

SUPERIOR COURT OF JUSTICE

NELSON BARBADOS GROUP LTD.

PLAINTIFF

- against -

RICHARD COX, ET AL

DEFENDANTS

\* \* \* \* \*

PROCEEDINGS

BEFORE THE HONOURABLE MR. JUSTICE SHAUGHNESSY  
on Friday, January 25, 2013,  
at OSHAWA, Ontario

\* \* \* \* \*

APPEARANCES

DONALD BEST

Agent for the Plaintiff

GERALD RANKING

Counsel for the Defendant,  
Price Waterhouse Coopers East Caribbean

LORNE SILVER

Counsel for the Defendants, Cox

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Barbados v. Cox, et al  
January 25, 2013

Friday, January 25, 2013

U P O N R E S U M I N G :

(9:52 a.m.)

5

THE COURT: All right. So the matter of the contempt motion relating to Mr. Best. I see Mr. Best is in court, I see Mr. Ranking is in court and Mr. Silver.

10

Today I think is a day to set a date. Can I ask you how did the surgery go, Mr. Silver?

MR. SILVER: Thank you well. I'm seven weeks out and recovering well.

15

...

THE COURT: Mr. Best, you've got a mask on your face so I take it you're not feeling well today?

20

MR. BEST: I'm not Your Honour, but I'm here.

THE COURT: I appreciate you taking precautions because right now I'm in the middle of a very serious criminal trial relating to guns, gangs and cocaine and the jury's been set away as a result of an issue that I'm trying to deal with today so I appreciate you taking the precaution for all of us and I say that on behalf of court staff and counsel. We appreciate your consideration.

25

30

Now, so today was a day to set a date. I guess I wanted to get a bit of an update. Where are the - did the cross-examination take place?

MR. RANKING: I can speak to that very briefly,  
Your Honour.

THE COURT: Please.

MR. RANKING: Mr. Best delivered three affidavits  
in total. Neither Mr. Silver's client nor mine  
delivered any responding affidavits. The cross-  
examination you'll recall was ordered to proceed on  
January 11. It did.

Mr. Best has moved his residence to Barrie so Mr.  
Silver and I went to Barrie to conduct the cross-  
examination on January 11<sup>th</sup>. We didn't finish that  
day and it was continued on January 23<sup>rd</sup>, two days  
ago, on the Wednesday and we completed at that  
time.

So we are ready to set a date. We also think that  
it's probably advisable for you to assist us with  
respect to certain other dates, the most important  
being that there were significant answers taken  
under advisement and significant refusals, so  
obviously we seek your direction to seek a date  
both for the hearing and a date for the delivery of  
answers to advisements and refusals should Mr. Best  
be pre-disposed to answer any of them.

We would ask that those date be pre-emptory and the  
only other thought that Mr. Silver and I had and I  
think that we're content to do this as soon as one  
of your brother judges might be available should  
you agree that the submission makes sense, is we

are certainly prepared, on behalf of our clients,  
to entertain a judicial mediation.

5 The only observation which I should make is that  
this case is a little different than many others  
that certainly Mr. Silver and I have handled in  
that Mr. Best is not represented and Mr. Best has  
taken the position that he will not speak to either  
of us, so it's difficult for us to try to deal with  
10 settlement and things of that nature because we  
just can't speak to him and that's his request and  
we're going to respect that.

15 So to the extent that it may, in fact, take the  
resources of others of your brother judges we - we  
ask somewhat apologetically but there may - there  
may be some utility. I've not spoken to Mr. Best  
about this because this was a discussion I had with  
Mr. Silver following the cross-examination on  
20 Wednesday.

I trust that brings you up to date. I know that my  
friend wants to make some submissions with respect  
to costs and things of that nature, but I think  
25 that can wait until we've dealt with other matters.

30 There is one other matter though which I should  
alert you to. When we were cross-examining Mr.  
Best on Wednesday, one of the questions we asked  
was that he produce the books and records of Nelson  
Barbados, and you'll recall that that was one of



the issues which is the subject matter of your  
orders of November and December of 2009, and Mr.  
Best did produce a sealed envelope which he told us  
contained a computer stick with all of the  
information which would be responsive to your  
order.

We asked for it to be produced and he indicated he  
was not prepared to do so without the direction of  
Your Honour. We also asked that he bring copies of  
that today, the sticks, and he's indicated to us  
that he does not want to do that without the  
direction of Your Honour, so I suspect that Mr.  
Best will want to speak to that but I do want to  
tell you that that is something that he had raised  
and that I expect he'll be seeking directions from  
the Court on that.

THE COURT: You have to realize, I've received just  
- just what I was able to read this morning and  
believe me, I have a very complicated issue dealing  
with the criminal trial that I've been working on  
furiously and again this morning so I started to  
read this affidavit of Mr. Best which is some - and  
it's not - cause you're saying there's more but  
it's 314 paragraphs and I don't even know how many  
pages cause it's - sorry, 53 pages.

I only got, suffice to say, with the other issues  
that were attending at my desk, I only got to page  
12 of it and there's - but I had two additional,  
I'll describe them loosely, as photocopied boxes,

banker boxes, of materials that have been delivered. They're up my chambers. I haven't been able to absorb any of this, all of the materials. I see a theme emerging from Mr. Best as a result of the affidavit material. I hope we're not going to - I don't hear you getting bogged down about what's appropriate affidavit argument in an affidavit, etc. We're not going to bother with that.

MR. RANKING: No.

THE COURT: 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.

I spent two years on this matter. I think two years, maybe longer. It seems like an eternity but two years on multiple motions, multiple issues. This case is not going to be about them. It is about your application brought by Mr. Greenspan in the first instance on your behalf, to bring you back into this country and to purge your contempt.

I want you to understand that. That's all I'm going to be focussing on.

Now one of the items that is raised by Mr. Ranking is one of the components of my finding of contempt against you was the a) you not attending an examination back in the relevant period and, b) not producing the books and records of Nelson Barbados. Now I'm being told that you have them. Now I want to say to you that having those records is and producing them is the first step I suppose, in relation to the purging of the contempt. If you have them, and you're indicating you do have the stick, then I don't understand why - well perhaps I'll stop talking and ask what's your objection to producing them if this is the first step to deal with - to give me some indicia of here judge, I'm willing to show you, I'm prepared to purge my contempt and here's the books and records on a stick?

MR. BEST: I have - I have - I have a few things I've written out to say Your Honour.

THE COURT: You answer me first.

MR. BEST: Yes, sir. I believe now Your Honour, that with all the questions that I've answered - well actually Your Honour, I have it right here if you would just give me a minute. It is the answer, Your Honour.

Your Honour, I've addressed every question that you wanted me to answer and I have the Nelson Barbados documents on a memory stick and a copy of my passport also so that the Court can see corroboration that I was out of Canada from



November 11, 2009, until my return and I brought two of the other sticks also for Mr. Ranking and Mr. Silver.

THE COURT: Good.

5 MR. BEST: But I wanted to give them to you and to let you distribute them Your Honour, because it's my suggestion that the Court should do something to make sure that this does find its way onto the internet, because that seems to be a problem for  
10 everybody. Many of the documents contain identity information that's contained in the Criminal Code - defined in the Criminal Code, including information from many, many persons who have no connection at all with this case but whose information, for some  
15 reason, was taken from the records of Crawford MacKenzie law firm and then according to Mr. Silver during my January 11<sup>th</sup> cross-examination, they were distributed by Mr. Silver to his clients, and subsequently published on the internet.

20 And as Your Honour will see by what's on the stick, Mr. Ranking and Mr. Silver and their clients now have my full minute book records for Nelson Barbados Limited. Although it's true that they had  
25 most of them before from the Crawford MacKenzie law firm in 2010, and Your Honour will also see that in 2010, Mr. Ranking and Mr. Silver and their clients as a result of the courts lifting the privilege, already obtained exponentially more evidence than  
30 they ever would have had I been able to attend court during late - during 2009 or early 2010 to



answer their questions according to the Court's order of November 2<sup>nd</sup>.

5 It's true that with the lifting of the privilege and all the documents that the defendants obtained in early 2010 that the Court's November 2, 2009 order was, in effect, almost completely fulfilled at that time Your Honour, and it's my submission that the questions that I have addressed during the  
10 past two days of cross-examination as well as providing these records of Nelson Barbados Group and the business records ...

15 THE COURT: Mr. Best, Mr. Best. These may be submissions that you're going to make at some other time. Right now, right now, look, I just want to deal with - you have a stick you say of the records of Nelson Barbados.

MR. BEST: Yes, sir.

20 THE COURT: And you have copies of them - two copies; one to give to Mr. Silver and one to give to Mr. Ranking.

MR. BEST: They are here, Your Honour.

25 THE COURT: All right. So I don't need them, I don't touch them, I'm not - you understand? I deal with matters that are submitted to the Court and presented to the Court in a proper manner. Right now, if they've asked for it and it does relate to the contempt application, the contempt finding, then I say to you now, now's the time to give them  
30 copies here and I'll, on the record, narrate that Mr. Silver and Mr. Ranking are now receiving a

sealed brown manila envelope which you say contains a stick ...

MR. BEST: Two sticks for them. I have the other which is - the exhibit actually, Your Honour.

5 THE COURT: I don't know what you're giving them.

MR. BEST: Okay.

THE COURT: But you're giving them a stick related to the records of Nelson Barbados.

MR. BEST: Yes, Your Honour.

10 THE COURT: All right. So let's hand that over now and I can narrate that that's going - you're handing them.

MR. BEST: All right. This is according to your order; right?

15 THE COURT: Apparently it is.

MR. BEST: Okay, sir. There's two there gentlemen.

THE COURT: You gave one envelope and in it are two sticks; one for Mr. Silver and one for Mr. Ranking.

20 MR. BEST: Your Honour, could you perhaps make an order that this is not to be distributed to the clients?

THE COURT: Just stop there. Counsel? He's asking that it not go onto the internet. I don't think I can tell them not to discuss it with their clients.

25 They represent their clients. Again, I want to remind you; this is not Mr. Ranking and Mr.

Silver's matter. This is your application to purge your contempt, so I'm - I can't tell them not to discuss or review the matter with their clients.

30 They have to take instructions from their clients.

Lawyers don't come in here and make their own decisions what's in the best interest of ...

MR. BEST: Well, there's - there's - it's just that there's oh, must be 30 clients of Mr. MacKenzie's law firm, the files from them, that have nothing to do with Barbados or this or anything but these records were chosen by Mr. Silver and Mr. Ranking and they're on there too and the problem is - and I don't want that to go on the internet.

MR. RANKING: Your Honour, I might be able to move this along.

THE COURT: All right. You don't want it on the internet. That's a different suggestion. Let me hear from Mr. Ranking.

MR. RANKING: I might be able to move it along and my friend may have submissions as well. I can undertake to the Court that I will not put anything on the internet.

THE COURT: Thank you.

MR. RANKING: And I can't - I don't know what's on the stick, but as you fairly point out Your Honour, I will be reviewing matters with my client. In the short term, I will not send any materials to my client but I don't want to be constrained from doing that but certainly to the extent that my friend in his affidavit material is concerned about the internet or the wide dissemination, I will undertake - I will not nor will anybody in my firm put anything on the internet and likewise, the only individuals to whom I will circulate this will be



to individuals at Price Waterhouse Coopers East Caribbean firm.

THE COURT: Mr. Silver?

MR. SILVER: I can give the same undertaking but I want to go a little bit farther to confirm on the record that I have never directly or indirectly caused anything to be put on the internet in respect of this file or quite frankly, any other file, I've ever had so it's easy to undertake to the Court and confirm that I will not be involved directly or indirectly in putting any of this on the internet, but as you've indicated of course - and nor do I have any knowledge that my clients have, so these are just allegations.

But obviously I have to have an opportunity to discuss what's on the memory stick with my client.

THE COURT: All right.

MR. BEST: Your Honour, may I continue to read this for a few more minutes?

THE COURT: No. Cause you know what? Frankly, you're entitled to your time in court but you're not entitled to an unlimited time in court, Mr. Best.

MR. BEST: Could I have it to you then, sir?

THE COURT: Just a minute.

MR. BEST: Sorry.

THE COURT: Today was meant to be a, if you will, a scheduling date for these matters. I'm now dealing with other issues that have arisen and I don't mind dealing with them in short order but it's a



scheduling date. I have a - now I want to set a date for the hearing of this matter. I want to tell you that my time now is very limited, and I'm going to outline to you the - I've already spoken to the trial co-ordinator and you might want to write this down, Mr. Best.

The only two days, and I'm not giving this two days, but I'm sorry my time is too precious. You can either have April 29 or April 30<sup>th</sup>. You can pick one of those two days and here's my schedule from here on. As of - I'm away with my wife from February 22<sup>nd</sup> til March 22<sup>nd</sup>. I return on March 25<sup>th</sup> and I begin pre-trial motions on a homicide trial that will last until - well, they're going to go right up to May but I'm hoping they give me a few days off writing so what I'm really doing is taking my own writing time, the 29<sup>th</sup> or 30<sup>th</sup> and offering it to you.

Then I begin a trial May 6<sup>th</sup>, which will run right through to July 1<sup>st</sup>. I'm then fortunately being given the entire rest of the summer off because I don't think I'm going to get that trial finished by July 1<sup>st</sup>, and then I return in September. In September, I then start pre-trial motions on yet another homicide that will run through the fall and right up into December. I then will be going supernumery January 1<sup>st</sup>, 2014, so a year from now, and so you can see that I have no other time.

5 And this I say, I will give one day. So I'm  
setting the parameters and it will be - the day  
will be divided. So as much as you want to bring  
in box loads of materials and you have Mr. Best, I  
want to tell you from my cursory review of the  
materials, I am not going to and I said this to you  
before, I am not going to go through the John Knox,  
Marjorie Knox, all of the Kingsland Estate matters  
that have already been through this court over a  
10 two year period with I don't know how many hours I  
devoted to that matter. It was countless, and my  
writing time and the decisions I released and  
multiple attendances by Mr. MacKenzie and a vast  
array of lawyers including Mr. Silver and Mr.  
15 Ranking.

20 So I want you to understand; this is the very  
narrow issue dealing with your application, your  
application to purge your contempt and the way a  
contempt is purged is not to entirely go back and -  
and try to go back through the entire history of  
the whole Nelson Barbados case. A decision was  
made. I don't believe it was ever appealed. The  
jurisdiction was found wanting and just in the  
25 material that I could get to today, you start  
referring to affidavits recently filed by  
individuals whose names I certainly remember, the  
lawyers in the Barbados, the individuals involved  
in this, all in the Superior Court or the Supreme  
30 Court of the Barbados. I forgot the proper name,  
but all of that is not relevant to the contempt,

the application to purge your contempt. I'm telling you that.

5 And so if that's your strategy and it appears to be  
your strategy, this is the not first time you've  
appeared in front of me, I want - I want to get you  
back and focussed on what is necessary, what is  
relevant, what is important, and in that regard, I  
10 do have to ask, I will direct - it's not a matter  
of asking, I will direct that there's going to be  
another judge other than myself and I'm not going  
to name him or give the date right now because I  
certainly want to talk to the trial coordinator  
because it's not everyone who has the time  
15 available, but there will be a meeting sometime  
before April 29<sup>th</sup>. Someone other than me, to  
discuss whether and how this application before me  
can be resolved without me hearing the full matter  
and making findings.

20 Because right now I have to hear both sides and you  
have to understand; this comes up in your  
materials. Mr. Ranking and Mr. Silver are not  
required to file affidavit materials. They are  
25 entitled to be put on notice and they're on notice  
and they're here and they've entered an appearance,  
and from this point forward, it is your application  
so that's where we are. So the next step then is  
let's choose the date. April 29<sup>th</sup> or April 30<sup>th</sup>?



MR. SILVER: April 30<sup>th</sup> is better for me. I have a trial but that's the last day scheduled of a seven day trial so I'll work it out.

THE COURT: Do you have anything, Madam Registrar?

5 THE REGISTRAR: I don't, Your Honour.

THE COURT: I think I'll put this endorsement on the back of the affidavit of Donald Best. I don't seem to have the court file. It went back to storage I'm sure in Mississauga or wherever they go. I know it's ...

MR. BEST: Your Honour?

THE COURT: ... been up before me before. I don't know what we put the other endorsements on.

MR. SILVER: There is a - there was an - there is an application record.

THE COURT: Can you find it, Tom? I'll let Mr. Mills go up as we have a discussion and so the date proposed now is April 30<sup>th</sup>. That works for you, Mr. Ranking?

20 MR. RANKING: It does. Thank you, Your Honour.

THE COURT: All right. Mr. Best?

MR. BEST: That date works for me, Your Honour.

THE COURT: That's good. So the first order of business the date of the hearing. It is one day and when I come in that day, I'll allocate the time that I can give you but you should understand I have to be fair in that so that you cannot - I can't give you from 9:30 in the morning until 3:30 in the afternoon and then ask the other counsel to respond.

30



I will allocate the time. Please remind me of that and I'll do that after counsel have been able to prepare and indicate to me how long they will be in their submissions and I'll ask you, Mr. Best, how long you're going to be and then I'm going to hold you to those limits. I can't ask counsel right now to make the allocation or to tell me how long they're going to be. Indeed I expect Mr. Ranking and Mr. Silver will speak, will decide between them which issues they're going to tackle so I'm not going to hear it twice from them so that's why we'll do that. That will be the first order of business on April 30<sup>th</sup> and we will begin at 9:30 in the morning and that will be my endorsement.

All right. So now the next step is ...

MR. BEST: Your Honour, I did have something a little more to say and to ask you, it would only take a minute, Your Honour. I don't have a lawyer. I apologize, I'm probably doing the wrong procedure but I had some things here ...

THE COURT: Just a minute. I see what Mr. Silver's on his feet.

MR. SILVER: I think to the extent that you're going to hear Mr. Best, maybe you should hear me first and then he could respond to it.

THE COURT: Yes, all right. Let me hear Mr. Silver and then I'll come back to you, Mr. Best.

MR. SILVER: I'll just be a moment and I support - Mr. Ranking and I are in agreement on the request that he's made and - but I had some additional issues or issue that I wanted to address and it

5 really flows from some comments that you've made about the volume of material that we're getting and the - and the issues in - we're senior counsel and we have a certain view about what's relevant and what's not and - and we're dealing with it accordingly, but there's a lot of time being spent on this and so the concern that I stand up to address is costs.

10 And I do it at a time where we're only scheduling a hearing date but I have two - two matters to address with you. You won't recall but on January 15, 2010, when you made the contempt finding, you ordered costs to be paid to four different sets of  
15 defendants; the lion's share to Mr. Ranking's client cause he did the lion's share of the work and some to mine and some to a bank and I think Andrew Roman's client.

20 We're concerned that at the end of application and of course, assuming that the order isn't set aside, those costs will never get paid and the only way to ensure that they get paid is to have them posted. We had previously requested that they be paid.

25 THE COURT: Twice before, I think.

MR. SILVER: Twice before. I asked and Mr. Ranking asked and as I understood it, your reservation was there was no evidence about ability to pay and - and so now you've seen the volume of material  
30 that's coming from Mr. Best. Expert's reports on you know, verifying the accuracy of surriptions

telephone recording of conversations. There's a fortune being spent by Mr. Best in respect of this application.

5 He says in cross-examination that he's paying that money, he doesn't have any agreement or arrangement to get repaid, and so it's my request, supported by Mr. Ranking that if the costs of the prior order that remain outstanding aren't paid to us, they  
10 should at least be posted in court.

If Mr. Best is successful in setting aside your order and the costs award that was made at that time falls, he can have his money back. But if  
15 he's not successful, our clients are entitled to not have to chase for that money and find where it is and so I make the request that a direction or an order be made that Mr. Best, within a certain period of time that fits into the - within the  
20 April 30<sup>th</sup> return date, post the costs ordered by you in your January 15, 2010 order. That's the first point.

Secondly, and this is more of - because of the  
25 difficulty in communication. I suppose I could put it in writing to Mr. Best but I think it's best to put it on the record.

It would - might be appropriate to bring a motion  
30 for security for costs in respect of this application. However, given all the circumstances



including the schedule and the realization before I  
got here today that at best we could expect one or  
two days from you and that there wouldn't be an  
opportunity to schedule a motion for security for  
costs first and give some time to post that and  
then have the application without it extending sort  
of beyond any reasonable date that everybody would  
want to get it resolved.

I'm not bringing a motion for security for costs  
but I'm putting on the record now that at the  
argument of the application in the event that we're  
successful or my client is - or Mr. Best is not  
successful in setting aside your order, we're going  
to ask that the bench warrant that was issued and  
that is now stayed not be lifted until any costs  
that you award in respect of the application are  
paid first.

And I want to Mr. Best to know that and I want Your  
Honour to know that that's the - the position, the  
direction that we're going and the request that's  
going to be made down the road on April 30<sup>th</sup>, in the  
event that Mr. Best is not successful. Those are  
the only additional two comments that I had to  
make. I thought I should make them before Mr. Best  
speaks so that if he wanted to respond to them, he  
could.

THE COURT: Thank you. Mr. Best?

MR. BEST: Yes, Your Honour. Your Honour, Mr.  
Ranking [sic] I spent a fortune. That's incorrect.



I've done all this myself and it was laid out all over my kitchen table and on the floor and I suppose - I think I spent about \$500 at Staples or I didn't even remember where it was, but I got them to bind things. That's what I've spent, Your Honour.

As to these experts he says I've spent a fortune. No Your Honour, it was a couple of thousand dollars and that's not a fortune but it was a lot of money to me and that's why I did it. So Mr. Ranking is - is - or Mr. Silver is - is not presenting a fair picture of - of me or - or what I've done. And it's just not - not true.

Your Honour, I wanted to speak about examining Mr. Ranking and Mr. Silver and their clients, because if we're going to have a hearing and by the way, I'm very pleased about the mediation judge. I think that's an excellent thing and I had hoped - frankly Your Honour, I will say this. I did receive a communication from Messrs Ranking and Silver which if it was meant as sort of an olive branch, I'll take it as that. They said they didn't want to see me go to jail which I guess a significant change in their position so ...

THE COURT: I don't think anybody wants to see anyone go to jail, Mr. Best.

MR. BEST: Well ...

THE COURT: It's not just Mr. Ranking and Mr. Silver. I got to tell you that I - I consider it

one of the most difficult and profound decisions I have to make and there's no - it's not something that's done cavalierly or without basis and foundation. So I want to tell you I share that same view but having said that, 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.

MR. BEST: I appreciate that Your Honour and ...

THE COURT: Maybe - maybe, and I can't get into this. This is why I don't want to get into this any further but that's why maybe a mediation judge is involved so that you can have a proper full dialogue through this what I'll call a mediation judge about a way to resolve this matter ...

MR. BEST: Yes.

THE COURT: ... without me hearing it. That's the whole focus. But I don't want to hear anything more about that aspect. All right?

MR. BEST: I understand Your Honour, but if I could just read this I - I ...

THE COURT: Go ahead.

MR. BEST: Yes, sir. I - I believe that you know I have a right to have all the evidence and I would want the Court to have all the evidence as it's relevant and in terms of examining Mr. Silver and Ranking, they have said things and done things that I believe they are going to try to convince you are true and I disagree, and I believe that I'm

entitled to examine them before we get here for the hearing.

5 Now, Mr. Silver did admit to me and it's right in the transcript Your Honour, that he has taken an enormous amount of information and he sent it to his clients, and I can tell you that after that, it appeared on the internet and that's why - that's one of the reasons why I want to examine Your Honour, because there's other information that he 10 has too that could help in my defence and you know, they've also put a lot of what I call quasi evidence before the Court. Not just since August but - but way back when and I'm asking the Court to 15 allow me to question them because if they're going to insist that what they said is true, I don't agree and I think it's only fair.

20 Now Mr. Ranking has also continued to avoid answering questions about the purported entity he represents and how and when he realized that Price Waterhouse Coopers East Caribbean Firm is a non-entity. I - you know, he admitted this effectively during a cross-examination last Wednesday. I'd 25 like to ask him questions about this issue and the affidavit and cross-examination of his witness Marcus Hatch (ph) in 2007.

30 I consider this issue to be very important to my presentation to the Court because Your Honour, everything flowed from that foundation, and Mr.



5 Silver said to me in the transcript that he had -  
you know, given a number of documents to his  
clients and those appeared on the internet. That's  
enormously important because where the issue was my  
security and - and this impacted my ability - this  
- this impacted my ability and - and impacted my  
reasoning and my decision making about my family  
and my family's security and I understand that  
there's been quasi evidence, allegations that I put  
10 this stuff on the internet and that's false.

And I'd like to ask them questions about the  
documents because their distribution to and by Mr.  
Silver's clients was the source of many attacks  
15 against my witnesses, my family, me and even many  
persons who have nothing to do with this case in  
any way, which is another reason why I want  
everyone to be very careful about what's on those  
sticks.

20 On Wednesday, Mr. Ranking and Mr. Silver indicated  
that Milt Davis (ph) had been in contact with them  
at some point as my lawyer and - and that's not  
accurate, Your Honour. Milt Davis was never my  
25 lawyer and I'm not sure what information Mr. Davis  
gave Mr. Ranking or Mr. Silver.

THE COURT: Mr. Milton - Mr. Greenspan indicated  
that he brought Mr. Milton into the picture because  
Mr. Greenspan's background is in criminal law.  
30 This is a quasi criminal proceeding when you have

contempt but in any event, to understand the civil components, Mr. Greenspan made that decision.

MR. BEST: Well ...

THE COURT: So let's not get into Mr. Davis.

MR. BEST: Your Honour, what I'm saying is Mr.

Ranking and Mr. Silver made several letters into

exhibits including one from Mr. Ranking to Mr.

Davis, the contents of which I vehemently disagree

with. Mr. Ranking is again putting quasi evidence

before the Court that is 100% wrong.

MR. SILVER: It's my letter.

MR. BEST: Please, I didn't interrupt you sir, and please.

MR. SILVER: It was my letter, not Mr. Ranking's.

MR. BEST: All right. I'm sorry but please - in any event, you know, it's quasi evidence put before the Court that is 100% wrong and I want to examine on that issue because there are serious errors and falsehoods in that letter and you know, here it is, it's put in as an exhibit, as evidence, but it's just quasi evidence and - and it really has an impact upon what Your Honour sees and it's just not fair.

I should be - as an accused, I should be - I'm going to jail. I should be able to cross-examine that and test it.

Now there's an also an enormous question in this case about the activities of Mr. Ranking's private investigator, Mr. Van Allen (ph). In fact, Mr. Van

Allen's affidavit was relied upon by the Court as one of the pieces of evidence used in my conviction and the events that preceded my conviction and set the stage and the sentence for the jail.

There's also information placed onto the internet about Mr. Van Allen's activities that says there are reports from Mr. Van Allen circulating among the defendants in addition to his affidavit. Now, I've not seen Mr. Van Allen's reports and his information could be important to my defence, and I deserve the opportunity to cross-examine him and also his employer, Mr. Ranking, about many aspects of the work including why Mr. Ranking redacted Mr. Van Allen's invoices prior to submitting them to the Court during the costs hearing.

This is about full disclosure when I'm - I'm - I could be heading to jail for three months for a criminal like charge and I think that under the Charter and normal practice, I should be given full disclosure.

Now it also came to my attention as first detailed in my December 1, 2009, letters to Your Honour and the lawyers, that Mr. Silver's email address was listed on the internet at this Barbados underground website, as a place for a persons to send information about me and my family members. This same website published threatening words against persons on my side of the case. Well here we are



5 Your Honour, four years later and Mr. Silver's  
email address is still on that website, along with  
invitations for persons to hunt me down and hunt my  
family down and harass persons on my side of the  
case and Mr. Silver's email address and his firm  
are published for that purpose on the internet and  
they have been so for years.

10 Now, I'd like to know who put it there, what if any  
Mr. Silver's involvement was; what responses he has  
received over the years, and why he has not had  
this taken down and what efforts he's made to take  
this down because I told him about this on November  
15 17, 2009, during the telephone call that it was  
terrible for my family and here we are, four years  
later, and it's still there. I know that members  
of organized crime that I've previously arrested  
are working with Barbados underground and I could  
show that to Your Honour and I wish to.

20 So this - this call to connect with Mr. Silver  
about information about my family has - has taken  
root and - and caused terrible things to happen,  
Your Honour.

25 Now did Mr. Silver receive any information that  
could be useful in my defence or otherwise convince  
the Court that I am innocent or of the - the  
30 terrible safety and security problems for my family  
that have been - have happened because of this?

I should have the right to examine Mr. Ranking and Mr. Silver and other involved person about this, including Mr. Van Allen.

5 Now Your Honour, Andrew Roman and Miller Thomson and their client asked on January 15, 2010, that I receive more than three months jail time. Mr. Roman accused me of placing a defamatory article on the internet, falsely accused me. Yet as we know  
10 now, and there is evidence in the latest affidavit and the previous one and such, that you could find there in John Knox's affidavit, that the computer system at Miller Thomson Toronto has been used since at least 2004, to deliver anonymous threats and hate mail to my witnesses. This is  
15 unbelievable coming from a major Toronto law firm and it's all documented and further, Mr. Roman was cautioned about this in writing and yet he concealed that from the Court. He just stood up  
20 and asked for more time for me.

Now these anonymous internet threats are a large part of my security concerns and they were part of the reason that I had to flee Canada with my  
25 family. Excuse me, I'll just get a drink here. I should be able to examine Mr. Roman and his firm's records and his firm's records would show who sent these anonymous messages that seriously impacted the safety, security and well being of so  
30 many on my side of the case. And also seriously impacted my movements and my ability to appear

before the Court in 2009 and early 2010. I think that's only fair.

5 Now, as a police officer, I was always taught that  
when someone's going to jail, you always give full  
disclosure to the other side and it's a matter of  
the Charter of Rights and Freedoms as well as  
normal, fair and just practice in our courts. We  
10 never know what is relevant or will become relevant  
until we get it and that's why we do a full  
investigation and then provide full disclosure to  
the accused and Your Honour, some of these issues  
might change your decision one way or the other and  
- and a full record needs to be put before the  
15 Court and I'm not asking you to re-litigate the  
Nelson Barbados thing, Your Honour. I'm really  
not.

20 I'm just saying that there's a lot of things that  
seriously impact why I did what I did and that if  
Your Honour knew them, it would seriously change  
how Your Honour thinks about - about me and what  
happened, and you know, I - there's a lot of things  
that are on the record, this quasi evidence, and  
25 you know, oral statements that are - are not  
accurate in the record. I've seen them in the past  
transcripts and they're unsworn and uncross-  
examinable and I know they're false and that's why  
I think it's important that I be given a chance to  
30 cross-examine these - these people.



5 I also believe Your Honour, that my two days of cross-examination that just ended were to fulfil the Court's November 2<sup>nd</sup>, 2009, order but on the second day, Mr. Ranking and Mr. Silver announced that they were forbidding me to answer questions regarding the fulfilling of the November 2<sup>nd</sup>, 2009, order. I didn't understand this at all.

10 And - and you know, I was denied many attempts to fulfil your order but I believe that said Your Honour, I believe the order has been fulfilled. I had brought today a sample order that I hoped Your Honour would at least look at and entertain cause you could end this thing today I thought. I  
15 intended to give it to you, Your Honour. May I - may I do that?

THE COURT: I saw it in the materials.

MR. BEST: All right, sir.

20 THE COURT: But I'm not granting it. I can tell you that right now.

MR. BEST: Very good, Your Honour. Well, that's what I wanted to say Your Honour, but once again, I also do appreciate the mediation judge and well who knows, and I thank you very much for hearing me  
25 out. I don't have a lawyer Your Honour, and that's another whole thing and I'm not very well, so.

THE COURT: Well, I've heard about that before. Thank you.

MR. BEST: Thank you very much, sir.

30 THE COURT: What about the costs? You didn't answer that, the costs issue raised by Mr. Silver.

5 He's saying in the prior application Mr. Ranking  
and Mr. Silver said they would like costs that I  
ordered on January 15, 2010, paid to their clients.  
They both made that application. I've not granted  
that application previously but now they're saying  
all right, don't - don't order the costs be paid to  
our clients but order that they be paid into Court,  
posted into Court, pending the hearing of this  
10 motion and then if you're successful the money is  
returned to you.

MR. BEST: I didn't understand that, sir. I'm  
sorry.

THE COURT: I've explained it so now you can tell  
me what you have to say about that.

15 MR. BEST: Well sir, I - I don't have that money  
and the other thing that I would say sir, is that  
it is true that Price Waterhouse Coopers East  
Caribbean Firm does not exist as a legal entity and  
it never has. It's a serious matter.

20 THE COURT: You're really not coming back to the  
issue that I want to deal with.

MR. BEST: Well, what I'm saying ...

THE COURT: You are rearguing matters that a) that  
you put into an affidavit. I told you today was a  
25 scheduling matter but now that counsel brought up  
yet another matter, that is, I had made an order  
for costs and they're asking that those costs be  
paid into Court. That's a previous order. Not the  
current proceedings.

30 MR. BEST: Right, sir. I'm just saying that that's  
...

THE COURT: If you're not successful on this application, I can't make the decision now but there may very well be another costs order but they're not asking for that. What they're asking for is payment of the costs that relate to the January 15<sup>th</sup> order.

MR. BEST: I understand that now, thank you.

THE COURT: Payment into Court.

MR. BEST: Sorry Your Honour, I didn't hear that.

THE COURT: That they be paid into Court. Not to be paid to the defendants - to the respondents themselves but to be paid in Court by you.

MR. BEST: All right, Your Honour. Well first of all, I would mention Your Honour, that when Your Honour made the costs you believed that Mr. Ranking's clients really existed and they're also from Barbados or wherever they are and they're far away and ...

THE COURT: Maybe I did and you haven't satisfied me otherwise but that's - so right now I made the order on a proper basis, I believe, and nobody appealed my order so.

MR. BEST: Your Honour, I don't have such money and I'm going to come here and I'll come here for the hearing Your Honour, and I will and I don't see it would do any harm to wait until the hearing to also look at the costs and everything. Who knows what will happen at the mediation? I just don't have it, Your Honour. I'm just - you see my suit. I wear the same suit all the time.



THE COURT: Let me hear - is there - I mean did you derive any information - you know what I'm concerned about.

MR. RANKING: There may be ...

THE COURT: If I make that order - if I make that order and he doesn't make the payment, then his whole application is in jeopardy and I can hear the argument coming forward now, well he didn't comply with your order about costs so therefore he can't purge his contempt, and that's what I'm concerned about.

I have to - I think at this point I have to hear this for his to purge his contempt because I have sentenced him to jail.

MR. SILVER: I appreciate all that and I agree that and I didn't mention this but - but the - his evidence is that Mr. Greenspan, he was able to somehow pay him \$60,000 for the work that he did and so it's not just the Staples and the experts. There's a lot of big money being spent and so for him to stand up and say I don't have the money is a little bit inconsistent with Mr. Greenspan getting \$60,000 and all these - having said that, there is another way that we can deal with this, the same way as I'm suggesting in respect of if we're successful in getting a cost award on this application, which is to make it a term of lifting the bench warrant.

5 But Your Honour, there's a great concern on my side  
that a lot of money is being spent to respond to  
this application, and I'll make my submissions  
about the merits of it at the right time, not  
today, and that - and that the only sanction to  
assist the respondent having to respond to the  
application and the nature of the - of the  
allegations being made, not just against me and my  
firm and Mr. Ranking and his firm, but my clients  
10 and - that's going to lead to a whole bunch of  
costs submissions as you can well imagine, and all  
I'm trying to do is to do what I can to ensure that  
if I'm - if we're right and we get those costs  
awards, they're paid.

15 And I'm repeating myself but there seems to be a  
lot of money and it's available to bring this  
application on and it is a prior costs award and  
you know, you'll remember, I'm sure you deal with  
20 it more, but costs of a contempt proceeding, the  
Court views it as in fact, you awarded substantial  
indemnity because you recall the Court has said  
previously that when parties come forward and seek  
to enforce orders that the Court makes, it's really  
25 helping the administration of justice do its work  
because you don't have the resources to ensure that  
every order that's made is enforced and it's only  
through counsel and their clients that come forward  
and the Court recognizes that with a substantial  
30 indemnity availability and the costs that I'm  
seeking to have awarded are exactly that; awarded

on a substantial indemnity basis recognizing that to some extent not only are we advancing our clients' interest but we were assisting in the administration of justice in ...

5 THE COURT: But Mr. Silver, there's nothing in any order that I've made in terms of staying the bench warrant that prevents you, or any other counsel, pursuing your costs against Mr. Best. I know this is the easiest mechanism but I'm also looking  
10 forward and seeing the - what could be the result of such an order not being complied with and then the position taken on the hearing date. I'm not saying I'm not sympathetic to your position.

MR. SILVER: I understand.

15 THE COURT: I am, but I also have to step back as a judge and say the contempt notice before the Court, he's asking that his contempt be purged. To create a barrier that may prohibit him from purging that contempt is just not something I find I'm  
20 comfortable with.

MR. SILVER: Even though the contempt includes the failure to pay the costs award?

THE COURT: Even though it includes.

MR. SILVER: I appreciate that. I understand it  
25 and I appreciate it.

THE COURT: All right.

MR. SILVER: Thank you, Your Honour.

MR. BEST: Thank you, Your Honour.

THE COURT: Don't thank me because there will still  
30 be a day of reckoning in terms of those costs. I can tell you I'm not dealing with costs unless



5 somehow, unless, unless somehow in the course of  
that judicial mediation that cost issue is resolved  
which is up to you. That's not something I'm  
listening to. I'm dealing with a single matter,  
contempt, and even if costs are related to that  
contempt, I'm listening to your application to be  
purged of the contempt.

10 So another good reason for many reasons to be  
discussed at a judicial mediation. I leave it  
there. All right. I've made the following  
endorsement:

15 **RULING**

**SHAUGHNESSY, J. (Orally)**

20 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 date prior to April  
30, 2013. Mr. Best and counsel to contact the  
trial coordinator within five days to arrange the  
judicial mediation which all parties and Mr. Best  
have jointly requested.

25 Mr. Best wishes to cross-examine Mr. Silver and Mr.  
Roman and Mr. Ranking and their clients. The  
application is denied. Mr. Best has not  
demonstrated on any reasonable or principled basis  
30 why such an order should be granted.

Mr. Ranking and Mr. Silver now seek an order that Mr. Best pay into Court the costs ordered by me on January 15, 2010. This is a variation of a prior request that costs be paid to the respondents directly.

I find it is necessary not to make such an order at this time so that Mr. Best will be able to make the argument to purge his contempt.

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

Costs of today reserved to the hearing date of April 30<sup>th</sup>, 2013.

MR. RANKING: Your Honour, if I could also ask you to supplement that endorsement, I have jotted out a timetable that I think will be helpful.

THE COURT: All right.

MR. RANKING: I think it would be very helpful if - let me just give you the overview so Mr. Best can hear it.

THE COURT: Yes, I forgot about the refusals.

MR. RANKING: What I seek is, and I'm happy to give you - these aren't fixed in stone but it seems to me that a month for Mr. Best to answer the refusals and advisements and when I say a lot of advisements

virtually 80% of the questions were taken under advisement.

MR. SILVER: There were a few undertakings.

MR. RANKING: And there were undertakings as well so the refusals, advisements and undertakings I would ask be answered within a month which would be Thursday, February 28.

THE COURT: Just a minute. Refusals, undertakings and questions under advisement ...

MR. BEST: Your Honour, if I could just ask for just a couple more weeks more than that. I'm still very, very sick, Your Honour.

THE COURT: Just a minute though. Today is the 25<sup>th</sup> of January.

MR. BEST: Right.

THE COURT: So for all intents and purposes we're talking about 60 days before the hearing date, no 90 days. Ninety days.

MR. RANKING: Right.

THE COURT: All right. So in that intervening period, you also have the mediation, the judicial mediation or judicial hearing pre-trial conference, whatever we want to call it, pre-hearing conference so that's got to take place.

MR. BEST: If it were mid-March Your Honour, it - it - just give me a couple of weeks to recover, Your Honour. I'm really sick.

THE COURT: Fine.

MR. RANKING: And if it's peremptory as well.

THE COURT: On or before?

MR. RANKING: Friday, March 15<sup>th</sup>.



THE COURT: Friday.

MR. RANKING: But what my friend gets with one hand, he loses with the other because what I was then going to say is that it is only fair to this Court that you get our responding factum at least two weeks before the hearing date which I say, and my friend and I are committed to, to providing our factum by April 16<sup>th</sup> but for that to occur, I think Mr. Best has to get us his factum by March 29<sup>th</sup> so if my friend needs an additional two weeks, that's fine but we need at least given the volume of materials that my friend sends, and the fact that he will have a very lengthy factum, I would like to have my friend's heels held to the fire and I will grant him the 15<sup>th</sup> of March if that's the time he needs for his advisements, but I then would ask that he deliver his factum by the 29<sup>th</sup> of March so that we would then have two weeks to deliver our factum by the 16<sup>th</sup>.

THE COURT: What date is it you're proposing?

MR. RANKING: It's the Friday the 29<sup>th</sup> of March for Mr. Best's factum.

THE COURT: Mr. Best, do you agree?

MR. BEST: Your Honour, I don't even know what a factum is.

THE COURT: Well you've certainly got materials. That draft order looks as good as any counsel I've ever seen draft, so you'll find out what a factum is. I'm pretty satisfied after I looked at your affidavit of materials, the sections of the Criminal Code. I'm not saying that your affidavit

is correct. It transgresses most of the rules that I know about affidavits in the sense that you're arguing your case, but the factum is a statement of a narrow - of all the materials you've delivered it is a concise statement of the facts as you state are related to the application. The issues that you say the Court must decide and the law that is applicable, the decisions that are applicable.

That's it I think in as brief a compass as I provide you, but I'm quite satisfied after I looked at the materials and that you certainly have access to some resource that is giving you excellent - or is giving you I'll just say direction on these matters.

MR. BEST: Sir, that's all my stuff. That's mine and mine only, Your Honour.

THE COURT: You seem to have a great ability and facility with it. Applicant's factum to be served and filed by March?

MR. RANKING: March 29<sup>th</sup>, Your Honour.

THE COURT: March 29<sup>th</sup>, 2013.

MR. RANKING: And then we will deliver our factum.

THE COURT: Respondents ...

MR. RANKING: By Tuesday, the 16<sup>th</sup> of April which will be two full weeks before the hearing, Your Honour. I have one other request.

THE COURT: Just a minute. To serve and file their factums by April 16<sup>th</sup>.

MR. RANKING: Yes Your Honour, that's a Tuesday.

MR. BEST: Your Honour?

MR. RANKING: The only other ...

THE COURT: What's the problem?

MR. BEST: No problem, Your Honour. There was just one thing I forgot. I was going to ask for permission to do a shall we say, a concise affidavit of the whole security issue so that Your Honour would have a comprehensive ...

THE COURT: What security issue?

MR. BEST: My security issues.

THE COURT: No, no. You've got volumes of material related to it but - so you know, I'm not putting any more materials or directing that any more materials. Cross-examinations have already taken place and I say to you, you want to argue those issues, it seems to me if you are the party in this proceeding, you would know and the history would reflect just how much time and how much of a lengthy hearing went on, brought by Mr. MacKenzie and where I made findings on very substantive material relating to the security issues in this case.

This has all been before the Court. It's nothing new but I'm not - no, I'm not granting any more affidavits so right now I've set up that you have your factum served and filed by March 29<sup>th</sup>, 2013. Respondents to serve and file their factums by April 16, 2013.

MR. RANKING: Yes Your Honour, and the only other thing I would ask and I think this is an exceptional request in some respects but it's



consistent with the Court of Appeal; can we limit the factums given the volume of material we see and the fact that we only have one day? I think it would be judicially efficient and pragmatic to limit the factums to 30 pages.

THE COURT: Do you agree?

MR. BEST: I have no knowledge of this, Your Honour. I didn't even know what a factum was, so I'm in Your Honour's hands. I'll do whatever Your Honour orders of course, Your Honour.

MR. RANKING: In fact, if you want a shorter page length Your Honour, I'm more than happy to comply.

THE COURT: I've made a further endorsement; factums to be limited to 30 pages.

MR. RANKING: Yes, Your Honour.

THE COURT: That doesn't mean if there's certain caselaw you refer to, obviously case authorities are not ...

MR. RANKING: Right.

THE COURT: ... in that scope. I'm explaining this to Mr. Best. If there's certain law that I should be looking at, you present that in a different book of authorities and you're not limited. Your factum refers to those legal authorities and it has no - the authorities themselves are not limited by that 30 page requirement.

You realize Mr. Best, the factum is of great assistance to me because it focuses where we're going on what issues and I can then readily understand the arguments being presented. The

factum is a - is in effect, a summary of your position on a) the facts or the facts as you allege, the issues that have to be decided and the law that is applicable. All right. Anything else?

5 MR. RANKING: No, Your Honour. Thank you.

THE COURT: Anything else, Mr. Best?

MR. BEST: I can't think of anything. I'll probably think about it the moment I walk out the door Your Honour, but thank you.

10 THE COURT: All of the above dates are peremptory. You can get a copy of my endorsement in a minute. It's here in Oshawa, this courthouse, 9:30. You can get a copy of my endorsement. I hope you can read it. The Registrar can assist you in  
15 deciphering my handwriting. All right. We'll see you April 30<sup>th</sup>.

MR. BEST: Your Honour, so I'm waiting here for a copy of the endorsement?

THE REGISTRAR: Yes, sir.

20 MR. BEST: Yes, sir.

\* \* \* \* \*

Barbados v. Cox, et al  
January 25, 2013

FORM 2  
Certificate of Transcript  
Evidence Act, subsection 5 (2)

I, Deborah Tinmouth, certify that this document is a true and accurate transcript of the recording of Nelson Barbados v. Richard Cox, et al in the Superior Court of Justice held at 150 Bond Street, Oshawa taken from Recording No. 2812 206 400668 20130125 Certified on Form One

January 27, 2013

Deborah Tinmouth  
Court Reporter

Transcript ordered.....January 25, 2013  
Transcript completed.....January 27, 2013  
Transcript approved for release.....January 27, 2013

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