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Attention: Complaints Investigations

Complaint re: Justice J. Bryan Shaughnessy, Ontario Superior Court of Justice

Court File Number: 000141/07 (07-0141)

Case Name: Nelson Barbados Group Ltd. v. Richard Ivan Cox et al

Date of misconduct: May 3, 2013

"Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary."

"Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons."

Judicial Conduct Principles – Integrity, Canadian Judicial Council, page 19.
ISBN 0-662-38118-1

Dear Sir or Madam:

This is a complaint about the conduct of Justice J. Bryan Shaughnessy on the date of May 3, 2013.

Summary: Three (3) areas of misconduct on May 3, 2013

1/ After court on May 3, 2013, Justice Shaughnessy secretly created & substituted a new & changed Warrant of Committal that illegally denied me statutory remission, and secretly increased my jail time by a month.

On January 15, 2010, Justice Shaughnessy convicted me in absentia of contempt of court in a civil case costs hearing, sentenced me to three months prison as punishment, and issued a Warrant of Committal that was subject to statutory remission as is normal. Under statutory remission, my effective incarceration was to be about two months. (Exhibit A: January 15, 2010 Warrant of Committal)

On August 9, 2012, (and reaffirmed in subsequent court dates), Justice Shaughnessy placed a stay upon the January 15, 2010 Warrant of Committal, pending his hearing of my application to set aside his January 15, 2010 conviction order and warrant of committal.

On May 3, 2013, Justice Shaughnessy denied my application to set aside his January 15, 2010 order, lifted the stay on the January 15, 2010 Warrant of Committal, and ordered that I be taken into custody to serve my sentence according to his January 15, 2010 order. I was a self-represented litigant during the hearing that took place over two days, April 30th and May 3rd, 2013.

After my hearing ended and Justice Shaughnessy had left the courtroom, I was taken to the cells to begin a three-month sentence with statutory remission in place as is normal.

Unbeknownst to me, after he left the courtroom on May 3, 2013, Justice Shaughnessy went to a backroom where he then secretly created, signed and secretly substituted a new and changed Warrant of Committal that now said 'No Remission Is Ordered': specifically (and illegally) denying to me statutory remission and increasing my prison time by a month. (Exhibit B: May 3, 2013 Warrant of Committal)

Justice Shaughnessy did this off the court record, after the hearing had concluded, without notification to me as a self-represented litigant, and in total contravention of his own existing orders and his own statements, directions and orders made on the court record since the initiation of contempt proceedings against me in 2009. This was also in total contravention of the orders issued in court by Justice Shaughnessy that very day on May 3, 2013.

Justice Shaughnessy arranged everything so that I would only discover my secretly increased 'no remission' sentence from the prison authorities at some unknown time weeks or months in the future while I was incarcerated.

2/ Justice Shaughnessy ordered the exclusion of me, a self-represented litigant, from the normal court process.

On May 3, 2013, during my hearing Justice Shaughnessy ordered on the court record, that I (a self-represented litigant) was to be excluded from important

processes in my own hearing that I should normally have participated in either as a self-represented litigant or through counsel.

Justice Shaughnessy ordered that I be excluded from approving the draft court order that arose from the proceedings; thus denying me access to justice and normal participation in an important court procedure that directly impacted me, and my freedom.

This action by Justice Shaughnessy, in the context of the secretly substituted new and changed Warrant of Committal, further shows the premeditated, deliberate and vindictive nature of Justice Shaughnessy's entire misconduct on May 3, 2013.

3/ Justice Shaughnessy ordered that my case was never to be brought before him again; as a strategy to shield himself from having to account on the court record for his premeditated, deliberate and vindictive misconduct.

On May 3, 2013, Justice Shaughnessy ordered on the court record that my case was never again to be brought before him, and that any further applications were to be heard by another judge. In ordering this, Justice Shaughnessy ensured that he would never have to personally face me, or any lawyer representing me, after I eventually learned of his secret, after court, illegal backroom "No Remission Is Ordered" increase in my time served in prison.

This action by Justice Shaughnessy, in the context of the secretly substituted new "No Remission Is Ordered" Warrant of Committal, further shows the premeditated, deliberate and vindictive nature of Justice Shaughnessy's entire misconduct on May 3, 2013.

Detailed Account of Misconduct

1/ After court on May 3, 2013, Justice Shaughnessy secretly created & substituted a new & changed Warrant of Committal that illegally denied me statutory remission, and secretly increased my jail time by a month.

On January 15, 2010, Justice Shaughnessy found me guilty, in absentia, of contempt of court in a civil case costs hearing, sentenced me to three months in prison as punishment, and signed a Warrant of Committal (Exhibit A) that stated:

"WHEREAS I have found that Donald Best is in contempt of this court and have ordered imprisonment as punishment for the contempt,

YOU ARE ORDERED TO ARREST Donald Best and deliver him to a provincial correctional institution, to be detained there for a period of 3 Months"

The Ministry of Correctional Services Act, R.S.O. 1990, c. M.22, and the Prisons and Reformatories Act R.S.C., 1985, c. P-20 govern the statutory remission of prisoners

in Ontario and Canada. Under the acts at the time I was convicted (January 15, 2010), and at the time I was incarcerated (2013, 2014), I was legally entitled to statutory remission. Justice Molloy of Appeal Court of Ontario confirmed this in April 2014. (Exhibit V)

The court transcript for January 15, 2010 (Exhibit C) further confirms that Justice Shaughnessy ordered three months imprisonment as punishment, and that statutory remission was therefore in place:

“Therefore it is the order of this court that Donald Best be committed to a Provincial Correctional Institution for a period of three months. A warrant for committal to issue.” (Exhibit C: Jan. 15, 2010 transcript, pg 55, line 1)

Justice Shaughnessy’s January 15, 2010 Order (Exhibit D) and Reasons On Motion For Contempt dated January 25, 2010 (Exhibit E) further confirm the sentence of 3 months as punishment and that statutory remission was in place:

“THIS COURT ORDERS that a warrant be issued for the arrest and committal of Mr. Best in the form attached hereto as Schedule “A”, and that Mr. Best be committed to a provincial correctional institution for a period of 3 months.” (Exhibit D, January 15, 2010 court order, page 3, para #4)

“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.” (Exhibit E, Reasons On Motion For Contempt dated January 25, 2010, para #35)

On August 9, 2012, Justice Shaughnessy ordered a temporary stay upon the execution of his January 15, 2010 Warrant of Committal, so that I could return to Canada and appear before him when my lawyer at the time, Brian Greenspan, would make a motion to have my conviction and sentence for contempt of court set aside.

On August 9, 2012, Justice Shaughnessy on the court record ordered the following, making it clear that he was only temporarily staying the execution of the January 15, 2010 Warrant of Committal, and that the warrant was still in place:

“It is further ordered that the execution of the arrest warrant shall be temporarily stayed until October 12, 2012 to permit Mr. Donald Best to return to Canada, instruct counsel and, if required, to be available for cross-examination on his affidavit.” (Exhibit F: Aug 9, 2012 transcript, pg 14, line 7) (Exhibit G: August 9, 2012 Endorsement) (Exhibit H: August 9, 2012 order)

On October 12, 2012, Justice Shaughnessy ordered that the stay on the January 15, 2010 Warrant of Committal would be extended. (Exhibit I: October 12, 2012

transcript, pg 2, line 14) (Exhibit J: October 12, 2012 Order) (Exhibit K: October 12, 2012 & November 16, 2012 Endorsements)

On November 16, 2012, Justice Shaughnessy further amended his order staying the January 15, 2010 Warrant of Committal; again reinforcing that the warrant and sentence ordered on January 15, 2010 were the subject of the ongoing court process. (Exhibit K: November 16, 2012 Endorsement) (Exhibit L: November 16, 2012 transcript, pg 6, line 26 through pg 7, line 22 / pg 11, line 12 / pg 13, line 20 / pg 26, line 7)

On December 11, 2012, Justice Shaughnessy wrote his endorsement that all the terms of his November 16, 2012 order continue; again reinforcing that the warrant and sentence ordered on January 15, 2010 were the subject of the ongoing court process.

Also on December 11, 2012, Justice Shaughnessy again clearly indicated on the record that the issue before the court was my existing January 15, 2010 conviction, sentence, order and warrant. He said:

“I'm dealing with contempt, already found. I've already found you in contempt of the court and in contempt of court orders and you're seeking to change that. It's as simple as that.” (Exhibit M: December 11, 2012 transcript: pg 24, line 19)

“But I'm saying to you, I'm not expanding this to a brand new hearing. I'm not re-litigating. You must understand this Mr. Best; I am not the Court of Appeal. I made - I gave a judgment. I made a finding. I am not the Court of Appeal. The Court of Appeal deals with anything that they feel I did wrong. The Court of Appeal is where you make applications for new evidence, not me.” (Exhibit M: December 11, 2012 transcript: pg 25, line 4)

“But this narrows down to, you've been found in contempt. I gave reasons why I found you in contempt.

I cited principles of law that I applied and I imposed a sentence.” (Exhibit M: December 11, 2012 transcript: pg 35, line 23)

(Exhibit M: December 11, 2012 transcript, pg 23, line 14 through pg 25, line 13 [Justice Shaughnessy is misidentified as Ranking] / pg 30, line 3 / pg 35, line 23) (Exhibit N: December 11, 2012 Endorsement) (Exhibit O: Draft Order dated November 16, 2012)

On January 25, 2013, Justice Shaughnessy again clearly indicated on the record that the issue before the court was my existing January 15, 2010 conviction, sentence, order and warrant.

“... I have made the decision. I have made an order. I did issue a bench warrant and I've stayed the bench warrant. So that's the plight you find yourself in right now.” (Exhibit P: January 25, 2013 transcript, pg 21, line 5)

(Exhibit P: January 25, 2013 transcript, pg 19, line 10 / pg 21, line 5 / pg 34, line 5)
(Exhibit Q: January 25, 2013 Endorsement)

During my hearing held over two days, April 30th and May 3rd, 2013, Justice Shaughnessy again clearly indicated on the record that the issue before the court was my existing January 15, 2010 conviction, sentence and warrant.

As example, on April 30, 2013, Justice Shaughnessy said:

“Go back to your original application drawn by Mr. Brian Greenspan. This is an application to purge your contempt. You have already been found in contempt so the issue now is can you or will you be able to alternatively, as you would like to put it, to have my order of January 15th, 2010 set aside, which found you to be in contempt of the court.” (Exhibit R: April 30, 2013 transcript, pg 40, line 22)

“If I decide that you have not purged your contempt, then I lift the bench warrant and you go to jail.” (Exhibit R: April 30, 2013 transcript, pg 146, line 26)

(Exhibit R: April 30, 2013 transcript, pg 22, line 18 through pg 23, line 5 / pg 40, line 22 / pg 145, line 9 / pg 146, line 26)

On May 3, 2013, Justice Shaughnessy said:

“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.” (Exhibit S: May 3, 2013 transcript, pg 14, line 3)

“... 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.” (Exhibit S: May 3, 2013 transcript, pg 57, line 11)

The judge further said, “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.” (Exhibit S: May 3, 2013 transcript, pg 62, line 28)

“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.” (Exhibit S: May 3, 2013 transcript, pg 70, line 2)

(Exhibit S: May 3, 2013 transcript, pg 14, line 3 through pg 15, line 4 / pg 57, line 11 / pg 62, line 28 / pg 70, line 2)

Also on or about May 6, 2013, Justice Shaughnessy signed a Judgment dated May 3, 2013, wherein he again clearly indicated that the issue before the court was my existing January 15, 2010 conviction, sentence, order and warrant, and that with the stay lifted, I was to serve my sentence as provided for in the January 15, 2010 Order of the Court. The May 3, 2013 Judgment stated in part:

“1. THIS COURT ORDERS AND ADJUDGES that the Application for an Order setting aside the Contempt Order made January 15, 2010, be and is hereby dismissed.

2. THIS COURT FURTHER ORDERS AND ADJUDGES that the Application for an Order setting aside the Warrant of Committal issued against Donald Best on January 15, 2010, be and is hereby dismissed and, accordingly, the stay on the Warrant of Committal is lifted and Donald Best shall be taken into custody to serve his three (3) months sentence, as provided for in the January 15, 2010 Order of this Court, starting today.”

(Exhibit T: Judgment dated May 3, 2013)

On May 3, 2013 at about 12:20pm, my case had finished, court had adjourned, Justice Shaughnessy had left the courtroom and I had been led away to the jail cells in the basement and was awaiting transport to prison to start serving my sentence.

After he left the courtroom on May 3, 2013, Justice Shaughnessy went to a backroom where he then secretly created, signed and secretly substituted a new and changed Warrant of Committal that now said ‘No Remission Is Ordered’: specifically (and illegally) denying to me statutory remission and increasing my prison time by a month. (Exhibit B: May 3, 2013 Warrant of Committal)

He secretly did this after telling me and everyone else in court on the record during the May 3, 2013 hearing that he was lifting the stay on the January 15, 2010 warrant of committal (Exhibit A) and I would be taken into custody to serve the sentence ordered on January 15, 2010 (Exhibit D) and indicated on the January 15, 2010 Warrant of Committal. (Which sentence was 3 months, and subject to statutory remission as is normal.)

Justice Shaughnessy created and substituted this new and changed May 3, 2013 “No Remission Is Ordered” Warrant of Committal off the court record, in some backroom after the hearing had concluded, without notification to me as a self-represented litigant, and in total contravention of his own existing orders and his own

statements, directions and orders made on the court record since the initiation of contempt proceedings against me in 2009.

Nowhere on the January 15, 2010 Warrant of Committal, endorsement, order or anywhere on the court record and transcripts from 2009 through May 3, 2013 is 'no remission' mentioned. The first time "No Remission" was mentioned was on Justice Shaughnessy's secret backroom May 3, 2013 Warrant of Committal.

This secret new warrant of committal was also in total contravention of the orders issued in court by Justice Shaughnessy that very day on May 3, 2013, and in contravention of the 'Judgment Order' dated May 3, 2013 that he would later sign on or about May 6, 2013. (Exhibit T: May 3, 2013 Judgment Order)

Not having any knowledge of Justice Shaughnessy's intention to secretly substitute a new and changed Warrant of Committal ordering 'No Remission' and increasing my time in prison by a month, I did not have an opportunity at my hearing to make submissions to him or to argue against the legality of his actions; which were eventually found illegal by Justice Molloy of the Court of Appeal for Ontario.

Justice Shaughnessy arranged everything so that I would only discover my secretly increased 'no remission' sentence from the prison authorities at some unknown time perhaps weeks or months in the future while I was incarcerated, and that is exactly what eventually happened.

Late in the evening on May 3, 2013 I arrived at the Central East Correctional Centre in Lindsay, Ontario to begin serving my prison sentence. Later, I was taken before a group of senior prison administrators who were standing together examining the Warrant of Committal dated May 3, 2013 (Exhibit B). One of them shook his head and said to me, "None of us has seen this before in twenty-five years. What did you do to piss off the judge so much?"

I was puzzled and had no idea what the prison administrators were talking about. Then they showed to me the May 3, 2013 Warrant of Committal and pointed out the part that said "No Remission Is Ordered".

It was only then that I learned what Justice Shaughnessy had done behind my back after court had adjourned. The prison authorities stated that they would obey Justice Shaughnessy's May 3, 2013 Warrant of Committal, would not apply remission to my sentence and would keep me in prison in solitary confinement for the full three months.

On June 14, 2013, having managed to find a lawyer, Paul Slansky, who filed an appeal, I was released on bail pending my appeal. (Exhibit U: June 14, 2013 Appeal Court Order, Justice Goudge)

On April 2, 2014 I reported to the Central East Correctional Centre in Lindsay, Ontario to complete my sentence, as the Court of Appeal for Ontario would not allow my appeal to be heard unless I paid hundreds of thousands of dollars in costs, which money I did not have.

On April 15, 2014, my lawyer appeared before Madam Justice Molloy of the Court of Appeal for Ontario and presented an application for Habeas Corpus, concerning Justice Shaughnessy's secret creation and substitution of the May 3, 2013 "No Remission Is Ordered" Warrant of Committal. It is my understanding that Justice Molloy was appalled that Justice Shaughnessy had secretly created and substituted the new May 3, 2013 "No Remission Is Ordered" Warrant of Committal.

Justice Molloy reversed Justice Shaughnessy's perfidy and ordered:

"IT IS ORDERED, pursuant to s. 24(1) of the Charter, that the Applicant, Donald Best, shall be eligible for release on April 20, 2014, having completed his sentence of 3 months for civil contempt, with credit for remission."
(Exhibit V: April 15, 2014 Order of Justice Molloy)

2/ Justice Shaughnessy ordered the exclusion of me, a self-represented litigant, from the normal court process.

On May 3, 2013, Justice Shaughnessy ordered that I, a self-represented litigant, be excluded from approving the draft court order that arose from the proceedings; thus denying me access to justice and normal participation in an important court procedure that directly impacted me, and my freedom.

Justice Shaughnessy said:

"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." (Exhibit S: May 3, 2013 transcript, pg 57, line 32)

Also on or about May 6, 2013, Justice Shaughnessy signed a Judgment dated May 3, 2013, wherein he further ordered:

"4. THIS COURT FURTHER ORDERS AND ADJUDGES that approval of this Judgment by Donald Best is hereby dispensed with." (Exhibit T: May 3, 2013 Judgment)

Justice Shaughnessy's exclusion order shows, in the context of the secretly substituted new "No Remission Is Ordered" Warrant of Committal, the premeditated and deliberate nature of Justice Shaughnessy's entire misconduct on May 3, 2013.

Justice Shaughnessy knew his backroom intentions before he adjourned court, left the courtroom and had me taken away to prison. Ordering my exclusion from the ongoing order creation process in my own case ensured that I would not know about Justice Shaughnessy's illegal substitution of a new and changed "No Remission Is Ordered" Warrant of Committal until perhaps weeks or months after I arrived at prison; where it would be extremely difficult to effectively complain about or to rectify the injustice of his illegal misconduct.

3/ Justice Shaughnessy ordered that my case was never to be brought before him again; as a strategy to shield himself from having to account on the court record for his premeditated, deliberate and vindictive misconduct.

Prior to adjourning court on May 3, 2013, Justice Shaughnessy ordered:

"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." (Exhibit S: May 3, 2013 transcript, pg 69, line 29)

In ordering this, Justice Shaughnessy ensured that he would never have to personally face me, or any lawyer representing me, after I eventually learned of his secret, after court, illegal backroom increase in my time served in prison.

This action by Justice Shaughnessy, in the context of the secretly substituted new and changed Warrant of Committal, further shows the premeditated, deliberate and vindictive nature of Justice Shaughnessy's entire misconduct on May 3, 2013.

My Expectations of the CJC

As can be seen in the attached exhibits, the facts of Justice Shaughnessy's misconduct are indisputable. This is a very serious, yet very simple, situation where Justice Shaughnessy's misconduct is well proven by the court record itself.

Several senior Canadian lawyers, including a serving Bencher of the Law Society of Upper Canada, have reviewed the evidence/exhibits attached to this complaint. Without exception, these senior lawyers are appalled at Justice Shaughnessy's conduct. As an example, one senior Ontario lawyer said, *"In all my years of practicing law, this is the most disgusting thing I have ever seen a judge do."*

Justice Shaughnessy's premeditated and deliberate misconduct is unethical and reprehensible. The misconduct is so serious that it brings the administration of justice into disrepute.

Based upon the court record alone, Justice Shaughnessy's conduct is so egregious that he should be suspended immediately (with pay), pending the results of a

complete investigation. A judge capable of doing what Justice Shaughnessy did should not be allowed to adjudicate any further matters.

This complaint with the supporting evidence obviously passes the test set out in Stage 1 of the new CJC Process Overview (CJC document 'CJC-Process-Overview-2015.pdf'). The public interest demands that such serious misconduct be dealt with transparently and on a priority basis.

Given the egregious nature of the misconduct, and that the supporting evidence is irrefutable, there is no need for a Stage 1 screening, so please immediately refer this complaint to a Stage 2 review by a Judicial Conduct Committee Member.

I expect and demand that the Canadian Judicial Council will:

- Immediately acknowledge receipt of this complaint via email,
- Immediately download the online Exhibits from the provided URL,
- Provide full transparency and immediately notify me in a timely manner via email of every step planned and taken,
- Inform me of the name of the Judicial Conduct Committee Member conducting the Stage 2 Review, and provide me with an investigative plan and timely updates of activity,
- Provide a written copy of the Judicial Conduct Committee Member's reasons for any decision taken during the Stage 2 Review,
- Process, investigate and conclude this simple and well-documented complaint within 30 days, with a recommendation to a Stage 3 Review Panel that an Inquiry Committee be constituted under Stage 4 of the CJC New Process.

Again, this is a very simple situation where Justice Shaughnessy's misconduct is well proven in the court record itself.

Yours truly,



Donald Best

Exhibits

Can be downloaded in .PDF format online from Hightail:



Caution: Exhibits contain Identity Information, not to be distributed to the public without redaction. Link is for CJC use only, and expires February 8, 2016.

Exhibit	Description
A	January 15, 2010 Warrant of Committal
B	May 3, 2013 Warrant of Committal
C	January 15, 2010 Transcript
D	January 15, 2010 Court Order
E	January 25, 2010 Reasons On Motion For Contempt
F	August 9, 2012 Transcript
G	August 9, 2012 Endorsement
H	August 9, 2012 Court Order
I	October 12, 2012 Transcript
J	October 12, 2012 Court Order
K	October 12, 2012 & November 16, 2012 Endorsements
L	November 16, 2012 Transcript
M	December 11, 2012 Transcript
N	December 11, 2012 Endorsement
O	November 16, 2012 Draft Order
P	January 25, 2013 Transcript
Q	January 25, 2013 Endorsement
R	April 30, 2013 Transcript
S	May 3, 2013 Transcript
T	May 3, 2013 Judgment
U	June 14, 2013 Appeal Court Order
V	April 15, 2014 Order of Justice Molloy