Ltd. was Ontario corporation that owned property KE Ltd. in Barbados — Land was derived from inheritance and was subject of many prior transactions and actions in Barbados — Plans were started to develop land — Plaintiff brought action against 62 defendants, most of whom lived in Barbados — Action was based in negligence, conspiracy and tortious interference with NBG Ltd.'s economic interest in its property in Barbados — Defendants brought motion for stay — Motion granted — There was no real and substantial connection between Ontario and subject matter of action or parties to action — Alleged tortious acts to support claims occurred entirely in Barbados — Trust documents related to property that was subject of action were lodged in United States — NBG Ltd. failed to provide evidence that would demonstrate its connection to Ontario — Mere residency of a plaintiff within Ontario is insufficient basis for assuming jurisdiction — Damages suffered in Ontario were also insufficient basis for establishing jurisdiction — Allegations of conspiracy against NBG Ltd. and K were unsupported by any hard evidence — There was no evidence that any defendants in motion had any substantial connection to Ontario, as they were located in other countries and provinces — No specific allegations were made that any conduct related to claims arose in Ontario — Defendants could not have reasonably foreseen that any conduct they were involved in Barbados would result in action being commenced against them in Ontario — Assuming jurisdiction would have resulted in inherent unfairness to moving defendants as they lived and carried business elsewhere, most witnesses resided outside Ontario, majority of files and documentary evidence relevant to case were located in Barbados and were prepared in Barbados according to Barbadian law and legal practice and majority of defendants would be required to re-litigate issues as similar actions involving same allegations and substantially same parties had already been brought there — There was no unfairness to plaintiff if court did not assume jurisdiction — Court could not successfully execute judgment in Barbados and defendants had no assets or business in Ontario — Assuming jurisdiction had potential to lead to multiplicity of proceedings with inconsistent results — Case was international in nature — There was no jurisdiction simpliciter.

Civil practice and procedure --- Pleadings — Statement of claim — Service — Service ex juris

Table of Authorities

Cases considered by *J.B. Shaughnessy J.*:

Amchem Products Inc. v. British Columbia (Workers' Compensation Board) (1993), 1993 CarswellBC 1257, [1993] I.L.Pr. 689, [1993] 3 W.W.R. 441, 14 C.P.C. (3d) 1, [1993] 1 S.C.R. 897, 150 N.R. 321, 23 B.C.A.C. 1, 39 W.A.C. 1, 102 D.L.R. (4th) 96, 77 B.C.L.R. (2d) 62, 1993 CarswellBC 47 (S.C.C.) — considered

Beals v. Saldanha (2003), [2003] 3 S.C.R. 416, 314 N.R. 209, 182 O.A.C. 201, 70 O.R. (3d) 94 (note), 113 C.R.R. (2d) 189, 39 B.L.R. (3d) 1, 39 C.P.C. (5th) 1, 2003 SCC 72, 2003 CarswellOnt 5101, 2003 CarswellOnt 5102, 234 D.L.R. (4th) 1 (S.C.C.) — considered

ECS Educational Consulting Services Canada Ltd. v. United Arab Emirates (Armed Forces) (2000), 2000 CarswellOnt 179, 44 C.P.C. (4th) 111 (Ont. S.C.J.) — referred to

Frymer v. Brettschneider (1994), [1996] I.L.Pr. 138, 19 O.R. (3d) 60, 115 D.L.R. (4th) 744, 28 C.P.C. (3d) 84, 72 O.A.C. 360, 1994 CarswellOnt 538 (Ont. C.A.) — referred to

Gajraj v. DeBernardo (2002), 28 M.V.R. (4th) 10, 213 D.L.R. (4th) 651, 40 C.C.L.I. (3d) 163, 24 C.P.C. (5th) 258, 2002 CarswellOnt 1766, 160 O.A.C. 60, 60 O.R. (3d) 68, 13 C.C.L.T. (3d) 194 (Ont. C.A.) — referred to

Hunt v. T & N plc (1993), 1993 CarswellBC 1271, 1993 CarswellBC 294, (sub nom. *Hunt v. T&N plc)* [1993] 4 S.C.R. 289, [1994] 1 W.W.R. 129, 21 C.P.C. (3d) 269, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée)* 37 B.C.A.C. 161, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée)* 60 W.A.C. 161, (sub nom. *Hunt v. T&N plc)* 109 D.L.R. (4th) 16, 85 B.C.L.R. (2d) 1, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée)* 161 N.R. 81 (S.C.C.) — considered

Ioannides v. Calvalley Petroleum Inc. (2006), 2006 CarswellOnt 4581 (Ont. S.C.J.) — referred to

Lemmex v. Bernard (2002), 2002 CarswellOnt 1812, 213 D.L.R. (4th) 627, 160 O.A.C. 31, 60

O.R. (3d) 54, 26 C.P.C. (5th) 259, 13 C.C.L.T. (3d) 203 (Ont. C.A.) — referred to

Leufkens v. Alba Tours International Inc. (2002), 2002 CarswellOnt 1811, 213 D.L.R. (4th) 614, 160 O.A.C. 43, 60 O.R. (3d) 84, 26 C.P.C. (5th) 247, 13 C.C.L.T. (3d) 217 (Ont. C.A.) — referred to

M.J. Jones Inc. v. Kingsway General Insurance Co. (2003), 2003 CarswellOnt 5784 (Ont. S.C.J.) — referred to

M.J. Jones Inc. v. Kingsway General Insurance Co. (2004), 185 O.A.C. 113, 2004 CarswellOnt 1022 (Ont. C.A.) — referred to

Morguard Investments Ltd. v. De Savoye (1990), 46 C.P.C. (2d) 1, 15 R.P.R. (2d) 1, 76 D.L.R. (4th) 256, 122 N.R. 81, [1991] 2 W.W.R. 217, 52 B.C.L.R. (2d) 160, [1990] 3 S.C.R. 1077, 1990 CarswellBC 283, 1990 CarswellBC 767 (S.C.C.) — considered

Muscutt v. Courcelles (2002), 213 D.L.R. (4th) 577, 2002 CarswellOnt 1756, 160 O.A.C. 1, 60 O.R. (3d) 20, 26 C.P.C. (5th) 206, 13 C.C.L.T. (3d) 161 (Ont. C.A.) — considered

Nelson Barbados Group Ltd. v. Cox (2008), 2008 CarswellOnt 566 (Ont. S.C.J.) — referred to

Plant Technology International Inc. v. Peter Kiewet Sons Co. (2002), 15 C.P.C. (6th) 84, 2002 CarswellOnt 6100 (Ont. S.C.J.) — referred to

Sinclair v. Cracker Barrel Old Country Store Inc. (2002), 213 D.L.R. (4th) 643, 2002 CarswellOnt 1755, 160 O.A.C. 54, 60 O.R. (3d) 76, 26 C.P.C. (5th) 239, 13 C.C.L.T. (3d) 230 (Ont. C.A.) — referred to

Statutes considered:

Courts of Justice Act, R.S.O. 1990, c. C.43
s. 106 — pursuant to

Land Acquisition Act, Cap. 228
Generally — referred to

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

R. 17.02 — referred to

R. 17.04(1) — considered

R. 17.06 — pursuant to

R. 17.06(1) — referred to

R. 21.01(3)(a) — referred to

R. 21.03(1) — pursuant to

Treaties considered:

Hague Convention on the Civil Aspects of International Child Abduction, 1980, C.T.S. 1983/35; 19 I.L.M. 1501

Article 10 — referred to

MOTION by defendants for stay of proceedings.

***J.B. Shaughnessy J.*:**

1 The Moving Defendants have brought motions for an order pursuant to s.106 of the *Courts of Justice Act* and Rules 21.03(1) and 17.06 of the *Rules of Civil Procedure* staying this action on the grounds

(a) that the Ontario Court does not have jurisdiction over the action or

(b) in the alternative, that Ontario is not the convenient forum for the action

(c) setting aside service on the basis that the originating process was not properly served outside of Ontario in accordance with Rules 17.02 and 17.04(1) of the *Rules of Civil Procedure.*

Background Circumstances

2 The Plaintiff in this proceeding, Nelson Barbados Group Ltd.("Nelson Barbados") is an Ontario Corporation which was incorporated on November 15, 2005. The corporate filing indicates that the President of the company is Donald Best and the head office of the company is the same address as the Plaintiff's Counsel law firm in Orillia, Ontario.

3 The Plaintiff's action relates to Kingsland Estates Limited ("Kingsland") and property that this corporate entity owned or owns in Barbados.

4 The action was originally commenced against 62 defendants the majority of whom are resident in Barbados. Of these original defendants 37 moved to challenge the jurisdiction of the Superior Court of Justice of Ontario over this action. There were 9 separate motions brought and 8 individuals residents in Barbados swore affidavits on behalf of 33 defendants located in Barbados. Cross-examination of the Barbadian affiants took place in Barbados over a number of days in the fall of 2008. The defendant Eric Ian Stewart Deane was cross-examined in Toronto as was the Plaintiff's affiant John Knox. The cross-examination of the defendants Veco Corporation and Commonwealth Construction Canada Ltd and Commonwealth Construction Inc. took place in western Canada. The cross examinations were to be conducted pursuant to an Order of directions issued by this Court. ([*Nelson Barbados Group Ltd. v. Cox*] [2008] O.J. No. 454 (Ont. S.C.J.)).

5 John Knox is the Plaintiff's principal affiant; however he is not a party to this proceeding. John Knox relates that his grandfather Estwick Ebenzer Deane and his wife Ilma Kathleen Ashby made a series of land acquisitions in Barbados. The Deanes had 7 children, one of whom is the defendant Marjorie Knox, the mother of John Knox. Marjorie Knox is presently 86 years of age and she resides in Barbados.

6 In 1958 the Deane family incorporated Kingsland Estates Limited which purportedly had land holdings of approximately 1100 acres. It is the contention of John Knox that on the death of his grandparents the Deane siblings, including Marjorie Knox, were equal shareholders in Kingsland. The Statement of Claim alleges that three of the Deane siblings (excluding Marjorie Knox) sold off and disposed of lands in a manner that did not provide compensation to Kingsland. The Statement of Claim inter alia alleges a conspiracy whereby through a number of transactions the various defendants have transferred shares of Kingsland to themselves or others. In an affidavit, John Knox states that the defendants "had the intention and plan to take control of the lands and develop them in such a way that the value would be stripped from the company and the shares (of Kingsland) would be rendered worthless while others benefited."

7 On March 23, 2009, shortly before this motion was scheduled to be heard, Counsel for the Plaintiff delivered a Notice of Discontinuance against 38 of the Defendants which inter alia included Sir David Simmons, the Chief Justice of Barbados, the present and former Prime Ministers of Barbados, the Country of Barbados, and the Attorney General of Barbados.

The Parties

8 There are presently 5 remaining Defendants located in Ontario: Brian Edward Turner, Thornbrook International Consultants Inc., Thornbrook Industrial Inc., Phoenix Artists Management Limited and G.S.Brown and Associates Limited (which is also listed as G.S.Brown Associates Limited with a Barbados address).

9 Veco Corporation is a United States corporation with its head office in Anchorage, Alaska. Commonwealth Construction Ltd. is a construction company incorporated in British Columbia with its head office in Burnaby,B.C.

10 The Defendant Eric Ian Stewart Deane has resided in Great Britain since September 2006. He is a theatre producer and director. The Defendant, Phoenix Artists Management Limited is a corporation which is related to Eric Deane's theatrical work and it is where he has his mail sent. Otherwise, this Corporation has no connection to the issues in this proceeding apart from it being an asset of Eric Ian Stewart Deane.

11 Eric Ian Stewart Deane is the primary beneficiary under the Last Will and Testament of his uncle Colin Ian Estwick Deane (one of the original 7 Deanes who inherited the shares of Kingsland) and the sole beneficiary of the residuary of the Estate. The Last Will and Testament of Colin Ian Estwick Deane was probated in Barbados on September 22 1982. At the time of his death the Testator, was a resident of Barbados and his entire estate was and continues to be located in Barbados.

12 Eric Ian Stewart Deane resided in Canada from 1972 to 1982 and again from June 14 2001 to September 30, 2006. However he has not resided in Canada since September 30, 2006.

13 Eric Ian Stewart Deane has filed an affidavit indicating that prior to 1998, all of Kingsland shares were owned by members of the Deane family including the Estate of Colin Ian Estwick Deane. Eric Ian

Stewart Deane also states that he never personally held shares in Kingsland, but was registered in the records of Kingsland in his capacity as executor and personal representative of the Estate of Colin Ian Estwick Deane.

14 The Defendant Classic Investments Limited is a company incorporated in Barbados with its head office in Barbados. It does not carry on business and has no assets in Ontario. All documents, electronic evidence and witnesses related to this defendant are located in Barbados.

15 Richard Ivan Cox, Gerard Cox and Alan Cox are directors of Classic Investments Limited and since December 2005 have also been directors of Kingsland. All of these individuals reside in Barbados.

16 Gittens Clyde Turney is a Barrister who resides in Barbados. He has no assets or business in Ontario. All documents, electronic evidence and witnesses of Mr. Turney are located in Barbados.

17 R.G.Mandeville & Co. is a law firm in Barbados with its only office located in Bridgetown, Barbados. This law firm does not carry on business in Ontario and has no assets in Ontario. Its documents, electronics and witnesses are located in Barbados.

18 Kingsland Estates Limited has been discussed above. This Barbados incorporated company was family owned and the shareholders were the Deane family, up to the time of a takeover by Classic Investments in 2005. It owns land only in Barbados and has no property or assets in Canada. All of its documents, evidence and witnesses are located in Barbados.

19 David Shorey is a chartered accountant and management consultant and since 1987, he has carried on business as David C. Shorey and Co., Chartered Accountants. Apart from ten years studying and working in England in the 1960s and 1970s, David Shorey has lived and worked in the Barbados. He does not carry on business in Ontario. In 1992 or 1993 he was asked to do a feasibility study to build a golf course on lands owned by Kingsland. Several years later, in 1997 and 1998 Mr. Shorey entered into separate transactions with Richard Cox to purchase shares in Kingsland. However, David Shorey never formalized his arrangements with Richard Cox and consequently he never became a shareholder of Classic Investments Ltd. or Kingsland.

Overview

20 An overview of the transactions relating to Kingsland is required for an understanding of the facts relating to the Plaintiff's claim.

S.B.G. Development Corporation

21 S.B.G. Development Corporation was incorporated pursuant to the laws of Barbados and registered on March 7,1990 by its then solicitor David Simmons. The incorporating directors were Peter and David Simmons. David Simmons resigned as a director on September 7, 1994 although a change of directors was not filed until August 2007 shortly after this litigation was commenced.

22 "S.B.G." is derived from the names of Peter Simmons, Glyne Bannister and Philip Greaves. The corporation was formed in 1990 to acquire the shares of Kingsland for the purpose of developing a golf course on the property. The funding for this transaction was to come through Brian Turner and Graham Brown both then located in Toronto but who met with the S.B.G. Development Corporation in Barbados. All meetings of S.B.G. and all of its activities relating to the proposal to acquire shares in Kingsland occurred in Barbados. The funding was expected to come from Europe, Cyprus or London.

23 An offer to purchase was presented to Kingsland dated June 1, 1990 and a deposit of approximately U.S. $200,000 ($400,000 Barbados dollars) was provided. The funds were provided by Messrs. Turner and Brown and were sent to Cottle Catford a Barbados law firm and solicitors for Kingsland. While the offer to purchase was accepted, the transaction did not close and the deposit was forfeited to Kingsland.

24 David Simmons was elected Attorney General by 1994 and he terminated his private practice. Peter Simmons was appointed High Commissioner to the United Kingdom and moved to London.

25 The S.B.G.Development Corporation proposal was terminated and no further steps were taken by the company and it has remained dormant.

Classic Investments Limited

26 On or about 1997, after the failed S.B.G.Development Corporation bid, Classic Investments Ltd. offered to purchase the shares of Kingsland. All of the Kingsland shareholders, with the exception of Marjorie Knox, agreed to sell their shares of Kingsland pursuant to an offer made by Classic Investments Ltd. An action was commenced in Barbados with respect to the acquisition of the Kingsland shares, which was not resolved until 2005 after which the share purchase agreement was completed. The legal proceedings in Barbados will be discussed later in these Reasons.

The Amended Statement of Claim

27 The prayer for relief in the Statement of Claim seeks a variety of injunctive and other relief including an accounting, disgorgement, appointment of a Receiver against or relating to Kingsland. In the Amended Statement of Claim, Kingsland is described as a company incorporated in Barbados, with its head office in Barbados and which owns property in Barbados. There are numerous claims advanced in the Amended Statement of Claim. In summary the allegations are that the defendants conspired with one another to benefit themselves and thereby caused past, present and future economic loss to the Plaintiff. It is noted that in the Amended Statement of Claim the "defendants" are simply lumped together in general allegations and that they owed fiduciary duties to Kingsland which were breached and that the "defendants" conspired to deprive Kingsland of its investments or withheld information from Kingsland.

28 The Amended Statement of Claim does *not* detail the Plaintiff's interest in Kingsland other than an assertion that it "has security over and ownership rights in common shares of the Defendant Kingsland" which it is pleaded, "includes the right to share in the increase in value of those common shares as well as the dividends or other payments to shareholders by Kingsland."

Who Is the Plaintiff ?

29 The Plaintiff's affiant John Knox in an affidavit asserts that the Plaintiff has an interest in shares of Kingsland previously owned by John Knox's mother, Marjorie Knox (a named defendant who resides in Barbados.) It is stated that the shares in Kingsland have been transferred to a trust. The actual shares of Kingsland, John Knox states "are physically located in Canada." The trust documents were not produced on the cross-examination although John Knox is a beneficiary of the trust, his sister in Miami is the trustee and the trust documents "are lodged with a U.S. attorney in Miami."

30 The Corporate Profile Report lists "Donald Best" as the President of the Plaintiff Corporation and that it was incorporated in 2005 in Ontario. Little else is known of the company. The affiant for the

Plaintiff on the motion, John Knox, on the instructions of plaintiff's counsel, would not answer questions on his cross-examination as to the identification of shareholders, directors, officers, assets, business activity(other than this litigation), as well as information about Donald Best which demonstrates a connection to Ontario. It is apparent that the focus of the Defendant's questions in this regard were directed for the purpose of demonstrating that the Plaintiff was only incorporated in Ontario to assist with the attack on jurisdiction which is before this Court. Notwithstanding the refusals on the cross-examination of John Knox, this Court provided 2 opportunities to Counsel for the Plaintiff in the course of submissions on this motion to provide the information requested by the Moving Defendants or an Affidavit from Donald Best explaining why the information could not be provided. Mr. McKenzie declined the invitation of the Court and he "read from a statement" that the Plaintiff had instructed him to advise that it had produced all the information it was going to produce on the motion. There was no affidavit from Mr. Donald Best explaining why the information was not being produced.

31 I find that the position taken by the Plaintiff (through its Counsel) on the cross-examination of John Knox and at the hearing of this motion directly impacts on the test relating to a real and substantial connection to Ontario as will be discussed later in these Reasons.

History of Related Proceedings in Barbados

32 There have been a number of proceedings commenced in Barbados which the Defendants have detailed to the Court and which was not challenged by the Plaintiff.

33 As previously outlined, following the S.B.G. Development failed transaction to purchase the Kingsland shares there was the 1997 Classic Investments Limited offer to purchase the same shares. Initially Ian Deane on behalf of the Estate of Colin Ian Estwick Deane rejected the offer. However, a short while thereafter he changed his mind and he agreed to the sale of the shares held by the Estate to Classic Investments Limited. Accordingly, all Kingsland shareholders, with the *exception of Marjorie Knox*, agreed to sell their shares of Kingsland pursuant to the Classic Investments Limited offer.

34 An action was commenced in Barbados in respect of the Classic Investment Limited acquisition of Kingsland which was not resolved until 2005 after which the transaction was completed. The history of the proceedings in Barbados may be summarized as follows:

(a) Suit No. 1805 of 1998 : an action brought by Marjorie Knox against the then shareholders and directors of Kingsland and Classic Investments Limited for a declaration that Marjorie Knox was entitled to certain pre-emptive rights to purchase the shares of Kingsland in priority to Classic

Investments Limited and for an oppression remedy and other relief. The action was dismissed by Greenidge J. of the Barbados High Court on June 14, 2001.

(b) Civil Appeal No. 17 of 2001: Marjorie Knox appealed Justice Greenidge's decision to the Barbados Court of Appeal. Her appeal was dismissed on April 16, 2003.

(c) Suit No. 9 of 2004: Marjorie Knox appealed the decision of the Court of Appeal of Barbados to Her Majesty The Queen in Council (the Judicial Committee of the Privy Council).This final appeal was dismissed on June 28. 2005.

35 Following the dismissal of Marjorie Knox's appeal to the Judicial Committee of the Privy Council, Classic Investments Limited, in December 2005, proceeded with the acquisition of 86.042% of the shares of Kingsland and Marjorie Knox held the remaining 13.958% of the shares.

36 In January 2006, Kingsland new directors contracted to sell beachfront property called Maxwell Coast Road in the Parish of Christ Church. Marjorie Knox refused to sign a release of her share interest as a charge on the property in favour of the former shareholders of Kingsland, notwithstanding an offer of payment in full of all monies due to her by Kingsland.

37 Originally, in Suit No. 1683 of 1993 in the High Court of Justice of Barbados, the owner of a charge on the land, Andefan Holdings Limited, obtained a judgment against Kingsland. That judgment was paid by the shareholders of Kingsland to whom the securities held by Andefan were assigned. Kingsland then made a successful application to redeem Marjorie Knox' share of the Andefan securities on payment of the debt owed to her. Notwithstanding a decision of Justice Goodridge in this regard dated July 24, 2006, Marjorie Knox refused to sign the release of her share of the Andefan securities and the Court therefore directed the Registrar of the High Court of Barbados to execute the release for and on behalf of Marjorie Knox following the payment into court of money due to her by Kingsland.

38 Marjorie Knox appealed the Order of Justice Goodridge and this appeal was dismissed. However, in the course of these redemption proceedings Marjorie Knox swore and filed an affidavit dated May 3, 2006 in which she stated that *Nelson Barbados Group Ltd.* had been appointed a Receiver of Kingsland.*

39 On or about July 21, 2006 Marjorie Knox, apparently without any authority or consent, procured the appointment of joint receivers of all the undertakings and assets of Kingsland, by virtue of her share of securities in Andefan Holdings Limited . In the result, Kingsland commenced proceedings in the High Court of Justice of Barbados (Suit No. 1332 of 2006) and obtained an injunction to restrain the

receivers from acting. The High Court of the Barbados held that the appointment of receivers was improper and awarded costs to Kingsland against Marjorie Knox.

40 Marjorie Knox has also brought other proceedings against Kingsland and other defendants which are summarized as follows:

(a) Suit No.993 of 2003: an action was commenced against Eric Ashby Bentham Deane, Owen Basil Keith Deane, Philip Vernon Nicholls and Kingsland alleging oppression and seeking disclosure of various documents, statements and records of Kingsland;

(b) Suit No. 1379 of 2006: an action against Eric Ashby Bentham Deane, Richard Ivan Cox, Allan Cox and Kingsland for oppression, an injunction to restrain the sale of the Maxwell Coast Road property and the appointment of a receiver/investigator of Kingsland and other relief. This action was consolidated with Suit No. 993 of 2003. In Suit No.1379 of 2006 the Court refused to grant the relief requested and the Court of Appeal refused to grant leave to appeal the decision.

(c) Suit No.2141 of 2006: an action was commenced against Eric Ashby Bentham Deane, Richard Ivan Cox. Gerard Cox, Allan Cox, Kingsland, the Attorney General of Barbados and PricewaterhouseCoopers for leave to bring a derivative action in the name of Kingsland against the Attorney General for compensation for the compulsory acquisition of certain lands of Kingsland in Barbados under the *Land Acquisition Act*, CAP 228 of the Laws of Barbados. This action has been discontinued and Marjorie Knox was ordered to pay costs.

41 In addition to these proceedings there have been numerous affidavits filed in Barbados proceedings either by Marjorie Knox or her son John Knox on her behalf. On the cross-examination of John Knox in this proceeding there were 22 affidavits identified as sworn by John Knox or Marjorie Knox in the Barbados proceedings. For the most part these affidavits confirm the position taken in the present action, to the extent they are known, and are substantially similar and arise out of the same underpinning facts and circumstances addressed in the within action.

42 It is also noteworthy that in the consolidated proceeding (Suit No.1379 of 2006 and Suit No. 993 of 2003) Marjorie Knox applied for a stay of the Barbadian action in favour of this Ontario action. This application was dismissed by the High Court of Barbados.

The Law

Jurisdiction Simpliciter

43 The Moving Defendants submit that this action should be dismissed or a stay issued on the basis that the Ontario Courts do not have *jurisdiction simpliciter* over the proceeding.

44 *Jurisdiction simpliciter* is the most basic form of jurisdiction that a Court must have before it can properly hear a matter. The determination of *jurisdiction simpliciter* is not a matter for the Court's discretion; jurisdiction either exists or it does not (*Plant Technology International Inc. v. Peter Kiewet Sons Co.*, [2002] O.J. No. 2305 (Ont. S.C.J.) at paras. 56-57).

45 When assessing whether an action against foreign defendants shall proceed in Ontario, the Court must determine whether Ontario can assume jurisdiction, given the relationship among the case, the parties and the forum. (*Muscutt v. Courcelles* (2002), 60 O.R. (3d) 20 (Ont. C.A.) at pg.35-36; *Lemmex v. Bernard* (2002), 60 O.R. (3d) 54 (Ont. C.A.) at p. 62).

46 Where a plaintiff seeks to bring foreign defendants into an Ontario court, the burden rests with the plaintiff to establish that the Ontario court has *jurisdiction simpliciter* in the event that jurisdiction is challenged. (*Frymer v. Brettschneider* (1994), 19 O.R. (3d) 60 (Ont. C.A.) at p. 84-85; *M.J. Jones Inc. v. Kingsway General Insurance Co.*, [2003] O.J. No. 4409 (Ont. S.C.J.) at para.27 aff'd [2004] O.J. No. 1087 (Ont. C.A.)

47 The Supreme Court of Canada in *Morguard Investments Ltd. v. De Savoye* (1990), 76 D.L.R. (4th) 256 (S.C.C.) at p.278 moved away from the traditional conflict of law rules and set forth a new standard for establishing *jurisdiction simpliciter* based on the principles of order and fairness, the need for judicial constraint and the creation of the "real and substantial connection" test. While Morguard involved the enforceability of judgments as between provinces, the Supreme Court of Canada nevertheless has stated that the same "real and substantial connection" test will be applied in an international context.

48 The "real and substantial connection" test is designed with the recognition that some limits must be placed on the exercise of jurisdiction and that the assumption of jurisdiction "must ultimately be guided by the requirements of order and fairness, not a mechanical counting of contacts or connections."(*Hunt v. T & N plc*, [1993] 4 S.C.R. 289 (S.C.C.) at p.325.

49 In *Beals v. Saldanha*, [2003] 3 S.C.R. 416 (S.C.C.), the Supreme Court of Canada detailed that the connection between the action and the jurisdiction must be substantial:

> The "real and substantial connection" test requires that a significant connection exist between the cause of action and the foreign court. Furthermore, a defendant can reasonably be brought within the embrace of a foreign jurisdiction's law where he or she has participated in something of significance or was actively involved in that jurisdiction. **A fleeting or relatively unimportant connection will not be enough to give a foreign court jurisdiction. The connection to the foreign jurisdiction must be a substantial one.**
>
> (emphasis added).

50 The Ontario Court of Appeal in a number of decisions has provided further clarification and guidance as to how the "real and substantial connection" test should be applied in practice.(*Lemmex v. Bernard supra*; *Sinclair v. Cracker Barrel Old Country Store Inc.* (2002), 60 O.R. (3d) 76 (Ont. C.A.); *Leufkens v. Alba Tours International Inc.* (2002), 60 O.R. (3d) 84 (Ont. C.A.); *Gajraj v. DeBernardo* (2002), 60 O.R. (3d) 68 (Ont. C.A.); and *Muscutt v. Courcelles supra.*). With the exception of *Muscutt v. Courcelles* all of the other noted cases involved international jurisdictional issues. However, common to all the cases is that the focus of the jurisdictional analysis is to be on the existence of connections between the issues raised in the proceeding, the parties and the forum.

51 In *Muscutt v. Courcelles*, the Ontario Court of Appeal recognized that the test for a real and substantial connection is, by necessity, a flexible one which defies reduction to a fixed formula. The Court of Appeal nevertheless acknowledged the need for clarity and certainty by detailing a list of 8 factors that should be considered in assessing whether a real and substantial connection with Ontario exists. The Court of Appeal also indicated that this list of factors was not to be considered exhaustive. These factors, of which no single factor is determinative, are as follows (*Muscutt v. Courcelles* at paras. 75-110):

(i) The connection between the forum and the plaintiff's claim;

(ii) The connection between the forum and the defendant;

(iii) Unfairness to the defendant in assuming jurisdiction;

(iv) Unfairness to the plaintiff in not assuming jurisdiction;

(v) The involvement of other parties to the suit;

(vi) The Court's willingness to recognize and enforce an extra-provincial judgment rendered on the

same jurisdictional basis;

(vii) Whether the case is interprovincial or international in nature;

(viii) Comity and the standards of jurisdiction, recognition and enforcement prevailing elsewhere.

Analysis of Jurisdiction Simplicter

52 I find that after applying the above noted factors and other factors in the circumstances of this proceeding, there is no real and substantial connection between Ontario and the subject matter of this action, or between Ontario and the parties to the action. Indeed, to the contrary, there is a real and substantial connection with the jurisdiction of Barbados where most of the Moving Defendants reside and work and where there has been litigation in respect of many of the same allegations made by the Plaintiff in the present action.

(i) Connection Between the Forum and the Plaintiff's Claim

53 The Amended Statement of Claim of the Plaintiff in this proceeding is based in negligence, the tort of conspiracy and tortious interference with the Plaintiff's economic interest. The conduct or alleged tortious acts to support these claims occurred entirely in Barbados and not in Ontario. The Plaintiff's economic interests in issue as related in the Amended Statement of Claim are that it "has security over and ownership rights in common shares of the Defendant Kingsland" which it is pleaded "includes the right to share in the increase in the value of the common shares as well as the dividends or other payments to shareholders by Kingsland." The Plaintiff's affiant, John Knox, asserts that the Plaintiff has an interest in the shares of Kingsland, previously owned by his mother, Marjorie Knox, who is a named Defendant and resides in Barbados. It is also noted that her shares in Kingsland have been transferred to a trust. John Knox states that the actual shares of Kingsland "are physically located in Canada." However, the trust documents were not produced at the cross-examination of John Knox, notwithstanding that John Knox is a beneficiary of the trust, his sister in Miami is the trustee of the trust and the trust documents are "lodged with a U.S. attorney in Miami."

54 The Plaintiff, through its Counsel, has made a deliberate choice not to provide details that would demonstrate its connection to Ontario. The little that is known or disclosed is that the Plaintiff is an Ontario corporation with a head office and business address which is the same as Plaintiff's Counsel in Orillia, Ontario. While the Courts have recognized that Ontario has an interest in protecting the legal rights of its residents and providing a forum in which to litigate disputes, nevertheless the Courts have also consistently acknowledged that mere residency of the Plaintiff within Ontario, without something more, is an insufficient basis for assuming jurisdiction over an action. (*Muscutt v. Courcelles supra* at

para.79 and *Ioannides v. Calvalley Petroleum Inc.*, 2006 CarswellOnt 4581 (Ont. S.C.J.) at para 231).

55 While damages suffered within Ontario is a factor which may be considered in the jurisdictional analysis to connect the Plaintiff to the forum, nevertheless, like residency, damages alone is an insufficient basis for assuming jurisdiction. It is only in limited circumstances that damages sustained within the jurisdiction, as a result of tortious conduct committed elsewhere, is accepted as a basis for *jurisdiction simpliciter*. (*Muscutt v. Courcelles supra* at paras. 77, 80-81,105; *Leufkens v. Alba Tours International Inc. supra* at para 36; *Ioannides v. Calvalley Petroleum Inc. supra* at para 23). In any event I find that there is no evidence presented which demonstrates any damage suffered by the Plaintiff in Ontario. Even if the plaintiff continues to suffer damages in Ontario after sustaining an injury outside the jurisdiction, this does *not* create a real and substantial connection between Ontario and the action. (*ECS Educational Consulting Services Canada Ltd. v. United Arab Emirates (Armed Forces)*, [2000] O.J. No. 211 (Ont. S.C.J.) at para 26-27

56 The only information that the Plaintiff through its Counsel would provide relating to the connection between the forum and the Plaintiff's claim is the information previously outlined at paragraphs 53-54 of these Reasons. Further the corporate filing document relating to the Plaintiff indicates that it was incorporated in 2005. At the direction of Plaintiff's Counsel, the Plaintiff's affiant John Knox refused to answer any questions as to the identity, location or residency of any of the Plaintiff's officers, directors or shareholders. I have reviewed the transcript of the cross-examination of John Knox. The transcript reveals that Plaintiff's Counsel, Mr. McKenzie, by his repeated interjections and improper refusals prevented Defense Counsel from obtaining information directly relevant to the status of the Plaintiff, its business and interest in the action. The numerous attempts by the Moving Defendants to obtain information relevant to the real and substantial connection test were thwarted by Mr. McKenzie's actions to carefully control John Knox's answers and thereby limit information which was potentially prejudicial to the position of the Plaintiff. Mr. McKenzie repeatedly interjected and improperly refused to permit questions concerning the following subject areas:

(a) whether John Knox's affidavits and his answers on cross-examination would bind the Plaintiff;

(b) the nature of the business of the Plaintiff;

(c) John Knox's relationship with Nelson Barbados Group Ltd;

(d) the location of the directors register of the Plaintiff;

(e) the location of the shareholder's register of the Plaintiff;

(f) the location of the books and records of the Plaintiff;

(g) the location of the banking records of the Plaintiff;

(h) the location of the financial statements of the Plaintiff;

(i) the Plaintiff pleads in paragraph 46 of the Amended statement of claim that it has "security over and ownership rights in common shares of Kingsland" however, Plaintiff's Counsel refused many questions relating to the security interest allegedly held by the Plaintiff.

57 At the cross-examination of John Knox, Plaintiff's Counsel, without notice, produced a memory stick containing some 4,000 documents. Mr. McKenzie refused to identify which of the 4,000 documents he intended to rely upon for this jurisdictional motion. Perhaps what is even more remarkable is that it was disclosed that most of the documents on the memory stick were provided to John Knox by William McKenzie. In the course of reading the transcript, it became apparent that John Knox had not made any inquiry to produce relevant hard-copy documents in response to the Notice of Examination served on him. John Knox also admitted that he had other relevant documents in his possession that ought to have produced at his cross-examination, Indeed, he stated that he had 6 to 8 boxes of documents at his office in Barbados, in addition to the documents that were sent to him by Mr. McKenzie.

58 I find that the evidence of the Plaintiff's affiant fails to disclose a real and substantial connection between the cause of action and Ontario. The Plaintiff alleges some sort of conspiracy between certain defendants who made a failed offer (and lost their deposit) to purchase all the shares in Kingsland between 1990 and 1994 (the S.B.G. Development Corporation offer) with subsequent actions by other defendants who did acquire a majority interest in Kingsland several years later led by Classic Investments Limited. However, the Plaintiff provides no particulars of the alleged conspiracy, which is denied by the parties involved in either the S.B.G. Development Corporation failed offer or the Classic Investments Limited transaction.

59 In the result I find that there is no connection between the forum and the Plaintiff's claim.

(ii) Connection Between the Forum and the Defendants

60 In assessing whether there is any connection between the forum and the Defendant the Court must consider:

(a) whether the defendant did anything in Ontario which relates to the plaintiff's claim and

(b) whether it was reasonably foreseeable that the defendant's actions would cause damage outside

Ontario.

61 The Court of Appeal in *Muscutt v. Courcelles supra* (paras. 82-83) stated:

> [W]here the core of the action involves foreign defendants, courts should be wary of assuming jurisdiction simply because there is a claim against a domestic defendant.

62 In the present case there is no evidence that any of the Moving Defendants have any substantial connection to Ontario. Most of the Moving Defendants are located in Barbados, with one also located in Alaska, another in British Columbia and yet another in London, England. All of the Moving Defendants without exception have requested that the trial of this proceeding take place in Barbados. Further, no specific allegations have been made that any conduct related to the subject matter of the Plaintiff's claims arises in Ontario. Only 5 of the existing Defendants are identified as being located in Ontario and about whom the Amended Statement of Claim says almost nothing and John Knox in his affidavits says little more. The very limited involvement of Brian Turner and Graham Brown in a failed bid, done entirely in Barbados to acquire Kingsland is not in my opinion a basis for finding jurisdiction. Finally, the fact that none of the Moving Defendants have any connection to Ontario, the Moving Defendants could not have reasonably foreseen that any conduct they were involved in Barbados would result in an action being commenced against them in Ontario.

63 Therefore I find that this factor favours declining jurisdiction.

(iii) Unfairness to the Defendants in Assuming Jurisdiction

64 The principle of order and fairness (*Muscutt v. Courcelles* para 86) engages the Court to have regard to any other consideration which makes assuming jurisdiction unjust to the Moving Defendants.

65 In analyzing whether it would be unfair to the defendants to assume jurisdiction, the defendants' reasonable expectations are relevant. (*Muscutt v. Courcelles supra*, para 88; *Gajraj v. DeBernardo* (2002), 60 O.R. (3d) 68 (Ont. C.A.). Where a defendant has confined its activities solely to another jurisdiction the court will generally consider it unfair and "unduly onerous" to require the defendant to defend an action in the home jurisdiction of the plaintiff. (*Lemmex v. Bernard* (2002), 60 O.R. (3d) 54 (Ont. C.A.) at para. 35).

66 I find that it would be inherently unfair to the Moving Defendants to assume jurisdiction over the dispute for the following reasons:

(a) the Moving Defendants reside or carry on business in locations outside Ontario and substantially in the Barbados;

(b) most, if not all the witnesses reside outside Ontario and are located in Barbados;

(c) the majority of the files and documentary evidence relevant to this case are located in Barbados and were prepared in Barbados according to Barbadian law and legal practice. Some of the documentation of non-Barbadian defendants is located in Alaska, British Columbia and England but *not* in Ontario.

(d) the majority of the Moving Defendants would be required to re-litigate the issues in this proceeding as similar actions involving the same allegations and substantially the same parties which have been brought in Barbados.

(iv) Unfairness to the Plaintiff in Not Assuming Jurisdiction.

67 In applying the real and substantial connection test to the facts of this case, the principles of order and fairness require a consideration of the Plaintiff's interest in accessing the Courts in its home jurisdiction. (*Muscutt v. Courcelles supra* para 88).

68 The concern of the Court in assessing possible unfairness to the plaintiff in declining jurisdiction evolves around whether it is reasonable to compel the plaintiff to travel abroad in order to litigate its claim and it involves an assessment of the inconvenience that would result (*Muscutt v. Courcelles supra* para.90).

69 I find in the present proceeding there is no unfairness to the Plaintiff if the Court does not assume jurisdiction in this matter. The Plaintiff has chosen to acquire an interest of some kind in shares of a Barbados company that owns land in Barbados and where all the other shareholders reside in Barbados and the transactions of that company have occurred in accordance with, or subject to Barbados law. I also accept the Moving Defendants argument that even if Ontario were to assume jurisdiction, the Plaintiff, if successful, could not execute a judgment of this court as the Moving Defendants have no assets or business in Ontario. Therefore, out of necessity, another action would have to be commenced in Barbados in order to execute on any judgment.

(v) Involvement of Other Parties to the Suit

70 The Court will also consider the involvement of any other parties to the action in a jurisdictional analysis with a view to avoiding a multiplicity of proceedings and inconsistent results. The issue is whether the "core of the action" lies in Ontario. Accordingly, the presence of domestic defendants will not warrant taking jurisdiction over foreign defendants absent a strong connection between Ontario and the subject matter of the claim. (*Lemmex v. Bernard supra* para 41-43).

71 I find that the core of this action lies in Barbados. The alleged tortious conduct occurred in Barbados and the action centres on a claim for damages suffered in Barbados principally as a result of the alleged conduct of the Barbadian defendants. While 3 of the Moving Defendants reside in British Columbia, Alaska and England, nevertheless the core of the action against them also lies in their alleged conduct in Barbados. The few defendants who reside in Ontario have limited involvement in the action and their alleged conduct relates to what they did in Barbados and two of them (Thornbrook and Turner) have made assignments into bankruptcy.

72 Finally, assuming jurisdiction in this case has the potential to lead to a multiplicity of proceedings with inconsistent results as an action is presently pending in Barbados and which a Barbadian Court has declined to stay in favour of this Ontario proceeding.

73 Therefore I find that this factor favours *not* assuming jurisdiction.

(vi) Willingness to Recognize and Enforce a Foreign Judgment Against an Ontario Resident Rendered on the Same Basis

74 In considering the jurisdictional analysis a court must also have regard to whether or not it would recognize a foreign judgment against a domestic defendant rendered on the same jurisdictional basis as the facts in the proceeding. If the court would not enforce judgment against a domestic defendant, then jurisdiction should not be assumed. In *Muscutt v. Courcelles supra* the Ontario Court of Appeal (para 93) underscored the importance of not exercising jurisdiction liberally:

> Every time a court assumes jurisdiction in favour of a domestic plaintiff, the court establishes a standard that will be used to force domestic defendants who are sued elsewhere to attorn to the jurisdiction of the foreign court or face enforcement of a default judgment against them. This

> principle is fundamental to the approach in *Morguard* and *Hunt* and may be seen as a self imposed constraint inherent in the real and substantial connection test. It follows that where a court would not be willing to recognize and enforce an extra-provincial judgment rendered on the same jurisdictional basis, the court cannot assume jurisdiction, because the real and substantial connection test has not been met. (emphasis added).

75 I find that this Court would not recognize a foreign judgment against a domestic defendant rendered on the same jurisdictional basis as the facts in this proceeding. Therefore this factor weighs against assuming jurisdiction.

(vii) Whether the Case is Interprovincial or International in Nature

76 The case law has held that the assumption of jurisdiction is more difficult to justify in international cases than in interprovincial cases.

77 The present case is clearly international and therefore this factor weighs in favour of declining jurisdiction.

(viii) Comity and the Standards of Jurisdiction, Recognition and Enforcement Prevailing Elsewhere

78 Comity requires that this Court take great care not to encroach on the judicial sovereignty of other nations.

79 There is no evidence, that in similar circumstances, the Barbados Court would assume jurisdiction over Moving Defendants if they were almost all from Ontario and being sued for matters that occurred in Ontario. In the absence of evidence to the contrary, I find there is no reason to expect that the Barbadian rules of civil procedure are more generous than those prevailing elsewhere. Therefore I find that this factor weighs against finding a real and substantial connection on the facts of the present case.

Summary on Jurisdiction Simpliciter

80 Based on the analysis of the eight factors detailed above I find that *jurisdiction simpliciter* does not exist in this case. The only connection to Ontario is that the Plaintiff is "resident" in Ontario in that it was incorporated in Ontario. The defendants Thornbrook International Inc. and Brian Edward Turner have made assignments into bankruptcy and they together with G.S.Brown Associates Ltd. while "resident" in Ontario, have no real and substantial connection to Ontario in relation to the circumstances surrounding this action. The core of this action lies in Barbados. The alleged tortious acts, including conspiracy, occurred in Barbados and the action centres on a claim for damages suffered in Barbados primarily as a result of the alleged conduct by the Barbadian defendants.

81 The real and substantial connection test has not been met by the Plaintiff on any of the eight criteria and in the result, it is the finding of this Court that any assumption of jurisdiction by Ontario would contravene the principles of order and fairness.

82 Therefore the motion brought by the Moving Defendants is granted and this action is stayed on the grounds that the Ontario Court does not have jurisdiction over the action.

Forum Non Conveniens

83 In the event I have erred in relation to my findings on *jurisdiction simpliciter*, I propose to consider the Moving defendants alternative argument that Ontario is not the convenient forum for the action.

84 The test for staying the action on the ground of *forum non conveniens* is whether there is some other forum which clearly exists as the more convenient and appropriate forum for the pursuit of the action and for securing the ends of justice. The choice of the appropriate forum is designed to ensure that the action is tried in the jurisdiction that has the strongest connection with the action and the parties.(*Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 S.C.R. 897 (S.C.C.) at p.921; *Frymer v. Brettschneider supra*).

85 In *Muscutt v. Courcelles supra* the Ontario Court of Appeal set out 7 factors which provide a guide to the Court in the exercise of its discretion in determining whether to assume jurisdiction in a proceeding. Once again the list of factors is not meant to be exhaustive. Similar to the factors guiding the *jurisdiction simpliciter* analysis, the test for *forum non conveniens* requires the factors to be weighed as a whole and is not meant to simply turn on which jurisdiction has the greatest number of factors. The 7 factors are outlined at paragraphs 114-115 of the *Muscutt v. Courcelles* case. I propose to deal with

each of the 7 factors however, in a much more abbreviated fashion, as the analysis somewhat overlaps the criteria already detailed in *jurisdiction simpliciter*.

(i) Location of the Parties

86 The Plaintiff is incorporated in Ontario with its registered office located in Orillia, Ontario at the offices of Counsel for the Plaintiff. All questions with respect to the Plaintiff, its business, shareholders, officers or directors were refused by Plaintiff's Counsel. The majority of the Defendants are not resident in Ontario but are located in Barbados. The witnesses for the Barbadian Defendants and their documentary evidence are located in the Barbados. This factor weighs against assuming jurisdiction.

(ii) Location of Witnesses and Evidence

87 The Moving Defendants have no witnesses located in Ontario and based on the material filed and the refusals on the cross-examination of John Knox it is apparent that the Plaintiff will have few, if any, of its own witnesses in Ontario. This action involves issues that relate to alleged misconduct occurring in Barbados, in respect of Barbadian companies and Barbadian real property. Most of the evidence will come from Barbados. This factor favours declining jurisdiction

(iii) Contractual Provisions that Specify Applicable Law or Accord Jurisdiction.

88 The only agreements in issue in this proceeding as identified to date refer to Barbadian law and some contain jurisdiction and choice of law clauses following Barbados. Further, as detailed above, several proceedings have been commenced in Barbados. The issues raised or decided in Barbados are substantially similar and arise out of the same facts and circumstances as the claims, to the extent that they are describable, in the Ontario proceeding. This factor weighs against assuming jurisdiction.

(iv) Applicable Law and Its Weight in Comparison to the Factual Questions to be Decided

89 The Ontario action is based on various torts alleged to have been committed by the Defendants. The law to be applied to a tort is the law of the place where the activity occurred. The Plaintiff also alleges specific breaches of Barbados statutes and treaties. While an Ontario court could apply the law of Barbados, nevertheless the foreign law would have to be proved through expert evidence which is costly and inconvenient.

90 The paramount consideration in relation to this factor is the application and interpretation of Barbadian law which I find favours the action being brought in Barbados. Further there is no suggestion of any need to consider Canadian law in this action. I find that this factor favours not assuming jurisdiction

(v) Geographic Factors Suggesting the Natural Forum

91 The real estate in dispute is in Barbados and all of the significant and material actions of individuals giving rise to the Plaintiff's claims occurred in Barbados. Therefore I find that Barbados then is the natural forum in this dispute.

(vi) Loss of Legitimate Judicial Advantage

92 In *Amchem Products Inc. v. British Columbia (Workers' Compensation Board) supra* Justice Sopinka stated:

> [T]he loss of juridical or other advantage must be considered in the context of the other factors.....A party can have no reasonable expectation of advantages available in a jurisdiction with which the party and the subject matter of the litigation [have] little or no connection.

93 While loss of juridical advantage is a factor to be considered within the *forum non conveniens* analysis, nevertheless as stated in the *Amchem Products* case:

> [I]f a party seeks out a jurisdiction simply to gain a juridical advantage rather than by reason of a real and substantial connection of the case to the jurisdiction, that is ordinarily condemned as "forum shopping".

94 Counsel for the Moving Defendants submit that the Plaintiff is blatantly "forum shopping". It is argued that the manner in which the Plaintiff has brought this proceeding, the persons sued and subsequently the Notice of Discontinuance served within days of the hearing of this motion together with the actions of Plaintiff's Counsel in refusing to allow questions relative to the Plaintiff's real and

substantial connection to Ontario leads to the inference that the Plaintiff Corporation is a shell company, incorporated solely for the purpose of seeking a jurisdictional advantage. While I do not have to make the finding that there is "forum shopping" to determine whether has been a loss of legitimate juridical advantage, nevertheless, based on the positions taken by Plaintiff's Counsel and all the evidence, I find that there is a reasonable inference to be made that the Plaintiff is in fact "forum shopping".

95 In this case the Plaintiff's claim of jurisdiction of the Ontario court rests predominately on its own residence in the province. Since most of the parties to this action are located in Barbados and the allegations contained in the Amended Statement of Claim centre on conduct alleged to have occurred in Barbados, the Plaintiff can have can have no reasonable expectation that it is entitled to a finding that it has a loss of a legitimate jurisdictional advantage in the Ontario court.

96 The Plaintiff has made allegations criticizing the Barbados justice system which will be discussed again in these Reasons. However, it is necessary to state at the outset that the Plaintiff's comments on the Barbados justice system, in the opinion of this Court, are scandalous and unfounded. Further, suggestions of delays and court backlogs in the Barbados courts has a familiar ring to the trial division of this Court in parts of Ontario. The Plaintiff's complaint relating to court facilities simply ignores the acknowledgement by John Knox, the Plaintiff's affiant, of the opening of a state of the art courthouse in Barbados in 2009.

97 The Plaintiff states that the lack of oral discovery in Barbados deprives the Plaintiff of a juridical advantage. However this submission is found to be lacking as the lack of oral discovery in Barbados makes it no different than England. It would be a most difficult challenge to suggest that one is at a juridical disadvantage by being required to sue in England rather than Ontario. Further, I have been directed to the testimony of Chief Justice Sir David Simmons on his cross-examination in this proceeding wherein he indicates that Barbados follows English rules of procedure and is adopting the Lord Woolf reform introduced in England in 1999.

98 I find that there is no reliable evidence which establishes that the Plaintiff has suffered a loss of legitimate juridical advantage and accordingly this factor favours the Court refusing to assume jurisdiction.

Summary on Forum Non Conveniens

99 I have considered all the factors guiding the jurisdictional analysis for *forum non conveniens.*

Applying the test for a stay of proceedings on the ground of *forum non conveniens* I find that Barbados is the more convenient, appropriate and natural forum for the pursuit of this action and for securing the ends of justice. I further find that since the Plaintiff chose to become involved in the business affairs of Barbadian companies and individuals, it is appropriate and fair that it should be required to litigate in the jurisdiction that has the strongest connection with the action and the parties.

100 In the result this action is stayed in Ontario on the basis that Ontario is *not* a convenient forum for the hearing of the present action.

Setting Aside Service of the Statement of Claim

101 The Moving Defendants seek an Order setting aside service on the grounds that the originating process was not properly served outside of Ontario in accordance with Rules 17.02 and 17.04 (1) of the *Rules of Civil Procedure.*

102 Where a foreign defendant has been served with an originating process on the basis of Rule 17.02, that party may challenge the jurisdiction of the court through any one of the following procedures:

(a) A motion under Rule 17.06 (1) to set aside service or to stay the proceeding;

(b) A motion to stay under section 106 of the Courts of Justice Act; and/or

(c) A motion under Rule 21.01 (3)(a) to stay or dismiss the action where the court has no jurisdiction over the subject matter.

103 The Moving Defendants submit that the Plaintiff's Amended statement of Claim fails to explain why service *ex juris* is applicable or authorized by Rule 17.02 of the *Rules of Civil Procedure.*

104 Rule 17.04(1) states that any originating process served outside Ontario without leave of the Court must "disclose the facts and specifically refer to the provisions of rule 17.02 relied on in support of such service."

105 The Plaintiff in response submits that there has been compliance with Rule 17.04(1) and 17.02 as the "contract between the Plaintiff and Marjorie Knox...was made in Ontario; [and] the contract provides that it is to be governed by or interpreted in accordance with the laws of Ontario; [and] the parties to the contract have agreed that the courts of Ontario are to have jurisdiction over legal proceedings in respect of the contract; [and] a breach of the contract has been committed in Ontario, even though the breach was proceeded or accompanied by a breach outside Ontario that rendered impossible the performance of the part of the contract that ought to have been performed in Ontario" The Plaintiff further states that there has been compliance with the rules because "Tort committed in Ontario whereby the operating minds of the conspiracy to reduce the values of the shares of Kingsland and gain control over them took place(sic) [and] "Damages sustained in Ontario to the Plaintiff; and Necessary or proper party-against a person outside Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario: which applies to the Moving Defendants as the action was properly brought against the Ontario Defendants (sic)." (The Plaintiff's Factum para. 52) The Plaintiff's factum then makes reference to Article 10 of the *Hague Convention* which appears to have no relevance to rules 17.04(1) or 17.02. The Plaintiff also refers to a contract which Plaintiff's Counsel refused to produce on the cross-examination of John Knox. The oral submissions of Plaintiff's Counsel on the hearing of this motion did not provide any clarity to the statements in the factum recited above.

106 If it were not for the findings related to *jurisdiction simpliciter* and *forum non conveniens* this Court might have given the Plaintiff an opportunity to amend and effect proper service. However the exercise becomes rather academic in light of the above findings made by this Court. I find no merit in the Plaintiff's submissions on compliance with Rules 17.02 and 17.04(1). The Amended Statement of Claim does not provide the factual basis required by the *Rules of Civil Procedure* to support service *ex juris* under Rule 17.02. There is no reliable evidence to suggest there was a contract made by the parties in Ontario and the Amended Statement of Claim does not allege any facts to support a claim that there was a tort committed in Ontario or damages suffered by the Plaintiff in Ontario. Therefore I find, on the basis of improper service, this action should be stayed.

The Positions Advanced by the Plaintiff on This Motion

107 The Plaintiff's position on this motion is "that there is no forum other than Ontario which has competent jurisdiction and which is appropriate for the trial of the action having regard to the interest of all parties and the ends of justice according to the tests of *jurisdiction simpliciter* or Real and Substantial Connection, Forum *non conveniens*, and overarching considerations in regards to the interests of all parties and the ends of justice (sic)." (Plaintiff's Factum para. 59)

108 Unfortunately, the Plaintiff submits to the court statistical information which is not relevant to the issues to be decided on this motion. (Plaintiff's Factum para 69). However, of greater concern to the

Court is that there are numerous instances in the Plaintiff's Factum where the evidence is quoted out of context, the statements are not supported by the evidence, are inadmissible hearsay or there is no basis for the statements. There are also references made to case law which is incorrect or where the citation cannot be found. Further the Plaintiff's Factum makes several references to the actions of party defendants against whom this action was discontinued only a few days prior to the hearing of this motion. Consequently, the Court did not have the response of the discontinued party defendants to the Plaintiff's Factum. I do not propose to deal with each of the transgressions, except to outline some of the impugned paragraphs of the Plaintiff's Factum are 1, 3, 9, 10, 11, 12, 14 to 18, 23, 24, 60, 75, and 144.

109 Mr. McKenzie also argued that it is not appropriate for the Court to draw the inference that because the Plaintiff did not produce evidence (documents) on the cross-examination, that this reflects on the strength or nature of the Plaintiff's case. Counsel for the Plaintiff maintains that most of the questioning by the Defendants related to the merits of the Plaintiff's claim and the particulars of the Amended Statement of Claim and was tantamount to a discovery of the Plaintiff's action. I do not find any merit to these submissions. A review of the transcript indicates that the Plaintiff's affiant was being asked questions which relate to the test and factors outlined in *Muscutt v. Courcelles supra.* There were 125 refusals to answer questions over 350 pages of the transcript of the cross-examination of John Knox.

110 In a somewhat disingenuous and inconsistent argument Counsel for the Plaintiff states that the Moving Defendants could have examined Donald Best on behalf of the Plaintiff but chose not to do so. Of course the Plaintiff chose John Knox, the son of Marjorie Knox, a Defendant in this proceeding, as the affiant on behalf of the Plaintiff. Mr. Best filed no affidavit. This argument does not assist the Plaintiff in relation to the issues that had to be decided on this motion.

111 Counsel for the Plaintiff submitted that some of the defendants are resident in Ontario and that together with the fact that the Plaintiff is an Ontario Corporation satisfies the real and substantial connection test. Mr. McKenzie stated that the "venue" for this action in his submission should be "Toronto on the Commercial List." He also submitted that there is "nothing in the materials filed to suggest there is any complaint with Ontario" and that the Moving Defendants "are all adept people who travel." Mr. McKenzie in his submissions acknowledged that there is a proceeding in Barbados which "is going on and is not over." I take this comment as an admission that Marjorie Knox is litigating the same or similar issues in Barbados. However, the submissions of Counsel for the Plaintiff on this point are without merit and do not assist the Court in determining the issues relevant to this motion.

112 In a separate hearing before Regional Senior Judge Brown, Ms. M Zemel, Counsel for Eric Ian Stewart Deane and the Estate of Colin Deane brought a motion against the Plaintiff and primarily against its Counsel, relating to the broadcasting, dissemination or transmission of spurious comments relating to the integrity and character of Ms. Zemel and which are characterized as defamation of

character. The Regional Senior Judge rendered a decision on this application on April 3, 2009. Mr. McKenzie submits that as a consequence of bringing that application that the Defendant Deane and the Estate have attorned to the jurisdiction. I give no weight to this submission and I find that there was no attornment to the jurisdiction by these Defendants. The application before Regional Senior Judge Brown was a matter unrelated to these proceedings and in fact related to comments on the internet relating to the integrity of Ms. Zemel. That is a separate and distinct issue from any matter related to the motion now before me.

113 In many of his submissions, Counsel for the Plaintiff dwelled on what can only be described as the fleeting or relatively unimportant connection to Ontario. He referred to the residency of Graham Brown, Brian Edward Turner, G.S.Brown Associates Limited and Thornbrook International Inc. in Ontario. The Plaintiff's own pleading gives little importance to these Defendants of which 2 have declared bankruptcy. Accordingly the Plaintiff's argument on this point is not persuasive.

The Barbados Justice System

114 The Plaintiff states that it cannot obtain justice in Barbados because the government of Barbados is "so indebted or has become insolvent" and because "some of the conspirators are members of the judiciary and governing party." In his affidavit, John Knox makes vague and generalized allegations of concerns with the Barbados justice system, ranging from delays and court backlogs, to access to court reporters and transcripts and to the English practice followed in Barbados wherein there is no oral discovery. Only once does John Knox attest to information coming from a lawyer, Mr. Alair Shepherd (who is Counsel to Marjorie Knox) and a vague assertion that court facilities in the Barbados are "not sufficient and that often leads to the necessity of adjournments and postponements." The rest of Mr. Knox's evidence is unsupported and unsourced.

115 The Chief Justice, Sir David Simmons, was cross-examined for two days by Counsel for the Plaintiff and wherein he related that a new courthouse in Bridgetown has been constructed and is scheduled to open in 2009. He refuted the allegation that he had rendered judgment in a case in which he had previously been counsel and which allegation he stated was "false in the extreme." The Chief Justice also testified that he "rarely" sits in the High Court and usually only in circumstances where it is a "heavy case" and sometimes at the invitation of the lawyers. There are 13 Supreme Court Judges in Barbados, five of whom sit on the Court of Appeal and eight on the High Court. Appeals from the Barbados Court of Appeal now go to the Caribbean Court of Justice. The Chief Justice has avoided ever sitting on matters to do with Kingsland Estates Ltd. He also testified that the civil rules under which Barbados operates are the same as those which existed in England between 1982 and 1999, prior to the reforms of Lord Woolf. Next year, the rules in Barbados will change to implement procedures based on the 1999 reforms, including Case Management. While there is no oral discovery, the Chief Justice detailed the documentary discovery steps that are followed in Barbados as well as the "interrogatory"

process of asking questions which must be answered. The Chief Justice also stated that the allegations made by the Plaintiff relating to corruption in the justice system of Barbados was "scandalous and offensive." On his cross-examination the Chief Justice stated: (Cross-examination transcript pp 164-174)

> [D]espite what you have alleged in your Statement of Claim....there has never been any allegation whatsoever, Mr. McKenzie, of any misconduct or corruption against any judges in Barbados. And international independent bodies have given Barbados' judiciary the highest possible marks, and our judicial system, and the independence of the judiciary.

116 The Plaintiff discontinued this action as against Chief Justice, Sir David Simmons and his brother Peter Simmons (who is a former Barbados High Commissioner to Great Britain) on March 23, 2009 but then had the audacity to make submissions to this Court on April 8, 2009 to the effect that "the Chief Justice has a history" and that the Chief Justice is "a very powerful man" and "he and his brother are up to their necks in this matter of conspiracy." All of the comments made by Mr. McKenzie are salacious, unfair, unsupported by any evidence and are based simply on Mr. McKenzie's opinion of the Chief Justice, his brother and the justice system of Barbados . Mr. McKenzie's opinions are of no importance to this Court. While Mr. McKenzie, inter alia, has formulated the intention to put the Barbados justice system on trial, nevertheless, he has failed on all accounts. I am more than satisfied that all the parties to this proceeding would receive a fair and impartial trial in Barbados.

117 Counsel for the Plaintiff also argued, once again, the alleged lack of security in Barbados and threats made to Marjorie Knox, John Knox and Plaintiff's Counsel, William McKenzie and his staff in the course of these proceedings and which were the subject matter of Reasons delivered by this Court in [2008] O.J. No. 454 (Ont. S.C.J.). The allegations have been refuted for the Reasons provided in the earlier proceeding and accordingly, I find no merit in these submissions made by Plaintiff's Counsel.

118 The Plaintiff also referred again to the transcript of the examination of Mr. Nitin Amersay who was examined by Mr. McKenzie without any of the Defendants' Counsel being present. At a much earlier time in these proceedings, Defense Counsel received very short notice by Mr. McKenzie that Mr. Amersay was going to be examined in the United States. Mr. Amersay is not a party to this proceeding and the thrust of his evidence related to the alleged corruption in the Barbados government and judicial system based on his own alleged experiences. I have again reviewed the transcript of the examination of Nitin Amersay by William McKenzie and again I conclude that it has no relevance to the issues in this proceeding. Further, I find the evidence of Mr. Amersay to be unsupported by any other evidence and it is largely a statement of opinion of Mr. Amersay unchallenged by any meaningful cross-examination.

119 There are other confusing and irrelevant submissions made by Mr. McKenzie to the effect that a

person who has been posting "nasty" comments on blogs on the internet in relation to this proceeding is BWWR (Black Woman Who Reads) and Mr. McKenzie submits to the court that BWWR is the Defendant Ian Deane and that this will be proven once the internet carrier responds to requests made by the Plaintiff. Mr. McKenzie suggests to the Court that witnesses are being intimidated in the Barbados by the blog postings. There is no evidence to support these extraordinary and irrelevant submissions and I give them no weight.

Conclusion

120 Therefore it is the Order of this Court that this action is stayed in Ontario on the basis

(a) that this Court does not have the jurisdiction over the proceeding,

(b) that Ontario is not a convenient forum for the hearing of this action and

(c) that there has not been proper service of the Amended Statement of Claim in compliance with Rules 17.02 and 17.04(1) of the Rules of Civil Procedure.

Submission by Mr. Ranking

121 Mr. Ranking, who represents PricewaterhouseCoopers East Caribbean Firm, on behalf of his client and the other represented Defendants, attended at the commencement of the hearing of this motion and requested a date for the hearing of costs on behalf of all those represented Defendants against whom the Plaintiff filed a Notice of Discontinuance on March 23, 2009. Mr. Ranking further advised that he and the other represented Defendants would be seeking an award of costs on a substantial indemnity basis as against the principals of the Plaintiff Corporation and Mr. McKenzie, personally.

122 I direct Counsel on behalf of the represented defendants as well as Counsel on behalf of the Moving Defendants and the Plaintiff to contact Ms. Jackie Traviss, the Trial Coordinator at Whitby, to arrange a date to speak to the issue of costs. I will expect a factum to be submitted by Counsel who make submissions on costs.

Motion granted.

Footnotes

* On February 1, 2007 Plaintiff's counsel commenced proceedings as Court file No. 07-0110 at Barrie, Ontario with the Plaintiff named as *"Nelson Barbados Investments Inc."* and which entity

is *not* an Ontario corporation. A Notice of Discontinuance in relation to that proceeding was filed on March 26, 2007.

End of Document

This is Exhibit "**B**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

Nelson Barbados 2010 ONSC 569
COURT FILE NO.: 07-0141
DATE: 2010/01/25

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
	)	
Nelson Barbados Group Ltd.	)	**Heidi Rubin** for K. William McKenzie and Crawford, McKenzie, McLean, Anderson & Duncan L.L.P.
Plaintiff		
-and-		
Richard Ivan Cox, Gerard Cox, Alan Cox, Philip Vernon Nicholls, Eric Ashby Bentham Deane, Owen Basil Keith Deane, Marjorie Ilma Knox, David Simmons, Elneth Kentish, Glyne Bannister, Glyne B. Bannister, Philip Greaves a.k.a. Philip Greaves, Gittens Clyde Turney, R.G. Mandeville & Co., Cottle, Catford & Co., Keble Worrell Ltd., Eric Iain Stewart Deane, Estate of Colin Deane, Lee Deane, Errie Deane, Keith Deane, Malcolm Deane, Lionel Nurse, Leonard Nurse, Edward Bayley, Francis Deher, David Shorey, Owen Seymour Arthur, Mark Cummins, Graham Brown, Brian Edward Turner, G.S. Brown Associates Limited, Golf Barbados Inc., Kingsland Estates Limited, Classic Investments Limited, Thornbrook International Consultants Inc., Thornbrook International Inc., S.B.G. Development Corporation, The Barbados Agricultural Credit Trust,		**Lorne S. Silver**, for the Defendants, Richard Ivan Cox, Gerard Cox, Alan Cox, Gittens Clyde Turney, R.G. Mandeville & Co., Kingsland Estates Limited, Classic Investments Limited et al **Gerald L.R. Ranking and Ms. E. Morse,** for the Defendant, PricewaterhouseCoopers East Caribbean Firm **Andrew Roman**, for the Defendants Eric Ian Stewart Deane, Estate of Colin Ian Estwick Deane **Sarah Clarke** for the Defendant First Caribbean International Bank

Phoenix Artists Management Limited, David C. Shorey and Company, C. Shorey and Company Ltd., First Caribbean International Bank (Barbados) Ltd., Price Waterhouse Coopers (Barbados), Attorney General of Barbados, the Country of Barbados, and John Does 1-25, Philip Greaves, Estate of Vivian Gordon Lee Deane, David Thompson, Edmund Bayley, Peter Simmons, G.S. Brown and Associates Ltd., GBI Golf (Barbados) Inc., Owen Gordon Finlay Deane, Classic Investments Limited and Life of Barbados Limited c.o.b. as Life of Barbados Holdings, Life of Barbados Limited, David Carmichael Shorey, Price Waterhouse Coopers East Caribbean Firm, Veco Corporation, Commonwealth Construction Canada Ltd., and Commonwealth Construction Inc.,

Defendants

) **HEARD : January 15, 2010**

Justice J. Bryan Shaughnessy

REASONS ON MOTION FOR CONTEMPT

[1] The moving party PricewaterhouseCoopers East Caribbean and the other participating defendants have brought a motion for an Order finding Donald Best to be in contempt of the orders of this court dated November 2, 2009 and December 2, 2009.

[2] At the hearing of this application on January 15, 2010, I made a finding that Donald Best was in contempt of the orders of November 2, 2009 and December 2, 2009. I made a further finding that Donald Best had actual notice of the orders of November 2, 2009 and December 2, 2009 and that he also was on notice of this contempt application and yet he failed to attend on the return date of this matter to answer questions and make production as required and detailed in the orders of this Court.

[3] Donald Best is the President of the Plaintiff, Nelson Barbados Group Ltd. The substantive jurisdictional motion in this action was heard and Reasons were delivered dated May 4, 2009. Thereafter Counsel were invited to make submissions on the issue of costs. A cost hearing has been set for February 22, 23 and 24, 2010 at the Durham Regional Courthouse. The Defendants have put the Plaintiff and the Court on notice that they will be seeking a cost award against inter alia, K. William McKenzie and the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP, former solicitors for the Plaintiff.

Order of November 2, 2009

[4] The Defendants brought a motion returnable November 2, 3, and 4, 2009 seeking an award of costs to the Defendants on a full indemnity scale, or in the alternative on a substantial indemnity scale, fixed and payable forthwith by the plaintiff, the plaintiff's officer Donald Best, K. William McKenzie and Mr. McKenzie's law firm, Crawford, McKenzie, McLean, Anderson & Duncan LLP on a joint and several basis. In addition thereto the Defendants sought an order, validating service of the motion material upon Donald Best and compelling Donald Best to appear on an examination on November 17, 2009 in Toronto to answer questions:

(a) refused or taken under advisement at the cross-examination of John Knox (a non-party affiant produced by the Plaintiff) held on November 4, 2008 and all questions reasonably arising therefrom;
(b) all questions refused or taken under advisement at the Rule 39.03 examination of Donald Best held on March 20, 2009 and all questions reasonably arising therefrom;
(c) all questions which the Court directed to be answered at the hearing of the substantive motion on April 8, 2009 and all questions reasonably arising therefrom;
(d) all questions relating to Donald Best's appointment and subsequent duties/responsibilities as an officer of Nelson Barbados Group Limited; his relationship, if any, to the matters pleaded in the within action (and the related actions in Barbados), and his association and/or relationship with K. William McKenzie and/or the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP; and
(e) all questions concerning the shares of Kingsland Estates limited, including without limiting the generality of the foregoing, the security over and ownership rights held by Nelson Barbados Group Ltd. in the common shares of Kingsland and all questions arising therefrom.

[5] There was also a request for an order compelling Donald Best to deliver two weeks prior to the examination, all documents by which Nelson Barbados Group Ltd. allegedly acquired security or an ownership interest in Kingsland Estates Limited, all trust documents, the minute book, director's register, shareholder's register, banking documents (including bank account opening documents, operating agreements and bank

statements) and all books of account, ledgers and financial statements from the date of incorporation of Nelson Barbados Group Ltd through to the present.

[6] The grounds advanced for the motion is that all the Defendants were forced to incur extraordinary legal expenses to respond to unmeritorious claims and what are alleged to be obstructionist tactics of the plaintiff and its counsel, Mr. William McKenzie. It is further alleged that this action was brought by a shell corporation with a head office address of Mr. McKenzie's law firm in Orillia Ontario and the action was devoid of merit and had no connection to Ontario and which issues were or continue to be the subject of civil proceedings in Barbados. Accordingly the Defendants seek "the highest scale of costs to compensate them for hundreds of thousands of dollars of legal fees thrown away."

[7] An Order issued from this Court on November 2, 2009 directing Donald Best to attend an examination in Toronto on November 17, 2009. A transcript of the examination indicates that Donald Best called into the special examiners office shortly before the examination was to commence. Mr. Best was placed into a conference call with the counsel present at the examiner's office. Mr. Ranking placed on the record of the examination a narrative of the conversation with Mr. Best, which is not disputed by counsel and which I accept as an accurate account. Mr. Best advised counsel that he was not going to attend the examination but he wanted the examination to take place over the telephone. It was explained to Mr. Best that this was not acceptable and was not in accordance with the order of the Court. Mr. Best asked if there was surveillance of him and he was advised that there was no surveillance. Mr. Best then made reference to blog entries concerning him and he was concerned for his own safety. Mr. Best was assured by Defense counsel present that they did not have any knowledge what he was referring to. Defense Counsel also offered to delay the examination to the afternoon of November 17/09 to which Mr. Best responded that he could not attend. Mr. Best refused to answer all inquiries as to where he resides. Counsel also offered other dates for the examination but Mr. Best refused to commit to another date. Mr. Best insisted that the examination proceed over the telephone. When Mr. Silver asked Mr. Best if he had the records of Nelson Barbados, Mr. Best refused to answer and he then asked Mr. Silver what his next question was. Counsel advised Mr. Best that this telephone conversation was not compliance with the November 2, 2009 order of the Court and the telephone call was terminated.

[8] Notwithstanding the non-compliance with the order of November 2, 2009 and despite the fact that Mr. Best did not attend the examination of November 17, 2009, Defense counsel served on him by mail another appointment for the examination on November 25, 2009. Mr. Best did not attend on this further appointment.

[9] Mr. Best never produced the documents detailed in the November 2, 2009 order.

Order of December 2, 2009

[10] On November 27/09 the defense served a motion record for a December 2, 2009 contempt motion by reason of the failure of Donald Best to comply with the order of November 2/09.

[11] On December 2/09 defense counsel attended at the Courthouse in Whitby to secure an order validating service of the November 27/09 motion record and authorizing substitutional service of the contempt motion. Donald Best did not attend the December 2, 2009 hearing although he was on notice of the same.

[12] The order of December 2, 2009 provided that the contempt motion was to be served upon Donald Best by an alternative to personal service. The endorsement of December 2, 2009 reads:

> In the usual course a motion to hold a person in contempt should be served personally. However, the circumstances in the present case are most unusual.
> Mr. Donald Best, the President, director and shareholder of the Plaintiff Corporation has set up a somewhat elaborate procedure for mailings and other communications. He has a UPS post box address in Kingston which in turn forwards all correspondence to yet another UPS post box at the Cloverdale Mall in Toronto.
> Further, it is apparent from correspondence sent by Mr. Best, including conversations he states he had with the Trial Coordinator at Whitby, that Mr. Best is aware of all aspects of this proceeding including my order of Nov. 2/09.
> Mr. Best called the Verbatim office on the day of the scheduled examination and attempted to conduct the examination over the telephone.
> Mr. Best has sent material to the Trial Coordinator and me which is not in Affidavit form.
> Mr. Best refuses to provide any address where he resides but suggests he is out of the country. Extensive investigations have not resulted in locating where he resides.
> I find that Donald Best is deliberately avoiding personal service of the contempt motion. There are no other steps that can be taken by the defendants to locate Mr. Best.
> In these unusual and unique circumstances I find that an Order for substitutional service of the contempt application is appropriate and it is so granted.
> Mr. Donald Best will be substitutionally served with the motion for contempt and my endorsement at:
>
> 1) the UPS address in Kingston Ont. as detailed in the order of Eberhard J.
> 2) at the UPS address at the Cloverdale Mall in Toronto.

> The contempt motion is now set to be heard by me on January 15, 2010 at 9:30 am at Whitby Ont.
> Costs of today's attendance and costs thrown away are reserved to the January 15, 2010 date.
> The cross-examination of Mr. McKenzie has been delayed pending this aspect of the proceeding. Further, 3 days for the hearing of costs have been reserved for the end of February 2010. It is therefore necessary that dates and timelines be adhered to in order that this matter can be completed in both a fair and expeditious manner.

[13] The order of December 2, 2009 directed Donald Best to attend on January 15, 2010 at Whitby, Ontario to give evidence viva voce before Shaughnessy J and produce the documentation referred to in the November 2, 2009 order (and which is repeated in the December 2/09 order). The order further provides that the contempt hearing would also proceed on January 15 2010. It further provides that in the event that Donald Best fails to attend on January 15, 2010 the contempt motion will proceed in his absence.

[14] On December 4, 2009 the defense served Donald Best by mail addressed to the 2 UPS address boxes, the December 2, 2009 order and my endorsement. On December 15, 2009 Mr. Ranking on behalf of all participating counsel forwarded correspondence to Donald Best at both UPS addresses in Kingston and Toronto enclosing the Motion Record dated November 27, 2009; the Notice of Return of the Amended Motion; a Supplemental Motion Record dated December 14, 2009 and a Notice of Examination returnable before me on January 15, 2010. Once again the request was made to Mr. Best that he produce the documentation previously requested and detailed in the Court orders and the Notice of Examination. Mr. Ranking's correspondence of December 15, 2009 states that, if Mr. Best did not attend on January 15, 2009, "I will proceed with the contempt motion in your absence and seek a warrant for your arrest." On December 23, 2009 Mr. Best was served by mail with the defendant's Factum and Book of Authorities.

[15] Donald Best did not attend court on January 15, 2010 and he has not produced the documents that are the subject of the November 2 and December 2, 2009 orders.

Is Donald Best in contempt of the Court Orders of November 2, 2009 and December 2, 2009?

[16] I am satisfied, based on all the material filed including Mr. Best's correspondence to this court and the trial coordinator, that he has actual knowledge of these proceedings and the orders of this court. On November 16, 2009 Mr. Best wrote to the Trial Coordinator's Office:

> .....the judge ordered me to appear tomorrow (Tuesday 17th) in Toronto at Victory Verbatim at 10am at 222 Bay Street to answer all questions from "sections a,b,c,d.

[17] Mr. Best did not attend on the examination of November 17/09 choosing instead to play a cat and mouse game over the phone. He also did not attend the November 25/09 date for the examination. On December 4/09 a copy of my order of December 2/09 and

my endorsement were forwarded to Mr. Best. He did not attend on January 15, 2010 as required by the December 2, 2009 order and he did not produce the documentation detailed under both court orders.

Law related to Contempt

[18] In Canada Metal Co. Ltd.v Canadian Broadcasting Corp (No.2) (1974), 4 O.R. (2d) 585 at 603(H.C.J.); aff'd (1975), 11 O.R. (2d) 167 (C.A.) Mr. Justice O'Leary stated the importance of obeying court orders:

> To allow Court orders to be disobeyed would be to tread the road to anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn. Daily, thousands of Canadians resort to our courts for relief against the wrongful acts of others. If the remedies that the courts grant to correct those wrongs can be ignored, then there will be nothing left but for each person to take the law into his own hands. Loss of respect for the Courts will quickly result in the destruction of our society.

[19] There is a three part test for a finding of contempt:

(a) the person has knowledge of the nature of the terms of the Order;
(b) the Order is directive and not simply permissive; and
(c) the person's conduct is in contravention of the Order.

[20] The principles governing contempt as detailed in Canada Metal *supra* and iTrade Finance Inc. v Webworx Inc. [2005] O.J. No.1200 (Ont. Sup.Crt.) at para. 12 can be summarized as follows:

(a) an order must be implicitly observed and every diligence must be exercised to observe it to the letter;
(b) the order must be obeyed, not only in the letter, but also in the spirit of the order; and
(c) knowledge of the existence of an order is sufficient to obligate persons to obey it (including non-parties if they know the substance or nature of the Order.)

[21] I find that all of the above principles governing contempt are met in the present case. Mr. Best did not observe either order of this Court. He contravened both the letter and spirit of the orders. Donald Best had knowledge of the orders as evidenced by his November 16, 2009 correspondence to the Trial Coordinator.

[22] Contempt must be proven beyond a reasonable doubt, but it is not necessary to establish that the alleged contemnor is intentionally contemptuous or that he intends to interfere with the administration of justice. (Re Sheppard v Sheppard, (1976), 12 O.R. (2d) 4 at 8-9 (C.A.).

[23] The breach of an order is not excused because the person committing the contempt had no intention to disobey or deprecate the authority of the Court. The absence of contemptuous intent is a mitigating factor but not an exculpatory factor. It is not a defence that the breach was done reasonably, with all due care and attention, even where that belief is based on legal advice. (Canada Metal *supra* at 603).

[24] Mr. Best stated his intention not to appear on the examination of November 17/09 when he called counsel the same day. He also failed to attend the examinations of November 25, 2009 and January 15, 2010 all of which I find beyond a reasonable doubt are contemptuous acts.

Remedy

[25] In determining what sanctions should be imposed for a contempt of court the case law refers to a number of factors that should be taken into account:

(a) *the nature of the contemptuous act*: Mr. Best has flagrantly ignored the orders of this Court. He has caused the defendants to incur unnecessary costs and this Court to spend valuable resources to enforce compliance. Mr. Best's contemptuous acts strike at the heart of the administration of justice.

(b) *whether the contemnor has admitted his breach* : Mr. Best admitted his intention not to attend to be examined on November 17,2009.

(c) *the court should also take into account whether the contemnor has tendered a formal apology to the court* : Mr. Best has not tendered any apology to the Court.

(d) *the court must consider whether the breach was a single act or part of an ongoing pattern of conduct in which there were repeated breaches*: Donald Best is in contempt of two court orders. He also failed to attend an examination on November 25, 2009 which is indicative of a pattern of conduct that is not in keeping with the spirit of the November 2, 2009 order. Mr. Best has also refused to provide his contact information (address, e-mail, telephone number) or to provide alternative examination dates or to disclose his whereabouts all of which are actions calculated to frustrate these proceedings.

(e)*the court should take into account whether the breach occurred with the full knowledge and understanding of the contemnor such that it was a breach rather than as a result of a mistake or misunderstanding*: Donald Best knew that he was required to attend an examination on November 17, 2009. Mr. Best wrote to the Court on November 16, 2009. He confirmed in that correspondence that he knew he had to attend the examination on November 17/09 and that he would attend. Mr. Best in his correspondence has demonstrated that he is in receipt of court materials. He is also aware

that court materials are being sent to his UPS box in Kingston (which is re-directed to his UPS box at the Cloverdale Mall in Toronto). Mr. Best has also deliberately breached the court order of December 2, 2009 by not appearing before this court on January 15, 2010. His refusal to comply with the Court orders is flagrant and deliberate.

(f)*the court must also consider the extent to which the conduct of the contemnor has displayed defiance.* I find that Donald Best has been openly defiant of this Court's orders throughout these proceedings.

(g)*the court should consider whether the order was a private one affecting only the parties to the suit or whether some public benefit lays at its root.* I find that this contempt strikes at the heart of the administration of justice.

[26] In assessing the appropriate remedy the Court should consider a sanction that is commensurate to the gravity of the wrongdoing. The sentence should not reflect a marked departure from those imposed in like circumstances and the court must consider any mitigating and aggravating factors relating to the offender and the offence. However, as in the present case, the intentional violation of a Court order is an aggravating factor in the determination of an appropriate sanction.

[27] One of the purposes in sentencing in contempt proceedings is specific and general deterrence as well as denunciation of the conduct of the contemnor. I find that these principles of sentencing are of the utmost importance in the present case.

[28] The Supreme Court of Canada in United Nurses of Alberta and Attorney General for Alberta [1992] A.J. No. 979, 1992 Carswell Alberta Reports 10 at para.75 stated that the criminal contempt power should be used sparingly and with great restraint. It follows then that the civil contempt power should be used even more sparingly and only in the clearest of circumstances where it is required to protect the rule of law. I find that this is one of those special circumstances. Donald Best has been and continues to be in defiance of the orders of this court.

[29] The Court must consider as well all other sanctions other than imprisonment in considering an appropriate remedy. However, the willful, deliberate and defiant conduct of Donald Best in his refusal to comply with the orders of this Court and a consideration of the principles of sentencing lead me to the conclusion that the only appropriate remedy in the circumstances is a sentence of incarceration. I find that any other sanction would diminish, rather than enhance, respect for the administration of justice. Further, I find that other measures of ensuring compliance by Donald Best with the Court orders have been exhausted.

[30] There is filed in this proceeding the affidavit of Sebastien J. Kwidzinski, an articling student at Mr. Ranking's law firm, sworn October 27, 2009. This affidavit details that a search of the case law indicates an association of Donald Best and K. William McKenzie that dates back some 13 years and which is summarized as follows:

(a) Expressvu Inc. v NII Norsat International Inc., [1997] F.C.J. No. 276. This action involved certain parts of six affidavits filed by the plaintiffs. Mr. McKenzie represented the plaintiffs. Donald Best was one of the affiants on behalf of the plaintiffs. The Reasons note that Mr. Best's affidavit was sworn on October 30, 1996 indicating that he and Mr. McKenzie were acquainted at some point before this time.

(b) WIC Premium Television Ltd. v. General Instrument Corp. (2000), 8 C.P.R. (4th) 1 (Alta. C.A.). This action involved an appeal brought by the defendants to appeal the dismissal of their applications to set aside service *ex juris* and to strike the claims brought against them by the plaintiffs. Mr. McKenzie represented the plaintiffs. Mr. McKenzie sought to introduce fresh evidence in the appeal. Part of this fresh evidence was the affidavit evidence of Donald Best.

(c) Bell ExpressVu. Ltd. Partnership v Rex, [2002] 2 S.C.R. 559. This case involved an appeal to the Supreme Court of Canada brought by the plaintiffs relating to wording in the *Radiocommunication Act*. Mr. McKenzie represented the plaintiffs and he presented affidavit evidence of Mr. Best sworn November 15, 1999 and he cited Mr. Best in his factum.

(d) Kudelski S.A. v. Love, [2002] MBQB 65. This matter involved a motion to extend service and to approve substituted service. Mr. McKenzie represented the plaintiffs as well as Mr. Best and The Nelson Group Limited. Mr. McKenzie, Mr. Best, and The Nelson Group Limited, among others, were third parties. Mr. Best had been retained to assist in the execution of an Anton Pillar order. The defendants were successful in obtaining an order for substituted service on Mr. Best and The Nelson Group Limited. The defendants were unable to locate Mr. Best. At paragraph 26 of the Reasons the presiding judge states : "Mr. McKenzie, when asked by me whether he knew where Mr. Best was, indicated that he "believed" that Mr. Best is now in Thailand. Mr. Best, according to corporate documents filed with the Companies Branch in Ontario, would appear to be the operating mind of The Nelson Group Limited." A corporate search of The Nelson Group Limited details that a "Donald Robert Best" is listed as a Director and Officer. The company was incorporated on March 15, 1993 and its last annual return was filed in 2003.

(e) CAMT Speed-I-Com Inc. v Pace Savings & Credit Union Ltd. (2005) WL 2158674 (Ont. S.C.J.). This action involved applications by both parties for interlocutory injunctions as well as to request the appointment of a receiver. Mr. McKenzie represented the plaintiff. Mr. Best was involved in an accounting investigation on behalf of the plaintiff and he is described in the Reasons as being a retired police officer with some experience in forensic financial matters.

(f) Love v News Datacom. Ltd., (2006) MBCA 92. This matter involved an appeal to the Manitoba Court of Appeal brought by the plaintiffs after the motions court struck a third party notice as disclosing no reasonable cause of action. On the appeal, Mr. McKenzie was a third party respondent and he also

acted as representative to the other third parties in the action, which included Donald Best and The Nelson Group Limited.

[31] The affidavit material filed on this motion indicates that a motor vehicle license search was conducted on "Donald Robert Best" and which disclosed an address of 122-250 The East Mall, Apt. 1255 which is the address for the mailbox of the UPS store located in the Cloverdale Mall in Toronto.

[32] The information detailed in paragraphs 30 and 31 herein do not form any basis of the finding of contempt. The information is provided as a narrative of the context in which the defendants, in part, are advancing a cost award against Mr. McKenzie, Mr. Best and Nelson Barbados Group Ltd.

[33] However the information detailed in paragraphs 30 and 31 does lead me to the conclusion that Donald Best is a seasoned litigator and therefore is knowledgeable concerning the necessity for compliance with Court orders and likewise the consequences for non-compliance with Court orders.

Imposition of a Fine

[34] The defendants also seek the imposition of a fine as yet another measure to give effect to specific and general deterrence in relation to the proven acts of contempt. However, one of the first criteria is to determine whether the contemnor has the ability to pay a fine. Donald Best on behalf of the Plaintiff had the resources to commence this action against 63 defendants for $ 500 million and pursue it to its conclusion on an application relating to jurisdiction. In relation to other interlocutory proceedings, costs awarded to the defendants and payable by the Plaintiff of approximately $ 250,000.00 were in fact paid. Therefore I am satisfied that there is an ability of Donald Best to pay any fine imposed by this Court. In addition to a sentence of incarceration, I also impose a fine of $ 7,500 payable by Donald Best.

Conclusion

[35] For the reasons provided, I impose on Donald Best a sentence of 3 months incarceration to be served in a provincial correctional institution. In addition to the sentence of incarceration I impose a fine of $ 7,500 to be paid by Donald Best to the Treasurer of Ontario plus the statutory surcharge thereon. A warrant for committal to issue forthwith.

[36] It is further an order of this court that Donald Best may apply to purge his contempt by appearing before me on or before February 22, 2010 and answering questions and making productions as detailed in my orders of November 2, 2009 and December 2, 2009.

[37] I have signed an order that relates to the attendance of K. William McKenzie on an examination now set for February 3, 2010.

[38] I have heard the submissions of defence counsel on the costs for attendances and argument of this motion for contempt. In light of my findings of a deliberate, willful and continuing contempt on the part of Donald Best, I find an award of costs on a substantial indemnity basis is appropriate. It is acknowledged by defence counsel that Mr. Ranking and his law firm did the substantial work on this application. I have considered the guidelines under the Rules of Civil Procedure and the principle of proportionality in assessing the cost award. After reviewing the bill of costs and hearing the submissions of counsel I made the following award of costs payable by Donald Best within 30 days:

(a) To Mr. Ranking's clients costs of $ 50,632.90 inclusive of GST (comprised of $ 45,000 in fees and $ 5,632.90 in taxable disbursements).

(b) To Mr. Silver's clients costs of $ 13,230 inclusive of GST

(c) To Mr. Roman's clients costs of $ 5,512.50 inclusive of GST

(d) To Ms. Clarke's clients costs of $ 3,500 inclusive of GST.

Dated: January 25, 2010

Justice J. Bryan Shaughnessy

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Nelson Barbados Group Ltd.

Plaintiff

-and-

Richard Ivan Cox, Gerard Cox, Alan Cox, Philip Vernon Nicholls, Eric Ashby Bentham Deane, Owen Basil Keith Deane, Marjorie Ilma Knox, David Simmons, Elneth Kentish, Glyne Bannister, Glyne B. Bannister, Philip Greaves a.k.a. Philip Greaves, Gittens Clyde Turney, R.G. Mandeville & Co., Cottle, Catford & Co., Keble Worrell Ltd., Eric Iain Stewart Deane, Estate of Colin Deane, Lee Deane, Errie Deane, Keith Deane, Malcolm Deane, Lionel Nurse, Leonard Nurse, Edward Bayley, Francis Deher, David Shorey, Owen Seymour Arthur, Mark Cummins, Graham Brown, Brian Edward Turner, G.S. Brown Associates Limited, Golf Barbados Inc., Kingsland Estates Limited, Classic Investments Limited, Thornbrook International Consultants Inc., Thornbrook International Inc., S.B.G. Development Corporation, The Barbados Agricultural Credit Trust, Phoenix Artists Management Limited, David C. Shorey and Company, C. Shorey and Company Ltd., First Caribbean International Bank (Barbados) Ltd., Price

Waterhouse Coopers (Barbados), Attorney General of Barbados, the Country of Barbados, and John Does 1-25, Philip Greaves, Estate of Vivian Gordon Lee Deane, David Thompson, Edmund Bayley, Peter Simmons, G.S. Brown and Associates Ltd., GBI Golf (Barbados) Inc., Owen Gordon Finlay Deane, Classic Investments Limited and Life of Barbados Limited c.o.b. as Life of Barbados Holdings, Life of Barbados Limited, David Carmichael Shorey, Price Waterhouse Coopers East Caribbean Firm, Veco Corporation, Commonwealth Construction Canada Ltd., and Commonwealth Construction Inc.,

Defendants

REASONS FOR JUDGMENT

Justice J. Bryan Shaughnessy

This is Exhibit "**C**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

Court File No. 141/07 (Barrie Action)

CITATION 2013 ONSC 8025

SUPERIOR COURT OF JUSTICE

NELSON BARBADOS GROUP INC.

- and -

RICHARD COX *ET AL*

****

BEFORE THE HONOURABLE JUSTICE SHAUGHNESSY,
AT THE COURTHOUSE, 150 BOND ST. E., OSHAWA, ONTARIO,
ON FRIDAY, MAY 3, 2013.

****

REASONS FOR JUDGMENT
ON APPLICATION BY DONALD BEST
TO PURGE OR SET ASIDE CONTEMPT ORDER

APPEARANCES:

D. Best	In Person.
L. Silver	Counsel for Kingsland Estates.
G. Ranking	Counsel for PricewaterhouseCoopers

FRIDAY, MAY 3, 2013

U P O N R E S U M I N G **(9:45 AM)**

THE COURT: Yes, Mr. Best.

MR. BEST: Yes, Your Honour. I was a little nervous last time and I forgot to tell you about - I wrote and asked Mr. Silver and Mr. Ranking a couple of weeks ago what the unanswered questions were and they refused to tell me. I have some letters that I'm hoping you would accept as exhibits in the court. They have already seen them. I have copies here for them. They are just our correspondence between us.

THE COURT: Well, I have to hear from Mr. Silver or Mr. Ranking. We are at an end here in terms of submissions but if this is letters that they are aware of, I suppose I can file them.

MR. RANKING: Justice Shaughnessy, Mr. Best never talks to us before court so if we can see the letters, then we'll be able to confer and let you know.

MR. BEST: Yes, sir. Here's those and these, sir.

MR. RANKING: We don't have any objection to these letters being passed up to the court.

THE COURT: All right.

MR. BEST: Thank you, Your Honour.

REGISTRAR: Do you wish to see these, Your Honour?

THE COURT: Yes, sure.

REGISTRAR: Do you want me to mark them as an exhibit?

THE COURT: All right. So for the purpose of the record, there is a letter dated April 22, 2013, unsigned, but purportedly sent from

Mr. Donald Best to Gerald Ranking and Mr. Lorne Silver. It says:

> *Upon reading your factum, I understand that there are questions that I have not answered. Please write these questions down and send them to me.*

That was April 22nd and on April 26th, there is a letter from Fasken Martineau signed by Mr. Gerald L.R. Ranking, dated April 26, 2013. The letter states:

> *Mr. Silver is in court and as such, I am writing on our joint behalves to respond to your letter dated April 22, 2013.*
>
> *Neither Mr. Silver nor I have asked you any questions with respect to the subject-matter of Justice Shaughnessy's orders dated November 2nd and December 2nd, 2009.*

There is a footnote and reference at the bottom of the page that:

> *These orders are at Tabs 25 and 30 of our responding motion record for the motion returnable April 30, 2013.*

Continuing in the main paragraph:

> *Would you please let us know if you are prepared to answer the questions relating to the issues enumerated in paragraph 3 of those orders and whether you are willing to attend before Justice Shaughnessy to have the*

questions put to you orally. We do not share your view that written questions are appropriate. It would be immensely time consuming, and extremely costly, to provide questions in writing. It is also contrary to the customary practice. More importantly, the order dated December 2, 2009 ***requires you to appear before the Honourable Justice Shaughnessy to answer the questions.***

I might say that the words "requires you to appear before the Honourable Justice Shaughnessy to answer questions" is in bold.

Your proposal therefore is inappropriate and seeks to circumvent Justice Shaughnessy's order.

Mr. Silver and I look forward to hearing from you in advance of our attendance before Justice Shaughnessy next Tuesday, April 30th. Additionally, I note that I have not heard from you with respect to the settlement offer contained in my letter dated April 12, 2013.

So those letters will be marked as the next lettered exhibits on these motions, madam registrar.

REGISTRAR: Collectively, Your Honour?

THE COURT: Yes.

REGISTRAR: Exhibit F.

THE COURT: Thank you.

EXHIBIT NO. F: LETTER FROM DONALD BEST TO MR. RANKING AND MR. SILVER DATED APRIL 22, 2013 AND LETTER FROM MR. RANKING TO DONALD BEST DATED APRIL 26, 2013 - Produced and Marked.

... MR. SILVER REINTRODUCES CARLY COHEN, ARTICLING STUDENT, AND EXPLAINS SHE WAS HIRED BACK AS FIRST YEAR ASSOCIATE

REASONS FOR JUDGMENT

SHAUGHNESSY J. (Orally)

As the record will note, this is an application by Donald Best to set aside or purge his contempt as found in the order of January 15, 2010. We had a full day hearing of this application to set aside the order and purge the contempt on April 30. I then put the matter over to today's date to provide Reasons for Judgment.

Donald Best knowingly and wilfully breached the orders of this court dated November 2 and December 3, 2009. As a result, on January 15, 2010, I found Donald Best in contempt and amongst other relief, I ordered that a warrant be issued for his committal.

At the time of issuing the contempt order, I granted Donald Best a further opportunity to purge his contempt by complying with the previous orders that he had breached. Donald Best failed to purge his contempt. He chose instead to live outside Canada in an unknown location until his

then lawyer, Mr. Brian Greenspan, brought an application to permit Mr. Best to return to Canada to deal with the contempt order.

BACKGROUND CIRCUMSTANCES

My involvement in this proceeding extends over several years and multiple motions made to the court, all within the context of a jurisdictional motion. I provided extensive written reasons which detail the background information relating to this litigation.

In that regard, I refer to my reasons as follows:

1. *Nelson Barbados Group Ltd. v. Commonwealth Construction Inc.* [2009] O.J. No. 1845
2. *Nelson Barbados Group Ltd. v. Cox* [2008] O.J. No. 454
3. *Nelson Barbados Group Ltd. v. Cox* [2008]O.J. No. 2410
4. *Nelson Barbados Group Ltd. v. Cox* [2010] O.J. No. 278

Therefore, as these reasons are extensive and outline the history of the facts relating to this proceeding, I do not purport to review those facts as I think they are reasonably and succinctly stated in those reasons that I have referred to.

Donald Best claims to be the sole officer, directing mind and shareholder of Nelson Barbados Group Ltd., an Ontario corporation, which I will

herein after refer to as Nelson Barbados. This company was incorporated by its former counsel, K. William McKenzie, and its head office was Mr. McKenzie's law office in Orillia.

In the course of the litigation, Nelson Barbados was represented by K. William McKenzie. Ultimately, Mr. McKenzie came off the record and counsel for LawPRO became involved. Transcripts of those proceedings are available in the court file.

While I do not wish to recite the history of the proceedings as this is available in the reasons detailed above, I can, by way of summary, state that Nelson Barbados went to extraordinary lengths to resist, complicate and delay the adjudication of the jurisdiction motions brought to stay the Ontario action. Rather than agreeing to facts and proceeding on a cooperative basis, Nelson Barbados raised countless objections and procedural roadblocks including:

A. Bringing a motion for an order that the cross-examinations of Barbadian affiants on the jurisdiction motion be held in Ontario and not in their country of residence, Barbados.

B. Bringing a motion requesting that Cable and Wireless (Barbados) Ltd. preserve and produce to plaintiff's counsel all data and information regarding threats

on a web blog against Mr. McKenzie, including the names of the sources of the threats, or that the said company submit to examination by way of commission or letters rogatory with power to compel witnesses.

C. Bringing a motion for leave to appeal of the above motions when the relief sought by Nelson Barbados was denied.

D. Bringing a motion to strike the affidavit of the defendant Peter Simmons.

E. Bringing a motion to introduce transcripts from the examination of a non-party, Mr. Nitin Amersey.

F. Bringing a motion to ask the court "to consider, rectify, clarify or reconsider" portions of the reasons released on February 8, 2008.

G. Refusing to produce an affidavit sworn by Donald Best at any time in the action and refusing to provide any explanation for why.

H. Objecting to virtually all questions on the cross-examination of John Knox, the affiant produced on behalf of Nelson Barbados, including the question of

whether Mr. Knox's answers were binding on Nelson Barbados.

I. Delivering a notice of discontinuance against 38 of the defendants at the eleventh hour, just before the hearing of the jurisdiction motion.

The manner in which the litigation was conducted by the plaintiff and its counsel were the subject of comment by me in the course of the proceedings. I have referenced [2009] O.J. No. 1845, paragraph 56, as well as the transcript of the proceedings June 8, 2010, paragraph 28 and elsewhere.

Following my decision on the jurisdiction motion, the defendants in the action sought costs against Nelson Barbados and others, including Donald Best.

The defendants obtained a court order from me dated November 2, 2009 requiring Donald Best to produce documents and to attend on an examination in Toronto at Victory Verbatim on November 17, 2009 to answer various questions, including questions concerning Nelson Barbados, the Ontario action, and the involvement of Nelson Barbados' lawyer, K. William McKenzie.

Mr. Gerald Ranking sent Donald Best a letter on November 6, 2009 (more than 10 days prior to the scheduled examination) enclosing *inter alia* a draft order and a Notice of Examination.

Mr. Ranking's letter states:

> *His Honour ordered you to attend on Tuesday, November 17th, 2009 at 10:00 a.m. at Victory Verbatim in Toronto, Ernst and Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario, to be examined. That order became valid and enforceable on November 2nd, 2009, the day it was made by His Honour. You must attend this examination. You must also bring with you the documents set out in the Notice of Examination for Donald Best, which is enclosed.*
>
> *We also enclose a copy of the draft order. We expect to have the draft order approved in substantially the same form.*

Mr. Ranking's letter and enclosures were served in accordance with the protocol for substituted service provided for in the order of November 2, 2009. More particularly, Mr. Ranking's letter was sent to Mr. Best's post office box located at 427 Princess Street, Suite 200, Kingston, Ontario K7L 5S9.

On November 16, 2009, Mr. Best spoke to the trial coordinator, Jackie Traviss, concerning his obligation to attend at Victory Verbatim. Mr. Best wrote a letter to Ms. Traviss stating:

> *Then you (Jackie Traviss) said that the judge ordered me to appear tomorrow (Tuesday, the 17th) in Toronto at Victory Verbatim at 10:00 a.m. at 222 Bay Street to answer all*

questions from:

Sections a, b, c, d.

In the same letter, Mr. Best acknowledged his obligation to attend stating:

> *Once again, I want to emphasize that I will make myself available for questioning by the lawyers tomorrow, Tuesday, November the 17th, 2009.*

Mr. Best then had full knowledge of his obligations arising from the November 2, 2009 order and in particular, the obligation to be examined by counsel to the defendants in the Ontario action.

Mr. Best did not produce any documents at or in advance and did not attend his examination on November 17, 2009. Instead, Mr. Best telephoned Victory Verbatim on November 17, 2009 and advised that he would neither attend the examination in person nor attend the examination at a date in the future. Mr. Best refused to provide counsel for the defendants with any information concerning his whereabouts. Despite requests, Mr. Best also refused to provide a time when he would attend an examination.

Mr. Ranking sent Mr. Best a letter dated November 18, 2009 offering to conduct Mr. Best's examination on November 25, 2009. The letter enclosed *inter alia* a new Notice of Examination.

Mr. Ranking's letter clearly stated:

> *If you fail to appear on that date (November 25, 2009), we will move for contempt and our motion will be returnable in Whitby before the Honourable Justice Shaughnessy on Wednesday, December 2, 2009 at 9:30 a.m.*

Mr. Best acknowledged receipt of Mr. Ranking's November 18, 2009 letter but failed to attend the examination on November 25, 2009. No explanation was offered by Mr. Best for his absence.

The defendants brought a motion, returnable on December 2, 2009, to require Mr. Best to attend for a contempt motion. Mr. Best was not in attendance on December 2, 2009, despite his acknowledgement of the court date in his December 1, 2009 letter addressed to me, the hearing judge.

On December 2, 2009, and in order to give Mr. Best a further chance to comply with the November 2, 2009 order, I ordered that Mr. Best attend on January 15, 2010 to answer questions *viva voce* in open court. Mr. Best was served with the December 2, 2009 order in accordance with the protocol for substituted service previously prescribed by me.

Mr. Best failed to attend court on January 15, 2010 as ordered by me. Accordingly, a finding of contempt was made and a committal warrant was

also issued on that date. At the time, Mr. Best was ordered to pay a fine of $7500 and to pay costs in the following amounts.

a) $50,632.90 to PricewaterhouseCoopers;

b) $13,230 to Kingsland Estates and Mr. Silver's other clients;

c) $5,512.50 to Eric Iain Stewart Deane and the estate of Colin Ian Estwick Deane; and,

d) $3,500 to First Caribbean International Bank.

My reasons of January 15, 2010 state:

> *Donald Best may apply to purge his contempt by appearing before me on or before February 22, 2010 and answering questions and making productions as detailed in my orders of November 2 and December 2, 2009.*

Mr. Best failed to purge his contempt or attend that hearing.

Following my decision on the jurisdiction motion, the defendants in the action sought costs against Nelson Barbados and others, including Donald Best, and I have outlined those cost orders.

Mr. Best then, for all intents and purposes, disappears and nothing is heard from him until his then counsel, Mr. Brian Greenspan, called the

trial coordinator to request an appointment before me concerning his client, Donald Best.

On August 9, 2012, Mr. Greenspan attended before me *ex parte* with an application for direction. The grounds of this application accurately outlined that on January 15, 2010 I issued contempt order against the applicant, Donald Best and *inter alia* imposed a sentence of three months incarceration and a fine of $7,500. This application, brought by Mr. Greenspan on Mr. Best's behalf, stated that:

> *The applicant wishes to apply for an order setting aside the contempt order issued on January 15, 2010. In the alternative, the applicant seeks an order varying the contempt order of January 15, 2010.*

The applicant then sought directions as to which parties ought to be served on the *ex parte* application and, at the request of Mr. Greenspan, I made the following order and directions:

1. That counsel listed on the contempt hearing transcript of January 15, 2010 were to be served with the application and supporting materials.
2. The execution of the warrant for the arrest of Donald Best was "temporarily stayed until October 12, 2012 to permit Mr. Donald Best to return to Canada to instruct counsel and, if required, to be available for cross-examination on his

affidavit filed".

3. The application was adjourned to October 12, 2012 before me.

Thereafter, Mr. Greenspan prepared an application record to:

a. Set aside the contempt order of January 15, 2010.

b. Alternatively, for an order varying the contempt order.

c. Staying the operation of the warrant of committal pending the determination of the application.

On the October 12, 2012 return date of the application, counsel, Mr. Gerald Ranking and Mr. Lorne Silver, appeared on behalf of their respective clients. Mr. Greenspan appeared on behalf of Mr. Best. The application was adjourned to November 16, 2012 to permit cross-examination of Mr. Best and then to set a date for a hearing. On October 12, 2012, I made an order extending the date set for the actual hearing of the application brought by Mr. Best.

On November 16, 2012, counsel and Mr. Best appeared. Mr. Greenspan, as the record will indicate, wished to get off the record and Mr. Best wished to retain new counsel. The application was adjourned to December 11, 2012 to permit Mr. Best to retain new counsel or, alternatively, for Mr. Best to file a Notice of

Intention to Act in Person. Among other directions, I ordered that cross-examination of Mr. Best on his affidavit material in support of this application was set for January 11, 2013. The application was adjourned to January 25, 2013 to set a date for the hearing.

On December 11, 2012, Mr. Best, now unrepresented, appeared, as well as Mr. Ranking for his clients and as agent for Mr. Silver. Mr. Greenspan was then removed as counsel of record. Mr. Best had filed a Notice of Intention to Act in Person. Leave was granted to Mr. Best to late file his affidavit sworn December 10, 2012.

In my endorsement of December 11, 2012, I stated:

> *I have already, by order dated November 16, 2012, directed cross-examination of Mr. Best to take place on January 11, 2013. Based on the affidavit of Mr. Best and the various letters attached to the affidavit, he has been in contact with the Law Society of Upper Canada lawyer referral services. His difficulty in retaining a lawyer appears to relate to the degree of experience of the lawyer that he wants to retain, as well as the requirement that the lawyer be experienced in "malpractice". I am not satisfied that Mr. Best cannot retain a lawyer as he suggests. The application brought is to purge my contempt findings and set aside the order. As I explained to Mr. Best, this application is*

> *not a relitigation of the Nelson Barbados v. Cox proceeding. Therefore, the cross-examination of Mr. Best shall proceed on January 11, 2013 regardless of whether he retains counsel. In light of the further material filed by Mr. Best, the cross-examination may extend beyond January 11, 2013.*

Mr. Best, Mr. Ranking and Mr. Silver next appeared before me on January 25, 2013. At that time, I made the following endorsement:

> *Hearing date set for April 30, 2013 at 9:30 a.m., one day only.*
>
> *A judicial mediation date is to be set by the trial coordinator on a date prior to April 30, 2013. Mr. Best and counsel to contact trial co-ordinator within five days to arrange this judicial meeting which all parties and Mr. Best have jointly requested.*
>
> *Mr. Best wishes to cross-examine Mr. Silver, Mr. Roman and Mr. Ranking and their clients. That application is denied. Mr. Best has not demonstrated on a reasonable or principled basis why such an order should be granted.*
>
> *Mr. Ranking and Mr. Silver now seek an order that Mr. Best pay into court those costs ordered by me on January 15, 2010. This is a variation of a prior request that the costs be paid to the respondents directly. I find it is*

necessary not to make an order at this time so that Mr. Best will be able to argue the purge of his contempt.

As I explained to Mr. Best and counsel, I order and direct that the hearing date and judicial mediation date are peremptory. I have no other time available for this matter due to other commitments.

Costs of today reserved to the hearing date of April 30, 2013.

Further, I order and direct that Mr. Best answer refusals, undertakings and questions under advisement on or before March 15, 2013.

Applicant's factum to be served and filed by March 29, 2013. Respondents to serve and file their factum by April 16, 2013. Factums to be limited to 30 days,

which obviously was an error and I meant 30 pages.

All of the above dates are peremptory.

The respondent, Kingsland Estates Limited, represented by Mr. Lorne Silver and PricewaterhouseCoopers East Caribbean Firm, represented by Mr. Gerald Ranking, filed a joint factum. On this application, Donald Best has filed and relies on his affidavits as follows:

1. Affidavit sworn April 18, 2012
2. Affidavit sworn September 13,

2012

3. Affidavit sworn December 10, 2012

4. Affidavit sworn January 10, 2013

Mr. Best was cross-examined on his affidavits on January 11, 2013 and January 23, 2013 and transcripts of those examinations are filed on this application. There are also transcripts relating to the various attendances before me. I am advised that the judicial mediation request by Mr. Best and counsel did take place before Mr. Justice Mark Edwards.

I have reviewed the various affidavits of Mr. Best. The affidavit of April 18, 2012 was delivered at a time when Mr. Greenspan was representing Mr. Best. I note that Mr. Best's affidavit was notarized by a notary on April 18, 2012 and somehow connected to Singapore. This affidavit is filed in support of Mr. Best's "application to set aside the contempt order of January 15, 2012" as stated at paragraph 79 of the affidavit.

Attached as exhibits to this affidavit is *inter alia* an examination of Nitin Amersey by Mr. William McKenzie on January 10, 2008 in Bay City, Michigan. Further attached as an exhibit to Mr. Best's affidavit are many pages of blogs on the internet apparently posted

October 30, 2009 and the first of which is titled "The Secretive World of Peter Andrew Allard and the Graeme Hall Nature Sanctuary: Does Barbados Need Any Of It?" There are other internet postings as well. I point out these items as they are illustrative of the type of irrelevant material filed on this application and to which I will make further comment.

The December 10, 2012 affidavit of Donald Best is comprised of 46 pages, 310 paragraphs, with numerous attachments lettered as Exhibits A to Z, which includes my reasons on the motion for contempt dated January 15, 2010. In this affidavit and the subsequent affidavit of January 10, 2013 is a vitriolic attack of Mr. Ranking and Mr. Silver and their respective law firms and clients by Mr. Best. There are accusations of false, fabricated, perjured affidavits related to the main proceedings and accusations of obstruction of justice, fabricating evidence, conspiracy and fraud upon the court by Messrs. Ranking, Silver, their law firms and clients.

I would summarize the December 10, 2012 affidavit as follows:

1. Mr. Best does not wish to represent himself.

2. Comments of Mr. Best concerning the Notice of Intention to Act in Person form.

3. Title: "I Am Not A Flight Risk", which comprises paragraphs 25 to 34.

4. Title: "No Lawyer Retained To Date. Not Qualified To Act For Myself", which is comprised of paragraphs 35 through 66.

5. The date of January 11, 2013 is "so unfair and so unjust in all the circumstances" as well as other perceived inequities by Mr. Best, which is paragraph 67 through 69.

6. Title: "Submissions of letters to court as unsworn un-cross-examinable, seek unserved 'quasi evidence'", which is comprised of paragraphs 70 to 87.

7. Title: "I Donald Best Am Not An 'Experienced Litigator'", which covers paragraphs 88 to 101, which in many respects, is a reiteration that Mr. Best does not wish to represent himself in this application.

8. Title: "Audio Recording Submitted For Forensic Verification. Time Needed", which covers paragraphs 102 to 110 of Mr. Best's affidavit.

9. Title: "Court File 'A Mess' And Missing Important Documents. Need More Time And My Lawyer To Examine The Court File", which covers paragraphs 111 to 120 of the affidavit.

10. Title: "Fears For Safety And Security Of Family, Witnesses And Relevant" is the word used, which is paragraphs 121 to 143.

11. Title: "Gerald Ranking And Fasken Martineau DuMoulin LLP's Purported Client Is False And A Non-Entity", which relates to paragraph 144 to 259 and paragraphs 263 and 264.

12. Title: "Confusing Court Order January 15th, 2010", which is detailed in paragraphs 260 to 262.1.

13. Title: "Lawyers And Law Firms Cannot Continue To Act For Defendants", which is comprised of paragraphs 265 to 272 and paragraphs 273 sub-paragraph 1 to sub-paragraph 15 inclusive.

14. Title: "Conviction For Contempt Of Court Based On Provably False Evidence", which is paragraphs 274 to 294. This portion of the affidavit of Donald Best is in respect of allegations mentioned previously in the affidavit and *inter alia* wherein Mr. Best states (Paragraph 276) "I verily believe that I was convicted by the Honourable Court based upon multiple instances of false evidence placed before the court".

15. Title: "Intent To Submit A Further Affidavit About The November 17th, 2009 Call", and this

comprises paragraphs 296 to 298.

16. Title: "December 2nd, 2009 transcript" and this consists of paragraphs 299 through 307 of the affidavit.

Then there is the affidavit of Donald Best sworn January 10, 2013. This affidavit consists of 53 pages and 314 paragraphs. In addition to this material, there is filed voluminous bound material consisting of the originating motion records of May 24, 2007 and affidavits of persons such as John Knox and references to material of November 7, 2011 and August 28, 2012, excerpts from legal publications and various other publications.

Suffice to say this affidavit of January 10, 2013 and the exhibits to the affidavit comprises four banker boxes of materials. A summary of the affidavit of Donald Best of January 10, 2013 is as follows:

1. Title: "The Honourable Court is not prosecuting me for contempt of court. The prosecutors are two of the defendants in the Nelson Barbados Group v. Cox and their respective lawyers and law firms". This theme continues from paragraphs 1 through 17 of the affidavit and I observe that in many instances, Mr. Best's affidavit contains sub-paragraphs within the paragraphs.

2. Title: "My Request of the Court". Commencing at paragraph 18, Mr. Best requests:

> *Having read this affidavit and having considered all the evidence to date, to accept the circumstances that resulted in my conviction for contempt is purged and to set aside the conviction, the associative penalties and costs and order the return of my passport and to order the RCMP CPIC Division to remove the warrant for my arrest from CPIC.*

If this request is not granted, then Mr. Best seeks an order that PricewaterhouseCoopers East Caribbean Firm and Kingsland Estates Limited and their respective lawyers and law firms not be permitted to "act as prosecutors in my current application" and that is references to paragraph 22 of the affidavit.

Further, that neither Gerald Ranking or Lorne Silver be able to act for their respective clients, which relates to paragraph 23 of the affidavit.

Requests are made for production of corporate registrations of the defendants and government registrations, which relates to paragraph 24 of the affidavit.

3. Title: "PricewaterhouseCoopers East Caribbean

Firm and PricewaterhouseCoopers (Barbados) do not exist and never have", and this comprises paragraphs 26 through 35 of the affidavit and references the same material and position as outlined in the December 10, 2012 affidavit. As acknowledged by Mr. Best, the material is repetitive.

I pause to note that Nelson Barbados sued the Pricewaterhouse Company. Regardless of what name we are using "Firm" "East Caribbean" or "Barbados", they are a named defendant. Mr. Best was president of the plaintiff company. I find it extraordinary that he suggests now that he sued or his company, Nelson Barbados, sued a non-entity. It is illogical.

4. Title: "Fasken Martineau DuMoulin LLP's and Gerald Ranking's clients/witnesses, committed fraud upon the court and other crimes", and there is paragraphs 36 to 42 of the affidavit and also paragraphs 47 through 49.

5. Title: "Cassels Brock and Blackwell, Mr. Silver's clients/witnesses committed fraud upon the court and other crimes" and that comprises paragraph 43 and 44 of the affidavit and paragraphs 51 through 69.

6. Title: "Costs payments are proceeds of crime as defined in the Criminal Code of Canada",

paragraphs 45 through 46 of the affidavit.

7. Title: "Forensic verification of audio recordings", which is paragraphs 70 to 78 of the affidavit.

8. Title: "Court appearances in August, October, November and December 2012", paragraphs 79 through 136, with a considerable number of sub-paragraphs related thereto.

9. Title: "I have not been able to find a lawyer: Over 50 lawyers have rejected my request to represent me", paragraphs 137 through 147 of the affidavit.

10. Title: "I am not an 'Experienced Litigant' or 'Experienced Litigator'", which is paragraphs 148 through 161 of the affidavit.

11. Title: "The Honourable Court is not the Court of Appeal but the court can hear new evidence and act if the court so desires", paragraph 162 to 168 of the affidavit.

12. Title: "Misuse of Costs Hearings and Contempt Prosecution to further other agendas", paragraphs 168 through 198 of the affidavit.

13. Title: "Personal Safety, Security and Well Being", which is paragraphs 199 to 216 of the affidavit.

14. Title: "Reasons for Conviction", paragraphs 217 through 220 of the affidavit.

15. Title: "Massive violation of lawyer/client privilege by Mr. Ranking, Mr. Silver, Mr. Roman and other law firms," which is paragraphs 221 to 267.

16. Title: "Mr. Silver and Mr. Ranking's deceit to me and the Court regarding the private investigator Jim Van Allen. Further proof now exits," paragraphs 268 through 278.

17. Title: "Criminal Complaint made to Durham Regional Police," paragraph 279 to 283.

I would also comment that in the course of oral submissions on April 30, 2013, I was made aware that Mr. Best made a complaint to the Durham Regional Police that Mr. Gerald Ranking had harassed him by standing in line to order a transcript. Mr. Ranking, at the request of the Durham Regional Police, attended before the police officer, who conducted an interview. The police did not lay any charges.

18. Title: "No complaint to the Law Society of Upper Canada," which is comprised of paragraphs 284 through 286.

19. Title: "Examinations of Mr. Rankings, Mr. Silver, Mr. Roman and their clients,"

paragraphs 287 through 300.

20. Title: "My passport", paragraphs 301 to 308 of the affidavit.

21. Title: "Cross-examination", paragraphs 309 to 311 of the affidavit.

22. Title: "This affidavit is incomplete," paragraphs 312 to 314.

Mr. Best then filed, on this application, a 25 page, small type, single spaced factum followed by 12 pages in even smaller print, single spaced, purported to be footnotes but are in fact a continuous running argument of his views, thoughts and wishes.

My attention is drawn to paragraph 137 of the factum of Mr. Best wherein it is stated:

> *Justice Shaughnessy ordered me to answer all questions and I have done so. I have noticed that a great number of the questions engage my solicitor/client privilege and other privacy issues, but because I do not want to disobey the court, I am reluctantly answering these questions under duress. I wish to be very clear that I am not waiving any rights I may have by doing this but it appears that I have no choice.*

I cite this paragraph as I made direct inquiries

on April 30, 2013 of Mr. Best and Messrs. Ranking and Silver as to whether Mr. Best had sought to purge his contempt by complying with my orders of November 2, 2009 and December 2, 2009. Mr. Best assured me that he had answered all of the questions and produced all documentation relating to my previous orders. However, the truth is otherwise.

Mr. Silver referred me to the transcript of the continued cross-examination on Donald Best taken on January 23, 2013, page 280 and following, commencing with Question 1176, and I read from this transcript:

> *Question: Are you prepared, sir – for example, once we've had an opportunity to review the documentation on the memory stick, satisfy ourselves whether it complies with paragraph 4 of Mr. Justice Shaughnessy's order, are you prepared to attend on an examination to deal with the questions and areas set out in paragraph 3 of Justice Shaughnessy's order?*
> *Answer: Sir, what we've been doing here for two days now is answering questions to fulfill Justice Shaughnessy's November 2nd, 2009 order.*
> *Question 1177: No, we haven't.*
> *Answer: Are you sliding something in on me? What have you done? I mean what kind of --*
> *Question: Sir--*
> *Answer: No, that's -- no, no way.*
> *Question: -- you brought an application to set aside Justice Shaughnessy's order and you*

filed affidavits and we've exercised our right to examine you on those affidavits. You know this. So we've exercised our right to cross-examine on those affidavits. You filed three. We started on the 11th, we didn't get finished so we're here to complete the cross-examination on three affidavits that you filed in support of an application to set aside Justice Shaughnessy's order. I'm encouraged to hear finally that you're willing to comply with Justice Shaughnessy's November 2nd order. I think that's a step in the right direction. But we don't think you've fulfilled it at all yet. To the extent that we get to review those documents -- because you need Shaughnessy's order which respectfully I say is ridiculous but, you're going to make your own bed in that regard -- we then have the right to examine you pursuant to paragraph 3 of the order and we're going to exercise that right. It would be nice to know that you agree that we're going to have that right and we're going to complete that examination. Instead what I'm hearing from you is you think that we've been doing this for the last day and a half. I'm telling you you're wrong.

Answer: All right. May I respond to that, sir?

Question: Sure. I mean --

Answer: The whole purpose --

Question: Not really but my saying that no response is required won't stop you so go ahead.

Answer: The whole purpose of the application and of me being examined here and of everything I've been answering and everything I've done is to fulfill the order and purge whatever contempt there is and that's the whole reason why --

Question: I'm glad to hear --

Answer: -- I came back to this country and it's what I've been doing. Now, I think --

Question: Well then why don't you give me those documents if that's a true statement?

Answer: I -- Please let me continue. I think there's some -- I think you're -- I think you're trying to have some theatre here.

Mr. Ranking: Have some what?

The Witness: Theatre.

Mr. Silver: Theatre for Carol?

The Witness: I fulfilled the order of Justice Shaughnessy and that's what we're here now. Now, if there's some question I need to answer to fulfil it more please let's give me the next question, sir.

Question: I'm not going to do that.

Answer: You're not going to answer -- or ask me questions to allow me to fulfill the judge's order?

Question: I did. I did. I said can I have the documents so that I can review them and your answer was no. So I'm not going to be sucked into this game that you are playing that -- to start asking you questions on an examination that we're not even here to conduct. And no,

sir --

Answer: I don't accept that at all. I don't accept that at all.

In conjunction with this exchange, which I may later reference, Mr. Best subsequently handed to the court - I would refer to it as a computer stick. I think they refer to it as something else on the examination but in any event, if I use the word computer stick, I think it is acknowledged what I mean.

This computer stick was handed over ultimately by Mr. Best and contains, to quote Mr. Best in his materials, "over 100,000 documents" relating to the Nelson Barbados proceedings. It goes without saying that my order of November 2 and December 2, 2009 never encompassed such a production, nor would the material be necessarily relevant. Mr. Best made the comment that "they already have this material" and by "they", I interpreted it to mean Mr. Silver and Mr. Ranking. I find that this "tactic" of producing a computer stick with allegedly 100,000 documents and then telling the court that there has been compliance with my order of November 2 and December 2, 2009 is offensive and is part of an ongoing litigation strategy to mislead and deceive the court.

Further, my orders direct Mr. Best to attend and answer questions in relation to the matters specifically outlined in the orders. As late as Tuesday afternoon, April 30, 2013, the

respondents proposed an order for the Warrant of Committal to be suspended and for Mr. Best to attend an examination related to the matters outlined in the orders of November 2 and December 2, 2009 and to pay the costs past and present. Mr. Best advised me that he refused to do so, maintaining that he had purged his contempt.

Regretfully, Mr. Best has again attempted to manipulate the court process by:

1. Suggesting he had answered all questions relating to the November 2 and December 2' 2009 orders when in fact he had not.
   As detailed in the transcript of the cross-examination, he was clearly being cross-examined on the affidavit material filed in support of this application to set aside or purge the order for contempt already made, yet Mr. Best was prepared to stand before me and state several times that he had attended and answered all the questions relating to my November 2 and December 2, 2009 order. I would like to characterize Mr. Best's comment as a mis-statement. However, I find in fact he lied.

2. Further evidence of Mr. Best's attempt to manipulate and frustrate the court process is a production of a computer stick, or I guess it is more properly called a memory stick, containing 100,000 documents and

effectively saying to the respondents' counsel and the court, "You figure it out."

3. At the hearing of April 30, 2013, Mr. Best passed up a several hundred page brief titled "Answers to Undertakings, Under Advisements, Refusals By Donald Best Relating To His January 11th And January 23rd, 2013 Cross-Examination". With 15 years of experience sitting on the bench and in reviewing the materials, I query why this cross-examination could have been so long. However, after a review of the transcripts and the brief filed by Mr. Best mentioned above, it is readily apparent that Mr. Best took an enormous number of questions under advisement. His brief (marked as Exhibit D) contains 119 pages alone in relation to refusals and matters taken under advisement. I have described Exhibit D in much greater detail on the record at the April 30, 2013 hearing. Suffice to say the brief contains ongoing arguments relating to his position. Much of the material is irrelevant and unresponsive.

While there are numerous examples to illustrate my finding on this point, I will refer but to one example at page one, Tab 2, under the title "Answers To Undertakings, Under Advisements Refusals" as follows. Again, I am reading from Tab 2, page one,

the last paragraph.

> *Throughout this application and during my cross-examination, I have been subject to abuse and deceit and outright lies by lawyers as well as innuendo and false quasi evidence improperly placed before the court. The lawyers, some of the defendants and some of their supporters also used intimidation tactics intended to frighten and intimidate my witnesses, my family and myself. Mr. Ranking, Mr. Silver, some of the defendants and their supporters also directly targeted my children and other family members who have nothing to do with anything.*

4. As yet a further tactic, Mr. Best made an application at the commencement of the April 30, 2013 hearing that there was an "undocumented, secret, private or 'on the side' (whatever it may be called) court police investigation" involving Durham Regional Police and others relating to alleged events in December 2009 which has caused a "miscarriage of justice and probably means that this court had to disqualify itself then and has to now."

In support of the application, Mr. Best swears an affidavit of April 29, 2013 and then produces it to the defence on April 30, 2013 after I enter the courtroom. This affidavit is marked as

Exhibit C. The affidavit of Mr. Best states (paragraph 12) that there has been a cover-up or a conspiracy in order to prevent a full hearing into this situation.

Neither Mr. Ranking or Mr. Silver or I have any knowledge of any such circumstances alleged. Mr. Best's affidavit is illustrative of the ongoing history related to this action of using any argument, suggestion or innuendo to cause this proceeding to be delayed or sent off the rails. As I ruled on the record, the affidavit material is not cogent or relevant to the issue before me at the hearing of April 30, 2013.

Mr. Best spent considerable time in his submissions and his affidavits to argue that PricewaterhouseCoopers Caribbean Firm is not a legal entity. Documents, including government filings, which have been filed, clearly demonstrate otherwise. The lengthy submissions of Mr. Best and his affidavit material do no merit further comment and I dismiss the argument on this point. As I have indicated previously, Nelson Barbados sued the PricewaterhouseCoopers entity.

Mr. Best then argued what are two incongruous positions. He submitted that he had no notice of the contempt proceedings. However, his letters to me (uninvited), the trial co-ordinator, Ms. Jackie Traviss, and the telephone

conversation at Victory Verbatim on November 17th, 2009 and the acknowledgement of material sent to him by Mr. Ranking do not support his position. As stated previously, I have provided extensive reasons relating to the method of service of the contempt application due to the intricate network of post office boxes set up by Mr. Best. Far more significantly is that Mr. Best's correspondence and his spoken words in a telephone conversation with counsel on November 17, 2009 illustrate and satisfied me that Mr. Best was aware of the contempt proceedings.

Now with this information at hand, Mr. Best tells me April 30, 2013 that he apologizes for not complying with my order of November 2, 2009 or December 2, 2009 or attending the hearing on January 15, 2010 or the subsequent date of February 2010 to purge his contempt. He states he apologizes but he had to flee Canada and take up residence in what we now understand to be, based on his affidavit, New Zealand for the safety of his family.

I reject Mr. Best's suggestion that his family was at risk. This is a continuation of the same sort of suggestions of threats and conspiracies advanced by his former counsel, William McKenzie, which involved many days of hearing and to which again I provided written reasons.

Further, I do not accept Mr. Best's apology as genuine. It is apparent that this is contrived in

light of the malicious accusations detailed in his affidavit material. Mr. Best never explained how conditions were so unsafe for him and his family in 2009 but is now sufficiently safe in 2013 that he wishes to have my contempt order set aside and resume residency in Canada.

Mr. Best made other submissions that the cost order by me on January 15, 2010, as well as any costs to be ordered, amount to "double dipping". The Minutes of Settlement entered into after the involvement of counsel for LawPRO clearly demonstrate that there has been no double dipping. Mr. Best is not impecunious. In the prior proceedings, at a time when Mr. McKenzie was acting on behalf of Nelson Barbados, I made a cost order against Nelson Barbados in an amount of approximately $200,000 and this cost order was satisfied. Mr. Best, on his own initiative, details in an affidavit on this application that he paid a significant retainer to Mr. Greenspan and he details the amount. Mr. Best states that he cannot retain a lawyer. He never suggests that this is due to impecuniosity and I have previously detailed wherein the basis of his inability to retain a lawyer lies.

ANALYSIS

At a time when Mr. Best was represented by Mr. Greenspan, I granted Mr. Best a further opportunity to purge his contempt. I begin this analysis then relating to this application by

referencing my reasons at [2010] O.J. No. 278, found in the materials filed by both sides, including Tab 4 of the Book of Authorities of the respondents.

In the Reasons of January 15, 2010, which I state are found at O.J. No. 278, paragraph 2 and following, I stated:

> *At the hearing of this application on January 15, 2010, I made a finding that Donald Best was in contempt of the orders of November 2, 2009 and December 2, 2009. I made a further finding that Donald Best had actual notice of the orders of November 2, 2009 and December 2, 2009 and that he also was on notice of this contempt application and yet he failed to attend on the return date of this matter to answer questions and make production as required and detailed in the orders of this Court.*
>
> *[3] Donald Best is the President of the Plaintiff, Nelson Barbados Group Ltd. The substantive jurisdictional motion in this action was heard and Reasons were delivered dated May 4, 2009. Thereafter Counsel were invited to make submissions on the issue of costs. A cost hearing has been set for February 22, 23 and 24, 2010 at the Durham Regional Courthouse. The Defendants have put the Plaintiff and the Court on notice that they will be seeking a cost award against*

inter alia, K. William McKenzie and the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP, former solicitors for the Plaintiff.

Order of November 2, 2009

[4] The Defendants brought a motion returnable November 2, 3, and 4, 2009 seeking an award of costs to the Defendants on a full indemnity scale, or in the alternative on a substantial indemnity scale, fixed and payable forthwith by the plaintiff, the plaintiff's officer Donald Best, K. William McKenzie and Mr. McKenzie's law firm, Crawford, McKenzie, McLean, Anderson & Duncan LLP on a joint and several basis. In addition thereto the Defendants sought an order, validating service of the motion material upon Donald Best and compelling Donald Best to appear on an examination on November 17, 2009 in Toronto to answer questions:

(a) refused or taken under advisement at the cross-examination of John Knox (a non-party affiant produced by the Plaintiff) held on November 4, 2008 and all questions reasonably arising therefrom;

(b) all questions refused or taken under advisement at the Rule 39.03 examination of Donald Best held on March 20, 2009 and all questions reasonably arising therefrom;

(c) all questions which the Court directed to be answered at the hearing of the substantive

motion on April 8, 2009 and all questions reasonably arising therefrom;

(d) all questions relating to Donald Best's appointment and subsequent duties/responsibilities as an officer of Nelson Barbados Group Limited; his relationship, if any, to the matters pleaded in the within action (and the related actions in Barbados), and his association and/or relationship with K. William McKenzie and/or the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP; and

(e) all questions concerning the shares of Kingsland Estates Limited, including without limiting the generality of the foregoing, the security over and ownership rights held by Nelson Barbados Group Ltd. in the common shares of Kingsland and all questions arising therefrom.

[5] There was also a request for an order compelling Donald Best to deliver two weeks prior to the examination, all documents by which Nelson Barbados Group Ltd. allegedly acquired security or an ownership interest in Kingsland Estates Limited, all trust documents, the minute book, director's register, shareholder's register, banking documents (including bank account opening documents, operating agreements and bank statements) and all books of account, ledgers and financial statements from the date of incorporation of

Nelson Barbados Group Ltd through to the present.

[6] The grounds advanced for the motion is that all the Defendants were forced to incur extraordinary legal expenses to respond to unmeritorious claims and what are alleged to be obstructionist tactics of the plaintiff and its counsel, Mr. William McKenzie. It is further alleged that this action was brought by a shell corporation with a head office address of Mr. McKenzie's law firm in Orillia, Ontario and the action was devoid of merit and had no connection to Ontario and which issues were or continue to be the subject of civil proceedings in Barbados. Accordingly the Defendants seek "the highest scale of costs to compensate them for hundreds of thousands of dollars of legal fees thrown away."

[7] An Order issued from this Court on November 2, 2009 directing Donald Best to attend an examination in Toronto on November 17, 2009. A transcript of the examination indicates that Donald Best called into the special examiners office shortly before the examination was to commence. Mr. Best was placed into a conference call with the counsel present at the examiner's office. Mr. Ranking placed on the record of the examination a narrative of the conversation with Mr. Best, which is not

disputed by counsel and which I accept as an accurate account. Mr. Best advised counsel that he was not going to attend the examination but he wanted the examination to take place over the telephone. It was explained to Mr. Best that this was not acceptable and was not in accordance with the order of the Court. Mr. Best asked if there was surveillance of him and he was advised that there was no surveillance. Mr. Best then made reference to blog entries concerning him and he was concerned for his own safety. Mr. Best was assured by Defense counsel present that they did not have any knowledge what he was referring to. Defense Counsel also offered to delay the examination to the afternoon of November 17, 2009 to which Mr. Best responded that he could not attend. Mr. Best refused to answer all questions as to where he resides. Counsel also offered other dates for the examination but Mr. Best refused to commit to another date. Mr. Best insisted that the examination proceed over the telephone. When Mr. Silver asked Mr. Best if he had the records of Nelson Barbados, Mr. Best refused to answer and he then asked Mr. Silver what his next question was. Counsel advised Mr. Best that this telephone conversation was not compliance with the November 2, 2009 order of the Court and the telephone call was terminated.

[8] Notwithstanding the non-compliance with the order of November 2, 2009 and despite the fact that Mr. Best did not attend the examination of November 17, 2009, Defense counsel served on him by mail another appointment for the examination on November 25, 2009. Mr. Best did not attend on this further appointment.

[9] Mr. Best never produced the documents detailed in the November 2, 2009 order.

Order of December 2, 2009

[10] On November 27/09 the defense served a motion record for a December 2, 2009 contempt motion by reason of the failure of Donald Best to comply with the order of November 2 2009.

[11] On December 2/09 defense counsel attended at the Courthouse in Whitby to secure an order validating service of the November 27, 2009 motion record and authorizing substitutional service of the contempt motion. Donald Best did not attend the December 2, 2009 hearing although he was on notice of the same.

[12] The order of December 2, 2009 provided that the contempt motion was to be served upon Donald Best by an alternative to personal service. The endorsement of December 2, 2009 reads:

In the usual course a motion to hold a person in contempt should be served personally. However, the circumstances in the present case are most unusual.

Mr. Donald Best, the President, director and shareholder of the Plaintiff Corporation has set up a somewhat elaborate procedure for mailings and other communications. He has a UPS post box address in Kingston which in turn forwards all correspondence to yet another UPS post box at the Cloverdale Mall in Toronto.

Further, it is apparent from correspondence sent by Mr. Best, including conversations he states he had with the Trial Coordinator at Whitby, that Mr. Best is aware of all aspects of this proceeding including my order of November 2, 2009.

Mr. Best called the Verbatim office on the day of the scheduled examination and attempted to conduct the examination over the telephone.

Mr. Best has sent material to the Trial Coordinator and me which is not in Affidavit form.

Mr. Best refuses to provide any address where he resides but suggests he is out of the country. Extensive investigations have not resulted in locating where he resides.

I find that Donald Best is deliberately avoiding personal service of the contempt motion. There are no other steps that can be

taken by the defendants to locate Mr. Best.
In these unusual and unique circumstances I find that an Order for substitutional service of the contempt application is appropriate and it is so granted.

Mr. Donald Best will be substitutionally served with the motion for contempt and my endorsement at:

1) the UPS address in Kingston Ont. as detailed in the order of Eberhard J.

2) at the UPS address at the Cloverdale Mall in Toronto.

The contempt motion is now set to be heard by me on January 15, 2010 at 9:30 am at Whitby Ont.
Costs of today's attendance and costs thrown away are reserved to the January 15, 2010 date. The cross-examination of Mr. McKenzie has been delayed pending this aspect of the proceeding. Further, 3 days for the hearing of costs have been reserved for the end of February 2010. It is therefore necessary that dates and timelines be adhered to in order that this matter can be completed in both a fair and expeditious manner.

[13] The order of December 2, 2009 directed Donald Best to attend on January 15, 2010 at Whitby, Ontario to give evidence viva voce before Shaughnessy J. and produce the documentation referred to in the November 2,

2009 order (and which is repeated in the December 2, 2009 order). The order further provides that the contempt hearing would also proceed on January 15 2010. It further provides that in the event that Donald Best fails to attend on January 15, 2010 the contempt motion will proceed in his absence.

[14] On December 4, 2009 the defense served Donald Best by mail addressed to the 2 UPS address boxes, the December 2, 2009 order and my endorsement. On December 15, 2009 Mr. Ranking on behalf of all participating counsel forwarded correspondence to Donald Best at both UPS addresses in Kingston and Toronto enclosing the Motion Record dated November 27, 2009; the Notice of Return of the Amended Motion; a Supplemental Motion Record dated December 14, 2009 and a Notice of Examination returnable before me on January 15, 2010. Once again the request was made to Mr. Best that he produce the documentation previously requested and detailed in the Court orders and the Notice of Examination. Mr. Ranking's correspondence of December 15, 2009 states that, if Mr. Best did not attend on January 15, 2009, "I will proceed with the contempt motion in your absence and seek a warrant for your arrest." On December 23, 2009 Mr. Best was served by mail with the defendant's Factum and Book of Authorities.

[15] Donald Best did not attend court on January 15, 2010 and he has not produced the documents that are the subject of the November 2 and December 2, 2009 orders.

Is Donald Best in contempt of the Court Orders of November 2, 2009 and December 2, 2009?

[16] I am satisfied, based on all the material filed including Mr. Best's correspondence to this court and the trial coordinator, that he has actual knowledge of these proceedings and the orders of this court. On November 16, 2009 Mr. Best wrote to the Trial Coordinator's Office:

> *…the judge ordered me to appear tomorrow (Tuesday 17th) in Toronto at Victory Verbatim at 10am at 222 Bay Street to answer all questions from "sections a, b, c, d".*

[17] Mr. Best did not attend on the examination of November 17, 2009 choosing instead to play a cat and mouse game over the phone. He also did not attend the November 25, 2009 date for the examination. On December 4, 2009 a copy of my order of December 2, 2009 and my endorsement were forwarded to Mr. Best. He did not attend on January 15, 2010 as required by the December 2, 2009 order and he did not produce the documentation detailed under both court orders.

I am going to take a short break right now because I think I need it and then we will resume.

Sorry, just to complete my references to that transcript, I want to refer yet to one further paragraph and that is paragraph 36 of my transcript of 2010. I state:

> *[36] It is further an order of this court that Donald Best may apply to purge his contempt by appearing before me on or before February 22, 2010 and answering questions and making productions as detailed in my orders of November 2, 2009 and December 2, 2009.*

That is the end of the quotation of that paragraph.

R E C E S S **(11:15 AM)**

U P O N R E S U M I N G **(11:40 AM)**

THE COURT: The rule which governs this application is Rule 60.11. Under Rule 60.11(8):

> *On motion, a judge may discharge, set aside, vary or give directions in respect of an order under subrule (5) or (6) and may grant such other relief and make such other order as is just.*

Therefore, it remained open to Donald Best, in his application returnable September 5, 2012, to seek to set aside my contempt order of January 15, 2010.

Since the commencement of the within application

and instead of attempting to comply with my orders and attempting to purge his contempt, Donald Best has engaged in a course of improper conduct, as I have particularized, that has unduly complicated the proceedings, raised irrelevant issues, defamed lawyers and their clients, all in an attempt, I find, to avoid complying with my orders.

In respect to the within application, Mr. Best swore four affidavits dated:

- April 28, 2012
- September 13, 2012
- December 10, 2012
- January 20, 2013.

The volume of material both within the affidavits filed and annexed as exhibits thereto, to say the least, is staggering. In his affidavits, and in particular in his affidavits dated December 10, 2012 and January 20, 2013, Donald Best persists in making baseless, highly inflammatory and offensive allegations of misconduct directed at Mr. Lorne Silver, counsel for Kingsland and Mr. Gerald Ranking, counsel for PwC, amongst others.

Mr. Best has been advised by me (on more than one occasion) that his allegations against counsel are not relevant to the application to set aside the contempt order. Indeed, as recently as

January 25, 2013, I stated to Mr. Best as follows:

> *But I just want to indicate to Mr. Best that it is very, very important that we stay focussed on the real issue and he's - he's - I know you're making demands that the respective clients of Mr. Silver and Mr. Ranking are fraudulent, are non-entities. You make frankly very spurious allegations against Mr. Ranking and Mr. Silver, but I've got to tell you as your head is shaking up and down in a positive manner, Mr. Best, this is not about - it's not Mr. Ranking or Mr. Silver or their respective clients is not issue.*

Mr. Best has chosen to completely ignore my direction and continues to make inflammatory, false and vexatious allegations against Mr. Silver and Mr. Ranking and their clients. He does so in his affidavits, his cross-examinations, his "Answer to Advisements, Undertakings and Refusals" and more recently, in his submissions to the court on this application.

Mr. Best was cross-examined on his affidavits on January 11, 2013 by Mr. Silver. I have noted that Mr. Best was evasive. He took most questions under advisement. When Mr. Best chose to respond, his answers were self-serving and often contained aggressive, irrelevant and improper allegations of misconduct designed to further impugn the integrity of both Messrs. Silver and Ranking. Aside from the defamatory comments, Mr. Best's

comments were not responsive and I find they were intended to frustrate his cross-examination.

Not surprisingly, the cross-examination was not completed on January 11, 2013. The cross-examination was continued on January 23, 2013, at which time the same improper conduct by Mr. Best continued unabated.

On or about March 14, 2013, Mr. Best delivered 119 pages of "Answers to Undertakings, Under Advisements and Refusals", as well as hundreds of pages of exhibits. Consistent with his cross-examination, most of Mr. Best's answers are evasive, self-serving and non-responsive. In addition, the answers are replete with repeated and additional baseless allegations of misconduct against Messrs. Silver and Ranking. Amongst many of the unanswered questions, Mr. Best refused to answer questions relating to Nelson Barbados' purported security interest in the shares of Kingsland.

Mr. Best's factum continues to advance baseless allegations concerning Messrs. Silver and Ranking rather than seeking to address the substance of the orders made against him and in respect of which he was found to be in contempt.

In my Reasons, previously referenced, I have outlined the applicable principles of law related to contempt. I see no necessity to relate the

principles of law again. Suffice to say I apply those principles to the facts so found on this application.

As the previous Reasons indicate, Mr. Best was aware of the various proceedings. I find he had full knowledge of his obligations and the consequences of ignoring them.

On December 4, 2009, Mr. Best was served with my December 2, 2009 order at the address Mr. Best had provided and in accordance with the protocol for substituted service ordered by me. Mr. Best had approximately six intervening weeks before the January 15, 2010 contempt hearing. Notwithstanding, no effort or attempt to comply with my orders was made.

Both the November 2, 2009 and December 2, 2009 orders are directive. The orders require Mr. Best to produce documents and attend on an examination. Mr. Best failed to produce the documents or attend the examination as required by the orders.

Today Mr. Best remains in contempt. Notwithstanding that Mr. Best is well aware of his obligations as prescribed by my orders, he has done everything in his power to avoid compliance with the same. Mr. Best has made some documentary production. However, it remains to be determined whether such is in compliance with my orders and as yet, there has been no cross-

examination conducted in accordance with the orders of November 2, 2009 and December 2, 2009. Rather, as detailed in the facts and as referred to previously, Mr. Best is engaged in a self-serving and obstructionist campaign to vilify and impugn the reputation and integrity of counsel, their clients and this court, all in an attempt to avoid compliance with my orders.

Further, and in any event, this court was never misled concerning Mr. Best's possession of the November 2' 2009 order. In fact, Mr. Ranking advised the court on December 2, 2009 that he had sent a draft order to Mr. Best on November 6, 2009 rather than the signed order, and I quote from the transcript of the proceedings before me on December 2, 2009, which is contained in the motion record, Tab 50. This is Mr. Ranking speaking:

> *So, I don't want there to be any suggestion that I provided – I didn't provide him* (Mr. Best) *with a signed order, and I want Your Honour to know that, but the reason for that because, as I say, there was delay getting approvals as to form and content and rearranging it and finally getting it done, and then I don't think – you know – so, to the extent that Mr. Best says he didn't have of the order, that's not fair. I gave a draft copy of the order, as I've indicated, but he did not have a copy of the signed order.*

Although Mr. Best's course of conduct illustrates a clear and consistent intention to avoid compliance with my orders, it is not necessary to prove that Mr. Best intended to breach or violate the order and again, in this regard, I reference the decision at paragraph 54 in *Sheppard and Sheppard* [1976] 12 O.R.(2d) 4 at 8. I'm sorry, in that regard, I am referencing the *Sussex Group* decision, which is contained in the Respondents Book of Authorities and which, in turn, refers at paragraph 54 to the decision in *Sheppard and Sheppard*.

What is evident then is that there has been no cross-examination conducted in accordance with the orders of November 2 and December 2, 2009 and in attempt to answer a number of myriad issues raised by Mr. Best in his materials and submissions, I find that it is irrelevant whether Mr. Best possessed an actual copy of the November 2, 2009 order when he telephoned Victory Verbatim and spoke to counsel on November 17, 2009.

In the case of *Sussex Group Ltd. v. Fangeat* [2003] O.J. No. 3348, Mr. Best need only have knowledge of the terms of the order. Mr. Best admitted having this knowledge in his November 16, 2009 correspondence to the trial coordinator, Jackie Traviss, and in his conversation with the respondents' counsel as recorded on November 17, 2009.

Mr. Best, by his words and actions and frankly his attempts to manipulate the court process, has effectively refused to purge his contempt. More particularly, Mr. Best has refused to submit to an examination in relation to my November 2 and December 2, 2009 orders and has not paid the fine or costs ordered by me. In this regard, Mr. Best has shown continued disobedience of orders or judgments.

Further, I find that Mr. Best's improper conduct in the within application has caused enormous expense to the respondents, has interfered with the judicial proceedings and it has obstructed the court. Mr. Best's conduct has led to four court appearances, a failed judicial mediation and two days of cross-examination on voluminous affidavits filed in support of the within application. It is apparent that an enormous amount of legal work had to be employed to respond to this application.

Mr. Best's affidavits are replete with irrelevant and baseless allegations of misconduct, deceit, fraud and illegality by Mr. Ranking, Mr. Silver, Mr. Andrew Roman and their respective law firms. Again, this is the case, notwithstanding that Mr. Best has been told repeatedly by me that these allegations are irrelevant, and as I stated previously, Mr. Best has persisted in his campaign of baseless allegations during his cross-examinations on affidavits and his "Answers

to Advisements, Undertakings and Refusals", and as well as his factum and his submissions to this court. I find that Mr. Best has shown a continued and complete disregard for the court's instructions, as well as a continued contempt for the court's process.

Noted previously, Rule 60.11(8) confers on the court a wide discretion to give orders for directions and to make such other orders as is just. This application has therefore proceeded on no new or fresh evidence from Mr. Best. I find that no steps have been taken by him to purge his contempt. His contempt continues. No explanation is offered in mitigation or to explain his non-compliance.

I am satisfied beyond a reasonable doubt that Mr. Best remains in contempt. Sufficient time has passed for him to comply with my orders. His affidavits, factum and submissions continue to flout the authority of the court. Therefore, I find that the finding of contempt stands.

Therefore, the application of Donald Best to set aside the Warrant of Committal issued January 15, 2010 is dismissed. Mr. Best will, accordingly, be taken into custody and begin serving a sentence of three months imprisonment today. My order that he report to Durham Regional Police is vacated in view of the sentence being served.

I note that Mr. Greenspan has been holding his passport pursuant to an order that I have made. I am compelled to order that the passport be returned to Mr. Best upon completion of serving the sentence imposed by this court. If Mr. Best appeals the order I make today, then the appellate court will have to deal with the terms of release, including surrender of the passport. If Mr. Best does not appeal or is not granted interim release pending appeal, then his passport shall be returned to him by Mr. Greenspan on August 1, 2013.

Approval of the order by Mr. Best will be dispensed with and I direct that this order shall be prepared by Messrs. Ranking and Silver and presented to me for signature by Monday, May 6, 2013.

Now, costs. Counsel, I heard your submissions on costs yesterday. I did not hear submissions from Mr. Best. I think I have to hear from him in that regard. Is there anything further on the issue of costs?

MR. RANKING: There is, Your Honour.

THE COURT: And I am talking about the costs of this hearing and the costs reserved to today from prior attendances.

MR. RANKING: Your Honour, there is. I make very brief submissions. If I could just hand up to the court – there was an offer to settle that was advanced by PricewaterhouseCoopers and you will

recall in Mr. Best's submissions that he made reference and filed today the Exhibit F.

THE COURT: Okay, just give me a second here. I have got papers galore. Yes, I am now looking at a letter, April 12, 2013.

MR. RANKING: Yes, thank you, Your Honour.

THE COURT: More than 10 days before the hearing.

MR. RANKING: Yes, and then I also want to make reference just for your bench brief that I did follow up in the letter of April 26, which was marked as Exhibit F, to ask him to - that I had not heard from him. That's the last sentence of that letter.

But the point of this letter, Your Honour, is you will recall that we had the judicial mediation on the 8th of April.

THE COURT: Right.

MR. RANKING: ...just to put this into context.

THE COURT: I didn't know the date but I was aware it was going to take place.

MR. RANKING: It was April the 8th and you'll see that I make reference to that in the first paragraph and we made clear to my friend, Mr. Best, that it was not our clients' desire to have him incarcerated. We were trying to resolve this. And so you'll see I say - and I don't need to read the letter to you but I do say in the second paragraph, you know, "We are putting forward a position of compromise in the interest of trying to resolve our differences notwithstanding your serious allegations."

I go on to say - express PwC's concerns with respect to the allegations that had been made but then I say that - and of course, this would obviously be subject to you - that the terms of settlement would be to agree to an examination, subject to your agreement, of course, that we would not oppose setting aside the fine of $7,500 and that we were asking for costs on a substantial rather than a full indemnity scale. And at the top of page two, I then detail the actual monetary benefit were both of those to occur and as of that date, it would have resulted in a saving to Mr. Best of some $26,000.

And so I don't force or make any, you know, strong submissions other than the fact that I think the parties at this side, notwithstanding - and I emphasize this - notwithstanding the allegations which, thankfully, Your Honour, you have properly characterized as baseless, we were still prepared to try to compromise. I leave this in your hands, of course, but I think the fact that we did try to compromise should go both to the scale, whether it should be on a full indemnity basis or not, and to quantum and I leave that entirely in your hands. The bills of costs are there. You are aware of the principles and I can't help. I simply wanted to bring to your attention the offer to settle that had been made.

THE COURT: Mr. Silver.

MR. SILVER: I support that. I just remind you

that we dealt with this in our factum in the special...

THE COURT: Yes.

MR. SILVER: ...cost - or the special place that cost awards in contempt matters have in the courts in terms of substantial indemnity is, I would say, a given and then based upon the conduct and the offer to settle, it's my submission that the quantum should be a full indemnity.

The other issue I don't know if you want us to readdress is this sanction for payment. We had handed up a draft order that proposed that the costs be paid within a certain time. I guess you have to now factor in the period of incarceration and that the bench warrant - the potential sanction of incarceration doesn't go away until the costs are paid because otherwise, I suspect, we are going to have a significant collection problem and that in the circumstances of this case and the conduct and what you've just spent two hours reviewing, that kind of order is warranted.

THE COURT: Mr. Best, costs.

MR. BEST: Yes, Your Honour. Your Honour, I've heard what you've said and I'm not clear on a couple of things.

THE COURT: Tell me what you are not clear about. I will be happy to explain it.

MR. BEST: Thank you, Your Honour.

With great respect, Your Honour, I was most

stunned that Your Honour, I think, said, if I understood it correct, that I had vilified the reputation of the court and I - I - I can't imagine the specifics of that.

THE COURT: That is re-argument. That doesn't require clarification. I said what I said.

MR. BEST: Well, could I have the specifics of it, Your Honour?

THE COURT: I am dealing with costs.

MR. BEST: Sorry?

THE COURT: I am dealing with costs, so let's go ahead to costs.

MR. BEST: Well, I'm just not clear on a couple of things, Your Honour. I - I - I've heard what you said and I - I don't...

THE COURT: You don't agree. You don't agree. Well, that is fine. You have the right to disagree, sir.

MR. BEST: Yes, Your Honour.

THE COURT: I have made a judgment. I have made a decision.

MR. BEST: Yes, Your Honour. I - I hear you. I wanted to - to speak to a couple of things, if I could. I look to Your Honour for guidance.

THE COURT: I am looking for costs. I would like you to respond to the costs which is - it's not a matter that you don't know about because it was in the joint factum.

MR. BEST: Yes.

THE COURT: ...at Tab C and D.

MR. BEST: Well, I...

THE COURT: ...of the respondents, so the costs that they are claiming is there.

MR. BEST: Yes. Well, I - I would have certainly liked to look - examine their costs and all costs more thoroughly with cross-examinations and a lot of things but I - I think I understand that Your Honour wouldn't permit that.

May I speak to the jail, Your Honour?

THE COURT: Well, I have made a decision, Mr. Best. I have now said I do not accept - I find you are still in contempt. You have not purged your contempt. I am not prepared to set aside the order and so the result of all that is the stay of the warrant is about to be lifted at this moment.

MR. BEST: Well, if I could...

THE COURT: I mean it goes from there. If you don't agree with my result, sir, then there is the Court of Appeal.

MR. BEST: Well, here's my...

THE COURT: And you can pursue your remedies there.

MR. BEST: If I could say here is my concern about the Court of Appeal, Your Honour. Your Honour, I'm asking that you suspend the jail sentence and other penalties and costs until the appeals have been exhausted. As you know, I have no lawyer and to try and find one for the appeal even - I'll try but I will probably have no luck. I have to do research about appeals and get the transcripts and that will take time and right now I'm the only person who has all the records and knowledge and my computer needed to do up the documents and if I go to jail, I will not have access to these records. So essentially, I will be out of luck

putting together these appeal documents and in all fairness, Your Honour, please allow me the ability to access my materials, the internet, the law research or I'll be unable to effectively use my computer and have access to the internet and my materials to make an appeal. And if these materials are taken to jail, they will undoubtedly be lost, as will years of work and research and evidence. I'll still report to the police, Your Honour, as I always have. I'm not going anywhere. Mr. Greenspan has my passport and as you're aware, sir, I returned of my own volition to address this conviction knowing that I might or might not go to jail. And if, at the end of the process, I have to go to jail, I will. I'm not a flight risk, Your Honour. I'm an honourable man.

THE COURT: Mr. Best.

MR. BEST: I'm pretty well...

THE COURT: The decision...

MR. BEST: I'm not going anywhere.

THE COURT: Sir, sir, the decision now - I mean let's understand. There are limitations. You may wish at some other time to bring a further application to purge your contempt. I am not saying that you have to do that but if you wish to, you may do so. I explained to you on the record the other day that none of this goes away. The orders, the applications can be made that you attend on an examination in compliance with my order. If you don't, I guess there will be further applications brought but I want you to

understand that nothing changed and that is what I tried to explain to you at some length at the end of the day on April 30th, to reconsider your position, to consider your position very carefully. I gave you that opportunity. Frankly, Mr. Best, this record is replete with numerous opportunities that I have extended and provided to you and I am sorry, but I have made a decision. Your position in terms of an appeal, getting back your passport, your interim judicial release, well they are matters for the Court of Appeal. I am *functus*. I have made a decision.

MR. BEST: I hear you, sir, but I am asking to allow me to fairly exercise my right to appeal, which I wouldn't be able to do unless I had my materials. By throwing me in jail right away, the court would be taking away all my rights to seek justice and have an appeal and frankly, Your Honour, this is a surprise. I believe I understood you told me you were not sending me to jail.

THE COURT: I have never said that, Mr. Best.

MR. BEST: Well...

THE COURT: Why would I be suspending a warrant? Why did Mr. Greenspan come to me and ask me to suspend the execution of a warrant for your committal? I mean not only did it happen once, I think I have made two, three orders in that regard to get you to a point where you could argue the purge of your contempt. So to suggest it is a surprise is, frankly, just nonsensical.

MR. BEST: Well, I hear you, Your Honour, but I -

if you could give me some time.

THE COURT: All right. Well, I have heard you, Mr. Best. I am not giving you the time. The officers are going to take you into custody. I take it you have no further submissions on costs because I certainly...

MR. BEST: I do have one thing, Your Honour, which is would you please order that I be put in protective custody, bearing in mind my former employment and very recent employment in the private sector in law enforcement, because I'm going to be meat on a stick, sir.

THE COURT: First of all, I am quite confident that once you are taken into custody at Central East Region and they have the responsibility for you, the superintendent of the jail - your circumstances will certainly be assessed and your needs will be assessed and including your background as being a former police officer. All of that will be assessed.

MR. BEST: Sir, please make the order. Please protect me because you - please protect me, sir.

THE COURT: I can draw it to the superintendent's attention on the warrant that you are a former police officer and are concerned for your safety and that they should take that into consideration in terms of your placement.

MR. BEST: Your Honour, if I could say just one more thing. Even the notation of "former police officer" might be a sign, which is why I'm asking you, with no explanation, just to put me into protective custody.

THE COURT: I don't do things like that. The superintendent has his responsibilities and duties. They cooperate with the court all the time. I think it is very important that they know what your background is and what the reasons are for that rather unique endorsement. I am confident that they will do what is appropriate and necessary. You are not the first police officer that has been placed into jail. There are numerous examples and I have been satisfied that the superintendent of the Central East Correctional Institute will fully take those matters into - will consider those matters.

MR. BEST: Can you tell me where I'll be jailed, sir?

THE COURT: Sorry?

MR. BEST: Can you tell me where I would be going to jail?

THE COURT: Well, I am assuming you are going to go to the Central East Correctional Centre is the first stop. I don't know where you go from there, sir.

MR. BEST: Okay.

THE COURT: ...because you are out of my hands. Once you leave this courtroom, it is out of my hands.

MR. BEST: And my materials, sir, could you make an order that I can access them in court?

THE COURT: No.

MR. BEST: ...or I mean in jail?

THE COURT: You will have to make that application. You speak to the superintendent. There are issues

with that as to where they are stored, how they are stored. You can make that to the superintendent.

MR. BEST: I see.

THE COURT: I can tell you from personal knowledge you are not the first officer or former police officer who wanted his materials brought into court. Anything else, Mr. Best?

MR. BEST: May I pack it up now or do I wait until you leave?

THE COURT: Just a minute. No, I have a further - just a short short decision on the cost issue.

RULING AS TO COSTS

In a contempt proceeding, it is appropriate for the contemnor to pay costs on a substantial indemnity basis. On this point, I note the case law and principles detailed by Charbonneau J. in *Iko Industries Ltd. V. Grant*, [2006] O.J. No. 4068, paras 43-46. In addition to the foregoing the award of costs, albeit discretionary, is also guided by the factors under Rule 57.01.

While the respondents submit, at least in their written materials, that I should find under Rule 57.01(1)(f)(i) that steps taken by Mr. Best in this proceeding were improper, vexatious or unnecessary, I do not accede to this request as the original application brought by Mr. Greenspan on Mr. Best's behalf was both proper and necessary. However, in light of my earlier

findings, there is no doubt that Mr. Best has made baseless allegations as against Mr. Ranking and Mr. Silver and their respective law firms, which I certainly would describe as vexatious in nature. Nevertheless, in the exercise of my discretion, I choose not to engage in this analysis.

A bill of costs has been provided by Cassels Brock Blackwell and Fasken Martineau DuMoulin and are attached as Schedule C and D respectively to the joint factum. After reviewing the bill of costs submitted and the submissions of counsel and Mr. Best and applying the factors under Rule 57, as well as the principle of proportionality, which does play a significant role, I hereby assess and order costs payable by Donald Best within 30 days as follows:

1. To the respondent Kingsland Estates Limited, $60,250 inclusive of fees, disbursements and HST
2. To PricewaterhouseCoopers East Caribbean Limited, $50,250, inclusive of fees, disbursements and HST.

If I am not using the appropriate term, it is the applicable taxes however they are now styled.

I have endorsed the application record that for oral reasons provided, this court orders:

1. That the application of Donald Best is dismissed without prejudice,

> of course, to Mr. Best's ability to bring a new application when he has complied with my orders of November 2, 2009 and December 2, 2009, and including the costs orders of January 15, 2010 and all costs that I have now awarded up to and including the present day. Indeed, it is a condition precedent to bringing a further application to purge his contempt that those costs be paid.

Further, I will also notate that I am no longer seized of this matter and I hereby direct that any further and other applications relating to this proceedings are to be heard by another judge. I will make a further endorsement just for clarity. The suspension of the warrant for committal is lifted and Mr. Best will now be taken into custody to begin serving his three-month sentence as provided in the January 15, 2010 order of this court.

I guess the offer or letter that was referred to should be marked as an exhibit. That is the letter of Fasken Martineau dated April 12, 2013.

REGISTRAR: It will be marked Exhibit G, Your Honour.

EXHIBIT NO. G: LETTER FROM G. RANKING, FASKEN MARTINEAU DUMOULIN LLP TO DONALD BEST - APRIL 12, 2013 - Produced and Marked.

THE COURT: Right, and I think we already have Exhibit F marked so we don't have to do that.

All right, so Mr. Best, you will be now taken into custody.

A D J O U R N E D **(12:20 PM)**

FORM 2

Certificate of Transcript

***Evidence Act*, subsection 5(2)**

I, Maxine Newell, certify that this document is a true and accurate transcript of the recordings of *Nelson Barbados Group Ltd. v. Richard Cox et al* in the Superior Court of Justice held at 150 Bond St. E., Oshawa, Ontario, taken from Recording number 2812-206-400668-20130503-085849, which has been certified in Form 1.

5 May, 2013

Maxine Newell, C.C.R.

**Released May 7, 2013

This is Exhibit "**D**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

COURT OF APPEAL FOR ONTARIO

CITATION: Best v. Cox, 2014 ONCA 167
DATE: 20140304
DOCKET: M43185, M43214 and M43229 (C57123)

MacPherson, Gillese and Pardu JJ.A.

BETWEEN

Donald Best

Plaintiff (Appellant/Moving Party/Responding Party)

and

Richard Ivan Cox, Gerard Cox, Alan Cox, Philip Vernon Nicholls, Eric Ashby Bentham Deane, Owen Basil Keith Deane, Marjorie Ilma Knox, David Simmons, Elneth Kentish, Glyne Bannister, Glyne B. Bannister, Philip Greaves A.K.A. Philip Greaves, Gittens Clyde Turney, R.G. Mandeville & Co., Cottle, Catford & Co., Keble Worrell Ltd., Eric Iain Stewart Deane, Estate of Colin Deane, Lee Deane, Errie Deane, Keith Deane, Malcolm Deane, Lionel Nurse, Leonard Nurse, Edward Bayley, Francis Deher, David Shorey, Owen Seymour Arthur, Mark Cummins, Graham Brown, Brian Edward Turner, G.S. Brown Associates Limited, Gold Barbados Inc., Kingsland Estates Limited, Classic Investments Limited, Thornbrook International Consultants Inc., Thornbrook International Inc., S.B.G. Development Corporation, The Barbados Agricultural Credit Trust, Phoenix Artists Management Limited, David C. Shorey and Company, C. Shorey and Company Ltd., First Caribbean International Bank (Barbados) Ltd., PricewaterhouseCoopers (Barbados), Attorney General of Barbados, The Country of Barbados, and John Does 1-25, Philip Greaves, Estate of Vivian Gordon Lee Deane, David Thompson, Edmund Bayley, Peter Simmons, G.S. Brown and Associates Ltd., GBI Golf (Barbados) Inc., Owen Gordon Finlay Deane, Classic Investments Limited and Life of Barbados Limited C.O.B as Life of Barbados Holdings, Life of Barbados Limited, David Carmichael Shorey, PricewaterhouseCoopers East Caribbean Firm, Veco Corporation, Commonwealth Construction Canada Ltd., and Commonwealth Construction Inc.

Defendants (Respondents/Responding Parties/Moving Parties)

Paul Slansky, for the appellant

Gerald L.R. Ranking, for the respondent PricewaterhouseCoopers East Caribbean Firm

Lorne S. Silver, for the respondent Kingsland Estates Limited

Heard: February 27, 2014

On motion to review single judge orders made November 14, 2013, December 3, 2013 and December 12, 2013 on the appeal from the judgment of Justice J. Bryan Shaughnessy of the Superior Court of Justice, dated May 3, 2013.

ENDORSEMENT

[1] Three motions to review orders of a single judge of this court, pursuant to s. 7(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, are before this panel.

[2] The appellant Donald Best brings two motions. The respondents PricewaterhouseCoopers East Caribbean Firm ("PwC") and Kingsland Estates Limited ("Kingsland") bring one motion.

[3] The underlying appeal is scheduled to be argued on June 2, 2014 with a time allocation of three hours.

The appellant's motions

(1) Blair J.A.'s decision dated December 12, 2013

[4] The appellant seeks an order setting aside the decision of Blair J.A. dated December 12, 2013, directing that the appellant's motions brought under s. 7(5) of the *Courts of Justice Act* be heard today, February 27, 2014. The appellant

contends that these motions should be adjourned and heard together with the appeal on June 2, 2014.

[5] We disagree. The appellant's principal motion seeks the removal of the respondents' counsel from the appeal on the grounds of professional misconduct, including allegations of criminal obstruction of justice, abuse of process, inappropriate dissemination of information, and fraud.

[6] In our view, it makes no sense to adjourn the removal of counsel motion to the date set for the appeal hearing. Such a result would be prejudicial to the respondents and wasteful of this court's time and resources. If the appellant's motion is heard today and granted, the respondents will have ample time to retain new counsel for the appeal hearing in June. If the motion is dismissed, all parties can proceed to the June hearing knowing that there is no chance of it being derailed on the actual hearing date by a motion seeking removal of the respondents' counsel. In short, Blair J.A.'s order makes perfect sense.

[7] The appellant's motion is dismissed.

(2) Feldman J.A.'s decision dated November 14, 2013

[8] The appellant seeks an order setting aside the decision of Feldman J.A. dated November 14, 2013, dismissing the appellant's motion to remove both respondents' counsel from the record and fixing costs, on a full indemnity scale, at $24,000 for PwC and $48,000 for Kingsland.

[9] On the basis of the original record on this motion, there is no basis for making the order now requested. We explicitly agree with Feldman J.A.'s analysis and disposition.

[10] The appellant has filed fresh evidence. In his motion record relating to the fresh evidence, the appellant asserts:

> The Appellant has recently discovered evidence that one of the most important pieces of evidence relied upon below, an affidavit to obtain substituted service and ratification of service, sworn by a private investigator, Jim Van Allen in October 2009, was a product of criminal and/or quasi-criminal misconduct. It is alleged that Mr. Ranking, and likely Mr. Silver, Respondents' Counsel, were aware of this situation and were thereby parties to these offences.
>
> ...
>
> The Appellant was told by the O.P.P. that Van Allen was a former O.P.P. police officer who had retired in 2008. What has recently been discovered is that this is a lie. In fact, Van Allen was a serving police officer, with likely official police involvement in this very case, until 2010.

[11] We would not admit the fresh evidence. It suffers from an overwhelming problem: it is utterly irrelevant to Feldman J.A.'s decision which was explicitly anchored in recognition that Shaughnessy J. was the case management judge for several years; accordingly, said Feldman J.A., "[c]onsiderable deference is owed to his findings."

[12] The entire thrust of the fresh evidence is to attack Mr. Van Allen's affidavit in support of the respondents' attempt to obtain substituted service for the

appellant because his whereabouts were difficult to ascertain. On this point, two crucial observations must be made. First, Shaughnessy J. did not rely on substituted service or the Van Allen affidavit in his contempt reasons which form the subject matter of the appeal. Second, the appellant himself confirmed, in an affidavit and during cross-examination on his affidavits, that he obscured his residential address. In an affidavit, the appellant deposed that "I have used unlisted phone numbers and post box offices to conceal my home address." In the cross-examination, he said: "Sir, I have had and have used various addresses that are not my residence address since '76, '78, somewhere around there."

[13] In short, the proposed fresh evidence is irrelevant to the appeal and, therefore, would have been irrelevant to the disposition of the motion before Feldman J.A.

[14] The appellant's motion is dismissed.

The respondents' motion

(3) Feldman J.A.'s decision dated December 3, 2013

[15] The respondents seek an order setting aside or varying the decision of Feldman J.A. dated December 3, 2013, which did not impose a date for the appellant to pay the costs ($72,000) she had awarded to the respondents in her earlier decision on November 14, 2013.

[16] In her November 14, 2013 endorsement, Feldman J.A. said:

> The appellant, through his counsel, has made serious allegations of deliberate misconduct against the two counsel for the respondents both in writing and in open court in the face of a finding to the contrary. In my view, that tactic requires the court to express its condemnation by awarding costs on the full indemnity scale. Costs are fixed in the amount of $24,000 for PricewaterhouseCoopers and $48,000 for Kingsland, all inclusive.

[17] Following the release of this endorsement, the appellant brought another motion seeking an order "varying the costs order made by Justice Feldman to costs in the cause".

[18] In an endorsement dated December 3, 2013, Feldman J.A. said:

> [T]he concern of the appellant is that he says he is unable to pay the costs ordered against him on the removal motion. He is concerned that if he is unable to pay before the hearing of the appeal, then he will not be able to have his appeal against the contempt order heard and will therefore be re-incarcerated for contempt.
>
> The respondents have drafted the order to make those costs payable "forthwith". That condition was not part of my reasons. The appeal has been scheduled for January 14, 2014. Although the respondents may ask the panel not to hear the appeal if the costs are not paid by then, that condition is not part of my order.

[19] The appeal is now scheduled for June 2, not January 14, 2014. The respondents say that the "expression of condemnation" in Feldman J.A.'s November 14, 2013 decision reflected in her award of $72,000 in costs on a full

indemnity basis will be lost if the appellant does not have to pay these costs before the appeal hearing. The respondents also assert that there is no evidence that the appellant is impecunious; on the contrary, the record established that he has been able to retain, and pay, two senior lawyers throughout these proceedings.

[20] We agree with both of these submissions. The reality is that, even after Feldman J.A.'s two decisions and Blair J.A.'s decision, the appellant continues to bring motions seeking to remove the respondents' counsel from the record and trying to postpone such motions to the scheduled appeal hearing in June, a procedure which makes no sense. Moreover, there is no evidence suggesting that the appellant is impecunious; indeed, the appellant has never personally made such an assertion under oath.

[21] The respondents' motion is granted. The appellant shall pay the $72,000 costs ordered by Feldman J.A. in her November 14, 2013 decision by Tuesday, April 1, 2014, failing which the Registrar is directed to dismiss the appeal.

Costs

[22] The respondents are entitled to their costs of the three motions. The costs of the appellant's two motions should be on a full indemnity scale; the costs of the respondents' motion should be on a partial indemnity scale. We fix these costs at $60,000 for each respondent, inclusive of disbursements and HST.

These costs must also be paid by April 1, 2014, failing which the appeal cannot proceed.

"J.C. MacPherson J.A."
"E.E. Gillese J.A."
"G. Pardu J.A."

This is Exhibit "**E**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

2014 CarswellOnt 6988
Supreme Court of Canada / Cour suprême du Canada

Best v. Kingsland Estates Ltd. [Application / Notice of Appeal]

2014 CarswellOnt 6988

Donald Best v. Kingsland Estates Limited et al.

—

Filing Date / Date de production: April 28, 2014
Docket / No. de cause: 35785

Counsel at Court of Appeal / Conseil à la cour de l'appel: Paul Slansky, for / pour Donald Best
Lorne S. Silver, for / pour Kingsland Estates Limited et al.

Application for leave to appeal filed / Demande d'Autorisation d'appel déposées

Filed / Déposée April 28, 2014

End of Document

This is Exhibit "**F**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

000145

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

(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 July 18, 2014 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
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: 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, 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 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 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 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.

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 #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

STATEMENT OF CLAIM

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

Tel: (416) 536-1220
Fax (416) 536-8842
LSUC #25998I

Counsel for the Plaintiff

This is Exhibit "**G**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

[redacted]

Safina Lakhani

POLLEY FAITH LLP

Polley Faith LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto ON M5H 2A4
Tel: 416.365.1600
Fax: 416.365.1601
polleyfaith.com

Mark Polley
Direct Tel: 416.365.1603
mpolley@polleyfaith.com

Assistant: Jennifer Gambin
jgambin@polleyfaith.com

October 24, 2014

VIA EMAIL (paul.slansky@bellnet.ca) and FAX (416-536-8842)

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

Dear Mr. Slansky,

Re: Donald Best v. PricewaterhouseCoopers East Caribbean, et al
Court file no. 14-0815

We represent PricewaterhouseCoopers East Caribbean, Marcus Andrew Hatch, Philip St. Eval Atkinson, Kingsland Estates Limited and Richard Ivan Cox with respect to the above matter.

In the event that the motion to strike being brought by other defendants does not succeed, we intend to contest jurisdiction on behalf of our clients, and as a result do not intend to serve a Notice of Intent to Defend or a Statement of Defence. As such, we trust you will not note any of our clients in default.

If you have any questions about our position, please contact me.

Sincerely,

POLLEY FAITH LLP

[redacted]

Mark Polley
MP/jg

This is Exhibit "**H**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

POLLEY FAITH LLP

Polley Faith LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto ON M5H 2A4
Tel: 416.365.1600
Fax: 416.365.1601
polleyfaith.com

Jessica Prince
Direct Tel: 416.365.0550
jprince@polleyfaith.com

Assistant: Christina Khaninson
ckhaninson@polleyfaith.com

November 6, 2014

VIA EMAIL (paul.slansky@bellnet.ca) and FAX (416-536-8842)

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

Dear Mr. Slansky,

Re: Donald Best v. PricewaterhouseCoopers East Caribbean, et al
Court file no. 14-0815

Further to our letter to you dated October 24, 2014, we reiterate that we represent PricewaterhouseCoopers East Caribbean, Marcus Andrew Hatch, Philip St. Eval Atkinson, Kingsland Estates Limited and Richard Ivan Cox in the above matter.

As requested in our earlier letter, and for the reasons set out therein, may we please have confirmation that you will not note any of our clients in default?

Sincerely,

POLLEY FAITH LLP

[redacted]

Jessica Prince
JP/ck

POLLEY FAITH LLP

Facsimile Transmission

Date November 6, 2014 **Fax: 416.365.1601**

To:	Mr. Paul Slansky	416.536.8842

From:	Jessica Prince			
Re:	Donald Best v. PricewaterhouseCoopers East Caribbean, et al.			
Pages:	2 (including cover) **If you do not receive all pages, please phone Christina Khaninson at 416-365-1600.**			
	Original to follow:	☒ no	☐ by mail	☐ by courier

Comments: Please refer to attached documents.

From: faxmaster@beanfield.com
To: Christina Khaninson
Subject: fax: 4165368842 11/06/2014 13:57
Date: November-06-14 1:57:44 PM

Fax: OK

To: 4165368842
Fax ID: 33618
Pages: 2

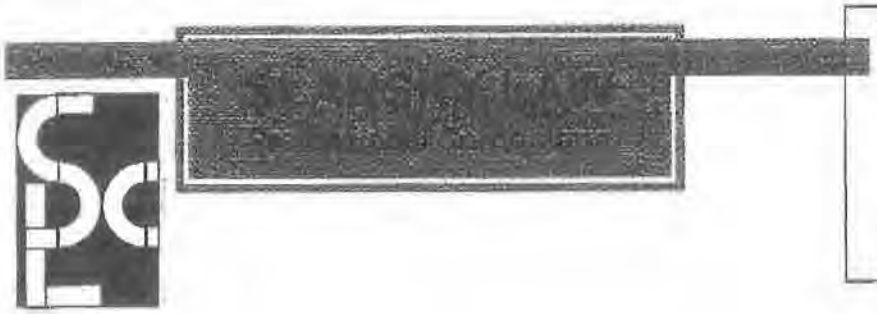
Beanfield BeanFax

This is Exhibit "I"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani.



Slansky Law Professional Corp.
1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220
fax: (416) 536-8842
E-mail: paul.slansky@bellnet.ca

FAX COVER

DATE: Nov. 6, 2014

TO: Mr. Polley

OF: Polley Faith LLP

FAX #: (416) 365-1601

FROM: Paul Slansky **PAGES:** 3

SUBJECT: **Best v. Ranking et. al.; Court File No. 14-0815; Letter re Noting in Default**

COMMENTS:

Enclosed:

- letter dated Nov. 6, 2014 (2 pp.)

Contact me if you have any questions.

[redacted]

Paul Slansky [redacted]

Slansky Law Professional Corp.
1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220
fax: (416) 536-8842
E-mail: paul.slansky@bellnet.ca

November 6, 2014 **BY FAX**

Polley Faith LLP
The Victory Building
80 Richmond St. W.
Suite 1300
Toronto, ON
M5H 2A4

Mr. Polley:

Re: Best v. Ranking, et.al (PricewaterhouseCoopers East Caribbean, Hatch, Atkinson, Kingsland Estates Ltd. and Cox)

Thank you for your letters dated October 24 and November 6, 2014.

Your clients PricewaterhouseCoopers East Caribbean and Hatch are now in default. The others will be in default shortly ((Atkinson: November 9) and (Kingsland and Cox: November 11)).

I do not agree that a motion contesting jurisdiction should await a motion to strike that will be heard no earlier than June 2015. My position is that any challenge to jurisdiction be heard at the same time as any motion to strike. If the Court does not ultimately accede to your position re jurisdiction, I do not want to deal with a second set of motions to strike. The jurisdictional issue must be addressed as soon as possible.

I will not move to have your clients noted in default if steps are taken in a reasonably prompt manner to get the case going. Taking the latest date for possible default in respect of your group of clients (November 11), you should be able to comply 2 weeks later. Accordingly, My position is that you must do one of the following:

- serve a statement of defence by November 25;
- serve a Notice of Intent to Defend by November 13 and then a Statement of Defence served by November 25; OR
- serve a motion to challenge jurisdiction returnable on June 15, 2015 by November 25.

That gives you approximately 3 weeks from now and 4 weeks since your October 24 letter, in addition to the time that you have already have been given in accordance with the Rules, to prepare these documents.

You have had the Statement of Claim for some time and assuming that their previous lawyers acted upon instructions, your clients are already familiar with the issues. If one of these options is not exercised by November 25, I have been instructed to have your clients noted in default without further notice to you.

I look forward to hearing from you.

Yours truly,

[redacted]

Paul Slansky

This is Exhibit "**J**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Sabina Lakhani

Slansky Law Professional Corp.
1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220
fax: (416) 536-8842
E-mail: paul.slansky@bellnet.ca

FAX COVER SHEET

DATE: Nov. 14, 2014

TO:	**FAX #:**
• Tara Mountney (Assistant to McCarthy, J.)	1(705) 725-7268
• LeDrew (Steiber)(PRPS)	(416) 366-1466
• Groot (Investigation Counsel PC (ISNI)	(416) 637-3445
• Wright (Johnstone)(Van Allen, et. al)	(416) 546-2104
• Moten (CLOC)(OPP, et. al)	(416) 326-4181
• Veel (Lencner) (TPA)	(416) 865-2861
• Wardle (Wardle)(Lawyers/law Firms)	(416) 351-9196
• Boggs (Lerners)(DRPS, et. al.)	(416) 867-9192
• Polley (Polley Faith LLP) (Barbados Defendants)	(416) 365-1601
• Former OPP Commissioner, Chris Lewis and OPP Commissioner, Vince Hawkes	1(705) 329-6195
• Peel Regional Police Chief, Jennifer Evans	(905) 451-1638
• P.R.P.S. Board	(905) 458-7278
• Former D.R.P.S. Chief of Police, Mike Ewles and D.R.P.S. Chief of Police, Paul Martin	1(905) 666-9273
• Durham Regional Police Services Board	1(905) 721-4249

FROM: Paul Slansky **PAGES:** 9

SUBJECT: **Best v. Ranking et. aL; Court File No. 14-0815; Case Management and draft orders re Setting aside Noting in Default and Amendment of SOC**

Enclosed is:

- a letter (2 pp.) addressed to Ms. Mountney, copied you all re case management;
- a draft order re setting aside noting in default (3 pp.);
- a draft order re amendment of Statement of Claim (3 pp.).

Contact me if you have any questions.

[redacted]

Paul Slansky

Slansky Law Professional Corp.
1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220
fax: (416) 536-8842
E-mail: paul.slansky@bellnet.ca

Nov. 14, 2014

Tara Lynn Mountney
Assistant to The Honourable Mr. Justice McCarthy
Superior Court of Justice, Newmarket
50 Eagle St.,
Newmarket, Ontario
L3Y 6B1

Dear Ms. Mountney:

Re: Best v. Ranking et. al Case Management

Further to the letter of Ms. Hunter dated November 5, 2014, I am writing to provide my input regarding the agenda and possible scheduling issues to be discussed at the case management tele-conference that is being arranged on this case with Justice McCarthy.

I had requested of all defendants that they agree to case management several times. They finally agreed and Ms. Hunter wrote a letter asking that a case management judge be appointed. The Regional Senior Justice has appointed Justice McCarthy to case manage.

At this meeting or conference call, I hope to address:

1 the setting aside of noting in default (on consent);
2 the amended Statement of Claim (consent or a date for leave);
3 the scheduling of the motions to strike and the exchange of materials (records/facta; cross-examination; motions re cross-examination; hearing date);
4 the scheduling of a motion for summary judgment (leave; date(s): exchange of materials);
5 the scheduling of a jurisdictional challenge by 5 Barbados defendants (date; exchange of materials);
6 directions re default judgment re Deane (U.K.) (already noted in default);
7 Any other issues raised by any of the defendants.

It should be noted that 3 days (June 15-17, 2015) have already been set aside for motions to strike. A half day has been set aside on March 13, 2015.

I would suggest that motions 3-5 (strike; summary judgement and jurisdiction) be scheduled together for hearing on the June dates, plus additional dates if necessary. The Barbados defendants have recently proposed that their challenge to jurisdiction be heard after any motion to strike. I take issue with the propriety and efficiency of this proposal. The evidence on all of the motions will also overlap. Rather than duplicate cross-examinations and re-litigate motions, I suggest a schedule along the following lines (subject to adjustment based on the availability of the participants) for all 3 sets of motions:

- orders be made setting aside default judgement (consent) and leave re Amended Statement of Claim and leave re summary judgement be addressed at the case management tele-conference (November/December, 2014);
- Moving parties file Motion Records: January 30, 2015;
- Responding Parties file their Responding materials: March 1, 2015;
- Any directions that are required, including leave to amend the Statement of Claim if this is contested, be heard on March 13, 2015 (already available for 4 sets of parties);
- Cross-Examinations mid to late March/early April;
- Motion(s) re examinations in late April, if any;
- All undertakings arising from cross-examinations be complied with by May 1, 2015;
- Any further cross-examinations by early May.
- Motions in June 15-17, 2015 (plus additional dates if required).

In anticipation of the Case management conference, I also enclose a draft order for setting aside of the notings in default and a draft order granting leave to the Amended Statement of Claim. I have already indicated that my client is consenting to the former. To date, with respect to the latter, I have not received an indication that this will be opposed.

I look forward to discussing these issues before or at the case management tele-conference.

Yours truly,

[redacted]

Paul Slansky

cc. All defendants

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

THE HONOURABLE	)	DAY THE
	)	
JUSTICE	)	DAY OF
	)	
IN CHAMBERS	)	DECEMBER, 2014

BETWEEN:

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

ORDER

WHERAS the some of the Defendants (underlined in style of cause) were noted in default and some of them have brought motions to set aside that noting in default.

AND WHEREAS, The Plaintiff seeks to amend the Statement of Claim by adding or substituting certain parties.

AND WHEREAS, The Plaintiff consents to the setting aside of the noting in default of all of the parties noted in default, except Eric Deane.

UPON Reading the materials filed and on consent,

THIS COURT ORDERS THAT:

(1) the noting in default of:

- 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;
- ONTARIO PROVINCIAL POLICE;
- PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
- DURHAM REGIONAL POLICE SERVICE;

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

THE HONOURABLE	)	DAY THE
	)	
JUSTICE	)	DAY OF
	)	
IN CHAMBERS	)	DECEMBER, 2014

BETWEEN:

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

- and -

FORMER ONTARIO PROVINCIAL POLICE COMMISSIONER, CHRIS LEWIS; ONTARIO PROVINCIAL POLICE COMMISSIONER, VINCE HAWKES; REGIONAL MUNICIPALITY OF PEEL POLICE SERVICES BOARD

PEEL REGIONAL POLICE SERVICE, CHIEF OF POLICE, JENNIFER EVANS
DURHAM REGIONAL POLICE SERVICES BOARD
FORMER DURHAM REGIONAL POLICE SERVICE, CHIEF OF POLICE, MIKE EWLES;
DURHAM REGIONAL POLICE SERVICE, CHIEF OF POLICE, PAUL MARTIN;
Proposed Defendants

ORDER

WHERAS some of the police Defendants have challenged whether the proper police institutional parties have been named as Defendants.

AND WHEREAS, The Plaintiff seeks to amend the Statement of Claim by adding or substituting certain parties in accordance with the police Defendants positions.

AND WHEREAS, Those Defendants who have responded to the Original Statement of Claim and the Proposed Defendants consent to the proposed Amendment of the Statement of Claim.

UPON Reading the materials filed and on consent,

THIS COURT ORDERS THAT:

(1) Leave to Amend the Statement of Claim, by adding or substituting parties, the Proposed Defendants, in accordance with the draft Statement of Claim attached hereto is granted.

(2) The service of the draft Amended Statement of Claim on the Defendants and Proposed Defendants is validated as service of the Amended Statement of Claim.

The Honourable Justice

This is Exhibit "**K**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

POLLEY FAITH LLP

Polley Faith LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto ON M5H 2A4
Tel: 416.365.1600
Fax: 416.365.1601
polleyfaith.com

Mark Polley
Direct Tel: 416.365.1603
mpolley@polleyfaith.com

Assistant: Jennifer Gambin
jgambin@polleyfaith.com

November 17, 2014

VIA EMAIL (paul.slansky@bellnet.ca) and FAX (416-536-8842)

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

Dear Mr. Slansky,

Re: Donald Best v. Ranking et al
Court file no. 14-0815

Thank you for your letter dated November 6, 2014, and for copying us on your letter to the Court dated November 14, 2014.

With respect to your November 6th letter, we cannot agree to meet your demands that we attorn to the jurisdiction or serve motion materials by November 25, 2014. Your client has served a statement of claim that is 90 pages long, listing 39 defendants, and in which the substance of any possible causes of action are difficult to decipher. Given that the motion in June 2015 will determine whether any part of this case can proceed, we see no reason to spend time and money on motions in a case that may not continue.

In the circumstances, I would ask you to reconsider your position, and allow the motion in June 2015 to proceed before you force parties like our clients to incur costs unnecessarily. If you are not prepared to reconsider your position, then we agree with your suggestion to seek the Court's directions in a case conference with Justice McCarthy.

Please let us know your position at your earliest convenience. In the interim, we request that you take no steps to note our clients (Kingsland Estates Limited, Richard Ivan Cox, Marcus Andrew Hatch, Philip St. Eval Atkinson, and PricewaterhouseCoopers East Carribean) in default until we have been able to either agree upon a plan or get the assistance of Justice McCarthy.

Sincerely,

POLLEY FAITH LLP

[redacted]

Mark Polley

POLLEY FAITH LLP

Facsimile Transmission

Date November 17, 2014 **Phone 416-365-1600 Fax 416-365-1601**

To:	Paul Slansky		416-536-8842

From:	Mark Polley			
Re:	Donald Best v. Ranking et al Court file no. 14-0815			
Pages:	2 (including cover) **If you do not receive all pages, please call Jennifer Gambin at 416-365-1600.**			
	Original to follow:	☒ no	☐ by mail	☐ by courier

Comments: Please refer to the attached letter.

Jennifer Gambin

From:	faxmaster@beanfield.com
Sent:	November-17-14 9:47 AM
To:	Jennifer Gambin
Subject:	fax: 4165368842 11/17/2014 09:45

Fax: OK

To: 4165368842
Fax ID: 33915
Pages: 2

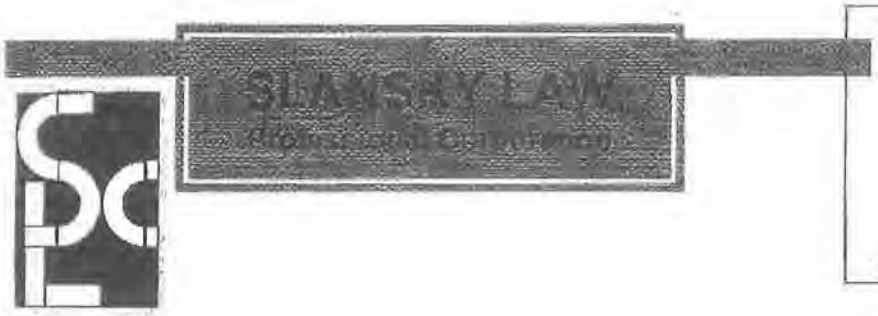
Beanfield BeanFax

This is Exhibit "**L**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January, 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Sabina Lakhani



Slansky Law Professional Corp.
1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220
fax: (416) 536-8842
E-mail: paul.slansky@bellnet.ca

FAX COVER

DATE: Nov. 20, 2014

TO: Mr. Polley

OF: Polley Faith LLP

FAX #: (416) 365-1601

FROM: Paul Slansky **PAGES:** 3

SUBJECT: **Best v. Ranking et. al.; Court File No. 14-0815; Letter re Noting in Default;**

COMMENTS:

Enclosed:

- letter dated Nov. 20, 2014 (2 pp.)

Contact me if you have any questions.

[redacted]

Paul Slansky

Slansky Law Professional Corp.
1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220
fax: (416) 536-8842
E-mail: paul.slansky@bellnet.ca

November 20, 2014 **BY FAX**

Polley Faith LLP
The Victory Building
80 Richmond St. W.
Suite 1300
Toronto, ON
M5H 2A4

Mr. Polley:

Re: Best v. Ranking, et.al (PricewaterhouseCoopers East Caribbean, Hatch, Atkinson, Kingsland Estates Ltd. and Cox)

I am writing to you further to your letter dated November 17, 2014.

We have not asked your clients to attorn to the jurisdiction. We have given you 3 options. The third option was to serve and file a motion on November 25 challenging jurisdiction, instead of filing a Statement of Defence or a Notice of Intent to Defend, returnable in June, 2015.

You assert that your clients do not want to waste time and effort preparing such a motion if the case does not proceed. Leaving aside the fact that a motion to strike, even if successful, is not likely to end the case on all grounds in respect of all defendants, this is no excuse to delay any response indefinitely or for a lengthy period of time. The Plaintiff is prejudiced by delay and seeks to ensure that the litigation of this claim proceed expeditiously. Accordingly, waiting indefinitely is not an acceptable option. It is the position of the Plaintiff, consistent with the law, that jurisdictional issues must be determined as soon as possible.

Further, the plaintiff would be prejudiced if you waited with your jurisdiction motion, you lost and then you sought to re-litigate motions that might be argued and decided in the interim. These motions would include, *inter alia*, motion(s) to strike and might include a summary judgement motion and leave to amend the Statement of Claim

I gave you a deadline past the date by which you are required to respond to the Statement of Claim: November 25. By writing letters instead of acting you have wasted much of that time. I have persuaded my client to give you a little more time. However, you must

take a real step to deal with this lawsuit as opposed to merely writing letters. I will give you until Dec. 2, 2014.

To keep things proceeding expeditiously, to minimize undue expense to your clients and to give you an option that does not require your clients from attorning to the jurisdiction, my client proposes that you choose one of the following two options:

1. Accept the jurisdiction of the Ontario Courts and serve and file a Statement of Defence by December 2, 2014;
2. Serve and file your jurisdictional motion by December 2, 2014, returnable on a date to be fixed and on terms to be fixed by Justice McCarthy at the Case Management Conference.

No steps will be taken to have your clients noted in default if one of these options is met by December 2, 2014. Your clients are already in default. You have agreed to none of my previous proposals. A failure to accept one of these reasonable proposals or to meet a December 2 deadline will result in your client being noted in default without further notice.

I recognize your clients procedural rights under the rules to bring a jurisdictional challenge, even though such a challenge would be without merit. I will withhold comment on whether your motion would be frivolous and vexatious until I see your materials. However, it is clear that the Statement of Claim is directly related to actions and proceedings taken by your clients through their Canadian lawyers in Ontario Courts and otherwise in Ontario, not in Barbados.

I expect a jurisdictional motion, to be a proper motion based on affidavits from your clients, not an assistant or articling student. In light of the lack of merit to any opposition to jurisdiction, I expect that any basis advanced to challenge jurisdiction will be disputed. Failure to file proper supporting material will result in a motion to strike the affidavit(s) and/or to have the motion summarily dismissed.

These options give you an additional week on top of the time you have already been offered (Nov. 25). These options give you almost 2 weeks from now and 5 1/2 weeks since your October 24 letter, in addition to the time that you have already have been given in accordance with the Rules, to prepare these documents. You have had the Statement of Claim for over 3 months and assuming that their previous lawyers acted upon instructions, as they have claimed, your clients are already familiar with the issues.

I look forward to hearing from you.

Yours truly,

[redacted]

Paul Slansky

[redacted]

This is Exhibit "**M**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January , 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

POLLEY FAITH LLP

Polley Faith LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto ON M5H 2A4
Tel: 416.365.1600
Fax: 416.365.1601
polleyfaith.com

Mark Polley
Direct Tel: 416.365.1603
mpolley@polleyfaith.com

Assistant: Jennifer Gambin
jgambin@polleyfaith.com

December 1, 2014

VIA EMAIL (paul.slansky@bellnet.ca) AND FACSIMILE (416) 536-8842

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

Dear Mr. Slansky:

Re: Donald Best v. Ranking et al | Court File No. 14-0815

Thank you for your letter dated November 20, 2014.

Given that we continue to disagree on the appropriate course of action, we see no alternative to seeking the Court's assistance. We understand that a telephone case conference has now been scheduled for December 16, 2014 with Justice McCarthy. We propose to raise this issue with His Honour on that date to determine the appropriate next step.

We again request that you not note any of our clients in default until we have been able to obtain the assistance of Justice McCarthy.

Sincerely,

POLLEY FAITH LLP
Per:

[redacted]

Mark Polley
MP/mw

POLLEY FAITH LLP

Facsimile Transmission

Date	December 1, 2014	Phone: 416.365.1600	Fax: 416.365.1601

To:	Paul Slansky Barrister and Solicitor		(416) 536-8842

From:	Mark Polley			
Re:	Donald Best v. Ranking et al Court File No. 14-0815			
Pages:	2 (including cover) **If you do not receive all pages, please call Molly Warwick at 416-365-1600.**			
	Original to follow:	☒ no	☐ by mail	☐ by courier

Comments: Please refer to the attached letter.

Molly Warwick

From: faxmaster@beanfield.com
Sent: Monday, December 01, 2014 1:39 PM
To: Molly Warwick
Subject: fax: 4165368842 12/01/2014 13:36

Fax: OK

To: 4165368842
Fax ID: 34424
Pages: 2

Beanfield BeanFax

This is Exhibit "N"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this 22 day of January , 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Safina Lakhani

POLLEY FAITH LLP

Polley Faith LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto ON M5H 2A4
Tel: 416.365.1600
Fax: 416.365.1601
polleyfaith.com

Mark Polley
Direct Tel: 416.365.1603
mpolley@polleyfaith.com

Assistant: Jennifer Gambin
jgambin@polleyfaith.com

December 11, 2014

VIA EMAIL (paul.slansky@bellnet.ca) AND FACSIMILE (416) 536-8842

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

Dear Mr. Slansky:

Re: Donald Best v. Ranking et al | Court File No. 14-0815

Thank you for your letter dated December 8, 2014 in which you advised that you have noted our clients in default based on our refusal to accept one of the options that you offered.

As we have previously said, we disagree with your position. Given our difference, we had suggested seeking directions on our disagreement from Justice McCarthy.

Your decision to ignore our request, and note our clients in default causes totally unnecessary litigation costs. It is also inappropriate to do so given that our clients' intentions had been clearly communicated to you, and you and I simply had a disagreement as lawyers on the appropriate procedure.

In any event, we will raise this issue on the conference call with Justice McCarthy next Tuesday December 16, 2014, and we will seek full reimbursement for all costs caused by the noting of our clients in default.

Sincerely,

POLLEY FAITH LLP
Per:

[redacted]

Mark Polley
MP/jg

POLLEY FAITH LLP

Facsimile Transmission

Date	December 11, 2014	Phone: 416.365.1600	Fax: 416.365.1601

To:	Paul Slansky Barrister and Solicitor		(416) 536-8842

From:	Mark Polley			
Re:	Donald Best v. Ranking et al Court File No. 14-0815			
Pages:	2 (including cover) **If you do not receive all pages, please call Molly Warwick at 416-365-1600.**			
	Original to follow:	☒ no	☐ by mail	☐ by courier

Comments: Please refer to the attached letter.

Jennifer Gambin

From:	faxmaster@beanfield.com
Sent:	December-11-14 3:43 PM
To:	Jennifer Gambin
Subject:	fax: 4165368842 12/11/2014 15:40

Fax: OK

To: 4165368842
Fax ID: 34864
Pages: 2

Beanfield BeanFax

This is Exhibit "**O**"
referred to in the Affidavit of
Jennifer Gambin
sworn before me, this _____ day of January , 2015

[redacted]

A COMMISIONER FOR TAKING AFFIDAVITS

Sabra Lakhani

Lerners LLP
130 Adelaide Street West, Suite 2400
Toronto, Ontario M5H 3P5
Telephone: 416.867.3076
Facsimile: 416.867.9192
www.lerners.ca

LERNERS

LAWYERS

Jennifer L. Hunter
Direct Line: 416.601.2659
Direct Fax: 416.867.2417
jhunter@lerners.ca

December 17, 2014

FILE NUMBER 38526-00096

Delivered via Email

Paul Slansky
Barrister and Solicitor

Peter Wardle & Erin Pleet
Wardle Daley Berstein Beiber LLP

Ian Johnstone & Philip Wright
Johnstone Cowling LLP

Paul-Erik Veel
Lenczner Slaght Royce Smith Griffen LLP

Ahsad Moten
Crown Law Office - Civil

Andrea LeDrew
Stieber Berlach LLP

Norman Groot
Investigation Counsel PC

Mark Polley & Jessica Prince
Polley Faith LLP

Dear Counsel:

Re: Durham Regional Police ats Best
Court File No: 14-0815

I write to confirm the outcome of today's case management teleconference with Justice McCarthy.

1. The Plaintiff has consented to the setting aside of the noting in default as against all defendants except Eric Deane and the so-called Bermuda Defendants. Mr. Slansky will circulate a draft order, which will be approved as to form and content by all parties and subsequently issued and entered.

2. The Bermuda Defendants will bring a motion to set aside the noting in default on March 13, 2015. The schedule for the delivery of materials and examinations is as follows:

Delivery of moving parties' materials	January 23, 2015
Delivery of responding materials	February 6, 2015
Complete cross-examinations	February 13, 2015
Complete motions for undertakings/refusals	February 27, 2015

3. The Defendants' motion to strike the statement of claim, the Plaintiff's motion for leave to amend the statement of claim, and the Bermuda Defendants' motion regarding jurisdiction will be heard June 15 to 19, 2015. The schedule for the delivery of materials and examinations for all three of the motions is as follows:

Delivery of moving parties' materials	March 31, 2015
Delivery of responding materials	April 23, 2015
Motion regarding cross-examinations and/or examination of witnesses (to be heard as part of the regular motions list)	April 28, 2015
Examinations to be completed	May 15, 2015
Delivery of moving parties' factums	June 1, 2015
Delivery of responding parties' factums	June 11, 2015

4. Any motion for default judgment regarding Eric Deane shall await the disposition of the motion to strike the statement of claim. (Mr. Slansky otherwise confirmed that he would not take any action towards default judgment with respect to any of the parties except Eric Deane.)

5. If any issue arises, counsel have leave to write to Justice McCarthy c/o Marianne Donnelly, Trial Coordinator and must copy all other counsel involved.

Yours truly,

[redacted]

Jennifer L. Hunter
JLH/

3158983.1

DONALD BEST

Plaintiff

-and-

PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY 'PRICEWATERHOUSECOOPERS') et al.

Defendants

Court File No. 14-0815

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT BARRIE

AFFIDAVIT OF JENNIFER GAMBIN

POLLEY FAITH LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto, ON
M5H 2A4

Mark Polley (44413O)
mpolley@polleyfaith.com

Jessica Prince (59924Q)
jprince@polleyfaith.com

Tel: 416.365.1600
Fax: 416.365.1601

Lawyers for the Defendants, PricewaterhouseCoopers East Caribbean (Formerly 'PricewaterhouseCoopers'), Kingsland Estates Limited, Philip St. Eval Atkinson, Richard Ivan Cox and Marcus Andrew Hatch

DONALD BEST

Plaintiff

-and-

PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY 'PRICEWATERHOUSECOOPERS') et al.

Defendants

Court File No. 14-0815

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BARRIE

MOTION RECORD
(For the motion to set aside noting in default returnable March 13, 2015)

POLLEY FAITH LLP
The Victory Building
80 Richmond Street West
Suite 1300
Toronto, ON
M5H 2A4

Mark Polley (44413O)
mpolley@polleyfaith.com

Jessica Prince (59924Q)
jprince@polleyfaith.com

Tel: 416.365.1600
Fax: 416.365.1601

Lawyers for the Defendants,
PricewaterhouseCoopers East Caribbean (Formerly 'PricewaterhouseCoopers'), Kingsland Estates Limited, Philip St. Eval Atkinson, Richard Ivan Cox and Marcus Andrew Hatch