

SUPERIOR COURT OF JUSTICE

NELSON BARBADOS GROUP INC.

- and -

RICHARD COX *et al*

BEFORE THE HONOURABLE JUSTICE SHAUGHNESSY,
AT THE COURTHOUSE IN OSHAWA, ONTARIO,
ON TUESDAY, APRIL 30, 2013.

APPLICATION BY MR. BEST TO PURGE CONTEMPT ORDER

APPEARANCES:

D. Best

in Person.

L. Silver

Counsel for Kingsland Estates.

G. Ranking

Counsel for PricewaterhouseCoopers.

i
Table of Contents

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
Preliminary motion by Mr. Best	9
Ruling on Preliminary Motion	18
Application to Purge Contempt Order	
Submissions by Mr. Best	21
Submissions by Mr. Silver	86
Submissions by Mr. Ranking	123
Reply Submissions by Mr. Best	140

<u>INDEX OF EXHIBITS</u>		
<u>EXHIBIT NO.</u>		<u>PUT IN ON PAGE</u>
A	Draft Order Prepared By Donald Best	151
B	Proposed Draft Order Prepared By Respondents	151
C	Affidavit Of Donald Best Sworn April 29, 2013	152
D	Answers To Undertakings, Under Advisements And Refusals By Donald Best	152

Legend:

(ph.) indicates spelling is unknown and therefore has been spelled phonetically

[sic] Latin term meaning "thus written"
Indicates a word obviously misspoken in court

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

TUESDAY, APRIL 30, 2013

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

(9:46 AM)

THE COURT: All right, Mr. Best, are you ready to proceed?

MR. BEST: Your Honour, do I have to stand when talking to you?

THE COURT: Yes.

MR. BEST: Yes. Okay, Your Honour, I thought so.

THE COURT: I expect counsel to and you will do as counsel. So my question was are you ready to proceed?

MR. BEST: Your Honour, I'm not. I'm not ready to proceed. With great respect, Your Honour, I am overwhelmed. I'm...

THE COURT: You have made that submission before. This is the date that was set months ago. You have raised the issue about being overwhelmed, not being a lawyer, so I take it that's just a continuation of the same position you have advanced before, correct?

MR. BEST: Well, Your Honour, it's - I am not a lawyer. I don't even know the rules of the game, Your Honour, and I'm doing the best I can.

THE COURT: You seem to have some knowledge from the affidavit material that I looked at. That's fine. You are ready, Mr. Ranking?

MR. RANKING: We both are.

THE COURT: Mr. Silver?

MR. SILVER: We are, Your Honour.

THE COURT: All right. Now, I want to raise some preliminary matters that I expect to be answered here today and so I am speaking to everyone. You

April 30, 2013

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 can have a sit while I'm speaking.

2 **MR. BEST:** Thank you, Your Honour.

3 **THE COURT:** I have read the applications. I have
4 read the affidavits. I would be foolish in the
5 extreme if I suggested that I could digest all
6 the appendixes to the affidavits which now
7 comprise at least two banker boxes of material,
8 but I have certainly read the affidavits and I
9 have read in great detail the factums of Mr. Best
10 and the joint factum of Messrs. Ranking and
11 Silver on behalf of their respective clients, all
12 right, and I have spent considerable time on this
13 in getting ready. I am not going to make much
14 more of a comment on that but here is where I
15 want to make sure.

16
17 First, I am going to set up the time allotments
18 because it was very clear from one of my
19 endorsements today is the day, the only day. So
20 we will discuss that very shortly and then we
21 will start proceeding. We will start hearing the
22 submissions of Mr. Best.

23
24 In your joint factum, and I am looking at
25 Mr. Silver and Ranking, I want much more clarity
26 about page - I guess it is paragraph 49, page 17
27 of your factum. It was open-ended. There's a
28 comment: "Documentary production: However, it
29 remains to be determined whether it is in
30 compliance with orders"

31
32 Now, that is my rough hand notes. Let me finish

April 30, 2013

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 here and then I will hear from you. I have got to
2 know about that. I don't want any - if I know all
3 the facts, and I think I must have come on to
4 this file in 2007, 2008 and I have written four
5 decisions on it - I think I know all of the facts.
6 So, I want that answer.

7
8 Mr. Best, in his factum, says he has answered all
9 the questions. Now I didn't give you his
10 reference but I am sure you can find it in his
11 factum but that is what he says. He raises the
12 issue of solicitor/client privilege and how it
13 has been violated and how many other people
14 really not associated with him at all but it
15 seems to be associated with Mr. McKenzie and his
16 law firm have been violated, but it is the answer.
17 The matter I am focused on is when Mr. Best says
18 in his factum that he has answered all the
19 questions, notwithstanding what he calls
20 solicitor and client breach. I want to be taken
21 to that.

22
23 Again, at paragraph 55 of the respondent's factum,
24 it says that Mr. Best "has likely not produced
25 all documents". So bluntly, gentlemen, I am
26 saying has he or has he not? That is what I want
27 to know about.

28
29 Then the factum says he has not produced
30 documents that relate to the November 2nd and
31 December 2nd order. So, sorry, what year is that?
32 That is two thousand and...

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 **MR. SILVER:** Nine.

2 **THE COURT:** Nine. And the other issue that
3 Mr. Best raises that I want answers to, and I
4 think I know the answer but I don't know if it is
5 in the - I can't see how it is responded to in
6 the materials and I realize the factums had
7 deadlines. The affidavits had deadlines. You had
8 to move things in quickly. I get that. But that
9 works from both sides.

10
11 But in his factum, Mr. Best argues that the costs
12 were paid previously and now there is double
13 dipping. That has to be answered. I am not saying
14 those are the only issues but those are the ones
15 that - what I call my side sheet issue summary
16 that I just want you to be alerted to that I
17 expect, in due course, to hear from you.

18
19 Now, we have roughly from now until one o'clock
20 with at least a 15, 20 minute break for staff and
21 then we will have this afternoon to resume at
22 2:15. I would like to be finished by 4:30 and
23 certainly no later than quarter to five and you
24 know that there is an afternoon break of another
25 15, 20 minutes. So, I have said there will be one
26 day and there will only be one day. That is why
27 we have factums. So, Mr. Best, I am going to ask
28 you, leading off, how long you expect to be in
29 your submissions.

30 **MR. BEST:** Your Honour, most respectfully, sir, my
31 submissions, to be full and complete, would be
32 two to three days.

April 30, 2013

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 **THE COURT:** It is not going to be that, Mr. Best.
2 So, you know what, it is not going to be that.

3 **MR. BEST:** Your Honour, I am making my point.

4 **THE COURT:** You are making your point but you have
5 also been told well in advance that this is one
6 day. I have explained my commitments. I am here
7 at...

8 **MR. BEST:** Your Honour, I...

9 **THE COURT:** ...having squeezed this in at a time
10 that I am conducting also a murder trial and...

11 **MR. BEST:** Your Honour, I understand, you're...

12 **THE COURT:** So you know...

13 **MR. BEST:** Oh, sorry.

14 **THE COURT:** Mr. Best, so you gave me your answer.
15 It looks like I am going to have to allot the
16 time and you are going to have to comply with it.
17 That is why we have factums. Factums are to focus
18 the case and focus the issues and Mr. Best, even
19 if you are representing yourself, the rules don't
20 change for you. I hope I am fair to both sides
21 but I will be just as difficult if Mr. Ranking
22 and Silver got up and said, "We need two to three
23 days to respond." It is not going to happen.

24 **MR. BEST:** Your Honour, may I speak to that,
25 Your Honour?

26 **THE COURT:** Yes.

27 **MR. BEST:** I understand what you've...

28 **THE COURT:** Quickly, please, though. You are using
29 up your time here.

30 **MR. BEST:** I heard you, Your Honour. Someone else
31 has recently said it would take two or three days.
32 You, yourself, said it would take another judge

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 two or three days to...

2 **THE COURT:** I said another judge.

3 **MR. BEST:** ...understand...

4 **THE COURT:** You know, Mr. Best, I really don't
5 appreciate you twisting my words.

6 **MR. BEST:** Oh, I didn't mean to...

7 **THE COURT:** As I read in the factum, everything I
8 said...

9 **MR. BEST:** ...upset you sir.

10 **THE COURT:** You have parsed the comment and then
11 you turn it around. So another judge would take
12 longer to get up to speed before he came into the
13 court but I am the judge. This is the day. We
14 don't have to worry about that, so let's move on.

15 **MR. BEST:** Very well, sir. Your Honour, very
16 quickly, I have - I am providing to the court a
17 suggested court order, with great respect, Your
18 Honour, any time today...

19 **THE COURT:** Well, don't you already have that in
20 the materials? I saw the draft order.

21 **MR. BEST:** Well, this one's a little different
22 maybe.

23 **THE COURT:** Oh, this is different. Let me see this
24 one.

25 **MR. BEST:** Yes.

26 **THE COURT:** Have they seen this before, counsel?

27 **MR. BEST:** No, I'm just giving it - yes, they have
28 seen it before, Your Honour, with a different
29 date on it. I believe that was the only
30 difference.

31
32 Your Honour, before we start this morning, there

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 is something that the court probably wants to
2 hear about and deal with first and it's very
3 respectful, Your Honour. I believe the court has
4 to deal with it first. Number one, here is a copy
5 of a very recent decision by the Ontario Court of
6 Appeal, *R.v.Salmon*. The gentlemen already have this.

7 **MR. RANKING:** We're getting it right now.

8 **MR. BEST:** And Your Honour, this says that the
9 court has to stop the proceeding because the
10 lawyers, Mr. Ranking, Mr. Silver and Mr. Roman,
11 most respectfully, Your Honour, they lied to and
12 deceived the court...

13 **THE COURT:** All right, now wait a minute. You are
14 in to the exact argument that you are making in
15 the entire application itself. I know that. I
16 have read your affidavits. I have read your
17 factum. I know where you are going so there is an
18 Ontario Court of Appeal decision. I am trying to
19 just delegate now, right now, and I am going to
20 control this process. We are going to decide how
21 much time is to be given. So just have a seat
22 then for a second, Mr. Best.

23 **MR. BEST:** Well, there is one other important
24 point, if I could, Your Honour. Number two,
25 Your Honour, I was recently officially advised by
26 the Durham Regional Police that in December of
27 2009, over a month prior to my January 15th, 2010
28 trial *in absentia*, a Durham Police court
29 constable performed a secret, undocumented
30 investigation into me, Donald Best, in all
31 likelihood, in assistance to the court.

32 **THE COURT:** I have no idea what you are talking

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 about.

2 **MR. BEST:** I know, Your Honour. I have an
3 affidavit here. I just found - this is brand new
4 evidence. I was just advised of it. This
5 affidavit was actually sworn yesterday.

6 **THE COURT:** Let me see it.

7 **MR. BEST:** Yes, Your Honour.

8 **THE COURT:** Have you got copies for the others?

9 **MR. BEST:** Yes, I do, Your Honour. Your Honour, I
10 was advised by Sergeant Rushbrook of the Durham
11 Regional Police, Professional Standards Unit,
12 that in December 2009, over a month prior to my
13 January 15th trial in absentia, a Durham Police
14 court constable performed a secret, undocumented
15 investigation into me, in all likelihood, in
16 assistance of the court. I am advised by
17 Sergeant Rushbrook that this investigation was
18 entirely undocumented and that no official notes,
19 reports or records of this court police
20 investigation exist with the Durham Regional
21 Police or at the court, including in the
22 administrative records of the court in Barrie or
23 Oshawa or in the Nelson Barbados Group Ltd. Court
24 file and court transcripts. An undocumented,
25 secret, private or on-the-side process, whatever
26 it may be called, and a court police
27 investigation of a person facing potential jail
28 term based on allegations of civil contempt that
29 may or may not have occurred at a future date
30 would mean that the entire hearing was polluted
31 to the point where there has been a miscarriage
32 of justice and with great respect, Your Honour,

April 30, 2013

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 great respect, it probably means that this court
2 had to disqualify itself then and has to now.

3 **THE COURT:** Why would you say that?

4 **MR. BEST:** Sorry, Your Honour?

5 **THE COURT:** Don't use those words "respect". It's
6 insulting to me. What this is insinuating is that
7 I...

8 **MR. BEST:** No, sir.

9 **THE COURT:** ...in presiding over this case - well
10 you said "The Court".

11 **MR. BEST:** No, sir, I mean the big small "c" court,
12 Your Honour. In no way am I saying that
13 Your Honour - no way, Your Honour, but I'm just
14 repeating what I have been told officially by the
15 police and I've been told that the undocumented
16 court police investigation of me was secret,
17 private, on-the-side. It was only revealed when
18 the Commissioner of the RCMP commenced an
19 internal audit concerning access to the Canadian
20 Police Information Centre computer database known
21 as CPIC.

22
23 The facts that were explained to me recently by
24 Sergeant Rushbrook and my own experience as a
25 police sergeant and veteran of internal
26 investigations call for an immediate and thorough
27 examination of this court process and court
28 police investigation. The fact that no electronic
29 or paper records, official or otherwise, of this
30 investigation exist with the Durham Police, such
31 as police notes, files, documents, occurrence
32 numbers - nothing exists in the court file and

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 Your Honour, that speaks further of a cover-up or
2 a conspiracy in order to prevent a full hearing
3 and it adds to already serious concern that this
4 has been a miscarriage of justice and abuse from
5 the beginning.

6
7 I am also informed - and this is incredible,
8 Your Honour. I am also informed by Sergeant
9 Rushbrook that this same type of undocumented,
10 secret, private or on-the-side court police
11 investigation in assistance to the court, has
12 also been done on occasion....

13 **THE COURT:** What do you mean by assistance to the
14 court?

15 **MR. BEST:** Well, I'm - I'm saying what the police
16 have officially advised me, sir.

17 **THE COURT:** I don't care what the police
18 officially advised you.

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

20 **THE COURT:** You are insinuating - you are
21 insinuating that somehow I have been involved in
22 the process.

23 **MR. BEST:** I am not insinuating you at all, sir.

24 **THE COURT:** You use the word "court". Who is the
25 court if I am not the face of the court?

26 **MR. BEST:** I see, sir. I see your point.

27 **THE COURT:** You can talk about the
28 administration...

29 **MR. BEST:** And I want to make it absolutely
30 clear...

31 **THE COURT:** The police administration is a
32 different story but I am very sensitive to that

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 type of an allegation.

2 **MR. BEST:** I am not making that kind of an
3 allegation at all, Your Honour.

4 **THE COURT:** All right, just continue.

5 **MR. BEST:** I am repeating what the police have
6 told me and they've said that this court police
7 investigation in assistance to the court has also
8 been done on occasion to other accused persons
9 who, like myself, have not yet been found guilty
10 or even come to trial and this is undocumented,
11 Your Honour. This is new evidence that has just
12 come to my attention and I placed this in an
13 affidavit which I have given you a copy of.

14
15 Your Honour, this secret investigation, we don't,
16 at this point in time, know how deep it went or
17 what came of it, who requested it, who received
18 the product of the investigation but a secret
19 investigation into an accused in assistance to
20 the court a month prior to the accused's trial
21 should disqualify any order that was made after
22 that.

23
24 The involved court officer - and I don't know the
25 involved court officer's name. That has not been
26 told to me. The involved court officer apparently
27 retired a few days after first being spoken with.

28 **THE COURT:** Don't read the affidavit to me. I have
29 read it.

30 **MR. BEST:** I'm not. I'm reading some comments I've
31 made, Your Honour.

32 **THE COURT:** Well, you are. You are reading it

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 because that is just what I've read.

2 **MR. BEST:** I see.

3 **THE COURT:** I have read it, sir.

4 **MR. BEST:** And...

5 **THE COURT:** Just make your point.

6 **MR. BEST:** Well, Sergeant Rushbrook states that
7 this Durham Police court officer was informed in
8 early 2009, a month before my trial, that the
9 Court would be issuing a warrant for my arrest
10 and incarceration on January 15th. That's just
11 what the police told me.

12
13 Currently, Sergeant Rushbrook does not know who
14 provided my name, date of birth, or other
15 information to the court officer or what the
16 court officer did with the product of the
17 investigation, whom he communicated that
18 information to. Sergeant Rushbrook does not know
19 the full extent of the December 2009 court police
20 officer's investigation into me.

21
22 Now, Your Honour, this is extremely serious and
23 it has ramifications, I know you'll appreciate,
24 that are much bigger than this case, especially
25 when we've seen the type of corruption that
26 happens in our justice system when, for instance,
27 a doctor, Dr. Charles Smith of the Centre of
28 Forensic Science, and also Mr. Ranking's expert
29 witness, Jim Van Allen, that together, they both
30 put innocent mothers into jail for the murder of
31 their babies. And in other cases, we've seen
32 police officers blatantly lying, fabricating

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

evidence that puts people in jail and Your Honour, with everything that this means - Your Honour, it's highly disturbing because an investigation was secretly done a month before my trial.

THE COURT: All right, now you are being repetitive.

MR. BEST: Well...

THE COURT: It is in the affidavit. Please don't repeat.

MR. BEST: Well, all right, Your Honour.

THE COURT: Time is precious here.

MR. BEST: A moment, please.

THE COURT: If you are just going to repeat your submissions, it doesn't help me. I heard it the first time and I have read it

MR. BEST: Your Honour, many questions remain unanswered: who initiated it, who received the product of the investigation. Was it by reports verbally or both? Who knew it happened? Who knew it happened afterward and remained silent to this day?

Now, I was told early by the trial coordinator that she knew I had not received all the documents in those days and I did not. Now I see that other things were happening, more serious than I thought. Your Honour, I respectfully submit that this matter is so serious that the court must stop the current proceeding immediately and reverse or stay the original January 15th, 2010 order.

THE COURT: All right, thank you. Who wishes to

15
Nelson Barbados v. Cox et al
Preliminary Submissions on Application

respond, Mr. Silver or Mr. Ranking?

MR. RANKING: I can respond, albeit briefly,
Your Honour.

THE COURT: I don't want to get off track here.
Remember I started out I wanted to allocate time.

MR. RANKING: I will make three very brief points.
I have no idea what my friend is talking about
and I can tell you that neither Mr. Silver nor I,
nor our respective clients, had anything to do
with any of the allegations set out in Mr. Best's
affidavit concerning Mr. Rushton,
Sergeant Rushton, that he has handed across today,
number one.

Number two, my friend, Mr. Best, has not
indicated in any of his submissions how the
investigation would impact the submissions that
were made that led to your contempt order or the
order that you made finding Mr. Best in contempt
and indeed, his affidavit, likewise, does not
show any connection other than some investigation
was conducted.

The third point, and I simply throw this out
entirely speculatively, you will recall that
Mr. McKenzie came to court with supposed agents
and security and other things because of these
alleged threats and who knows if in fact there is
any truth to this, why this investigation was
commenced, but it may have been commenced by
reason of other matters and other allegations
that were raised by Mr. McKenzie.

April 30, 2013

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 **THE COURT:** Well, that is speculative too.

2 **MR. RANKING:** Entirely speculative.

3 **THE COURT:** I am not getting into speculation.

4 **MR. RANKING:** So all in all, Your Honour, we are
5 here ready to go. I see no basis upon which my
6 friend has raised to suggest that this in any way
7 impugns the integrity of this court or the order
8 that you made and my respectful submission is
9 that we get to scheduling and move forward.

10 **THE COURT:** Any reply to what Mr. Ranking said? I
11 don't have to hear your arguments over again but
12 just any retort to what Mr. Ranking said.

13 **MR. BEST:** Thank you. Your Honour, first of all,
14 as I said and as mentioned in the affidavit, the
15 court officer isn't talking and there's a lot of
16 serious questions that remain unanswered. So for
17 Mr. Ranking and Mr. Silver to say it's not
18 important, I can tell you it's as if I was to be
19 tried for a murder and a month in advance of my
20 trial, the court staff and the court police were
21 told to build a scaffold for the hanging. That's
22 important, Your Honour. That's not the way our
23 justice system works. And this is not me talking
24 about what happened. This is, first of all, the
25 Commissioner of the RCMP and it's Durham Regional
26 Police and I've put what I know in evidence.

27 **THE COURT:** All right.

28 **MR. BEST:** Affidavit. Now...

29 **THE COURT:** No, no, not now. I asked you whether
30 you are replying to what Mr. Ranking says. This
31 is not a restatement.

32 **MR. BEST:** Well, I responded to his first point

Nelson Barbados v. Cox et al
Preliminary Submissions on Application

1 that he said and he's also assuring us that his
2 clients don't know and I would remind you that
3 Mr. Ranking's private investigator, by his own
4 admission in his affidavit, accessed secret
5 police records which he should not have, which
6 the people who hold those records, the police
7 association, say was a criminal offence that he
8 did it. That was...

9 **THE COURT:** That goes to the main argument that
10 you are making in this case.

11 **MR. BEST:** So, Mr. Ranking saying that his client
12 doesn't know is - you know, it carries very
13 little weight.

14
15 Your Honour, this is a fundamental undermining of
16 my right to have a fair trial at the time. I
17 think it needs to be fully investigated. There
18 are larger issues here, as indicated, with other
19 people. This is a - something that is so foreign
20 to how I think our justice system is supposed to
21 operate. It's like up in Barrie when they were
22 doing the investigations on those witnesses
23 perhaps. It's like when the officers lied and
24 that's another reason why this should be stayed,
25 which I haven't even gone into except to say that
26 it should be, but this investigation that was
27 secret a month before my trial, where it was
28 undocumented, no occurrence number, with all the
29 rest of that, Your Honour, it is so wrong,
30 suspicious and for - could only be for a negative
31 impact upon my trial that I believe that
32 Your Honour should stay this and it's that

Nelson Barbados v. Cox et al
Ruling on Preliminary Motion – Shaughnessy J.

important and that big. And that's what I ask
Your Honour to do and it's what I think should
happen, most respectfully, Your Honour.

THE COURT: All right, thank you.

RULING

SHAUGHNESSY J. (Orally)

At the commencement of what is an application by
Mr. Best to purge his contempt, he has, without
notice, produced an affidavit, his own affidavit,
sworn 29 April 2013, wherein he outlines that the
Durham Regional Police have conducted what he
describes as an "undocumented, secret, private or
'on the side' (whatever it may be called) court
police investigation" of him.

He alleges in paragraph five of his affidavit
that there has been a miscarriage of justice. He
states that, "There has been a miscarriage of
justice and probably means that this court had to
disqualify itself then and has to now."

He also, in paragraph one, alludes to the fact
that his undocumented police investigation was
made "most likely in assistance to the court".

In paragraph 12 to this affidavit, he states that
this "cover-up or conspiracy" was to prevent a
full hearing into his situation. Therefore, he
states that this proceeding should be terminated
and he has provided to the court a case called

April 30, 2013

Nelson Barbados v. Cox et al
Ruling on Preliminary Motion – Shaughnessy J.

1 *R. v. Salmon* on the CanLII copy, a recent decision of
2 the Ontario Court of Appeal, March 28, 2013.

3
4 The first paragraph indicates that this was the
5 trial judge staying 17 charges against the
6 respondent for a variety of offences on the basis
7 of "police fabrication of evidence such as he
8 found occurred in this case, so clearly
9 contravened fundamental notions of justice and
10 undermined the integrity of the criminal judicial
11 process..."

12
13 Neither the *Salmon* case nor Mr. Best's affidavit
14 produced this morning is relevant to the matter
15 in which I am presiding.

16
17 Mr. Ranking, not having prior notice, nor
18 Mr. Silver having prior notice, have stood up and
19 said they have no idea what Mr. Best is talking
20 about, that neither they nor their clients have
21 been involved in any conspiracy or cover-up as
22 alleged in this most recent affidavit.

23
24 I reject the information and material as being
25 irrelevant to the proceeding I am dealing with.
26 If Mr. Best has any complaint, it must be against
27 the Durham Regional Police but it is unrelated to
28 the very issue before me and that is whether
29 Mr. Best is able to purge his contempt.

30
31 So we are proceeding. That is my ruling on that
32 matter.

April 30, 2013

1 Now, we have spent roughly half an hour on this
2 issue. I want to divide up the time. I want to
3 over to - and be fair about this - Messrs.
4 Ranking and Silver as to how we divide up the
5 time.

6 **MR. RANKING:** Your Honour, we have spoken about
7 that and I think we can fairly say that our
8 collective submissions will be no more than two
9 hours and we can likely be shorter than that.

10 **THE COURT:** I would like it shorter.

11 **MR. RANKING:** All right.

12 **THE COURT:** All right.

13 **MR. RANKING:** And so we're happy - we're in your
14 hands - if you split it up however you wish. We
15 are in your hands but realistically, we think
16 each of our respective submissions will be
17 45 minutes, but that is our best guess. We
18 haven't heard what Mr. Best is going to say but
19 certainly that's our best guess and we are in the
20 court's hands and happy to abide by whatever
21 ruling you might make with respect to the length
22 of time we have for our submissions.

23 **THE COURT:** All right. Well, Mr. Best, we are
24 going to begin now and I am going to give you two
25 and a half hours with a break. Then I will begin
26 with counsel in the afternoon. I may have to ask
27 the court staff, if need be, if we have to creep
28 into the time beyond the time we normally sit,
29 whether that is available. I understand there are
30 family commitments and issues but it would be of
31 assistance to me. I just thought I would send
32 that message out now so you can make inquiries

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 and come back to me.

2
3 All right, Mr. Best, begin. Please, sir, remember
4 what I told you. I read your affidavits, read
5 your factum.

6
7 **SUBMISSIONS BY MR. BEST ON CONTEMPT APPLICATION**

8 Your Honour, first of all, I would like to ask
9 your forgiveness to the fact that I am not a
10 lawyer. I don't know the rules.

11 **THE COURT:** Mr. Best, I am well aware of that.

12 **MR. BEST:** And I don't know what I'm doing, Your
13 Honour.

14 **THE COURT:** Unrepresented people appear in front
15 of me all the time, sir, so I understand that.

16 **MR. BEST:** All right, Your Honour.

17 **THE COURT:** I don't need apologies. I just need
18 your submissions

19 **MR. BEST:** I just don't want to upset the court or
20 make you angry.

21 **THE COURT:** You are not making me angry. I just
22 would like you to stay focused, sir.

23 **MR. BEST:** Your Honour, if I could mention about
24 the issue with the police investigation, that it
25 was the police who told me that it was likely
26 done, 99.9%, in assistance to the court. Now,
27 Your Honour, I...

28 **THE COURT:** What do you imply by that, sir?

29 **MR. BEST:** I did not mean you. It could have been
30 your court staff. It could have been - who knows
31 what?

32 **THE COURT:** My court staff, sir, are - I have the

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 finest individuals with me from the man,
2 Mr. Mills, who has been my - I am afforded as an
3 older judge the same court service officer and I
4 don't know what I would do if I didn't have him
5 day to day. The reporters are the very best. The
6 registrars are very discreet. I don't know who it
7 was back then. I don't know but I assume they are
8 the same quality of the individuals I have in
9 front of me today.

10 **MR. BEST:** I'm not saying it's any of these people
11 or anything, Your Honour. I don't know and the
12 police don't know.

13 **THE COURT:** Al right, but you have made that point.
14 I have told you it is not relevant to what I am
15 dealing with today. Please move on to the
16 essential arguments you have and remember that I
17 have read your factum. I know the issues that you
18 have raised. So what you should be doing is
19 highlighting to me those issues which you think
20 are the most persuasive in terms of what your
21 original application was. Please don't lose sight
22 of the application drafted by Mr. Greenspan and
23 what this is all about.

24 **MR. BEST:** Yes, Your Honour. The application was
25 to set aside the contempt order issued against
26 the applicant on January 15th, 2010. I am reading
27 from the application record, Notice of
28 Application. It is made on behalf of Donald Best,
29 the applicant herein, and it's to set aside - an
30 order setting aside the contempt order issued
31 against the applicant on January 15th and, in the
32 alternative, an order varying the contempt order

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 issued against the applicant on January 15th, and
2 an order staying the operation of the words
3 "pending" and "determination" and such further
4 order. That's what I'm trying to convince you to
5 do today, sir, is to set aside that order.

6
7 Now, just a moment, please.

8
9 Your Honour, we do have a brand new case from the
10 Court of Appeal and you are correct that it was
11 about police officers who lied and fabricated
12 evidence and upon that evidence, the court was
13 asked to convict that man and notwithstanding
14 that - I mean you read the newspaper and all the
15 rest of that. It was a procure of young
16 prostitutes and all sorts of things but
17 notwithstanding that, because evidence had been
18 faked, the court had been lied to:

19 *He stayed the proceedings on the basis that*
20 *the police fabrication of evidence such as*
21 *found occurred in this case, so clearly*
22 *contravened fundamental notions of justice and*
23 *undermined the integrity of the criminal*
24 *judicial process that it was necessary to*
25 *dissociate the court from the continued*
26 *prosecution of the case.*

27
28 And later on, paragraph 9, page 4 of the printout
29 I provided to you, it said that:

30 *A balancing of interests is apparent in his*
31 *finding that the police conduct in this case*
32 *was so egregious that only a stay could serve*

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 *society's interest in preserving the integrity*
2 *of the judicial system.*

3
4 Your Honour, it is my submission to you today
5 that this is the same situation we are facing
6 here only it's worse because the gentlemen who I
7 allege lied and misled the court are officers of
8 the court. They are people in positions of trust
9 and upon their evidence, their false evidence,
10 this court convicted me. Your Honour, it's my
11 intent right now to go into those lies and to
12 prove to you that those lies happened and that
13 they matter.

14
15 Now, Your Honour, I'm alleging and I know - I'm
16 trying to be as - I'm speaking very respectfully
17 here but I have to allege that Mr. Ranking and
18 Mr. Silver and Mr. Roman lied and deceived the
19 court in many ways and it was not just in
20 relation to that November 17th phone call and the
21 surrounding events of that phone call.

22
23 The first series of lies was actually evidence
24 submitted by the defendants and Mr. Ranking and
25 indeed Mr. Silver - his client submitted evidence
26 also, which was about the purported name of the
27 purported entity that was Mr. Ranking's purported
28 client and Kingsland's purported auditor
29 "PricewaterhouseCoopers East Caribbean Firm", all
30 of that in capitals.

31
32 That series of lies actually begins before the

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Nelson Barbados Group Ltd. case, as I will show
2 you. That series of lies in itself, in and of
3 itself, regarding Mr. Ranking's client does not
4 exist, as both the client and Mr. Ranking have
5 given evidence to the court, and I will show you.
6 That alone, I believe, would match the test in
7 *R. v. Salmon* and I have made extensive references to
8 that in my affidavit but there is new evidence
9 provided by Mr. Ranking himself on January 23rd,
10 2013 during my cross-examination, and we'll get
11 to that. He, in effect, confirmed that everything
12 I have been saying and everything others have
13 been saying, including Mr. Alair Shepherd, Q.C.,
14 about the fraudulent, non-existence of his
15 purported client is true. Mr. Ranking actually
16 confirmed that himself and Your Honour, his
17 continued - continued behaviour in this regard, I
18 very respectfully submit to the court,
19 Your Honour, is fraud upon the court in the face
20 of the court.

21
22 I'm not much of a lawyer, Your Honour, but I was
23 called the best fraud investigator in Canada by
24 the head of the Toronto Police Commission and
25 given a few awards and Your Honour, I will lay
26 that all out for you today.

27
28 Of course, Mr. Ranking could stop that right now
29 by standing up and presenting a registration
30 certificate in Barbados for his purported client,
31 "PricewaterhouseCoopers", new word "East", new
32 word "Caribbean", new word "Firm",

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Pricewaterhouse Coopers, new word "East", new
2 word "Caribbean", new word "Firm". He could do
3 that. He's had the chance and I will lay it out.
4 He can't do that because it doesn't exist. Yet he
5 still maintains that some entity formed four
6 years after the perjury, which is not the same
7 name, has something to do with what he has done
8 and his client has done for four years. And as I
9 mentioned in materials, it wasn't just - it
10 didn't just start with that. It also started with
11 the name of the company they used before and I'm
12 going to show that.

13
14 It's also about where the money went, Your Honour.
15 Mr. Ranking received over a million dollars in
16 costs and wherever it went, it didn't go to a
17 bank account PricewaterhouseCoopers East
18 Caribbean Firm. It did not.

19
20 So, Your Honour, I have - and I must apologize.
21 I've got some things for you in three-ring
22 binders only because, Your Honour, I - it was all
23 I was able to manage in the middle of the night,
24 2:00 p.m. last night. So I have one for each of
25 the gentlemen and one for the court.

26
27 If I could just have a moment here, Your Honour.

28
29 Your Honour, at Tab 1 of the compendium, which is
30 in the three-ring binder, called "Situation Two",
31 we have an affidavit of Philip St.Eval Atkinson
32 and this was signed - one moment here - in 2006.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Now, Your Honour, Mr. Atkinson says that "I am a
2 partner of PricewaterhouseCoopers (Barbados)"
3 and...

4 **THE COURT:** This is the Barbados action you are
5 referring to.

6 **MR. BEST:** Yes, sir, and Mr. Atkinson...

7 **THE COURT:** It's a separate action. You understand
8 that?

9 **MR. BEST:** Sorry, sir?

10 **THE COURT:** It is a separate action.

11 **MR. BEST:** Yes, it is a separate action.

12 **THE COURT:** It isn't even Mrs. Knox's action
13 against Deane Cox, Kingsland, and
14 PricewaterhouseCoopers. Is this the one that went
15 up the Privy Council?

16 **MR. BEST:** You will - I'm not sure about that, sir.

17 **THE COURT:** Go ahead. Go ahead.

18 **MR. BEST:** You will see that this affidavit and
19 the information from - it is actually spoken to
20 by Mr. Ranking and his client in affidavits
21 that...

22 **THE COURT:** All right, just take me to the point.

23 **MR. BEST:** I will, sir, but what I'm saying is at
24 this point in time, in an affidavit before a
25 court, over - with the same defendants, they're
26 saying that the name of their legal entity is
27 "PricewaterhouseCoopers (Barbados)" and Your
28 Honour, you'll see that that company doesn't
29 exist.

30 **THE COURT:** All right, just show me. Go ahead.

31 **MR. BEST:** Yes, Your Honour. You'll see that that
32 does not exist.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **THE COURT:** You understand that I got that issue
2 out of your factum, what you are raising now, and
3 I just want you to understand, though, in taking
4 me through it, I have read your affidavits and I
5 read your factum. So I am aware of what you are
6 saying on this issue. Just go ahead, though. What
7 I am saying to you is you don't have to provide
8 me with background. Just point me to what you say
9 are the inconsistencies or why you say there
10 isn't such an entity.

11 **MR. BEST:** Well, Your Honour, first of all, I make
12 a point that there's a reason why people use
13 false names and that these people, because it's
14 the same partner, as you will see - Mr. Atkinson
15 is a partner with Mr. Hatch and they're all in it
16 together and they habitually use false names. Now
17 there was also a little bit of legal kerfuffle in
18 Texas over the use of, you know, what is the real
19 name and this matters...

20 **THE COURT:** Do we have to get into that? Can you
21 not just take me forward on this particular
22 matter and leave Texas alone?

23 **MR. BEST:** Well, Your Honour, I apologize. I've
24 never done this before. I don't know what I'm
25 doing but I'm doing my best, Your Honour. I've
26 had no advice. I'm doing my best.

27
28 So the court can see that this group of people -
29 the court will see this group of people uses
30 false names and it matters because there's over
31 700 PWC entities in the world and you know, one
32 is not responsible for the work of other.

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 And there's also - and we'll get to it. There's
2 five or six entities having something to do with
3 Pricewaterhouse, something maybe, in Barbados and
4 they're all different from who Mr. Ranking says
5 his client is and who his people he works with or
6 his visible people. I hesitate to use the word
7 clients. His clients who are people, the people
8 who give him instructions.

9
10 So they're all different and that means that it's
11 important who sues whom. It's important who's
12 doing work. It's important where money goes and
13 so this sets the ground that
14 PricewaterhouseCoopers (Barbados) never existed,
15 never has, but they used it in a lawsuit and they
16 used it for other ways.

17
18 Now then we had Marcus Hatch in this case, Nelson
19 Barbados, and Mr. Ranking represented Mr. Hatch
20 and he was with him when he was cross-examined
21 and he was with him when he put in an affidavit
22 in this action. If we go to Tab 2, what we see,
23 just like the affidavit in the motion record that
24 Mr. Ranking put in in this case, that said that
25 the name of the defendant was wrong because when
26 we had started this case, we sued
27 PricewaterhouseCoopers (Barbados) because that's
28 who they said they were because that's what they
29 delivered in an affidavit. That's who they said
30 they were.

31
32 So, we believed them and we sued them but when we

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 did that, Mr. Ranking and his client,
2 Marcus Hatch, came and said, "No, you've got it
3 all wrong. It's "PricewaterhouseCoopers East
4 Caribbean Firm" and they put in an affidavit to
5 say that.

6 **THE COURT:** This is the cross-examination that I
7 take it took place in Barbados that I ordered, I
8 directed. This is all old material of
9 Mr. McKenzie representing Nelson Barbados...

10 **MR. BEST:** That's right

11 **THE COURT:** ...asking the questions and the
12 outline is there on the page.

13 **MR. BEST:** Right, and I have made...

14 **THE COURT:** So let's go on.

15 **MR. BEST:** I have taken the transcript and taken
16 some pages from it and you'll see here that I
17 have some quotes, where both Mr. Ranking and
18 Mr. Hatch assure me, my lawyer...

19 **THE COURT:** Mr. McKenzie

20 **MR. BEST:** Mr. McKenzie, that

21 "PricewaterhouseCoopers East Caribbean Firm" is
22 the proper legal entity, the proper legal name,
23 and that it's a member of PricewaterhouseCoopers
24 International Ltd.

25
26 The entire transcript focuses in many places on
27 the legitimacy of PricewaterhouseCoopers East
28 Caribbean Firm as a real entity. That's assured
29 by Mr. Ranking.

30 **THE COURT:** You have said that several times. You
31 have been on this issue now approximately half an
32 hour. I am saying to you, you are repeating.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **MR. BEST:** Well, Your Honour...

2 **THE COURT:** It is matters that are in your factum.
3 I think you should try to move forward and use
4 your time wisely. I can't control you and tell
5 you. I am just trying to assist you and say we
6 have been on this issue for approximately a half
7 an hour and if you are going to get to all your
8 points, you had better consider your time
9 allotment.

10 **MR. BEST:** Thank you, Your Honour. Again, I have
11 never done this before and I...

12 **THE COURT:** Well, I started out by telling you...

13 **MR. BEST:** Yes.

14 **THE COURT:** ...what time you have and the
15 importance of managing your time and your
16 submissions and also that I have read the
17 affidavits. I have read the factum.

18 **MR. BEST:** Then Tab 3, it's just an exhibit that
19 says how PricewaterhouseCoopers International is
20 structured and that each of the firms are
21 independent legal entities.

22 **THE COURT:** You made that point. It is the same
23 point as made at Tab 2.

24 **MR. BEST:** Sorry, Your Honour?

25 **THE COURT:** It is the same point, got it, at Tab 2,
26 Mr. Hatch's own words.

27 **MR. BEST:** Okay. Now, Your Honour, in my affidavit
28 attached as...

29 **THE COURT:** It is better if you tell me which
30 affidavit because I have them with stickers as to
31 dates. So the date it was sworn is the way I
32 refer to it.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **MR. BEST:** December 10th, Exhibit T.

2 **THE COURT:** Got it.

3 **MR. BEST:** This is - and I'd like you to go into
4 one, two, three, four - six pages in. You will
5 get a statement giving...

6 **THE COURT:** Six pages in?

7 **MR. BEST:** Six pages in of Tab 4.

8 **THE COURT:** Tab 4 or Tab T?

9 **MR. BEST:** Tab 4.

10 **THE COURT:** Just a minute. You said to me the
11 December 10th, 2012...

12 **MR. BEST:** Okay, I'm sorry, Your Honour, I didn't
13 clarify that. I'm still looking at my compendium
14 and at Tab 4 of the compendium, you will find
15 Exhibit T from my December 10th affidavit. I put
16 it in the compendium. I apologize I didn't make
17 that...

18 **THE COURT:** That's fine and then go in how many
19 pages?

20 **MR. BEST:** ...that clear. Well, if you go in two
21 pages...

22 **THE COURT:** Two pages.

23 **MR. BEST:** ...you will see "Statement of Notice to
24 the Partners".

25 **THE COURT:** Yes.

26 **MR. BEST:** And the names on there that I ask you
27 to look at down below, halfway, Marcus Andrew
28 Hatch, Philip St.Eval Atkinson. So they're
29 partners.

30
31 And then three pages from the back or however
32 many pages that is from the front that says

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 "Business Name Rules". Page number eight on Tab 4
2 of the compendium, "Business Name Rules".
3 statement giving notice of changes. You'll notice
4 the date in the top there, Your Honour, June 23rd,
5 2011 and it says that the partnership known as
6 PricewaterhouseCoopers, on June 23rd, 2011, and it
7 was Marcus Hatch - that's his signature there.
8 You can check that out - changed the name of the
9 firm to PricewaterhouseCoopers East Caribbean.
10 Now, once again "PricewaterhouseCoopers", new
11 word "East", new word "Caribbean".
12

13 This is the first time, in 2011, four years after
14 those affidavits were sworn in 2007 saying that
15 PricewaterhouseCoopers East Caribbean Firm
16 existed. This is the first indication we see of
17 anything like it, except that it's not the same.
18 It doesn't have "Firm" on the end, so it's
19 something similar but it's not the same. This was
20 in my December 10th affidavit, of course, and it
21 basically makes the point that, "Hey, this is as
22 close as it comes," four years after people were
23 testifying under oath that PricewaterhouseCoopers
24 East Caribbean Firm exists. Now, even if this
25 said "PricewaterhouseCoopers East Caribbean Firm",
26 it would still be four years after the offence of
27 perjury, obstruct justice, swearing a false
28 affidavit occurred.

29 Now, once again, I am pointing out this is in my
30 affidavit. Tab 5, my December 10th affidavit -
31 and that's important, that date, December 10th.
32 That's when I brought that up. On the 5th or

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Tab 5, rather, you'll see a number of Corporate
2 Affairs and Intellectual Property Office of
3 Barbados just indicating that there are so many
4 different firms down there having something to do
5 with PricewaterhouseCoopers. Perhaps some of them
6 are holding companies. Perhaps they have
7 different partnerships, who knows, but none of
8 them are "PricewaterhouseCoopers East Caribbean
9 Firm".

10
11 Tab 7, Notice of Appearance filed by Mr. Ranking
12 very recently on November 26th, 2012. That's after
13 years - years- of allegations and controversy as
14 to the fact that his client was not real, was not
15 registered and still they continue to say it was
16 and it was real and here it is here again. And
17 Your Honour will remember it took some doing to
18 get him to file that.

19
20 Tab 8, Alair Shepherd. Alair Shepherd indicates
21 that PricewaterhouseCoopers East Caribbean Firm
22 does not now exist as a genuinely registered
23 entity in Barbados, nor has it existed at any
24 time in the past. And that is also true on the
25 next page, paragraph seven, of
26 PricewaterhouseCoopers (Barbados). So, you know,
27 once again, we have a history of false affidavits,
28 lies in affidavits, in motions, in verbal
29 statements, in cross-exams and backed up by
30 Mr. Ranking.

31
32 Number 9 and number 10. On January 23rd, 2013...

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **THE COURT:** Well, nine refers to the Certificate
2 of Registration of PricewaterhouseCoopers on the
3 15th of October, 2003, right?

4 **MR. BEST:** Yes, that's the first one, yes, the 15th
5 of October, 2003, PricewaterhouseCoopers.

6 **THE COURT:** Yes.

7 **MR. BEST:** And that is that...

8 **THE COURT:** Now we are over to Tab 10.

9 **MR. BEST:** Right. That is a...

10 **THE COURT:** A Certificate of Registration.

11 **MR. BEST:** Right. You saw these before in my
12 Exhibit T file on the 10th. And here we have the
13 Certificate of Registration. Once again, the name
14 was created June 23rd, 2011. You will see that on
15 the next page and there's the stamp.

16 **THE COURT:** I see it.

17 **MR. BEST:** All right, and it's not
18 PricewaterhouseCoopers East Caribbean Firm. Your
19 Honour, these things matter. It matters and it is
20 extremely telling reading the transcript of
21 January 23rd, 2013 when Exhibit 32 and Exhibit 31
22 were introduced during my cross-examination by
23 Mr. Ranking. When he went to read this
24 certificate, Exhibit 32, which says
25 PricewaterhouseCoopers East Caribbean, he
26 verbally inserted the word "Firm" when he spoke
27 about it in the transcript and I called him on it.
28 I actually started laughing because, Your Honour,
29 back in December - and I'm going by memory here
30 so you'll have to forgive me, Your Honour, when I
31 quote you again. Maybe I should...

32 **THE COURT:** Maybe you should quote me accurately

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 and in context.

2 **MR. BEST:** All right. All right, then give -
3 you're right, Your Honour, and I'm doing my best.
4 Please give me a moment. I'm going to find it.

5
6 Your Honour, I'm going to ask for your indulgence,
7 Your Honour.

8 **MR. SILVER:** What is my friend looking for?

9 **THE COURT:** Yes, maybe they can find it for you
10 fast, Mr. Best.

11 **MR. BEST:** Well, Your Honour....

12 **THE COURT:** But tell me what you are saying I said
13 in December and you know, what matters is rulings
14 but you go ahead. What did I say?

15 **MR. BEST:** Well, you said that you were...

16 **MR. SILVER:** This is December 2012?

17 **MR. BEST:** I believe so. I think that's when it
18 was and Your Honour basically said, in regards to
19 my argument that PricewaterhouseCoopers East
20 Caribbean Firm didn't exist, that you were
21 unconvinced. You didn't say...

22 **THE COURT:** Well, you had better quote me.

23 **MR. BEST:** Something like that.

24 **THE COURT:** Yes, something like that.

25 **MR. BEST:** I want to get it right, Your Honour.
26 You know, let's...

27 **THE COURT:** You know, I sort of would like it too
28 to be right, Mr. Best...

29 **MR. BEST:** I understand, Your Honour, and I'm...

30 **THE COURT:** ...after reading your factum but go
31 ahead.

32 **MR. BEST:** Yes.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **MR. SILVER:** All I can do to try to assist is -
2 I'm not sure there was an attendance before you
3 in December. There's a transcript in our motion
4 record at Tab 53. There is a transcript of the
5 proceedings before you on November 16th, 2012. So
6 if Mr. Best has the date wrong and it's the
7 November, he can find that transcript at Tab 53
8 of our motion record.

9 **MR. BEST:** Okay, it was actually...

10 **THE COURT:** Thank you, Mr. Silver.

11 **MR. BEST:** Well, okay, let me look at it but I
12 thought it was after I submitted my December 10th
13 affidavit, Your Honour.

14 **MR. RANKING:** Your Honour, I believe - and I've
15 got to go back because I was looking at my notes.
16 I believe there was a December 11th attendance. I
17 think there was a December 11th attendance. My
18 friend may not be aware of it because he had hip
19 surgery and I think I attended that day.

20 **THE COURT:** I remember that issue, yes.

21 **MR. SILVER:** That's right.

22 **MR. RANKING:** I think it was December 11th, Your
23 Honour.

24 **THE COURT:** All right.

25 **MR. SILVER:** Okay, we don't have a transcript for
26 that in our motion record.

27 **MR. BEST:** Well, hang on. Let me...

28 I have the December 11th transcript here. I'm
29 going to work from the back because I think it
30 might have been near the end.

31 **THE COURT:** Well, if you can't find it, Mr. Best -
32 and you have been at this for about 10 minutes.

38
Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 You have got about 25 minutes to the morning
2 break. Perhaps you should just move on to your
3 next point.

4 **MR. BEST:** You know, I will then, Your Honour. I
5 will say I recall you saying something like you
6 remained unconvinced.

7
8 Your Honour, prior to Mr. Ranking submitting this
9 - perhaps Your Honour had some doubt but,
10 Your Honour, once Mr. Ranking submitted
11 Exhibit 32 and Exhibit 31 agreeing, in effect,
12 with my December 10th affidavit in Exhibit T,
13 Your Honour, he admitted it.

14 **THE COURT:** All right, you have made that point,
15 Mr. Best. I have heard it.

16 **MR. BEST:** Right, so...

17 **THE COURT:** So let's move on.

18 **MR. BEST:** So now if we are settled that
19 "PricewaterhouseCoopers East Caribbean Firm" is
20 not a legally registered entity and does not
21 exist and that the court has been, for years,
22 been provided with sworn evidence that it does
23 exist, Your Honour, surely there was due
24 diligence done at the start by Mr. Ranking and
25 his firm but even if that wasn't the case - let's
26 say they made a mistake at beginning. By that
27 cross-examination in 2008 when Mr. Ranking gave
28 all assurances that "PricewaterhouseCoopers East
29 Caribbean Firm" was a legal entity, by that time,
30 even if he didn't know, even if his clients were
31 lying to him, as they did with their previous
32 name used in the previous lawsuit, by the time we

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 get to January 23rd, 2013 and Mr. Ranking lays
2 down on the table Exhibit 32 and Exhibit 31,
3 admitting that everything he is - every motion,
4 every piece of evidence, every affidavit, even
5 what he's done now, is false, Your Honour, and
6 this has real importance because...

7 **THE COURT:** You have told me that.

8 **MR. BEST:** Yes, Your Honour.

9 **THE COURT:** You have told me that, Mr. Best.

10 **MR. BEST:** All right.

11 **THE COURT:** Please don't be repeating. I have got
12 the point.

13 **MR. BEST:** All right, and with the new case,
14 *R. v. Salmon*, I think, Your Honour, that just on that
15 lie alone, that Your Honour should stay this case
16 right now.

17 **THE COURT:** All right. What is your next point?

18 **MR. BEST:** Your Honour, I don't know the procedure
19 here. Would I be...

20 **THE COURT:** You are not having much difficulty
21 manoeuvring the procedures, from my observation.

22 **MR. BEST:** Would it be out of order if,
23 hypothetically - am I allowed to ask the court to
24 rule, make a ruling on whether
25 PricewaterhouseCoopers East Caribbean...

26 **THE COURT:** No, that would not be correct.

27 **MR. BEST:** Okay, then Your Honour, I apologize.

28 **THE COURT:** I said move on to your next point. You
29 are making all of your submissions now.

30 **MR. BEST:** All right.

31 **THE COURT:** They are going to respond to your
32 submissions.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **MR. BEST:** I see.

2 My next point will take, frankly, several hours,
3 Your Honour.

4 **THE COURT:** Mr. Best, you are not listening to me.

5 **MR. BEST:** I heard you, Your Honour.

6 **THE COURT:** And you know what, I find it very
7 deliberate. I have told you what time. I have
8 given you more time than the others. I have
9 allocated this day. You have known for months
10 that it was this day and I told you to properly
11 allocate your time. You have prepared factums. It
12 is the purpose of the factum to alert the court
13 to the issues, to summarize the arguments. You
14 are not going to be given days, as you requested,
15 or even further hours. I am telling you right now
16 you present and summarize your most important
17 issues. Because I have read them, I have an
18 awareness of them and what you are attempting to
19 do is to persuade me by highlighting what you say
20 are the most important points.

21
22 But if I could just make one comment, sir. Go
23 back to your original application drawn by
24 Mr. Brian Greenspan. This is an application to
25 purge your contempt. You have already been found
26 in contempt so the issue now is can you or will
27 you be able to purge your contempt or,
28 alternatively, as you would like to put it, to
29 have my order of January 15th, 2010 set aside,
30 which found you to be in contempt of the court.
31 You used the words "not guilty of contempt of
32 court" in your draft order. But I am telling you

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 right now that is the issue and I am throwing it
2 out there again and I have said repeatedly that
3 is the issue that you have got to deal with today.
4 So with that in mind, I am not going to remind
5 you again. I am going to sit, I am going to
6 listen but I ask you to organize your arguments
7 as it relates to the issue that is central to the
8 attendance today.

9 **MR. BEST:** Your Honour, I've heard what you said.

10 **THE COURT:** You heard me but I don't think you are
11 buying it. Go ahead.

12 **MR. BEST:** Your Honour, I don't understand. I will
13 try and...

14 **THE COURT:** Oh, you understand, Mr. Best. It is
15 just that you have decided that you are going to
16 go in certain directions and deal with issues
17 notwithstanding. I am just telling you that at
18 some point, you would really want to address the
19 most important central issues that deal with your
20 contempt and the order that I made of January the
21 15th, 2010.

22 **MR. BEST:** I see.

23 **THE COURT:** That is what you really want to get at
24 today.

25 **MR. BEST:** I see.

26 **THE COURT:** I say no more, sir. Go ahead.

27 **MR. BEST:** All right, Your Honour.

28 **MR. BEST:** I had intended to play for you the tape
29 of the November 17th phone call.

30 **THE COURT:** Sir, I have read the transcript of it.
31 I actually opened up and I read that transcript
32 from front to back. I read - you have produced it.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 You even had it verified. I read it.

2 **MR. BEST:** With respect, Your Honour...

3 **THE COURT:** I read what you had to say and I don't
4 think anything jumped out at me from the
5 transcript that I had not already heard way back.

6 **MR. BEST:** And Your Honour, that is why - because
7 everything that was done was done in context and
8 for instance, well, I have here a compendium,
9 which I have actually given to Mr. Ranking and
10 Mr. Silver at another place. It's the same
11 compendium.

12 **MR. RANKING:** And I think my friend is referring
13 to the mediation compendium, which I have left in
14 my office. I don't know why we are handing up the
15 compendium that was prepared for the mediation.

16 **THE COURT:** You can't get into that. I know that
17 you attended before Justice Edwards because I
18 asked that the mediation be set up. I don't know
19 what goes on at the mediation.

20 **MR. BEST:** Well, this is...

21 **THE COURT:** Justice Edwards...

22 **MR. BEST:** Oh, sorry, sorry.

23 **THE COURT:** Justice Edwards cannot disclose to me
24 - that is the whole purpose of it - what was
25 discussed, what issues were raised, nor should I
26 be looking at any materials that you put in front
27 of him. You have got all the materials here and
28 you talk about the transcript. I have the
29 transcript. It has been produced. Mr. Best, we
30 have three banker boxes - that is what I am
31 running - packed with materials as it relates to
32 this particular - this particular application. So

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 I am not going to get into mediation briefs,
2 sorry. Go ahead.

3 **MR. BEST:** Okay. Actually, this was redone as a
4 hearing brief, Your Honour, but in any event,
5 it's all exhibits that are already in before the
6 court.

7 **THE COURT:** Right, so why do we duplicate it? Go
8 ahead. Just tell me.

9 **MR. BEST:** Well, because I...

10 **THE COURT:** It may be of assistance to you. You go
11 ahead. I am not looking at it.

12 **MR. BEST:** I see.

13 **THE COURT:** I have all those materials.

14 **MR. BEST:** I see. Well, Your Honour, my point is
15 about - about the lies surrounding the
16 November 17th phone call. All of that started back
17 in October, October 2nd, 2009, when Mr. Ranking
18 hired his private investigator and I wanted to
19 take Your Honour - because only by seeing things
20 as they occurred in context and by seeing them in
21 a chronological order do you, for instance, know
22 when Mr. Ranking spoke to you on December 2nd
23 during the hearing and said what he did.

24 **THE COURT:** He made submissions to me. Please
25 don't say he spoke to me. He made submissions in
26 open court.

27 **MR. BEST:** He made submissions and everything.

28 **THE COURT:** You are aware of what he said.

29 **MR. BEST:** When you see all that in context - and
30 I'm sorry Your Honour hasn't actually listened to
31 the conversation because there's a lot to be said
32 with tenor and pauses and tone and such and it's

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 important. That's why - but Your Honour, I hear
2 you. I will obey your order for me to move on but
3 most respectfully, sir, I don't think I'm getting
4 a fair shot here.

5 **THE COURT:** Again, that is a very unfair comment
6 because I am bending over backwards to keep you
7 focused. I have given you direction.

8 **MR. BEST:** All right, sir.

9 **THE COURT:** I have not given you orders. Sir, if
10 you want to utilize your time on other issues,
11 you go right ahead. All I am saying to you - I
12 tried to get you back focused onto the issue so
13 that you can maximize the time allowance given to
14 you.

15 **MR. BEST:** All right, sir.

16 **THE COURT:** If you don't wish to do so, sir,
17 that's entirely up to you. I can do no more.

18 **MR. BEST:** What I would like to do then,
19 Your Honour, is to show that I've answered all
20 the - I've answered all the questions. I've done
21 everything that you wanted. I've done it and more
22 in your orders. I've done it...

23 **THE COURT:** Well, now you are on the points that...

24 **MR. BEST:** ...all.

25 **THE COURT:** Go ahead.

26 **MR. BEST:** Your Honour - okay, and if I can have
27 just a moment, here. It's all done, Your Honour.
28 I answered everything.

29 **THE COURT:** Can we just get out the order itself?
30 I don't have a memory of it but I know it is in
31 the materials.

32 **MR. BEST:** Yes, your November 2nd order,

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Your Honour?

2 **THE COURT:** Yes, I want to get both of them.

3 **MR. BEST:** Yes, sir.

4 **THE COURT:** They are together.

5 **MR. RANKING:** The November 2nd order, Your Honour,
6 is under Tab 25.

7 **THE COURT:** Of your materials?

8 **MR. RANKING:** Yes, and the December 2nd order is
9 under Tab 30.

10 **MR. BEST:** I'm sorry, 25 and 30, sir?

11 **MR. RANKING:** 25 and 30.

12 **THE COURT:** Yes.

13 **MR. RANKING:** The November 2nd and December 2nd.

14 **THE COURT:** Oh, I need another binder. I have got
15 30 but 25 is in the other one.

16 **MR. SILVER:** In Volume 1.

17 **MR. RANKING:** And for your benefit, Your Honour,
18 at Tab 37 is the January 15th order. So the three
19 orders are Tabs 25 - going from earliest to
20 latest, 25, 30 and 37.

21 **THE COURT:** Madam Registrar, it says "Responding
22 Party's Motion Record". It is volume number one.
23 It has got a blue backing.

24 ... DISCUSSION ABOUT LOCATING DOCUMENTS

25 **MR. RANKING:** Your Honour, I have not marked mine.
26 I will just hand it to the registrar.

27 **THE COURT:** I had it. I have clearly seen it, but
28 it's all right if we can use...

29 **MR. RANKING:** Do you have the first volume,
30 Your Honour?

31 **THE COURT:** I have got Volume 2. One is not -
32 madam registrar is having a problem. It may be

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 that we have got yet another box upstairs.

2 **MR. RANKING:** These have not been marked. I can
3 represent that to the court.

4 **THE COURT:** No, I have got two. All I need is
5 Tab 25.

6 **MR. RANKING:** Yes.

7 **MR. SILVER:** There is also a Volume 3.

8 **MR. RANKING:** Well, I am handing that up.

9 **THE COURT:** All right.

10 ... DISCUSSION WITH THE STAFF ABOUT MORE DOCUMENTS
11 BEING IN CHAMBERS

12 **THE COURT:** That order shows up in other places,
13 just so you know. It is well presented.

14 All right, so let's go to - you wanted to start
15 with the order of November 2nd, 2009 and it is at
16 Tab 25.

17 **MR. BEST:** Your Honour...

18 **THE COURT:** ...of the respondent's materials. Yes,
19 go ahead.

20 **MR. BEST:** Yes, Your Honour. Now, I'd like to say
21 that all the requirements of your orders were
22 fulfilled through the combination of:

23 A) I provided memory sticks with tens of
24 thousands of documents of the books and records
25 of Nelson Barbados Group Ltd. to Mr. Ranking and
26 Mr. Silver in court on January 25th.

27 **THE COURT:** Where did you get those documents?

28 **MR. BEST:** Your Honour, some I had myself. Some I
29 got off the internet. A large amount of them I
30 got off the internet because I'll tell you right
31 now, Your Honour, Mr. Ranking and Mr. Silver took
32 copies of my file or took all the file, even

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 things I don't have that I wish I had, and
2 Mr. Silver said he gave it all to his clients. He
3 said that on January - well, in one of the cross-
4 examinations. And Your Honour, so I gave what I
5 had and I have them here.

6 **THE COURT:** No, no, no, no. Let's just stay
7 focused, okay?

8 **MR. BEST:** All right, but...

9 **THE COURT:** We are dealing with...

10 **MR. BEST:** In any event...

11 **THE COURT:** Just a minute. When I am talking...

12 **MR. BEST:** Yes, Your Honour.

13 **THE COURT:** ...you stop and then I will stop
14 talking and you can talk.

15 **MR. BEST:** I'm sorry, Your Honour.

16 **THE COURT:** November 2nd, 2009 order, Tab 25. It
17 begins with directions that you will appear in an
18 examination November 17th but let's go over to
19 subparagraphs (a) through (e) of paragraph three.
20 That is what we are dealing with, and paragraph
21 four of that order.

22 **MR. BEST:** Yes. Well, Your Honour, I...

23 **THE COURT:** And paragraph seven. So that is what -
24 wait a minute, that is Mr. McKenzie, sorry. So
25 paragraph seven relates to McKenzie and of course,
26 at that time, you were using UPS stores as your
27 addresses in Kingston and elsewhere, so I made
28 orders in that regard. You had a box at 250 The
29 East Mall, Box 1715 in The East Mall, and then
30 there was Box 200 at 427 Princess Street. So the
31 record will speak for itself on those issues.
32 So tell me, you are on the issue I want to hear

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 about.

2 **MR. BEST:** Yes.

3 **THE COURT:** What do you say in terms of compliance
4 with that order?

5 **MR. BEST:** Yes. Your Honour, there is - if we can
6 break it down into two sides and that is I have -
7 and you know, I've heard you, Your Honour. I'm
8 just saying what I have - many hours, even a
9 whole day on why I did not fulfill - why I was
10 unable to fulfill your order at the time you made
11 your orders, and that's a combination of I was
12 prevented and it's a combination of I didn't know.
13 It's a combination of I wasn't served. But
14 leaving all of that aside for the moment, I would
15 like to show Your Honour that notwithstanding
16 that I did not do what you wanted me to do on the
17 dates you wanted me to do them, notwithstanding
18 that - and there were good reasons and I could -
19 for an entire day I could tell you about those
20 reasons.

21 **THE COURT:** Well, you have...

22 **MR. BEST:** But notwithstanding that, I want
23 Your Honour to know that now, right here as we
24 are right now, I have fulfilled all of the things
25 in your orders that are possible for me to
26 fulfill. I can't appear on January 15th, 2010
27 because that is gone, but everything that I - I
28 have done everything I possibly can and I'm going
29 to show you that.

30 **THE COURT:** All right. Well, you have got to
31 succinctly direct me to that because your factum
32 is pretty silent. You make a blanket statement.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 There is no detail. That is the kind of material
2 I was looking for.

3 **MR. BEST:** All right, well...

4 **THE COURT:** And then we have, of course, the order
5 of, don't forget, the 2nd of December, 2009 and in
6 particular, paragraphs two, three and three has
7 (i) through (iv). So let's deal with it.

8 **MR. BEST:** All right. Well, to deal with what I
9 think I had to do to fulfill the orders now, as
10 best I can, I have done - first of all, I
11 provided these two gentlemen with the memory
12 sticks and as I recall, I tried to give it to
13 court too but the court did not want it. But I
14 have that still here now if the court wants it.
15 So the court could look at it and see the hundred
16 thousand documents itself.

17 **THE COURT:** No, no. You have referred to the
18 100,000 documents in your factum. The issue is
19 finitely I want to know, in relation to those two
20 orders...

21 **MR. BEST:** Yes, sir.

22 **THE COURT:** ...did you make the productions and
23 provide the materials and answers that those
24 orders stipulate?

25 **MR. BEST:** I did.

26 **THE COURT:** That's the...

27 **MR. BEST:** I did, sir, and also...

28 **THE COURT:** Well then, you had better be able to
29 tell me and show me because now we are...

30 **MR. BEST:** Yes, sir.

31 **THE COURT:** ...at the heart of the issue here.

32 **MR. BEST:** All right. I have here, sir, my

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 "Answers To Undertakings, Under Advisements And
2 Refusals".

3 **THE COURT:** Let's see that, and why wasn't this
4 filed earlier?

5 **MR. BEST:** Well, I didn't know - I didn't know
6 what - I thought that - I guess I thought that
7 these gentlemen would do it and then when I read
8 in their...

9 **THE COURT:** It is not their application, sir, with
10 all due respect, and now you are handing to me...

11 **MR. BEST:** Well, I...

12 **THE COURT:** Just a minute. I want the record to
13 reflect. You are saying "Answers To Undertakings,
14 Under Advisements, Refusals By Donald Best,
15 Applicant, Stemming From His January 11th And
16 January 23rd, 2013 Cross-Examinations" and it
17 begins - the pages are unnumbered but for the
18 purposes of the record, it will be filed. It will
19 be seen to encompass - has somebody got a page
20 count on this? There is no page count. I have got
21 to believe it is several hundred pages. I would
22 think, conservatively, 250, 300 pages.

23 **MR. SILVER:** The letter itself is 119 pages and
24 then there are attachments.

25 **MR. BEST:** Your Honour, you told me to give
26 these...

27 **THE COURT:** That's fine. I am just describing now
28 what I am getting.

29 **MR. BEST:** Yes, sir.

30 **THE COURT:** Let's just go through it. Well, I am
31 not going to describe it any further. Go ahead,
32 sir, go ahead.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **MR. BEST:** But with great respect, Your Honour,
2 you didn't tell me to file it. I didn't know
3 enough to file it. I obeyed your order to give it
4 to them on the day that I should and I did.

5 **THE COURT:** All right, go ahead.

6 **MR. BEST:** All right, sir. So this...

7 **THE COURT:** So tell me how that answers all the
8 questions and orders that I made of November 2nd
9 and December 2nd, 2009.

10 **MR. BEST:** Okay. You - in your orders, you asked
11 some very specific things. For instance, let me
12 go to the first order here, which is at Tab 25,
13 the 2nd of November. Okay, number three, I
14 appeared for two days in examination.

15 **THE COURT:** I know that.

16 **MR. BEST:** On - yes, and I answered all the
17 questions that were asked of me and they could
18 have had me back for as many days as they wanted
19 and Your Honour was quite clear about that. And
20 so I did appear and for two days and I answered
21 all the questions refused or undertaken. This is
22 on the next page:

23 (A): "All questions refused or taken under
24 advisement at the cross-examination of John Knox
25 held on November 4th, 2008 and all questions
26 reasonably arising therefrom."

27 Your Honour, in here I have addressed each of
28 those questions one by one.

29
30 (B) "All questions refused or taken under
31 advisement at the Rule 39.03 examination of
32 Donald Best held on March 20th, 2009 and all

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 questions reasonably arising therefrom."

2
3 Your Honour, they too, I went through them one by
4 one and I answered them and I - I answered them
5 to the best of my ability. I mean you can see
6 what's here, Your Honour. I spent a long time,
7 weeks.

8
9 "And all questions which Justice Shaughnessy
10 directed be answered on April 8th, 2009", they are
11 also covered here, Your Honour. They are covered.

12
13 "All questions relating to his employment,
14 subsequent duties, responsibilities" - this is
15 Paragraph (D). I answered all questions that were
16 asked of me and I answered all questions
17 concerning the shares. I answered them and I
18 answered them and all these questions as if I was
19 sitting there on November 17th and I had arrived
20 or January 15th, 2010 and I've - I've done - I've
21 done that, sir, and that's one of the ways that I
22 fulfilled your orders.

23 The other way...

24 **THE COURT:** Just a minute. I'm going through Tab 2.
25 What I am noticing is...

26 **MR. BEST:** Yes, sir.

27 **THE COURT:** Let me get this focused. What it
28 begins with is - these pages are numbered and it
29 comprises - just Tab 2 alone of the material you
30 have given me comprises 119 pages. The first
31 almost five pages, 4¾ pages is all argument and
32 the position that you have advanced and the

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 attacks that are made against Mr. Silver, Mr.
2 Ranking, Mr. Roman, their law firms, clients and
3 your argument. That is the first five pages.

4
5 Then we get to undertaking number one and other
6 undertakings for which I am presuming I will hear
7 more, including undertaking number four, which
8 includes a printout of an article on Barbados
9 Underground dated October 30th, 2009, "The Shady
10 Secretive World of Peter Andrew Allard and the
11 Graeme Hall Nature Sanctuary: Does Barbados Need
12 Any Of It?" That same article shows up in other
13 materials that you have filed with this court. I
14 have seen it.

15 **MR. BEST:** They asked me for it, sir. They asked
16 me to give...

17 **THE COURT:** All right, so that's...

18 **MR. BEST:** I'm just fulfilling their undertaking,
19 sir.

20 **THE COURT:** The bottom of page five and page six
21 relates to undertakings. Then from page seven is
22 an ongoing, continuing argument of your position.
23 Then we get to undertaking number five, which is
24 at page 11, where you say: "A copy of Exhibit 6
25 is attached to these answers. See also number
26 four," referring to the article, "The Secret
27 World of Peter Andrew Allard".

28
29 Then we have undertaking number six, page 11.

30
31 Undertaking number seven and number eight are on
32 page 12.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Then from page 13, there is quotations of
2 transcripts and again, the presentation of your
3 argument, which goes from page 13, quoting
4 attendances by Mr. Greenspan before me.

5
6 Then we get to undertaking number nine and number
7 ten at page 17. Up until that, it's just the
8 argument and transcripts.

9
10 Undertaking number eleven is at page 18 and then
11 we begin refusals.

12
13 Refusals begin three-quarters of the way down on
14 page 18 and then goes on a long, long argument or
15 an argument, I should say, pages 19 through 20,
16 and then refusals two, three, and four, page 20.
17 Refusals five, six, seven and eight at page 21.
18 Refusal nine, ten and eleven, page 22.

19
20 And then we begin "Under Advisements" at page 23,
21 which the advisements continue on with argument
22 interspersed among the matters taken under
23 advisement. That's at least up to number 51 Under
24 Advisement at page 35 and then begins further
25 argument, which runs from page 36. We then get to
26 advisement number 52, which then also refuses -
27 it goes into transcripts of January 11th, cross.
28 Under advisement number 53, 54, 55, 56 and the
29 answer to that seems to span several pages.

30 Under advisement number 57, 58, 59 - well...

31 **MR. BEST:** Sorry, Your Honour, these are page
32 numbers you're quoting?

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **THE COURT:** Your page numbers. They are your page
2 numbers in the bottom corner.

3 **MR. BEST:** Yes, sir.

4 **THE COURT:** These advisements go on to page 47.

5 **MR. BEST:** Sorry, page 47?

6 **THE COURT:** 45, advisement number 65. And then we
7 begin the January 23rd, 2013 cross-examination and
8 undertakings, page 48 and argument is
9 interspersed on those under - that refusal,
10 refusal number 13 and it begins at page 50.

11 Refusal number 14, page 51 and all sorts of
12 references and arguments to attendances, comments
13 made, attacks on the manner in which the
14 examination or cross-examination, I should say,
15 took place. And then we go back to refusals 15,
16 16, 17 and 18, more under advisements again
17 interspersed with references to the notice of
18 application.

19
20 I really don't want to spend any more time with
21 this. There are refusals where there are answers.
22 I will have to hear what the submissions are on
23 that regard.

24
25 And then begins a long argument or I would call
26 it argument and it begins at page 103. "Is
27 John Knox aware that there are materials from the
28 Ontario action that have been passed on blogs?"
29 The answer, refusal number 104, "The answer is
30 yes," and it goes on then for several pages
31 referring to affidavits of Mr. Knox and Knox's
32 being aware of a conspiracy published on the

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 internet.

2 **MR. BEST:** May I...

3 **THE COURT:** I see more refusals. The refusal
4 numbers are all over the place. I take it the
5 bracketed number must be the transcript pages
6 which are up to 1447, at least that page as
7 indicated at page 114. And John Knox under
8 advisements begin at page 115.

9 **MR. BEST:** So I went through the transcript and...

10 **THE COURT:** I don't know how much time it would
11 take. In any event, that is a fair description at
12 Tab 2. I guess we will take the morning break now
13 and then we will come back.

14
15 I just want to advise you, Mr. Best, that it is
16 now twenty minutes to 12:00. I have given you up
17 to one o'clock. We are going to take a very brief
18 break - I hope the staff is happy with that -
19 10 minutes, no more, and we will resume. But
20 please, sir, I just caution you, manage your time.

21 **R E C E S S**

(11:36 AM)

22
23 **U P O N R E S U M I N G**

(11:54 AM)

24 **THE COURT:** Yes, Mr. Best.

25 **MR. BEST:** So, Your Honour, to keep on the subject
26 of have I now fulfilled everything, I truly
27 believe I have.

28 The memory stick that I provided, thousands of
29 documents, which fulfills their request. I
30 answered questions during two days of cross-
31 examination and that's all they wanted and I gave
32 them what they wanted. Now, I don't know if

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Your Honour has read the transcripts of those
2 cross-examinations.

3 **THE COURT:** No.

4 **MR. BEST:** All right, Your Honour. On
5 January 23rd...

6 **THE COURT:** Well, look, I don't have to be taken
7 through it because the factums describe where the
8 examinations took place. I know they took place,
9 certainly the second one, in Barrie. I don't know
10 where the first one was. Was it Barrie as well?

11 **MR. SILVER:** Both.

12 **THE COURT:** And where you have made references, I
13 have seen those references to it.

14 **MR. BEST:** All right, Your Honour.

15 **THE COURT:** Please don't - please don't read me
16 the transcript.

17 **MR. BEST:** All right, Your Honour.

18 **THE COURT:** The transcript is meant to focus me to
19 specific areas. You understand if you give a
20 memory stick with 100,000 documents and I have
21 three banker boxes principally with all of your
22 materials - let's say 96 percent, 95 percent are
23 your materials. You can't possibly expect, with
24 all my other commitments, for me to get into
25 100,000 documents on a memory stick plus three
26 banker boxes. That is why we have factums and we
27 have affidavits. It is why I am trying to stay
28 focused and trying to keep you focused on the
29 issues. I did a lot of preparation. I did a lot
30 of reading. I am not talking about one day here.
31 I am talking about several days I spent, and
32 evenings and weekends, trying to get up to speed

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 to deal with this. In fairness, I am trying to
2 give you a fair hearing, so I am sensitive when
3 you make the suggestion you are not getting a
4 fair hearing. I have done everything I can,
5 Mr. Best. I say no more and I will let the record
6 speak for itself. Go ahead.

7 **MR. BEST:** Well, Your Honour, on the memory stick,
8 the documents are in fulfillment of their
9 questions and your orders and also when I
10 answered the questions and the transcripts show
11 that I answered the questions. And it was very
12 difficult, the two days, and I don't know - I
13 know you - it was very difficult during the two
14 days, Your Honour, and I remained calm while,
15 frankly, there were objects thrown at me,
16 outbursts, foul language.

17 **THE COURT:** All of which you made reference to in
18 your answers and undertakings.

19 **MR. BEST:** All right, Your Honour.

20 **THE COURT:** I saw it. I mean I sped read the
21 material as it was presented in this "Answers to
22 Undertakings, Under Advisements and Refusals".

23 **MR. BEST:** Very good, Your Honour.

24
25 Now, I don't have - they wouldn't give me the
26 audiotapes of that. They said it would take your
27 order. I'm not about to ask you for your order
28 because I know - well, I wish I could but in any
29 event, if you listen to the tapes, you would see
30 exactly how I complied and how it was an un -
31 I've never seen anything like it in my life and
32 I'll leave it like that, Your Honour, because the

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 tapes would speak for themselves, they really
2 would, as a transcript just cannot.

3
4 Now, Your Honour, you said to Mr. Ranking and
5 Mr. Silver that I could - they could take as many
6 days as they wanted. They took two and I did it.

7 **THE COURT:** I think I ordered that there be cross
8 and then I think the request was made that as a
9 result of the materials that were then being
10 delivered, that a further day was going to be
11 required and I granted that. That is quite
12 correct. That is one of my endorsements.

13 **MR. BEST:** Yes. Your endorsement actually
14 indicates - I forget the words but as many days -
15 as many days, not just one, but in any event,
16 Your Honour, I attended and I answered those
17 questions and I did so very well and with great
18 respect and I did so very well under very trying
19 conditions. I believe the conditions that were
20 established there were intended to make me do
21 something and I didn't respond. I'll leave it at
22 that.

23
24 I also, in my 119 pages plus exhibits of the
25 answers, which you have seen, I answered all of
26 the previous stuff going way back, stuff that
27 isn't even relevant and in 2010, there was the
28 de-privileging and release of my and my company's
29 entire files from Mr. McKenzie, a hundred
30 thousand pages. And let's remember, Your Honour,
31 the idea was they wanted somebody to pay for
32 their costs and they wanted to bring Mr. Allard

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 into it and you know, that took like three
2 documents. And so they got everything they want
3 with all those things and I have...

4 **THE COURT:** Well, Mr. Allard was involved. As you
5 read decisions, Mr. Allard was involved way way
6 back.

7 **MR. BEST:** My point, Your Honour, is that - is
8 that even with the release, the de-privileging
9 and release of a hundred thousand documents - and
10 I'm not even talking about the side issues of
11 identity information and other people, dozens of
12 them. I'm not talking about that.

13 **THE COURT:** You've made that point.

14 **MR. BEST:** Yes.

15 **THE COURT:** I read that.

16 **MR. BEST:** But I'm talking about the documents
17 themselves were exponentially far more than they
18 would have received had I been there, had I been
19 able to be there and I haven't addressed that yet
20 and I'll address that briefly.

21
22 But Your Honour, what I'm saying is here, as I
23 stand here now, I have - Your Honour, I have
24 great respect for the court. I have great respect
25 for you.

26 **THE COURT:** Good.

27 **MR. BEST:** I am in fear and respect and
28 Your Honour, I've done it. I've done it to the
29 best of my ability. Now, I will say, Your Honour,
30 that these gentlemen wanted to be never finished
31 and they have acted in a manner that shows me
32 that - what their intent is and they have said

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 that in their materials. You've got it.

2 **THE COURT:** Mr. Best, they have clients. They have
3 clients who instruct them. Mr. Silver and
4 Mr. Ranking are not parties to the proceeding.
5 They are counsel. They are legal counsel. They
6 represent the parties named and you know who they
7 are.

8 **MR. BEST:** Well, Your Honour, I...

9 **THE COURT:** It's not fair to comment in that
10 regard. They have received instructions and they
11 are following their clients' instructions.

12 **MR. BEST:** Did their clients instruct them to
13 throw objects at me and swear at me?

14 **THE COURT:** All right, you've made your point.
15 Let's move on.

16 **MR. BEST:** I will, Your Honour. I hear you but I
17 think that the issue of their intent when you
18 listen to them - Your Honour, I mean I've just
19 done everything. With great respect, sir, I've
20 done everything and the materials that I
21 submitted, the answers that I gave during cross-
22 examination, all the materials, and I've - and
23 I've answered everything, Your Honour, that I
24 possibly could to the best of my ability.

25
26 Now, I didn't - I was unable to be in court on
27 those days that you wanted me to back in 2009,
28 2010 and Your Honour, that was a combination of a
29 number of factors: fear for myself, my family.
30 You are shaking your head, Your Honour.

31 **THE COURT:** I am not shaking my head at all.

32 **MR. BEST:** Oh, I'm sorry.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **THE COURT:** Please don't interpret me as shaking
2 my head.

3 **MR. BEST:** I apologize, Your Honour. I thought you
4 would tell me to stop talking.

5 **THE COURT:** If you meant that as an off-handed
6 comment, that's fine but I am not shaking my head.
7 Please, sir.

8 **MR. BEST:** All right, Your Honour.

9 In any event, I wanted to put in an affidavit
10 which would have brought all that together and
11 included a lot of new information and just this
12 one point - and I won't dwell on it, Your Honour.
13 You looked at my "Answers to Undertakings and
14 Advisement" and sort of with a little comment - I
15 forgot what it was and it was about how I went on
16 and on in one of the questions.

17 **THE COURT:** Oh, no. No, several questions.

18 **MR. BEST:** Sure.

19 **THE COURT:** You made argument.

20 **MR. BEST:** Sure.

21 **THE COURT:** And advanced the argument and referred
22 to other transcripts. I certainly made that
23 comment, not once. I made it several times by
24 perusing as best I could the...

25 **MR. BEST:** Okay, I guess - I guess I'm talking
26 about how, in the case of - for instance, I was
27 accused of certain things and we now know from
28 forensic records and reports and frankly, what
29 Mr. Iain Deane, Mr. Andrew Roman's client said
30 on-line and wrote on-line under his own name - we
31 now know that that whole mess they accused me of
32 was actually part of their campaign and that is

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 seen in the John Knox affidavit where they give
2 the - where Mr. Knox gives the forensic evidence
3 to show that, for instance, some of the threats
4 that were coming to my witnesses originated
5 actually at Miller Thomson over a number of years
6 in Toronto.

7
8 Anyway, what I'm saying, sir, is that there has
9 been a long-term campaign of harassment, criminal
10 acts to do with this case against my witnesses,
11 myself, me and there's actually - one of the
12 justices in Barbados has commented on this very
13 cultural phenomenon in Barbados and I have a
14 little bit of that here. I'll just - it's Justice
15 Randall Worrell was interviewed in an article in
16 the "NationNews", which is a big newspaper down
17 there, and he was talking about how witnesses in
18 Barbados don't talk because they're threatened.
19 They're killed. They're burned out.

20
21 Then we had in Canada, Professor Hans Machel,
22 University of Alberta. He was tasked to go down
23 to Barbados and investigate a cave-in where many
24 people died and such and he said, and I quote
25 him:

26 *"I found out many more things that the public*
27 *has a right to know but that have been hidden*
28 *so far. I encountered an atmosphere of*
29 *frustration and intimidation nourished*
30 *especially under the previous BLP government.*
31 *I met several individuals who were afraid to*
32 *speak out for fear of losing their jobs,*

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 *bodily harm, or having their houses burnt down*
2 *if they ever went public with what they know.*
3 *I will speak for them."*

4 And indeed he testify at the Arch Cot inquest

5
6 Then there's another article here, Thursday,
7 July 5th, 2012, in the "NationNews" and it talks
8 about poaching of sea turtles and such but it
9 gets to the point where it says that nobody will
10 help the police because the witnesses are afraid.
11 They are afraid that they will be attacked for
12 going to court.

13
14 Now, Your Honour, not all societies are the same.
15 Canada has its problems. The U.S. has their
16 problems. Apparently, Barbados has this
17 particular problem with witnesses in their courts.
18 May 31st, 2012, a firebomb attack of a lady at her
19 home, Ms. Shirnell Gill, pointing to the blacked
20 and broken window through which the Molotov
21 cocktail was thrown. There's many many articles.
22 It's a national problem that even the judiciary
23 acknowledges.

24 **THE COURT:** So you are linking this to the reason
25 why you didn't attend...

26 **MR. BEST:** What I'm saying...

27 **THE COURT:** ...not just in relation to November 2nd
28 and December 2nd but the other date, January the
29 10th when I gave you the opportunity to attend in
30 court, this is how you are connecting this
31 argument. Is that it?

32 **MR. BEST:** What I'm saying, sir, is Your Honour

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 has previously indicated that the attacks on my
2 family and my witnesses are - and once again,
3 Your Honour, I'm scared, frightened to put words
4 into your mouth.

5 **THE COURT:** You are and you have made this in the
6 factum.

7 **MR. BEST:** Then I don't want to do it.

8 **THE COURT:** You take discussions that I had and I
9 indicated the whole issue of safety of these
10 witnesses, of John Knox, Mr. McKenzie. I had
11 spent several days. I wrote a ruling on it. I am
12 saying to you I was not oblivious to that issue.
13 I made findings and I made rulings. You are
14 trying to bring it back up and revisit it. I tell
15 you my rulings will speak for themselves. My
16 decisions, they were written decisions. You have
17 them so you can...

18 **MR. BEST:** I hear you, Your Honour, and...

19 **THE COURT:** No, I don't appreciate that when you
20 take words, and I saw it, and you don't put it
21 into context, it misrepresents exactly what has
22 taken place but you know what, we have
23 transcripts and another appellate court can look
24 at what I said and they will measure what I said.

25 **MR. BEST:** Your Honour, I don't mean to offend you.
26 I don't know what I'm doing here.

27 **THE COURT:** You are not offending - I am just
28 saying to you, please, sir, it is repetitive. If
29 you want to link why or tell me why, in terms of
30 purging your contempt, you didn't come in
31 January...

32 **MR. BEST:** All right, Your Honour, I'll speak to

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 that.

2 **THE COURT:** ...when I opened up the opportunity,
3 January 15th, 2010.

4 **MR. RANKING:** The 15th, Your Honour.

5 **THE COURT:** Yes, 2010, why you did not come, which
6 is now more than three years ago but then I
7 understand it, but I am just trying to look at
8 your time. We now have - you have got 45 minutes
9 left. I just want you to make best use and stay
10 focused. Go ahead.

11 **MR. BEST:** Your Honour, I said there was two parts
12 to this business of my satisfying the court. One
13 was - one was that I have satisfied. I have done
14 everything I can now and that's my position and I
15 think I have given you evidence to see that, sir.

16 **THE COURT:** Yes, I see that.

17 **MR. BEST:** Now...

18 **THE COURT:** Well, I hear the argument.

19 **MR. BEST:** Right.

20 **THE COURT:** There's two parts. The second part?

21 **MR. BEST:** The second part, Your Honour, is why
22 was I unable to attend. Why did I not attend?

23 **THE COURT:** Right.

24 **MR. BEST:** Was I able to attend and why did it
25 take me so long to get back here? Well,
26 Your Honour, first of all, to set the stage - and
27 once again, I wish I had been able to put in that
28 affidavit. I'll say no more.

29 **THE COURT:** What affidavit, sir?

30 **MR. BEST:** The affidavit that I wanted to put in
31 which brought all the long campaign of threats
32 and intimidation and criminal acts against my

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 witnesses, myself and I and Your Honour did not
2 allow me to submit that.

3 **THE COURT:** I didn't even make that.

4 **MR. BEST:** I'm sorry.

5 **THE COURT:** I didn't make that ruling, sir. I
6 don't know where you are.

7 **MR. BEST:** Okay, then maybe...

8 **THE COURT:** I am just basically saying to you I
9 know what the history is. I didn't make - please
10 don't...

11 **MR. BEST:** All right.

12 **THE COURT:** I did not make a ruling on any
13 affidavit. I don't even know what the affidavit
14 is and I am not sure that even the respondents
15 have been provided with this affidavit.

16 **MR. RANKING:** Perhaps, and obviously through
17 Your Honour, if Mr. Best could identify the
18 affidavit that he's referring to, when it was
19 sworn?

20 **THE COURT:** Yes. What date was it sworn? Whose
21 affidavit is it?

22 **MR. BEST:** Okay. I had asked you for permission to
23 put in - you know what, rather than me going off
24 my memory, Your Honour, I would like to - it must
25 be in one of the transcripts here. Rather than me
26 go off my memory, I would like to...

27 **MR. RANKING:** What is the affidavit date?

28 **MR. BEST:** I would like - the affidavit was to do
29 with bringing together - you know, the affidavit
30 was to bring together a comprehensive index and
31 history of all the incidents, safety and security,
32 criminal acts against the witnesses over the

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 years. Now, Your Honour, let's - let me find that
2 over lunch.

3 **THE COURT:** No, no, no.

4 **MR. BEST:** No?

5 **THE COURT:** No, no, we are dealing with it now.
6 Over lunch - the respondents are beginning this
7 afternoon. Have you got that affidavit that you
8 are referring to? Is it there in front of you?

9 **MR. BEST:** No, Your Honour.

10 **THE COURT:** You never put it together.

11 **MR. BEST:** No. You know what, Your Honour, rather
12 than go from memory, please, let me - let me find
13 it in the transcripts over lunch and...

14 **THE COURT:** If your reference is to the fact that
15 I am aware of the allegations, the sordid history,
16 the various experts who testified when
17 Mr. McKenzie was representing your company, I
18 have been through that. If that is the comment
19 you are looking for, I acknowledge that I said
20 that.

21 **MR. BEST:** Your Honour...

22 **THE COURT:** I also have indicated that I have
23 written - I gave written reasons on that entire
24 issue and they are in the materials. So if that
25 is what you are referring to, let's say yes, I
26 certainly said that. If you want to draw a
27 distinction that somehow it's Mr. McKenzie, his
28 witnesses, as opposed to your family and their
29 security, well then that is a distinction you can
30 draw but let's accept certain premises and move
31 on because this is not that kind of an absolute
32 technical argument, Mr. Best. I am trying to deal

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 with your ability to comply with the orders,
2 purge your contempt of my order of January the...

3 **MR. RANKING:** 15th.

4 **THE COURT:** January 15th, 2010.

5 **MR. BEST:** Let me just say this, Your Honour. In
6 leading up to - leading up to October of 2009,
7 there had been a long history that I was aware of,
8 of criminal acts all associated with, shall we
9 call it, my side of the case, against my
10 witnesses, and I was aware of all that.

11 **THE COURT:** Your witnesses being who? John Knox?

12 **MR. BEST:** The Knox, all those - all the Knox
13 family and their extended family. There were also
14 incidents against persons who were thought to be
15 associated with...

16 **THE COURT:** All this relates to blogs, correct?
17 That's where the threats came through, on
18 underground blogs?

19 **MR. BEST:** Your Honour, some threats came through
20 on blogs and please, if I could finish - and
21 after those threats were made, there were, for
22 instance, follow-up arsons. So some actually came
23 via email as early as 2003 and 2004. The ones
24 from Miller Thomson started coming in 2004, very
25 disturbing, and there were home invasions. There
26 were vehicles that were...

27 **THE COURT:** All right.

28 **MR. BEST:** ...sabotaged. So what I'm saying, it's
29 not just somebody saying something on the
30 internet, sir. There were real acts of violence
31 and criminal acts, including identity theft and
32 mail theft all interspersed with that.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Now, that leads me - how I got to October 30th. On
2 October 30th...

3 **THE COURT:** 2009?

4 **MR. BEST:** 2009.

5 **THE COURT:** Yes.

6 **MR. BEST:** All the information or a great deal of
7 the information that Mr. Ranking's private
8 investigator had gathered was published on the
9 internet, including my identity information and
10 I'm sure you're aware, Your Honour, that that's a
11 criminal offence. And I knew from reading the
12 article - although I didn't know it was
13 Mr. Ranking who had hired the private
14 investigator at that time, I knew that the police
15 community had been somehow penetrated and was
16 giving information. So that sets the stage.

17
18 And then, on October 30th, that was published and
19 things began to happen because there were calls
20 not only on that website but some others and
21 excuse my language, sir, one of them was called
22 "Cat Piss and Vinegar" and there were other and
23 biker websites that exhorted persons...

24 **THE COURT:** You have raised this in your factum.

25 **MR. BEST:** Pardon?

26 **THE COURT:** You have raised all these issues in
27 your factum.

28 **MR. BEST:** All right, sir, I'll...

29 **THE COURT:** So I am trying to understand how you
30 focus the argument.

31 **MR. BEST:** All right. Then, Your Honour, one of my
32 children was approached and a person threw down

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 an article, one of the articles and the threats,
2 and asked my child whether they were related to
3 me and my child lied. My child had to lie.

4 **THE COURT:** Again, isn't this in your factum about
5 your child being approached?

6 **MR. BEST:** It's in the affidavits, I'm sure, sir.

7 **THE COURT:** Yes, I am sure it is, so I am aware of
8 it.

9 **MR. BEST:** Oh, okay. Yes, sir. Okay, so - and then
10 I was assaulted. I was assaulted on the street
11 while walking early in the morning, November 5th.

12 **THE COURT:** Where?

13 **MR. BEST:** Near my home, sir.

14 **THE COURT:** Where?

15 **MR. BEST:** Your Honour, I was in my neighbourhood.

16 **THE COURT:** No, I am asking you specifically, city,
17 town, country.

18 **MR. BEST:** Your Honour, if I...

19 **THE COURT:** Just answer my question or do you not
20 want to answer it? Just say, "I don't wish to
21 tell you, sir."

22 **MR. BEST:** Well, let me...

23 **MR. RANKING:** I can tell you, just as an officer
24 of the court, I have gone through this entire
25 line of questioning and every single question of
26 the sort that Your Honour has just asked was
27 refused.

28 **MR. BEST:** If I could...

29 **THE COURT:** No. You know what, I asked a very
30 specific question. Your response can be,
31 "Your Honour, I would prefer not to tell you,"
32 and that answers the question.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **MR. BEST:** Your Honour...

2 **THE COURT:** I don't want to waste this time.

3 **MR. BEST:** I would prefer not to give - in the
4 history of what has happened and continues to
5 happen, I prefer not to say in a public forum
6 where my family either lived or lives because
7 it's their safety and I ask Your Honour to
8 understand that.

9

10 So, right away, that was the end of it. I booked
11 a flight for the family and we left Canada and we
12 headed...

13 **THE COURT:** So that answers the question. You were
14 in Canada at the time.

15 **MR. BEST:** Yes, Your Honour.

16 **THE COURT:** Right.

17 **MR. BEST:** But I knew nothing about anything.

18 **THE COURT:** Well, Mr. McKenzie didn't keep you
19 advised? Is that what you're saying?

20 **MR. BEST:** Sir, he did not. He had resigned as my
21 lawyer and I left Canada on November 11th because
22 of everything that had happened and I travelled
23 and - to New Zealand where I expected I would be
24 able to settle down and be safe but that didn't
25 happen. And Your Honour, you have to also
26 remember my history, my personal history. I think
27 you've probably acknowledged that it's in all the
28 materials.

29

30 So I left, took my family. I had never had to
31 appear in this case in court. I had never had to
32 appear. I didn't know and as a matter of fact,

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 many of the things that were said to have been
2 sent to me never arrived, never arrived at all.
3 Some material caught up June and July of 2010.
4 But what I'm saying, Your Honour, is I was
5 unaware of January 15th. I had not been served
6 with the materials. I had not been served with
7 previous materials for December and Your Honour,
8 I have not been able to cross-examine on any of
9 this but, Your Honour, the stuff that they said
10 they sent me and that they told the court that I
11 had - that I said I had received, and they
12 falsely told you that.

13
14 I was in legitimate fear for myself and my family
15 and it was Mr. Ranking and Mr. Silver's clients
16 and their supporters and indeed, some of the
17 things that Mr. Ranking and Mr. Silver said to me
18 on November 17th - they didn't care. They wouldn't
19 help me even if they could to find out who was
20 doing criminal acts against my family.
21 Your Honour, if you'd listen to the tape, you'd
22 hear some of the humour in their voice.

23 **THE COURT:** I have read the transcript.

24 **MR. BEST:** I understand, Your Honour, but as I say,
25 it's another thing to hear the voice and to hear
26 all of them say they had no idea who hired the
27 private investigator when in fact, everybody was
28 there to cross-examine the private investigator
29 and Mr. Kwidzinski.

30
31 So, Your Honour, there were people who either
32 were hired in New Zealand or who - you know,

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 whatever, they began searching for us. I had
2 intended to stay in New Zealand where I had
3 relatives but we were unable to, so I left and I
4 didn't get my mail for a long time.

5
6 But Your Honour, I began to search for a lawyer
7 and it was a very difficult process, let me tell
8 you. And even Mr. Greenspan took over a year, and
9 there was another lawyer before him, and there
10 were actually some other lawyers too. I have done
11 my best to get back as soon as I could. I have
12 fulfilled your orders, Your Honour. I deeply
13 regret that I was unable, that I was prevented,
14 and that I didn't know about this at first and
15 that when I knew a process was in place, I wasn't
16 served with a lot of stuff and I didn't know a
17 lot of the exact things and I was run off and the
18 attacks still continue.

19
20 So, Your Honour, I've never not attended court in
21 my life before. There was a good reason why I
22 could not, many reasons, some of which were I
23 wasn't told about it and I wasn't served. Others
24 were. I was being threatened by the very people
25 who demanded I be convicted for this, and that
26 story is yet to be told.

27 So, Your Honour, that's - that's what I have to
28 say. I have fulfilled my orders and I've done my
29 best and I wish I could have done it before but I
30 didn't know about it and if I had been tied up -
31 let me put it this way. If I'd have been
32 kidnapped and held in a closet with a gun to my

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 head and I was unable to discover or to have
2 freedom to move, as silly as that situation
3 sounds, in many ways it was very much what
4 happened to my family and me.

5
6 And Your Honour, you've seen some of the proof
7 here as to who was doing that and believe me,
8 Your Honour, since you sat on this case, there's
9 a lot more proof that has come forward and
10 Your Honour, it's real. I had to protect my
11 family and as I say, in many cases I couldn't - I
12 didn't know about it so I couldn't come. And
13 Your Honour has been told falsely that I received
14 certain documents and that I said I received
15 certain documents. That's not true.

16
17 I also notice other things that are strange in
18 the paperwork like when an affidavit of service
19 is served and it's said that something was sent
20 by Purolator. A Purolator courier receipt would
21 be the normal thing that would be filed. So many
22 things like that and I'm not going to go into the
23 minutia of that, Your Honour, but that is what
24 I'm saying about the issues of your order and me
25 fulfilling them. I have now fulfilled them a
26 hundred percent and I regret that I couldn't
27 fulfill them at the time but I was unable to as
28 much as if someone had that gun to my head,
29 Your Honour. Plus, I didn't know about a lot of
30 it and that is what I have to say about those
31 subjects, sir.

32 **THE COURT:** Thank you. Who is leading off,

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Mr. Silver?

2 **MR. SILVER:** I'm going to go first, Your Honour.

3 **THE COURT:** Or are you finished, Mr. Best?

4 **MR. BEST:** Well, I had other things that I
5 wanted...

6 **THE COURT:** Oh, I'm sorry, back down. That sounded
7 like a conclusion. I didn't mean to rush you. You
8 have got another 25 minutes, so go right ahead,
9 sir. You organize what you want to say. I wrongly
10 interpreted that as your final comment but you go
11 right ahead.

12 **MR. BEST:** Well, that was...

13 **THE COURT:** If you've got other things to say, you
14 say them.

15 **MR. BEST:** I was addressing a situation that I
16 thought you wanted me to address, sir.

17 **THE COURT:** Yes, that's fine.

18 **MR. BEST:** One moment, please.

19 Your Honour, I wanted to speak to the issue of
20 the November 17th, 2009 conversation and what
21 preceded it and to try and place into context for
22 you everything that happened and what was said
23 and some paperwork that's very relevant so that
24 instead of considering phrases out of context -
25 and Your Honour mentioned context and I - I hear
26 you, Your Honour, and you are well aware that
27 context is so very important and I'll illustrate
28 it this way.

29

30 A man and a woman are walking down the street and
31 they meet and the man says to the woman, "Hey,
32 great to see you again." If they were high school

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 sweethearts or co-workers and they had a lovely
2 time at a party the week before, "Hi, great to
3 see you again," is nothing more than "Hi, great
4 to see you again." But if he was put away for
5 five years for raping her or used to beat her,
6 then, "Hi, great to see you again," takes on a
7 different meaning and of course, Your Honour, I
8 know you know this. I just make the point.

9
10 So what I'm saying is how important it is when
11 people say this and people say that or say that
12 this phrase means that and not this. It's
13 important to start right at the beginning, what
14 people said, what they knew, and I would like to
15 do that.

16
17 Your Honour, the Van Allen affidavit, which has
18 been filed as an exhibit several times in various
19 affidavits, including mine, but was not filed
20 until long after the information from it appeared
21 on the Internet - Mr. Van Allen's affidavit was
22 sworn October 21st, 2009. Now, on page three,
23 Mr. Van Allen says that on October 7th, 2009, he
24 was hired by Gerry Ranking, October 7th, 2009. So
25 Mr. Ranking knew that he hired him and if we go
26 to Mr. Ranking's - I'm sorry, the invoices from
27 Mr. Van Allen to Mr. Ranking that have been
28 redacted, there's enough in there to also
29 indicate that Mr. Ranking and Mr. Kwidzinski
30 worked with Mr. Van Allen to put together his
31 affidavit. So, Mr. Ranking knew all about
32 Mr. Van Allen.

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Now, on October 27th, 2009, Mr. Kwidzinski swore
2 an affidavit and attached to that affidavit as
3 one of the exhibits was a printout of my driver's
4 licence number, Don R. Best, and also my medical
5 status and height and such and address
6 information from the Ministry of Transport
7 records. So that information was all known and
8 Mr. Silver knew about Mr. Kwidzinski. So did all
9 the lawyers. Why? How do we know that? Well,
10 there were letters sent out because Mr. - one of
11 the lawyers wanted to cross-examine Mr. Van Allen
12 and Mr. Kwidzinski and the lawyers fought that.
13 They didn't want that to happen, so there were
14 letters and a series of emails and we know that
15 because I have a couple of them, which I have
16 included as exhibits in some of the affidavits.
17 But we also know that because on November 17th,
18 after they hung up on me, they talked about it
19 but the telephone didn't hang up, so I recorded
20 it and I listened.

21 **THE COURT:** And you wrote a letter that is in your
22 materials.

23 **MR. BEST:** Mm.

24 **THE COURT:** I have read it.

25 **MR. BEST:** Okay. So, on October 30th, after they
26 had done all this work with Mr. Van Allen and
27 they have sent the product of his investigation
28 out to their clients, according to Mr. Silver,
29 and so they've done that, it appears on the
30 Internet with threats, death threats. It just
31 morphs into - it went nuclear. And I must say,
32 Your Honour, and I have put in there are all

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 sorts of guidelines by the Supreme Court and
2 Canadian Judicial Council and the Law Society of
3 Upper Canada and the whole works about putting
4 driver's licence numbers and other identity
5 information into affidavits. Even the Ministry of
6 Transport says in the normal agreement, like it
7 probably has, and I would have asked - cross-
8 examined on this but I wasn't allowed to cross-
9 examine. Even the Ministry of Transport, before
10 they allow you to, for instance, include like the
11 printout or the information from Ministry records
12 in an affidavit, it needs a judge's order and
13 they have to be notified of it and they have to
14 be able to appear to do that and there is all
15 sorts of things about redacting the information
16 too, and that starts at the Ministry of Transport
17 regulations and goes all the way up, you know, to
18 the *Criminal Code*.

19
20 But no, they put it on line. They put it in an
21 affidavit. They distributed it to their clients
22 in an atmosphere where they knew the history of
23 what was happening. So they were well aware.

24
25 Now, on November 12th, there was an Andrew Roman
26 letter to all counsel regarding Kwidzinski and
27 Van Allen, the cross-examination on November 17th,
28 2009 and you know, so - and this letter went out
29 to all the lawyers, all the lawyers, and so
30 everybody knew about it.

31
32 Now, on November 17th, 2009, I called

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 Victory Verbatim from a location in the South
2 Pacific. I was out of the country. I had left on
3 November 11th and I had discovered on the 16th, as
4 Your Honour knows. So when all the lawyers and
5 Mr. Ranking and Mr. Silver spoke to me, they knew
6 who hired the private investigator. They knew
7 because of Mr. Van Allen's affidavit where he
8 says that he got the information from the Toronto
9 Police Association and everything and if we
10 compare Mr. Van Allen's affidavit and
11 Mr. Kwidzinski's affidavit with the article on
12 the "Barbados Underground", it's a cut and paste
13 in many areas, Your Honour, just cut and paste.
14 So, they knew and yet when I asked them - and I'm
15 speaking with Mr. Silver, and the transcript's
16 there. I would like to lead you through it and
17 listen to it but - because, once again, it's
18 important in context and to hear the tenor of
19 their voices as they talked to me. Everybody in
20 the room knew. The joke was on me. Everybody knew
21 who hired the private investigator. Everybody
22 knew by what I was saying that the information
23 that I was saying was posted on the Internet
24 whether they knew it or not.

25
26 In that same article posted on the Internet,
27 Mr. Silver's firm posted something, Cassels. They
28 posted at an internal address, and I address this
29 in my December 1st letters to you and to the court
30 and to the lawyers. They posted, Cassels did, a
31 very special internet address to download
32 documents from Cassels and this was posted in

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 "Barbados Underground" and it was also posted in
2 the "Comments" section of "Barbados Underground"
3 which means that multiple people can do that.

4
5 Now, bear in mind, we already know Miller Thomson,
6 because of the Internet IP information and
7 forensic information, that they have been active
8 anonymous postings on the Internet. Mr. Roman was
9 cautioned about that in writing, and that's in my
10 affidavit too.

11
12 So, that sets the stage for that telephone
13 conversation, Your Honour. And in that telephone
14 conversation, I told all of them that I had not
15 received a copy of the order, your November 2nd
16 order or order dated November 2nd. And in fact,
17 Your Honour, whether we're talking about a signed
18 copy or an unsigned copy doesn't matter. That's a
19 red herring. Read it and listen to it. You'll see
20 that over a dozen times - and these two quizzed
21 me about it. They cross-examined me about it.
22 "Did you get the November 6th package?" "No," said
23 I, "No, no. Send it to me. No." 12 or 16 times I
24 said words that were very direct, very forceful.

25
26 And then they walked out of the room and they
27 created their statement for the record. Now,
28 Your Honour, I wanted to go on the record. I
29 begged them to go on the record. That's quite
30 evident in the transcript. I was doing what I
31 could with what I had but they didn't want me on
32 the record. But the minute I got off, they

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 created a record.

2
3 What record did they create? They had the ability,
4 as I asked, to do it *verbatim*, to have a real
5 record for Your Honour. They didn't do that. Even
6 if they were going to insist that I appear and
7 they didn't want to do it by phone, they had the
8 ability to do that, to make a record, a proper
9 record for the court, and I asked them to and
10 they didn't.

11
12 So what did they say in that statement for the
13 record? That I acknowledged I got it, that I
14 acknowledged I'd got a copy of the November 2nd,
15 2009 dated order. Whether signed or not, nobody
16 discussed it. That was just - that's just damage
17 control afterwards. So they made their statement
18 for the record and then they submitted it and
19 there was a package sent to me and when that
20 package arrived in New Zealand - and I had given
21 these gentlemen the indication of when I picked
22 it up and also when it arrived.

23
24 Your Honour, I found that the first time they
25 sent me a copy of your signed order was the 18th.
26 It was dated the 18th. It didn't hit the post
27 until the 19th. And I did not get this sixth
28 package, November 6th package they claim they've
29 sent.

30 **THE COURT:** Mr. Best, you have five minutes. I am
31 just watching the clock, so if you have got
32 further points, you had better get to them.

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 **MR. BEST:** Well, Your Honour, I - bearing in mind
2 that and then what I wrote - by the way, they
3 sent me on the - on the 19th they sent it to me
4 and I received it I think on the 25th in
5 New Zealand, November, 2009. They sent me a copy
6 of their Victory Verbatim transcript, their
7 statement for the record, and I looked at it and
8 I wrote those letters to you and to them, sir,
9 because I could see that they had fabricated
10 evidence.

11
12 So when Mr. Ranking spoke for himself and
13 Mr. Silver in front of you on December 2nd, it was
14 in context of having received my December 1st
15 letter and the jig was up. They were revealed as
16 having created a false statement for the record.

17 **THE COURT:** And you could have come on January the
18 15th, 2010.

19 **MR. BEST:** Your Honour.

20 **THE COURT:** Appeared before me and made those
21 submissions.

22 **MR. BEST:** Your Honour, I did not know January 15th
23 was happening. I was also under attack and in
24 great fear for myself and my family. I haven't
25 even told you about our car being shot up. I have
26 told you about it in the first affidavit but
27 Your Honour, I was on the run because of actions
28 from the cumulative defendants and some of their
29 legal counsel and that can be proven.

30 **THE COURT:** You are saying you are on the run as a
31 result of the actions, among others, of
32 Mr. Ranking and Mr. Silver. Is that what you are

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 telling this court?

2 **MR. BEST:** Well, let me - let me...

3 **THE COURT:** No, no, I am just asking. That is what
4 you said.

5 **MR. BEST:** Actually, I said some of the lawyers
6 and some of the people and some of the defendants
7 and their supporters. Now, I have not yet had a
8 chance to cross-examine and I...

9 **THE COURT:** You have made that point.

10 **MR. BEST:** Yes, Your Honour, and also to gather
11 the evidence that would be at their law firms
12 about their communications and such.

13 **THE COURT:** Whose law firms?

14 **MR. BEST:** These gentlemen's law firms.

15 **THE COURT:** Mr. Ranking and Mr. Silver.

16 **MR. BEST:** Yes, sir.

17 **THE COURT:** Right.

18 **MR. BEST:** But when they knew what they knew and
19 about who they sent the materials to because that
20 would be another way of tracking down who was
21 responsible for the criminal acts against my
22 family but these gentlemen didn't care. They told
23 me. It's right in the transcript.

24
25 So all of that together, Your Honour, plus the
26 fact that I didn't receive, because I was on the
27 run in fear for my family, plus what, you know,
28 Miller Thomson was doing and - I didn't know it
29 was them at the time but that was all part of the
30 party. And Your Honour, when I discovered what
31 had happened I started working to try to find a
32 lawyer to get back here to you and it took me

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Best)

1 this long. And even now, it just amazes me that
2 I've had so many lawyers who, right in a
3 straightforward way, tell me - and they have
4 listened to the conversation and they don't want
5 to go there.

6
7 So, Your Honour, that is an abbreviated version,
8 a very abbreviated, of what - how those - how it
9 was that Mr. Ranking and Mr. Silver deceived the
10 court, lied to me and lied to you about things,
11 things to do with this. Now, I have also
12 mentioned about how they tried to - I believe
13 Mr. Ranking, even during cross-examination, he
14 tried to say oh he didn't get the December 1st
15 letter. That's right in the transcript and yet,
16 it was a big part of the topic of conversation on
17 that day on December 2nd in court with you,
18 Your Honour.

19 **THE COURT:** All right, anything else, Mr. Best?

20 **MR. BEST:** Well, Your Honour, I really wanted to
21 give you a comprehensive overview and I - I see
22 it's one o'clock and I really would have liked to
23 have walked you through and it would have taken
24 several hours just on the telephone conversation
25 alone.

26 **THE COURT:** Well, thank you. Your time is up. We
27 will resume at 2:15. Thank you.

28 **R E C E S S**

(1:00 PM)

29
30 **U P O N R E S U M I N G**

(2:15 PM)

31 **THE COURT:** Yes, I found the materials now. They
32 were upstairs. It's hard to believe that I had

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 more. Is that Volume 2?

2 ... DISCUSSION WITH REGISTRAR ABOUT WHICH DOCUMENTS
3 ARE NEEDED ON THE DIAS

4 **THE COURT:** Mr. Silver.

5 **MR. SILVER:** Thank you, Your Honour. Firstly,
6 maybe I was remiss for not doing this early but I
7 should reintroduce Carly Cohen, who is our
8 articling student, who has been assisting me so
9 that you know who else is in court with me.

10 **THE COURT:** There was somebody else before her. I
11 don't know he was and then there was a lady over
12 on the left side of the room.

13 **MR. SILVER:** I'm not sure who the lady was but the
14 gentleman...

15 **MR. RANKING:** The gentleman that was here and will
16 be returning is Robert Osborne and he is with PwC.

17 **REGISTRAR:** And the other woman, Your Honour, was
18 from Durham College, a student.

19 **THE COURT:** I guess she didn't find it too
20 interesting. She didn't stay long.

21
22 **SUBMISSIONS BY MR. SILVER:**

23 Your Honour, I will just quickly go through the
24 material that we filed so that we are certain
25 that you have all of what we delivered. There is
26 a three-volume motion record and I just heard
27 that you have located volumes one and three.

28 **THE COURT:** I knew I had them. They were up in my
29 chambers.

30 **MR. SILVER:** And in order to keep the volume down,
31 you will see that in many places we have slip-
32 sheeted and said that this is a document that had

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 been filed by Mr. Best so as to not duplicate,
2 although it was marked as an exhibit on his
3 cross-examination.

4 **THE COURT:** Yes.

5 **MR. SILVER:** In addition, you have our joint
6 factum.

7 **THE COURT:** Read it.

8 **MR. SILVER:** I think that there was some extra
9 photocopying done at the end with the cover page
10 and index to the Book of Authorities and the
11 Motion Record so you can rip that out.

12 **THE COURT:** Yes.

13 **MR. SILVER:** That was our mistake. I apologize.
14 And in addition, there is a Brief of Authorities.

15 **THE COURT:** Yes.

16 **MR. SILVER:** ...that we provided and what we've
17 tried to do is at the front of the Brief of
18 Authorities, we have put in four of your
19 endorsements.

20 **THE COURT:** Yes, that was helpful.

21 **MR. SILVER:** Your reasons. The most significant
22 one, which I will come back to in a moment is the
23 endorsement that you made on the contempt motion,
24 which is at Tab 4 of the Brief of Authorities. I
25 will come back to it but just as a reference
26 point, you know that you have that.

27
28 Let me first deal, Your Honour, with the four
29 points that you raised at the outset this morning.
30 You sought from us an explanation of paragraph 49
31 and 55 of the factum in respect of Mr. Best's
32 assertion that he has complied with the

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 November 2nd order in respect of the delivery of
2 documents in advance of an examination and you
3 will recall that on January 25th, Mr. Best came to
4 court with USB keys and he didn't want to hand
5 them over without it going through you or in
6 front of you and we got those on the 25th and the
7 memory key is in this envelope.

8
9 We have looked at the documentation on that
10 envelope and as stated at paragraph 49, which you
11 picked up on, we say:

12 *Best has made some documentary production.*
13 *However, it remains to be determined whether*
14 *such is in compliance with Justice*
15 *Shaughnessy's order.*
16

17 Without going through exactly what's on that USB
18 key, it's a compilation of stuff from different
19 places, it would appear, and we propose to
20 examine him on it when we get the chance to
21 examine him in accordance with the November 2 and
22 December 2 orders. And so we are not seeking for
23 any further production from him before that
24 examination but will challenge or test the
25 sufficiency of the production on the cross-
26 examination. And so that's why we worded it the
27 way we did in 49 and 55. And so at the end of my
28 argument, I am going to be handing up a draft
29 order of the relief that we think is appropriate
30 following today and it doesn't include any
31 further production from Mr. Best before the
32 examination that we're still asking for. So I

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 hope that clarifies that.

2 **THE COURT:** Well, yes and no. I guess, as I read
3 Mr. Best's factum and as I was reading his
4 materials, I was under the impression that
5 effectively he did comply to the best of his
6 ability with my orders. That's the impression I
7 was left with. So, you can see I am sort of
8 looking at you wide-eyed right now because it
9 comes back to has he or has he not?

10 **MR. SILVER:** Yes.

11 **THE COURT:** And that is what - I mean purging has
12 a lot to do with - it has to do with a lot of
13 factors but one of them is maybe late compliance
14 but compliance. So, I guess that is what I was
15 really trying to focus on.

16 **MR. SILVER:** So for the purposes of today, I would
17 say that he has complied with that term of your
18 November 2nd order that required him to produce
19 documents in advance of the examination that was
20 ordered for November 17th, and he did that on
21 January 25th by delivering the USB key and had he
22 made that production a week before November 17th,
23 we would have dealt with it on the examination
24 and so we are in that same position.

25
26 But vis-à-vis the balance of that position, which
27 is Mr. Best taking the position that he's
28 answered all questions that were ordered to be
29 dealt with back in November and December of 2009,
30 in my respectful submission, what's happened is
31 sometime between the two dates of cross-
32 examination, being January 11th and January 23rd,

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 it is my submission that Mr. Best got it in his
2 mind that rather than just take the position that
3 this should all be set aside for all the reasons
4 that he's got in his materials, he will also take
5 the position that he's complying with the
6 requirement to be cross-examined and that arose
7 during the cross-examination on January 23rd.

8
9 We have the transcripts from those two days of
10 cross-examination at Tabs 1 and 2 of our motion
11 record. So the transcript for January 23rd would
12 be behind Tab 2. Because they are four to the
13 page and not the customary form that should be
14 delivered to the court, I also have the court
15 copy of each transcript. So I don't know if you
16 want that or not. They are one to a page and they
17 are prepared by the reporter for the court.

18 **THE COURT:** Whatever works for you. I probably can
19 work on either basis but perhaps I should go with
20 what I am used to.

21 **MR. SILVER:** I will pass them both up but I am
22 just going to be referring to the January 23rd
23 transcript for the time.

24 **THE COURT:** Got it.

25 **MR. SILVER:** And if you turn to page 280.

26 **THE COURT:** January 23rd, page 280?

27 **MR. SILVER:** Tab 2 of the Motion Record. It's Tab
28 2 in there and page 280 of the transcript. It's
29 the bottom right corner of the four-to-a page and
30 the way they work, it works across and then down.

31 **THE COURT:** All right, so I am actually looking at
32 the transcript you handed up.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 **MR. SILVER:** Okay, page 280, question 1176,
2 hopefully.

3 **THE COURT:** Yes.

4 **MR. SILVER:** And I am asking the questions,
5 Your Honour.

6 *Question: Are you prepared, sir - for example,*
7 *once we've had an opportunity to review the*
8 *documentation on the memory stick, satisfy*
9 *ourselves whether it complies with paragraph 4*
10 *of Mr. Justice Shaughnessy's order, are you*
11 *prepared to attend on an examination to deal*
12 *with the questions and areas set out in*
13 *paragraph 3 of Justice Shaughnessy's order?*

14
15 So stopping there, he had the memory stick with
16 him on the 23rd but he wouldn't give it to us.
17 That only took place two days later when he
18 appeared before you. So I was trying to get at
19 what he was prepared to do to purge his contempt
20 and so I ask, "Once we get these documents and we
21 review them, are you prepared to be examined on
22 them?" And then we get this answer:

23 *Sir, what we've been doing here for two days*
24 *now is answering questions to fulfill Justice*
25 *Shaughnessy's November 2nd, 2009 order.*

26 *Question: No, we haven't.*

27 *Answer: Are you sliding something in on me?*
28 *What have you done? I mean what kind of --*

29 *Question: Sir--*

30 *Answer: No, that's -- no, no way.*

31 *Question: -- you brought an application to set*
32 *aside Justice Shaughnessy's order and you*

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

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

27 *Answer: All right. May I respond to that...*

28 *Question: Sure. I mean --*

29 *...*

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

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

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

7 Question: I'm glad to hear --

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

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

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

15 Mr. Ranking: ...

16 Theatre.

17 Theatre for Carol?

18 Who is the court reporter.

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

24 Question: I'm not going to do that.

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

28 Question: I did. I did. I said can I have the
29 documents so that I can review them and your
30 answer was no. So I'm not going to be sucked
31 into this game that you are playing that - -
32 to start asking you questions on an

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 examination that we're not even here to
2 conduct. ...

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

4
5 And so what Mr. Best is asserting is that the two
6 days that we spent with him, cross-examining him
7 on his affidavits filed in support of this motion,
8 he decided were really two days of cross-
9 examination or the opportunity to cross-examine
10 him in accordance with your order and had made
11 that perfectly clear on the 23rd before we had the
12 documents. He wasn't providing them to us that
13 day. We made that clear to him on the 23rd, and
14 yet - which was the last day of examination and
15 yet, he stands up here today and puts in a factum
16 that we've asked all the questions and if we had
17 any more, we should have asked them and he would
18 have answered them.

19
20 In my respectful submission, it's all contrived.
21 It's Mr. Best carrying on in the manner in which
22 he's decided to act in this matter, which is to
23 make it appear that he's doing everything he can
24 and yet that not being the case. You only have to
25 look at the answers to undertakings to realize
26 that that's the game that's being played here.
27 It's all orchestrated by, "You give me the
28 questions and then I go off and write stuff that
29 I think helps me and re-argue my case and send
30 119 pages," and then stand up in the face of a
31 clear indication that he's wrong about what he is
32 there to be cross-examined on, stands up here and

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 says, "I've done everything and I have complied."
2

3 In my respectful submission, he's complied with
4 the obligation to produce documents and there
5 hasn't been a single question asked of him by
6 Mr. Ranking or I in respect to the obligations as
7 set out in your November 2 and December 2 orders.
8 So that's the third point that you raised this
9 morning.
10

11 The fourth point that I will deal with that you
12 raised was that - and I suppose it's in his
13 materials that the costs were paid previously and
14 now we're double dipping, is the way you put it,
15 I think, this morning.

16 **THE COURT:** I think I was using his words.

17 **MR. SILVER:** His words. If you could turn, please,
18 to the motion record, Volume 1, Tab 23.

19 **THE COURT:** Okay, just one second. Motion record.

20 **MR. SILVER:** Volume 1.

21 **THE COURT:** Volume 1.

22 **MR. SILVER:** Tab 23. You will...

23 **THE COURT:** Just one second. I am not there yet.

24 **MR. SILVER:** You will recall that Mr. Ranking and
25 I, on behalf of our clients, sought that costs be
26 awarded not just against Nelson Barbados Group
27 Ltd. but we also brought in other parties,
28 including Mr. Best and Mr. Allard and McKenzie
29 and his law firm, and we had actually started to
30 argue that before you in February when Mr. Dewart
31 announced that he couldn't carry on because of
32 professional obligations and that ended those

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 attendances. And then we were, I think, scheduled
2 to come back to you and we reached a settlement
3 with all of the respondent parties other than
4 Mr. Best.

5 **THE COURT:** Yes.

6 **MR. SILVER:** And the agreement that was reached
7 with those other parties is reflected in the
8 Minutes of Settlement that were filed with the
9 court on June 8th. So you've seen these before.

10 **THE COURT:** Yes.

11 **MR. SILVER:** And there's a couple of points that I
12 want to make but staying on point, if you look at
13 paragraph three and four with me, you will see
14 that my clients and Mr. Ranking's clients, and
15 it's agreed to by all the parties to this
16 settlement agreement, which included Allard
17 through his counsel, and Mr. McKenzie through his
18 counsel and the law firm through their counsel,
19 agreed that the payments being made, as indicated
20 in paragraph one, resolve and satisfy all claims
21 for costs in respect of the action against all
22 the respondents listed - those are the new
23 respondents - except that, and I'm reading now:

24 *PwC, Cox defendants do not release Mr. Donald*
25 *Best and shall be at liberty to pursue him for*
26 *the costs, respectively \$50,632.90 and \$13,230,*
27 *and contempt reflected in the order made by*
28 *Justice Shaughnessy dated January 15th.*

29 And it is attached as Schedule B.

30
31 So those numbers may be familiar to you. Those
32 are the numbers that you awarded for costs in

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 favour of Mr. Ranking's client and mine on
2 January 15th.

3 **THE COURT:** Yes.

4 **MR. SILVER:** And then we also agreed Faskens and
5 Cassels - this is paragraph four - "confirm that
6 they do not currently have instructions to pursue
7 Donald Best for the costs and contempt reflected
8 in the order made by Justice Shaughnessy dated
9 Jan. 15, 2010 and do not currently expect to
10 obtain such instructions in the immediate future,
11 but such instructions may be forthcoming in the
12 future depending on the circumstances."

13
14 Well, the change in circumstances is that
15 Mr. Best has resurfaced looking to set aside the
16 contempt and in response to that, Mr. Ranking and
17 I both received instructions that given that
18 change of circumstance, we would pursue the costs
19 of 50,000 and 13,000 that specifically were not
20 released as part of this settlement. In fact,
21 it's even stronger than that. They were
22 specifically identified as not being released and
23 open to us to pursue down the road.

24
25 Secondly, the cost recovery reflected in these
26 Minutes of Settlement was not a full recovery and
27 so to the extent that additional amounts would be
28 paid, that still wouldn't bring our respective
29 clients to full recovery of costs. So there is no
30 double dipping and it was specifically provided
31 for in Minutes of Settlement that those costs
32 could be pursued against Mr. Best as

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 circumstances afforded.

2 **THE COURT:** Thank you.

3 **MR. SILVER:** I am going to make my argument and
4 Mr. Ranking and I have discussed splitting up the
5 argument and so we are attempting not to repeat
6 what each other has to say, although there will
7 be a little bit of that.

8
9 Part of the argument that I am going to cover is
10 the factual detail relating to this assertion
11 that Mr. Best didn't get notice and didn't know
12 what was going on and that Mr. Ranking and I
13 consciously and deliberately misrepresented the
14 truth to the court; an allegation, I might add,
15 that it wouldn't surprise you that I find
16 personally offensive. Having practiced for as
17 long as I have and maintained an integrity and a
18 reputation, for it to be alleged in black and
19 white that I consciously and deliberately, as
20 part of a plan and a strategy, misrepresented and
21 lied to the court is about as offensive an
22 allegation that could be made against a lawyer as
23 any. And I say that not because I want sympathy.
24 I say that because I am going to come back to
25 that when we examine Mr. Best's conduct in
26 attempting to purge the contempt and argue that
27 his conduct is really just a further abuse of the
28 process that's been going on throughout this
29 proceeding and should attract a sanction from the
30 court.

31
32 Mr. Best's position is that - sorry. Our position

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 is that Mr. Best knowingly and willfully breached
2 your orders of November 2 and 4[sic]. The January
3 15th order was perfectly appropriate. The court
4 bent over backwards to avoid the consequences
5 that we are dealing with now both in November,
6 then again in December and even in January, you
7 will recall that while you made a finding of
8 contempt, your order also said that he could
9 still come in and purge that contempt at any time
10 before February 22nd, which was the date set up
11 for the arguments.

12
13 Mr. Best did none of that. Instead, he set upon -
14 rather than purging his contempt in a remorseful
15 and honest and meaningful way, he set upon a
16 course of conduct which attacks lawyers, their
17 clients, Your Honour, quite frankly, and the
18 court system. I mean it extended to the court
19 staff this morning. The attack is on credibility
20 and integrity and it should not be countenanced.

21
22 And I say that in light of the direction that
23 Your Honour gave to Mr. Best and we have covered
24 this in the factum. It was apparent to
25 Your Honour on the motions for directions that
26 Mr. Best was setting off on a path that you
27 thought wouldn't assist him and wasn't relevant
28 to the issues that had to be decided. So for him
29 to stand up today or for him to deal with the
30 stuff in the "under advisements" or for him to
31 deal with it at all is bad enough but it's worse
32 when it's in the context of direction from His

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 Honour, from the judge who told him unequivocally,
2 "That isn't relevant. This isn't about what the
3 lawyers did. This is about what you did and how
4 you acted and how you are acting now." And in the
5 face of that, we still hear the arguments that we
6 heard. We have 119 pages that's laced with the
7 lies and the deceit and the cheating that
8 Mr. Ranking and I are responsible for and so
9 Mr. Best has no regard, in my respectful
10 submission, for this court, for court processes,
11 for directions provided by the court and
12 certainly for court orders.
13

14 You will recall - and it might be helpful, just
15 for markers, to turn up Tab 25 of the first
16 volume of the Motion Record, which is your
17 November 2nd order, and Mr. Best's complaint that
18 he didn't get a copy of this order and didn't
19 know what he had to be examined.
20

21 Of course, Your Honour, that has to be considered
22 in context. I agree with Mr. Best that context is
23 important and the context that I want to
24 highlight is that Mr. Best knew that all of this
25 was going on while it was going on and that
26 evidence is reflected in his own correspondence
27 starting with, in this regard, a letter to you
28 dated October 30th, 2009. That you can find as
29 Exhibit D to Mr. Best's April 18th affidavit,
30 April 18, 2012.

31 **THE COURT:** One second.

32 **MR. SILVER:** It's a letter dated October 30th to

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 you and it doesn't appear to have been copied to
2 us. That may have been the case with the first
3 one and then subsequent letters got copied to us.
4 But Mr. Best knew that the motion was coming on
5 on November 2nd, 2009 and he says a number of
6 things but he says, "I know that I'm going to be
7 treated fairly and so I leave it in your hands,
8 Your Honour," is effectively what he's saying,
9 although he doesn't say that effectively because
10 he's also got to say that, you know, people have
11 wrongfully attacked McKenzie and this and that.
12 But the point that I'm making is that on
13 October 30th, he knew that something was going to
14 court on November 2nd that could directly affect
15 him.

16
17 Then we attend on November 2nd and prior to
18 November 2nd, Mr. Ranking obtained an affidavit
19 from Jim Van Allen. It was sworn on October 21st
20 and he also obtained an affidavit from his
21 associate or junior, Mr. Kwidzinski, and both of
22 those affidavits were included in an amended
23 Motion Record, further Amended Notice Of Motion
24 that was served and filed on October 29th in
25 advance of the motion returnable on November 2nd.

26
27 And so I thought I heard Mr. Best say that, you
28 know, this blog of October 30th, which I won't be
29 spending much time on, was prior to the public
30 filing of the Jim Van Allen or Kwidzinski
31 affidavits. That's false. Those affidavits were
32 filed in support of the November 2nd order. And in

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 consequence of that information with respect to
2 service, you made the order that you did on
3 November 2nd at paragraph two dealing with service
4 of materials will be effective four days after
5 mailing and couriering to these post office boxes.
6 That's where the information came about the post
7 office boxes was from the Van Allen and
8 Kwidzinski affidavits.

9
10 And then that issue is re-addressed on
11 December 2nd but then, as we've seen, you order
12 him to be examined on November 17th in paragraph
13 three and it's very specific what he's being
14 examined on. That's set out at (a) to (e) of
15 paragraph three. And then paragraph four is the
16 order that requires him to deliver documents at
17 least one week before.

18
19 And if it sounds like I am being repetitious,
20 it's because I am because all of this was dealt
21 with by you on November 2nd, December 2nd and most
22 significantly, on January 15th, and that's why I
23 said to you that I'd make reference to your
24 Reasons in our brief of authorities at Tab 4. You
25 will see that all of these issues that I'm about
26 to talk about were considered by you on January
27 the 15th. And that's important because in my
28 respectful submission, Mr. Best hasn't raised
29 anything new today, anything at all new today.

30
31 Following November 2, all services thereafter
32 were effected in accordance with your orders and

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 in cross-examinations of Mr. Best, I asked
2 specifically whether he was taking any position
3 at all that the services that were effected after
4 November 2nd were not in compliance with the
5 protocol set out in your order and I got no
6 information. And so in my respectful submission,
7 all of the services - and there's affidavits of
8 service to support them all and Mr. Ranking is a
9 very careful lawyer and his secretary,
10 Jeannine Ouellette, does affidavits of service
11 every time something was served or sent to
12 Mr. Best. All of the services were in accordance
13 with the protocol and so to the extent that
14 Mr. Best argues, "I didn't get it. I didn't get
15 the document," in my respectful submission, it's
16 - I make two submissions.

17
18 My first submission is it's irrelevant as long as
19 it complied with the protocol because the
20 protocol was determined by you to be a protocol
21 that would bring the documents to his attention
22 and service of those documents.

23
24 Secondly, to the extent that he didn't get them,
25 it was his own situation or his own carelessness.
26 I mean if he chose not to check the box that
27 these things were being sent to, that's up to him
28 but he can't then come to court and say, "I
29 didn't get it." I will come back to that point
30 because it's dealt with with him in the telephone
31 conversation on November 17th.

32

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 Following November 2nd - and for this, I would
2 like you to turn to - I guess it's in Volume 2 of
3 our motion record, Tab 26. The careful lawyer
4 that he is, Mr. Ranking sent a letter to Mr. Best
5 on November 6th, 2009 and that's at Tab 26 and it
6 directly follows up on the attendance before you
7 on November 2nd, which was a Monday, and he tells
8 Mr. Best that you're ordered - he, being
9 Mr. Ranking, tells Mr. Best that he was ordered
10 to attend on the 17th and that the order became
11 valid and enforceable on November 2, the day it
12 was made and "you must attend" and he enclosed a
13 copy of the draft order. And he says, "We expect
14 to have the draft order approved substantially in
15 the same form," and he gives him a whole bunch of
16 other records and it was boxes of stuff.

17
18 We subsequently find out that there were boxes of
19 stuff that arrived in New Zealand and that's
20 reflected in the documents at Tabs 20, 21, 22 of
21 our motion record. We had gotten production on
22 cross-examination of - I guess it's UPS delivery
23 to New Zealand of stuff that went to boxes here
24 in Ontario, although we could never get a clear
25 answer from Mr. Best as to what was in the box,
26 what was in these deliveries, although I think
27 there is some indication that one of them was an
28 eight pound box of material. That's the third one.

29
30 And so it all makes sense. I mean Mr. Ranking
31 sent his letter of November 6th. He sent what's
32 referenced in the letter. It appears to have

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 arrived in New Zealand later in November and
2 notwithstanding that, Mr. Best still takes the
3 position, irrelevant as it is because of the
4 subservice order, that he never got it. And just
5 for your bench book, Ms. Ouellette's affidavit of
6 service in respect of the November 6th letter and
7 delivery is found at Tab 27 of the Motion record.

8
9 Then the next event is November 16th. Mr. Best, I
10 guess, if he is to be believed, says, "I called
11 Jackie Traviss out of the blue. I didn't know
12 about November 17th. I knew about November 2nd but
13 I didn't know about November 17th and I just
14 decided to call Jackie Traviss out of the blue."
15 And I think he calls her the court reporter in
16 certain places but I think we all know he's
17 talking about the trial coordinator who
18 apparently told him for the first time that he
19 had to attend the next day and he sends a
20 confirming letter to Jackie Traviss that is found
21 at Exhibit E to his April 18th affidavit. And he
22 says, "I informed you I have not seen any order,
23 nor did" - and Ms. Traviss sort of says, "Well,
24 you really need a lawyer. There's a lot going on
25 here."

26 But the bottom line is, respectfully, it's an
27 incredible position to say that, "I just happened
28 to call her out of the blue and that's when I
29 found out about the examination the next day."
30 He had either received the materials through
31 Mr. Ranking's effort or spoke to Mr. McKenzie, we
32 don't know, but he knew enough that on

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 November 17th, he calls in to Victory Verbatim and
2 tapes a telephone conversation. Mr. Ranking and I
3 were out in reception, just arriving at Victory
4 Verbatim that day, and the receptionist indicated
5 that there was a call for Mr. Ranking and
6 Mr. Best was on the phone and he's recorded that
7 transaction, that conversation.

8
9 The recording, or one of them, is at Tab F or
10 Exhibit F to his April 18th affidavit and you have
11 indicated that you've read it.

12 **THE COURT:** Yes.

13 **MR. SILVER:** But it's there and he talks about
14 concerns about his safety and he's told, "Well,
15 you'd better file an affidavit about all of that."
16 That doesn't happen and it's important to point
17 out that no one knew where he was on the 17th. He
18 didn't come clean the way somebody who honestly
19 wants to comply with their obligations and say,
20 "Hey, listen, I'm in New Zealand." If he had done
21 that, there wouldn't have been this exchange on
22 the telephone about, "Can you be here for two
23 o'clock? How about tomorrow? What about Thursday?"
24 And there's an answer here. It's kind of
25 incredible. He says, you know, how long - "I
26 won't be able to get there that quickly," he said.
27 I mean that's an incredible answer when you're in
28 New Zealand and you're not prepared to be honest
29 with people who are focused on allowing him to
30 comply with a court order as opposed to playing
31 games. That's what happened. "I can't be there
32 and I don't want to - I can't tell you where I am.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 I can't tell you how far away I am," etcetera,
2 etcetera. It's all in the transcript and my
3 friend, Mr. Best, suggests that we don't care. I
4 mean it's all there.

5
6 To the extent that I said I didn't care about his
7 safety, I said as a lawyer, "I don't care. You've
8 got an order that requires you to attend and
9 that's what you need to do. If there's problems
10 with your safety, as a lawyer, I can't really
11 help you." And so there's a twisting and a
12 parsing which is symptomatic of what we hear from
13 Mr. Best, but there's nothing in this transcript
14 that is a misrepresentation.

15
16 He asked about the private investigator and do I
17 know - and when you look at this transcript,
18 specifically, if you go to page 13 for a moment
19 and I mentioned I'd come back to this.
20 Mr. Ranking asked him, "Have you gone to your
21 post office box?" This is in the middle of the
22 page. Mr. Ranking says, "I wanted it noted for
23 everyone's record that Mr. Best has refused to
24 answer the question as to where he is. He's also
25 refused to answer the question that I posed
26 numerous times as to whether he's gone to his
27 post office box to pick up the materials that
28 were sent to him pursuant to Justice
29 Shaughnessy's order and in compliance with
30 Justice Eberhard's order," which was the address
31 for service. "I must have asked the question
32 three times and I'm noting that you're refusing

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 to answer, but - but," and so, I mean we weren't
2 getting told the truth by Mr. Best. He was
3 playing games with us.

4
5 And then on the next page, there's this dialogue
6 with - it starts in the middle. He's highlighted
7 it. It starts at B:

8 *Well, it says they have a copy of a report*
9 *from a private investigator from the firm of*
10 *Cassels. Silver chuckling.*

11 I must have said, "Ha ha, from the firm of
12 Cassels?" because Cassels didn't hire any private
13 investigator.

14 *Best: That's what it says.*

15 *Silver: Okay. Well, I can tell you that the*
16 *firm of Cassels doesn't have a report on (a)*
17 *on you.*

18 *Best: Yes, does anyone?*

19 *Silver: Whoever posted it, posted the wrong*
20 *information.*

21 I didn't even know what he was talking about and
22 I hadn't seen this October 30th blog. I mean this
23 came as a complete surprise to me.

24 *Best: Well, how did this come to be?*

25 Silver - he wasn't sure if it was Silver or
26 Ranking. It was probably me.

27 *I have no idea, nor do I care.*

28 *Best: Oh, well they are calling for - I see,*
29 *yes, guys, I get it. Whoever put this on,*
30 *whoever let the Ministry of Transportation*
31 *information into the public, they knew what*
32 *they were doing, identity theft, intimidation.*

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 I'm intimidated. I know exactly what you guys
2 have done.

3 Silver: I guarantee you, sir, that it wasn't
4 me or Cassels Brock.

5 Well, well, who was it then, sir? Who hired
6 the private investigator?

7 I have no idea anyway, so...

8 because I'm trying to get on with it, not
9 realizing that what he was talking about was
10 Van Allen. That, of course, I knew, that
11 Mr. Ranking had hired Mr. Van Allen and put an
12 affidavit in.

13
14 And so all of this gets twisted and parsed and
15 Cassels Brock has put blogs on and you recall
16 this October 30th blog, which is at Tab A of the
17 same book, once we're at it - I think it's at
18 Tab A. There's a blog on October 30th and you'll
19 recall that this side of the litigation wasn't
20 paying any attention to these blogs but this is
21 from the "Barbados Underground" and somebody,
22 whoever wrote this - I don't know who it was -
23 said at page - well, I guess it's the fifth or
24 sixth page in. They said that Mr. Best is a
25 habitué of Barbados.

26 Are there any Barbados Underground readers who
27 may be able to assist in tracking down
28 Mr. Donald Best? Please either post the
29 information here for all to read or
30 alternatively, send it by email to any one of
31 defence counsel that Keltruth has been so
32 obliging as to list for us, all in the past.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 Keltruth was the blog that the Knox family kept.

2 **THE COURT:** I remember that.

3 **MR. SILVER:** *If you prefer not to have to brave*
4 *the cyberspace premises of Keltruth, please be*
5 *advised that Barbados, our country, is*
6 *represented in Ontario by Mr. Lorne Silver of*
7 *the law firm of Cassels Brock (and we are*
8 *indebted to Keltruth for this information) and*
9 *his email address which we have obtained on*
10 *the internet from the Cassels Brock website is*
11 *lsilver@CasselsBrock.com*

12
13 From that comes this allegation back in 2009,
14 continuing to today, that Cassels Brock is
15 responsible for the posting of intimidating,
16 threatening, breach of the Criminal Code
17 disclosures on websites concerning Mr. Best. It's
18 nonsense, Your Honour. It was nonsense back then
19 when you heard it and dealt with it accordingly
20 and it continues to be nonsense today. And yet,
21 today, it's a little bit more grave in that when
22 somebody comes to court and says, "I want to
23 purge my contempt. I want to be a good guy. I
24 failed to comply with your order back then but
25 now I want to be a good guy," it's laced with the
26 same nonsense and the same game playing and the
27 same disdain for court process and court orders
28 as it was back then.

29 I am going to be another 10 or 15 minutes.

30 **THE COURT:** That is fine. Mr. Ranking just
31 surrendered that time.

32 **MR. SILVER:** And then we have the statement on the

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 record that we felt that it was appropriate to
2 put some statement on the record. We attempted to
3 be as fair and forthcoming as possible.
4 Ms. Rubin was there, who was acting for the law
5 firm. There was an exchange about whether or not
6 Mr. Best said he got the order or not but in my
7 respectful submission, it doesn't matter because
8 the important submission is the one that
9 Mr. Ranking made before you on November 2nd. Let
10 me see if I can't find that. I had marked that.
11 One moment, Your Honour.
12

13 If you go to our motion record, Volume 2, there
14 is a transcript from the submissions made before
15 you on December 2nd.

16 **THE COURT:** December 2nd?

17 **MR. SILVER:** Yes, December 2nd, sorry, at Tab 50.
18 Yes, December 2nd, the next time we were before
19 you after November 17th and Mr. Ranking is making
20 a submission about what should happen as a
21 consequence of the failure to attend and then at
22 page 38, in the middle of a submission, in the
23 middle of the page, and it serves to highlight
24 that these issues have been dealt with before,
25 but Mr. Ranking is making a submission and then
26 he says "So". Do you see the sentence that starts
27 with the word "So" in the middle of the top...

28 **THE COURT:** "So I don't want there to be any
29 suggestion..."

30 **MR. SILVER:** *So I don't want there to be any*
31 *suggestion that I provided - I didn't provide*
32 *him with a signed order, and I want Your*

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 Honour to know that, but the reason for that
2 because, as I say, there was delay getting
3 approvals to form and content and rearranging
4 it and finally getting it done, and then I
5 don't think - you know - so to the extent that
6 Mr. Best says he didn't have a copy of the
7 order, that's not fair. I gave a draft copy of
8 the order, as I've indicated, but he did not
9 have a copy of the signed order.

10
11 And so, in full response to the assertions that
12 there is misrepresentations and lies, this puts
13 that completely to rest. Mr. Ranking said to you
14 on December 2nd, "He didn't have the signed order.
15 He had a draft. That was sent to him on
16 November 6th but the signed order he didn't yet
17 have." And so my friend's submissions that this
18 is all a nullity because of misrepresentations
19 and lies and cheating, in my respectful
20 submission, has no merit.

21
22 I add, going back a bit, because Mr. Ranking is
23 as careful as he is, after November 17th, there
24 was a letter to Mr. Best sent on November 18th.
25 That's at the motion record, Tab 31, so in
26 Volume 2. It sets out the positions of what
27 happened in the telephone call but significantly,
28 it says, "We don't want to have to bother
29 Justice Shaughnessy with all this. How about
30 November 25h?" Of course, we don't know he is in
31 New Zealand and so there is an attempt to get the
32 examination of the 17th conducted on November 25th,

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 but Mr. Ranking makes it perfectly clear that,
2 "If that's not the case, then we are going to
3 court on December 2 and we're seeking a finding
4 of contempt against you."

5
6 That letter was sent out on its date and Mr. Best
7 acknowledges receipt of that letter in a letter
8 that I am going to come to dated December 1. So
9 there is no doubt that he got that letter before
10 December 2. Actually, that letter is the next tab
11 and he sends a letter to Mr. Ranking on
12 December 1 and he also sent a letter to you on
13 December 1. That is at Tab 33.

14
15 He says in his letter to Mr. Ranking, the third
16 paragraph down:

17 *I am in receipt of your package of*
18 *November 18th ... and the manipulated*
19 *"transcript" of our conversation that you*
20 *created after the fact.*

21 *... I find it appalling...*

22 All the things that he is still raising today he
23 had known about prior to December 1st and
24 addressed with Mr. Ranking and subsequently with
25 you, if you look at the next letter, on
26 December 1st.

27
28 And then we come before you on December 2 and at
29 Tab 30 of this same book is the order that you
30 made on December 2nd and you will see - and from
31 your endorsement, by then you were satisfied that
32 there was an attempt to evade service and so you

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 made a more specific order for substitutional
2 service in paragraph two, indicating that it is
3 served on him four days after mailing or
4 couriering to that post office box, and you gave
5 him another chance to purge his contempt. And you
6 talk about fairness. We were asking you to find
7 him in contempt on December 2. That was clear.
8 Your Honour was more careful and wanted to give
9 more chance, for whatever reason, all good, and
10 ordered that he appear before you on January the
11 15th to give his evidence and that he produce all
12 documents that you had ordered previously and it
13 is the same listing of areas to be cross-examined
14 on as the December 2 order.

15
16 Mr. Ranking, at Tab 34, immediately sent a letter
17 to Mr. Best, serving your endorsement on him, as
18 well as a copy of your order of December 2, 2009
19 and he says the order validates service and that
20 you have ordered him to appear before you to be
21 cross-examined in open court and that date is
22 January 15th and "if you don't attend, the
23 contempt motion will proceed in your absence,"
24 and he copies everybody and there is no denial
25 that Mr. Best received that letter. And I believe
26 there is also, which isn't in the record, an
27 affidavit of service of Jeannine Ouellette in
28 respect of that letter and its enclosures.

29
30 And so he knows. Mr. Best knows what is going on.
31 To the extent that he doesn't, it's his own
32 carelessness. We come to January 15th. He fails to

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 appear, a finding of contempt made, cost order
2 made reflected in endorsements and in the order
3 and then we don't hear from Mr. Best until two
4 and a half years later when we first hear from
5 Mr. Greenspan telling us that he had appeared
6 before you *ex parte* and the bench warrant was
7 lifted and we now need to deal with it. So that
8 is the background to how we got here today,
9 including the Minutes of Settlement of
10 January 15th, which I have already taken you to,
11 which reserve the right to go after these costs.

12
13 Instead of purging - I don't want to repeat
14 myself - there is a series of complaints,
15 misrepresentation, lack of service attack on
16 lawyers, His Honour, notwithstanding the warning
17 that you gave us. I have addressed that at
18 paragraph 30 of my factum and specifically, for
19 your bench book, you addressed Mr. Best on that
20 specifically on January 25th, 2013 at pages 5 and
21 13 and that transcript can be found in our motion
22 record, Tab 54.

23
24 The direction was ignored by Mr. Best and we
25 cross-examined him over two days. The transcripts
26 are available to you. To say that he was less
27 than cooperative is an understatement. Yes, he
28 spoke in a quiet, collected way but in my
29 respectful submission, he did everything he could
30 to avoid his obligations under the order that he
31 was seeking to set aside. He took opportunity
32 after opportunity to put statements on the record,

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 to read from John Knox's affidavit.
2 Notwithstanding how hard I tried to control him,
3 that's what we heard.
4

5 And then in respect of the substantive questions
6 on his affidavits that he filed, virtually every
7 one of them was taken under advisement and that's
8 why we couldn't get finished in one day. We had
9 to go back a second day and that is why you see
10 119 pages of all these listings of "under
11 advisement". Virtually every substantive question
12 was taken under advisement. Why? Because it's
13 Mr. Best's way. "I won't answer this question now.
14 I'll answer it later when I can put a book
15 together. I can put four pages of what liars
16 Silver and Ranking are rather than answer the
17 questions." And that's what we got in respect of
18 the questions that we asked on this motion. And
19 those answers to "under advisements" have been
20 provided to you.
21

22 What makes this all a little bit more remarkable,
23 if that's possible, is that it's amazingly
24 consistent with a strategy that seems to have
25 developed between Mr. McKenzie and Mr. Allard
26 back in 2009 when the issue of costs against
27 individuals first arose and in that respect, I
28 take you to Tab 29 of our motion record. There is
29 an email exchange between McKenzie and Allard.
30 Mr. Best says he didn't know anything about this
31 but that is for another day, I suppose, to decide.
32 But you will see on the second page of six - I

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 won't read the whole email trail to you but at
2 the bottom, "lawyerbill", who we know is
3 Bill McKenzie, writes to Peter Allard and says:

4 *Gerry Ranking for PwC is the lead lawyer for*
5 *those who are attacking me and you - see*
6 *attached letter to all counsel and memo to you*
7 *identifying counsel for the discontinued and*
8 *other parties.*

9
10 You will remember that Mr. Ranking's client - the
11 claim was discontinued against him right before
12 the jurisdiction motion so he didn't appear
13 before you on the jurisdiction motion. It says:

14 *As per my earlier memo I want to gear up for*
15 *attacking any lawyers who attack me and you -*
16 *best defence is offence. In the meantime I am*
17 *planning to approach the bit player lawyers*
18 *and tell them that they really don't want to*
19 *get involved in the dust up that seems about*
20 *to happen so why not settle...*

21
22 So Mr. Best's conduct, I say, is remarkably
23 similar to the strategy that Mr. McKenzie and
24 Mr. Allard were discussing at the time we first
25 sought costs against individuals.

26 That really takes me through the factual part of
27 our joint factum.

28 **THE COURT:** If we can, I would like to just take a
29 short break now and then I will come back in.

30 **MR. SILVER:** Thank you.

31 **R E C E S S**

(3:20 PM)

32
April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

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

(3:30 PM)

2 THE COURT: Yes, sir.

3 MR. SILVER: Thank you. I will just be a couple
4 more minutes. I had taken you through our factum
5 really dealing with the factual - part two, the
6 facts. The statement of issues starts at page 14.
7 I am going to leave much of this to Mr. Ranking
8 to deal with to the extent required. At page 20,
9 paragraph 61, we highlight Rule 60.11(8) which
10 should be reproduced - it is - in Schedule B and
11 it deals with contempt orders and sub (8) says:

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

16
17 In analyzing it, it seems as though it's a
18 substitute for an appeal, that it's permitted,
19 pursuant to the Rules, that you don't have to
20 appeal a contempt order. You can ask the judge to
21 vary, discharge and there are other judges who
22 said, "That's kind of odd but that's what it
23 provides for."

24 THE COURT: Read it and considered it.

25 MR. SILVER: And so in our respectful submission,
26 it would be just to allow Mr. Best one final
27 opportunity to purge his contempt by complying
28 with your order and paying our costs. In our
29 respectful submission, it would be unjust to
30 allow him to avoid compliance and/or allow him to
31 comply but without paying costs.

32
April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 Costs in contempt proceedings are *prima facie*
2 awarded at a substantial indemnity basis. In fact,
3 that is what you did on January 15th. What we
4 have done for you is we have put our bills of
5 costs at the back of our factum. You have seen
6 that.

7 **THE COURT:** Seen them and reviewed them.

8 **MR. SILVER:** Both Mr. Ranking and I have done that
9 and it sets out partial, substantial and full
10 indemnity because it is always in your discretion
11 to award a scale higher than substantial and in
12 my respectful submission, given the conduct - and
13 I am limiting it to the conduct in this professed
14 attempt to purge contempt - by making the serious
15 allegations that he does against counsel, their
16 clients and the court deserves the further
17 sanction of the court.

18
19 And so I want to finish by handing up to you - I
20 passed a copy to Mr. Best just when you took your
21 break this afternoon but it's a draft judgment
22 and I have styled it as a judgment because I
23 always thought judgments follow applications.

24 **THE COURT:** I think you are right.

25 **MR. SILVER:** Hmm?

26 **THE COURT:** I think you are right.

27 **MR. SILVER:** Right. So, in effect, we have left
28 some blanks and I guess we didn't number the
29 paragraphs either, so it's really draft.
30 Paragraph number one isn't numbered. That got
31 missed. But we are asking that there be an order
32 that Mr. Best appear - we put it before you and I

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 remind you on December 2nd, you had ordered that
2 Mr. Best appear before you on the 15th of January
3 to be examined. Obviously that is subject to your
4 agreement and your availability. We have left the
5 date open. "To give evidence in open court on"
6 and we have left the date open, and at that
7 appearance, he will answer all the questions and
8 we have just taken (a) to (e) that appeared in
9 the prior orders.

10
11 Paragraph two, we're seeking an order that by a
12 specified date, which, in our submission, should
13 be before the date fixed for the examination, if
14 you are so inclined, and that Mr. Best, before
15 that date, pay the fine and the costs ordered by
16 you on January 15th, and we particularize what
17 they are, the fine and then the four amounts that
18 you ordered on January 15th.

19
20 And then we also ask that you make an order for
21 costs. That is paragraph three. We have left the
22 amounts blank for each of Kingsland and
23 Pricewaterhouse and we say "within a specified
24 number of days of the date of this judgment.

25
26 And in paragraph four, we say that the bench
27 warrant or the warrant for committal shall
28 continued to be stayed provided that Mr. Donald
29 Best remains in compliance with this judgment and
30 the warrant of committal shall be lifted upon
31 Best's full compliance with paragraphs one to
32 three hereof.

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Silver)

1 And thus, the sanction of incarceration would
2 stay in place as a possibility until after he
3 complies with all his obligations, including the
4 payment of the costs of this application. I know
5 that I have debated with you, you know, that
6 sanction in respect of costs before but in my
7 respectful submission, and Mr. Ranking may
8 develop this a little bit further, in the
9 circumstance of this kind of conduct that's gone
10 on for this long and the amount that Mr. Best has
11 put my client to in terms of the costs of
12 responding to this with the plethora - with the
13 volume of material and plethora of irrelevant yet
14 aggressive allegations of impropriety and lying
15 and cheating, all in an attempt to so-called
16 purge his contempt, should lead you to the
17 conclusion that the only way that the costs will
18 get paid for certain is if the sanction of
19 incarceration applies if he doesn't pay and in
20 these circumstances, we respectfully submit that
21 that's appropriate.

22
23 So subject to any questions that you have, I have
24 gone over my time and I will turn it over to
25 Mr. Ranking.

26 **THE COURT:** Well, I should say I did not
27 understand one statement in the factum but I do
28 now, which I had circled to ask you or
29 Mr. Ranking, page 21, paragraph 62 and 63. So, I
30 thought it was a backhanded submission with the
31 court giving further attempts to Mr. Best. I
32 should have properly read it in the context of

1 which you are arguing it now. I didn't read it
2 that way. I didn't know that you were going to
3 suggest that he be given yet a further attempt to
4 comply. However, I do now.

5
6 I should stop before Mr. Ranking begins just to
7 say, Mr. Best, without - and we are going to have
8 to go into tomorrow. I have already called the
9 trial coordinator. It is perfectly obvious to me
10 we are not going to get through this evening and
11 I sure can't do a marathon here until six or
12 seven o'clock and there will have to be right of
13 reply.

14
15 But let me ask this, Mr. Best, right now. You
16 have seen this draft judgment. Are you prepared
17 to enter in to such a judgment on consent at this
18 time, at this point? And to be quite candid to
19 you, I was not looking forward to an ongoing and
20 continuing involvement with this matter. I don't
21 even know what time I could give you because I
22 have a murder trial that I will be doing now and
23 in the fall. They are taking months and then I am
24 going supernumerary January 1st. Now,
25 supernumerary doesn't mean I am fully retired but
26 that is how far out we are going with me. So, I,
27 frankly, was of the viewpoint coming into this
28 that this is it. I mean after six to seven years
29 of the same case, I have pretty well had it and
30 this has taken up an extraordinary, extraordinary
31 number of court hours, not just me but court
32 hours, on what was originally a jurisdictional

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 motion.

2
3 However, let me come back to the question I asked.
4 Mr. Best, are you prepared to enter into, on
5 consent, the judgment as proposed by Mr. Silver
6 now?

7 **MR. BEST:** No, I'm not, Your Honour.

8 **THE COURT:** All right. Well, that answers that.
9 Thank you, have a seat. Mr. Ranking.

10 **MR. RANKING:** Thank you, Your Honour.

11 **THE COURT:** So you don't know what I will be doing
12 and notwithstanding this may be your proposal, I
13 have other - I can make any decision I wish at
14 this point in time. I think I recognize that.

15 **MR. SILVER:** That's absolutely right. I should
16 have said that. We are telling you what would be
17 okay for us but it is up to you. The only thing
18 that I want to add is that I can't - I am in
19 court in front of Justice Matlow tomorrow. Maybe
20 we will talk about that at the end.

21 **THE COURT:** Well, it's a judge's conference week,
22 just so you know, and so I made a call to the
23 trial coordinator asking that the staff stay on,
24 so we're going to have issues all over the place
25 here. In any event, let me hear from Mr. Ranking.
26 We will use the time that's available.

27 **MR. RANKING:** Thank you, Your Honour.

28
29 **SUBMISSIONS BY MR. RANKING:**

30 Your Honour, what I want to do, and I will go
31 through this quickly, and it's from this
32 perspective. My friend and I agreed that he

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 should provide you with more detail in respect to
2 the specific issues that were raised concerning
3 your November and December and January orders and
4 I was going to provide a broader framework for
5 reasons, should you be inclined to draft them, in
6 the context of what's happened over the last
7 number of years relative to this lawsuit because
8 there are a number of factors which I urge upon
9 you to take into consideration. I ask you to
10 consider this when taking into consideration the
11 submissions that you have heard from Mr. Best and
12 Mr. Best's conduct, and I start with the fact
13 that he is the principal of Nelson Barbados and
14 the lawsuit that was commenced. I am not going to
15 dwell on that but I am simply going to remind you,
16 and in your bench brief it is Tab 55 and 56, the
17 Statement of Claim for hundreds of millions of
18 dollars, commenced by Mr. Best and it's
19 uncontroverted now, he being the sole officer and
20 director of the company, and the nature of the
21 claims and the allegations that were made.

22
23 The reason I start there, Your Honour is because
24 - not because for any moment you will forget
25 because you have an incredible alacrity to
26 remember the facts of this case, but it's worth
27 simply refreshing your memory and going back to a
28 case that started in February of 2007 and then
29 proceeded. And the reason I start there is
30 because it's Mr. Best who comes here and who
31 professes not to be able to do anything. And so
32 when I start, there are two things - really three

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 things that I focus on.

2
3 The first is the nature of the proceeding and
4 your findings that have already been made, and I
5 am going to comment on that.

6
7 The second is the background and sophistication
8 of Mr. Best, notwithstanding his professed
9 ignorance and his repeated comments that he is
10 without a lawyer and needs help.

11
12 And the third is his approach to the contempt
13 order, the steps he has taken or hasn't taken.

14 **THE COURT:** Can I say this? Mr. Silver raised - I
15 think he said it in so many words. There is
16 nothing new.

17 **MR. RANKING:** Right.

18 **THE COURT:** There is nothing new. I covered all of
19 this. I wrote extensively written Reasons. I
20 covered the background and history of Mr. Best in
21 my Reasons. I have covered what has gone on all
22 the way up to that day, January 15, 2010 and what
23 happened after that is an unfolding or a wrapping
24 up of the case into Minutes of Settlement. But
25 there is nothing new. The attacks are the same.

26 **MR. RANKING:** Yes.

27 **THE COURT:** The issues that Mr. Best raises are,
28 if not identical, very very similar. I have heard
29 it, heard it. Now I am not trying to cut you off
30 but I am saying...

31 **MR. RANKING:** No, that's fine.

32 **THE COURT:** ...there is just not a whole lot

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 different other than more - I say the attacks
2 against you and Mr. Silver and your law firms has
3 been ratcheted up even more so in written
4 materials but...

5 **MR. RANKING:** I know, and that's fine. I am more
6 than happy to take the instruction and direction
7 that you are giving me.

8 **THE COURT:** No, no, I am not trying to - I'm just
9 basically saying I hear you. I certainly - by
10 reading your materials, I understand too what has
11 happened subsequently. I am reading the factums
12 of both sides. I read the cross-examinations. I
13 got clarity where I needed clarity today on just
14 exactly what was being cross-examined on because
15 I was, frankly, let to believe from Mr. Best's
16 material that he had answered - he was seeking
17 compliance with my orders of November 2nd and
18 December 2nd and that is not the case at all. That
19 has been clarified.

20
21 The issue of costs, which I was concerned about
22 and what is so-called double dipping, that has
23 been clarified.

24 **MR. RANKING:** Right.

25 **THE COURT:** But you go ahead now and argue what
26 you want.

27 **MR. RANKING:** No, and I appreciate your direction
28 and I was not going to spend a lot of time there
29 but there are a number of things that I would
30 pause simply to emphasize is the fact that
31 Mr. Best was a police officer for some 15 years
32 and certainly no...

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 **THE COURT:** On the Fraud Squad, he says.

2 **MR. RANKING:** On the Fraud Squad and going as high
3 as Sergeant. One point that wasn't raised, but
4 it does go, Your Honour, to the invective and the
5 maliciousness that we've seen, is that following
6 our attendance on September 11th - and this is in
7 Mr. Best's material - he tried to charge me
8 criminally, and that is in the material.

9
10 But the reason I pause on some of these is that
11 what it does is it supports what my friend is
12 saying with respect to a lack of contrition and
13 why what we are seeing on our side for our
14 clients, leaving aside our own professional
15 reputations, is a complete lack of candour and an
16 ability to come to this court with clean hands
17 and do what we believe is right.

18
19 And after December 11th, and this is in Exhibit X
20 of Mr. Best's affidavit - I don't need to take
21 you to it.

22 **THE COURT:** Okay.

23 **MR. RANKING:** But I'll just simply refer you to it.
24 It's Exhibit X of his affidavit sworn January 10th.
25 I lined up to get a transcript of this court's
26 proceeding of the earlier attendance. I did that
27 at the request of Mr. Silver because I have to
28 come and pick it up and when I go to the front of
29 the queue to ask the chap behind the counter -
30 because I saw Mr. Best there - if I could get the
31 same transcript that Mr. Best was asking for,
32 Mr. Best went to the Durham Police and attempted

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 to charge me criminally with intimidation of a
2 justice system participant.

3
4 I was interviewed by the Durham Police. The
5 Durham Police listened to me and said,
6 "Mr. Ranking, your evidence is exactly the same
7 as the evidence I got from the man behind the
8 counter. We are not proceeding." But Mr. Best -
9 not only did they have to conduct an interview of
10 the court staff in this building, they in fact
11 went to the limits of actually taking the
12 videotapes and watching the videotapes, etcetera,
13 etcetera.

14
15 And I stand before you as an officer of this
16 court and I am offended in the highest degree and
17 I have never used those words in a court, but for
18 this man to come before you with a motion to say,
19 "Let's waive the contempt," when he himself is
20 taking steps which are in furtherance of the very
21 same steps we saw taken by Mr. McKenzie, which
22 are quoted by you, whether it be the Barbados
23 justice system and the salacious comments that he
24 made about the Barbados justice system, whether
25 it be Niton Amersey without notice, trying to put
26 that in, this is a complete replication and in my
27 respectful submission, and I know you don't want
28 to hear it because I know it's not nice to have
29 officers of the court speaking ill of their
30 adversaries but this is an exceptional case and I
31 don't feel comfortable making the submissions I
32 am compelled to do so. This is not a case where

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 Mr. Best has shown any contrition whatsoever. It
2 is a case where he has flaunted your orders and
3 with the greatest of respect to Mr. Best, the
4 fact that he could criticize Your Honour, and I
5 speak both on my own behalf and on behalf of
6 Mr. Silver with respect to the patience and the
7 hours you have spent, is unbelievable.

8
9 I will comment on one other issue and that is
10 with respect to Mr. Best having no ability to be
11 contrite and now saying that I don't act for a
12 client, a client who Mr. Best, Nelson Barbados,
13 chose to sue, a client who he knows conducted the
14 audit of Kingsland, a client who he delivers
15 material to say "Yes, this is an international
16 entity and they have separate partnerships all
17 over the world," but if I can just ask you - I
18 will take one more minute on this because...

19 **THE COURT:** No, no, I don't want to pressure you.
20 Just go ahead. We are going over.

21 **MR. RANKING:** The material demonstrates four
22 square that my friend, Mr. Best's submissions are
23 completely without merit.

24
25 If I could ask you to turn to Tab 4 of the binder
26 that was handed up by Mr. Best.

27 **THE COURT:** Yes, Tab 4 of this new blue binder
28 that we saw today, right.

29 **MR. RANKING:** Thank you, Your Honour. Page four of
30 that binder makes reference to
31 PricewaterhouseCoopers East Caribbean. You will
32 see that at the bottom of the page and the date

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 of registration was June 30, 1998.

2 **THE COURT:** Sorry, "Information Registration of
3 Partners"?

4 **MR. RANKING:** I apologize, it's Tab 5, Your Honour,
5 my mistake.

6 **THE COURT:** Five.

7 **MR. RANKING:** Page four of Tab 5.

8 **THE COURT:** Yes.

9 **MR. RANKING:** PwC, as you well know, is a
10 partnership for professional accountants. What
11 that reflects in Mr. Best's own materials is
12 PricewaterhouseCoopers East Caribbean Firm, the
13 business name of a professional partnership
14 having been registered in Barbados on June 30th,
15 1998.

16
17 If I can then take you to the next document which
18 my friend - I should call him Mr. Best.

19 **THE COURT:** Mr. Ranking, I have a recollection -
20 but of course, I should be very careful about my
21 recollections because they get replicated here.
22 But I have a recollection even when these
23 proceedings were on that you went through an
24 explanation...

25 **MR. RANKING:** I did.

26 **THE COURT:** ...of these corporations for the
27 benefit of Mr. McKenzie.

28 **MR. RANKING:** I did.

29 **THE COURT:** ...because I recall.

30 **MR. RANKING:** Yes, and it was the subject matter
31 of Mr. Hatch's cross-examination but I simply
32 bring you to Exhibit 32.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 **THE COURT:** All right. Sorry, now we're back to...

2 **MR. RANKING:** This is Tab #10.

3 **THE COURT:** ...of the materials Mr. Best put
4 forward today?

5 **MR. RANKING:** Yes.

6 **THE COURT:** Yes.

7 **MR. RANKING:** And I do so because it concerns me
8 no end that my friend will say something which
9 the documents don't support. This document shows
10 that PricewaterhouseCoopers East Caribbean Firm
11 has been registered in the Register of Business
12 Names under #18309 as of the date 30 June, 1993,
13 which is entirely consistent with the document I
14 just provided to you. It is entirely consistent
15 with my representations to this court and the
16 date, June 11th, 24th [sic] is when the Registrar
17 gave his seal to confirm the registration.

18
19 It's as the plain as the nose on my face and when
20 I cross-examined Mr. Best to say, "You are
21 relying upon the affidavit of Mr. Alair Shepherd.
22 Would you please inquire of Mr. Shepherd to ask
23 him if he did a business name search or did he
24 restrict his search to corporate names?"
25 remarkably, none of those questions were answered.
26 And if you want the reference again for your...

27 **THE COURT:** No, I don't.

28 **MR. RANKING:** Let me turn to one other issue,
29 which is the issue of the lack of counsel and
30 then I'll speak to costs and briefly touch upon
31 the cases.

32

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 Clearly Mr. Best is seeking the sympathy of the
2 court but let's look at the history of this. When
3 Mr. Best needs counsel, Mr. Best gets the best
4 counsel in the country. Mr. Brian Greenspan is
5 one of the finest criminal counsel and he had one
6 of the finest criminal counsel. So for Mr. Best
7 then to come back - we don't know the
8 circumstances under which Mr. Greenspan was
9 dismissed. We don't have any of those details.

10 **THE COURT:** Oh, I do. He stood up before me and
11 made submissions that he did not feel comfortable
12 in the civil area. That is not his area of
13 expertise. I think there is maybe even a
14 transcript of this. I can remember it clearly.

15 **MR. RANKING:** I was not...

16 **THE COURT:** I really wasn't surprised at his
17 submissions but in any event, that is what he put
18 on the record. It wasn't my suggestion.

19 **MR. RANKING:** Oh no, I wouldn't suggest that. What
20 I actually find quite remarkable...

21 **THE COURT:** I thought it was when you consider the
22 findings I have to make are very similar to the
23 criminal requirement in terms of proof, I thought,
24 frankly, he was well suited but then he chose
25 otherwise. But that is neither here nor there.
26 That is his decision.

27 **MR. RANKING:** Fair enough.

28 **THE COURT:** And is the best one to judge.

29 **MR. RANKING:** Fair enough. My only point - and I
30 do actually attribute this in part to Mr. Best -
31 is we have Mr. Best, who is not incapable of
32 retaining counsel. He then moves *ex parte*, which,

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 in my respectful submission, was most unusual
2 when he knew that Mr. Silver and I were engaged.
3 He obtains what he wants, which is the contempt
4 order to be lifted and thereafter, for reasons
5 which are not fully explained, Mr. Best can't
6 have counsel and can't locate counsel. I suggest
7 to you that the inference is entirely reasonable
8 that Mr. Best obtained what he wanted, which was
9 a lifting of the contempt. He is now in Canada.
10 He does not have the bench warrant hanging over
11 his head. It has been delayed and this has been
12 moved on and on and on. So, my only point was
13 that I did want to make the point that I find it
14 disingenuous of my friend to say that he cannot
15 have counsel. If my friend wanted counsel, he
16 could have got counsel, simply put.

17
18 The other point that I wanted to make - I only
19 use one example and this is a point - we don't
20 have time to go through everything but the one
21 point which is extremely important here is the
22 allegation that Nelson Barbados took security
23 over the shares of Kingsland. You will recall
24 that that was an allegation in the Statement of
25 Claim and we put some questions to Mr. Best about
26 that and I'm only going to deal with one instance.
27 But before I do that, the April 18th - it's
28 paragraph 40 of the Statement of Claim. It refers
29 to the security over the shares in Kingsland.

30
31 What we then see is Mr. Best swears an affidavit
32 on April 18th in this proceeding and he says, at

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 paragraph 11:

2 *This litigation concerns a long running*
3 *dispute over an estate in Barbados known as*
4 *the Kingsland Estate. The plaintiff*
5 *corporation, Nelson Barbados, has asserted a*
6 *security interest in the shares of the estate.*

7
8 I then, together with Mr. Silver, am interested
9 in that, and this is one of the subject matters
10 that you ordered to be answered had Mr. Best
11 attended on January 15th. It's an answer to
12 advisement number 89. Excuse me, it's a refusal
13 at 20 at the bottom of page 83. The question is
14 there asked: Refusal 20:

15 *Do you know whether Nelson Barbados has any*
16 *security documents?*

17 *Answer: I am not a lawyer. I don't know what a*
18 *security document is.*

19
20 And he goes on with respect to refusal 37 to 40
21 at page 88. Refusal 39 - excuse me, I'll start at
22 37:

23 *From whom did the plaintiff obtain the rights*
24 *described in the sentence I have just read,*
25 *has security over the ownership rights in the*
26 *common shares of the defendant?*

27 *This answer has been answered above.*

28 *When did Kingsland obtain security over the*
29 *rights in the common shares of Kingsland?*

30 *This has been answered above.*

31
32 And those are the references to the fact he's not

April 30, 2013

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 a lawyer and he doesn't know what a security
2 interest is.

3
4 So the reason I bring that, simply as an example,
5 to the court's attention is one of the very
6 issues that Mr. Best says he's answered that is
7 the subject matter of your orders dated
8 November 2nd and December 2nd have to do with these
9 trust documents and the security over the shares
10 of Kingsland and he has not answered them.

11
12 The only other point that I wanted to raise - and
13 it has to do with the payment of the fine and the
14 payment of costs. It has to do with the evidence
15 that Mr. Best gave as the sole officer and
16 director and he has made clear that in fact he
17 has been responsible for the cost awards that
18 have been made and he has paid them. He has also
19 indicated that he paid Mr. Greenspan and you will
20 also recall in your contempt reasons, that you
21 made reference to the fact that he had paid the
22 earlier cost awards of some \$250,000 and that was
23 a factor in your reaching the decision that you
24 did.

25 **THE COURT:** Oh, that's right. There was a much
26 earlier order.

27 **MR. RANKING:** There was and that was your finding.
28 When it comes to costs - and this is the last
29 point that I want to make on costs because I know
30 we are pressed for time. There is not a shred of
31 evidence, despite all the books, that Mr. Best
32 can't pay. Not one piece of evidence has been

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 tendered to this honourable court to say either
2 that he can't pay the costs that were awarded by
3 Your Honour on January 15th, that he can't pay the
4 fine or that he can't pay the costs that are the
5 subject matter of both the expenses that have
6 been incurred by PricewaterhouseCoopers and
7 Kingsland. And indeed, the evidence that we have
8 is just to the contrary and you will have seen,
9 and I will take you to it - it's in the answers
10 to undertakings and it's consistent with
11 paragraph 40 where Mr. Best is saying that he has
12 security, Nelson Barbados has security over the
13 shares. At page 66, in answer to advisement
14 number 89, he says, when talking about the assets
15 because the assets were the subject matter of our
16 cross-examination he says, and I quote, and this
17 is referenced in the factum:

18 *On the high end, the assets of Nelson Barbados*
19 *could be worth tens of millions of dollars.*
20

21 So, to summarize that, what I say is not only has
22 my friend not tendered evidence that he cannot
23 pay but rather, the evidence that he has
24 proffered to the court is that the security that
25 Nelson Barbados has over these shares in
26 Kingsland are worth tens of millions of dollars.
27

28 Your Honour, the only two other - well, one other
29 point before I turn to the law, and it is this.
30 This is not an academic motion. There are
31 proceedings extent in both Barbados and Florida
32 dealing with Kingsland and there are expenses

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 that are being incurred. PricewaterhouseCoopers,
2 thankfully, is not a party to either proceeding.
3 We hope that that remains the case. But the
4 reason that I bring that to your attention is
5 that Mr. Allard - if we go back to the Minutes of
6 Settlement, Mr. Allard agreed not to fund any
7 further litigation...

8 **THE COURT:** I read that today.

9 **MR. RANKING:** ...in Ontario. The only inference to
10 draw from that - and those were negotiated with
11 Mr. Allard being represented by the Paliare
12 Roland firm and I was against Mr. Roland who said,
13 "Mr. Allard is not giving the same undertaking
14 with respect to litigation outside the province.

15
16 So, Mr. Allard is clearly still involved and for
17 whatever reason, the fact that Mr. Best refuses
18 thus far to be contrite and to come to answer
19 questions with respect to Nelson Barbados, the
20 inference is that Mr. Allard continues to fund
21 and for whatever reasons, he or the McKenzie or
22 whatever team is behind this machine that
23 continues to litigate against Kingsland, they
24 don't want the evidence to come forward.

25
26 Let me very briefly look to the law, and I won't
27 take long. I only want to draw your attention to
28 three cases. They are the cases that appear under
29 Tab 5 and I can simply refer you, if you wish,
30 Your Honour, to the paragraph numbers. The case
31 from the Supreme Court of Canada under Tab 5. The
32 relevant has been highlighted at paragraph 50.

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 **THE COURT:** Didn't I recite that case in my
2 original Reasons in January? I might be wrong but
3 go ahead.

4 **MR. RANKING:** What I wanted to bring to your
5 attention was not the highlighted portion but
6 also the last sentence in paragraph 52 at the
7 bottom of page 21.

8 **THE COURT:** Oh, 52, sorry.

9 **MR. RANKING:** ...where the court there states:

10 *The gravamen of the offence is rather the open,*
11 *continuous and flagrant violation of a court*
12 *order without regard for the effect that may*
13 *have on the respect accorded to edicts of the*
14 *court.*

15 I bring that to your attention.

16
17 I equally go to the next tab, Your Honour, the
18 Pal Magder Furs, the decision of Justice Chilcot,
19 and draw your attention to the highlighted
20 portions in paragraphs 41 through 43 and in
21 particular, the dicta of Justice Dubbin. And
22 finally, I wanted to bring your attention to
23 Mr. Peter Cumming's decision under Tab 7 in
24 Sussex Group because it may be instructive to
25 draw your attention not only to those areas that
26 have been highlighted but equally to that portion
27 of the case...

28 **THE COURT:** I read it. To be honest with you, I
29 read it. Also, looking back at my reasons of
30 January 2010 at paragraph 28, the United Nurses
31 of Alberta case I made reference to and I have
32 read Justice Cumming, as he then was - I read his

Nelson Barbados v. Cox et al
Submissions on Application to Purge Contempt (Ranking)

1 decision.

2 **MR. RANKING:** That's fine, Your Honour, I
3 appreciate that. I just refer you to paragraph 55
4 where even though the contemnor may have purged
5 his contempt, that the court still retains
6 jurisdiction to consider and punish for contempt
7 notwithstanding that.

8 **THE COURT:** A little different, the facts there.

9 **MR. RANKING:** The facts were different but I make
10 that submission more with respect to the
11 appropriateness of a cost award. Your Honour, I
12 appreciate your time. Thank you.

13 **THE COURT:** So let's understand something here,
14 Mr. Best. This is reply, right? So it is reply to
15 submissions made by Mr. Silver and Mr. Ranking.
16 It is not a re-argument of your case. Do you
17 understand, sir?

18 **MR. BEST:** I - I...

19 **THE COURT:** Yes?

20 **MR. BEST:** I think I do, Your Honour, and...

21 **THE COURT:** What don't you understand? You are
22 doing a reply argument to the submissions they
23 made. That is what the purpose of reply is. So I
24 am just telling you...

25 **MR. BEST:** Your Honour, I would...

26 **THE COURT:** I don't know how to say it more
27 simplistic than that.

28 **MR. BEST:** I would ask you to guide me if I fall
29 astray from what you want.

30 **THE COURT:** Go ahead.
31
32

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

REPLY SUBMISSIONS BY MR. BEST

Your Honour, first of all, Mr. Ranking has once against wrongly added the word "Firm" orally when reading a paper that only says PricewaterhouseCoopers East Caribbean. Your Honour, we all know with corporations, the little bracket at the end that says 1996 or "limited" versus "incorporated" is everything.

THE COURT: Mr. Best, here is what I don't understand...

MR. BEST: Yes, sir.

THE COURT: ...on your entire submission. You are the president of Nelson Barbados.

MR. BEST: Yes, sir.

THE COURT: You instructed Mr. McKenzie to begin a case against a number of defendants, including the Chief Justice of Barbados, the prime minister, the former prime minister and against Pricewaterhouse - whatever the name was at that point.

MR. BEST: ...Coopers East Caribbean Firm.

THE COURT: The fact that the name changed or altered or was referenced in different forms, the fact is the entity existed. That is who you brought your lawsuit against. The fact that the corporation name changed doesn't matter anything in terms of this matter before the court, which is your contempt, your failure, your acknowledged failure to attend before me on three separate occasions. That is what this is about, Mr. Best.

MR. BEST: I understand, sir, and I'll say one more thing.

April 30, 2013

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 **THE COURT:** So, please, you seem to think that
2 there is some technical argument about a
3 corporation entity's name and the change in the
4 name or any reference of how it was referred to
5 in the process of the litigation. It is just ill-
6 founded and without merit. I tell you that, sir,
7 because I have listened to it and you are
8 repeating the same argument. Mr. Ranking has
9 taken you - I think it is as much for your
10 benefit as much as mine - to the same documents
11 that you produced to show you how that is arrived
12 at. Now for goodness sakes, Mr. Best, you have
13 much more ability than you pretend from time to
14 time. You understand that and I am telling you if
15 you got advice that somehow that is a significant
16 issue on this application, well, you did not get
17 very good advice. But ago ahead, sir.

18 **MR. BEST:** Your Honour, I've heard you and most
19 respectfully, sir, even though I maintain my
20 position and we disagree, I will leave it.

21
22 Mr. Ranking, when he was talking about how
23 terrible it was when I - on December 11th when I
24 asked for the police to investigate him, does not
25 tell you that I asked him very politely twice to
26 give me privacy, very reasonably, "Give me
27 privacy." It's in my materials. Twice I asked him
28 and he refused to leave. So it's not exactly as
29 portrayed, Your Honour.

30
31 Your Honour, I have fulfilled the orders of the
32 court. I would just - in the transcript of

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 October 23rd, I would note two things but - there
2 are many others, as you can see here, but just
3 two.

4 **THE COURT:** October 23rd, two thousand...

5 **MR. BEST:** I'm sorry, sir. January 23, 2013,
6 during my cross-examination, right on page 272,
7 Question 1133, and I had been saying, "Let's get
8 the questions. "So we agree I've fulfilled your
9 orders?" Mr. Silver said: "No, we don't, of
10 course we don't." I said, "Then dictate what
11 we've done, sir. I'm here." "So these are the
12 questions directly pertaining to the fulfilling
13 of the November 2nd, 2009 order that I want to do
14 right now. I do not want to be accused of being
15 in default of the judge's order when I believe
16 I've now fulfilled the judge's order. So let's
17 deal with that before we deal with anything else."
18 They wouldn't let me, and Your Honour...

19 **THE COURT:** Mr. Best.

20 **MR. BEST:** Yes, sir.

21 **THE COURT:** By your own material, you provided a -
22 I'm sorry, the technical jargon I am not used to
23 - a stick, a computer stick.

24 **MR. BEST:** Yes, sir.

25 **THE COURT:** ...with what you say contains 100,000
26 documents and you hand that over and then you say
27 to them, "All right, so ask me questions," and
28 how would they ever possibly, from any sense of
29 reasonableness, digest...

30 **MR. BEST:** Because those documents had been in
31 their possession since at least 2010, sir. The
32 vast majority had been in their position and one

Reply Submissions on Application to Purge Contempt (Best)

1 would think that they could have asked me a
2 question and indeed, some of the questions they
3 asked me could be said to be entirely about
4 everything but they - they didn't want to. They
5 constructed a situation. That is my position, sir,
6 and when we consider how they conducted that
7 cross-examination - I wish you could hear the
8 tape, Your Honour, because the transcript's
9 pretty bad but the tape would really really tell
10 you what happened.

11
12 So I will say also that Mr. Silver, I think, said
13 that I gave no information regarding the service,
14 that the service was not under the protocol. This
15 is when I was served the documents and
16 Ms. Ouellette, I think her name, and some other
17 people served affidavits. Yes, sir, on page 45,
18 Under Advisement number 60, I address that. I do
19 not accept her service and I - I mean there's a
20 whole bunch of things that the court was told I
21 was served with. I was not and I haven't been
22 able to cross-examine on it and I wish I could
23 have.

24
25 Mr. Silver makes it sound like it was such a
26 reasonable cross-examination regarding the
27 documents and the questions and everything but in
28 fact, both of them - it was just theatre.
29 Mr. Ranking yelled at me and I won't say it in
30 the voice but I was just making notes and he goes,
31 "LOOK AT ME," and this was unbelievable, sir.
32 I've never seen it before. It was all done to

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 have a theatre.
2

3 In terms of costs, Your Honour, I wanted to
4 cross-examine re: the costs, check the files and
5 the invoices, the hours. Sir, there was two
6 million dollars on the table and there's no way -
7 I just can't believe they left such a small
8 amount on the table. I believe that they've
9 double-dipped and I believe that cross-
10 examination and a real look at their outlook and
11 everything would show it.
12

13 I'm the only one who's put in evidence since
14 June 10th or June 2010. I'm the only one. My
15 evidence is uncontroverted.
16

17 Your Honour, I'd also let you know that prior to
18 November 11th, 2009, the most I had been out of
19 the country was only a few weeks. I've never been
20 a resident of any other country. My action in
21 leaving the country with my family was real. It
22 was forced, it was necessary and many people,
23 defendants and some law firms and personnel from
24 law firms were part of that large campaign that
25 caused me to leave.
26

27 I have been convicted on false evidence,
28 Your Honour, and Your Honour, I have fulfilled
29 all your orders, sir, and I worked hard to try
30 and fulfill them and the purpose now for these
31 gentlemen is improper. They're talking about
32 other - other venues. They want evidence for

April 30, 2013

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 other venues. Your Honour, this is...

2 **THE COURT:** Is that how you perceive it?

3 **MR. BEST:** Yes, sir.

4 **THE COURT:** That's how you perceive this?

5 **MR. BEST:** That's how I perceive why they're doing
6 what they're doing, sir.

7 **THE COURT:** I see.

8 **MR. BEST:** And they've said as much.

9 **THE COURT:** So is that the reason that you don't
10 want to consider the proposal - and I can put it
11 at no higher level than that - the proposal that
12 is contained in this draft judgment put forward
13 by Mr. Silver, which gives you a further stay on
14 the bench warrant. It gives you the opportunity
15 to attend and answer the questions that they say
16 have not been answered that relate to my
17 November 2nd and December 2nd order. Oh, and it
18 also directs you to pay costs, costs which have
19 already been awarded in any event as it relates
20 to January 15, 2010 and of course, costs to be
21 assessed by me based on the material.

22 **MR. BEST:** Well, Your Honour, most respectfully,
23 sir, I will, of course, fulfill anything you
24 order me to do, of course I will.

25 **THE COURT:** No, no, I am asking you...

26 **MR. BEST:** But I cannot enter...

27 **THE COURT:** I am giving you this - they are
28 surprising me. I say it's my fault. I should have
29 picked up on it in the joint factum. I didn't. I
30 read it as a slight. I should not have read it as
31 a slight, but I did, that somehow I have been
32 giving nothing but further chances and further

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 chances, as I thought they perceived that that's
2 what was occurring in this case, to you. I
3 probably have been. Looking back on it, there's
4 been requests for costs, and security for costs
5 and I have refused those because I have wanted to
6 give you the opportunity to stand before the
7 court and make your argument and not have you in
8 a situation where you would be found immediately
9 in default. But now - now it is coming from - and
10 I have got to believe this is a joint proposal by
11 Mr. Ranking and Mr. Silver: "All right, judge,
12 please, using your discretion under Rule 60.11(8),
13 give Mr. Best yet another opportunity to attend
14 and answer questions and oh, by the way, pay the
15 costs, costs that have already been put in place
16 and a penalty, plus costs of this present
17 application." You don't want to avail yourself of
18 that, Mr. Best?

19 **MR. BEST:** Your Honour, I don't think they - that
20 their proposal is just and so I can't do that,
21 but I'll do whatever you order, sir.

22 **THE COURT:** No, no. No, it is - you understand
23 that if I did not accept your arguments - and I
24 haven't decided the case yet. I haven't given my
25 Reasons, but I just want to make sure that you
26 understand this. If I decide that you have not
27 purged your contempt, then I lift the bench
28 warrant and you go to jail. Then it doesn't mean
29 that anything is expunged. It means you are back.
30 They will bring further applications to
31 cross-examine you all in relation to productions
32 that relate to the November 2nd and December 2nd

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 orders. Nothing goes away, Mr. Best. It isn't
2 that you do the time and if you do the time,
3 everything else is now forgiven and forgotten. I
4 am saying that is if you don't purge your
5 contempt. That is what is being served up here.

6 **MR. BEST:** Your Honour, I thought I...

7 **THE COURT:** And I just say to you, sir, with the
8 greatest of respect, that would cause me, if I
9 was in your shoes, to stand back and reflect on
10 my position.

11 **MR. BEST:** Your Honour, I - I thought I had purged
12 my contempt.

13 **THE COURT:** I said to you, sir, if you are not
14 successful in purging your contempt because that
15 is my decision, Mr. Best.

16 **MR. BEST:** I understand that, Your Honour.

17 **THE COURT:** I want you to understand what happens
18 if you have not been successful.

19 **MR. BEST:** But I've attended and I - I've put
20 hours and hours and hours into answering their
21 questions. Even when they didn't want me to, I -
22 I went down all through the transcripts, sir, and
23 I listed every question and I answered it to the
24 best of my ability.

25 **THE COURT:** You are not answering my question. I
26 don't suppose there is an answer to my question.
27 I just...

28 **MR. BEST:** Maybe I didn't understand, sir.

29 **THE COURT:** ...asked you to pause and reflect upon
30 your position, sir. I can do no more. I can do no
31 more. I am not here to be your advocate and I am
32 sure that the counsel are thinking, "Yes, but he

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 has transgressed that line several times." Having
2 said that, I can say no more to you other than to
3 outline what is in front of me, what is available
4 and then the consequences flow depending on my
5 findings.

6 **MR. BEST:** I wish I was better, Your Honour, and I
7 wish I had more time.

8 **THE COURT:** I don't think it is a matter of being
9 better, Mr. Best, which is sort of a play on
10 words. I think the difficulty right now is for
11 some reason, I sense that you have decided to
12 pursue a certain path and whether that has been
13 with the advice and direction of others, I don't
14 know. I don't know. The fact is the consequences
15 all flow for you, sir, nobody else.

16 **MR. BEST:** I'm all alone here, sir, and I'm well
17 aware of the consequences. I mean...

18 **THE COURT:** Well, I would have thought you were
19 properly advised about this litigation as it
20 progressed and how it progressed and the manner
21 in which it progressed. After all, you were
22 paying the bills as the president of
23 Nelson Barbados.

24 **MR. BEST:** Your Honour, I...

25 **THE COURT:** And it's hard for me not to reflect
26 back on this history. It's been an - I don't say
27 that to be dramatic or to provide theatre. I
28 could not tally the number of hours...

29 **MR. BEST:** The number of...

30 **THE COURT:** ...I have been personally involved in
31 this matter and I think the cost awards, which
32 were not complete indemnity, are reflective of

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 what happened in this case and I think it's the
2 involvement of the counsel then that moved into
3 the Minutes of Settlement so that everyone was
4 represented on those cost orders. I think it is
5 representative of just what kind of a matter was
6 put before this court and I cannot lose
7 perspective that this was all a motion about
8 jurisdiction. That's it.

9 **MR. BEST:** Your Honour, I've been to see a
10 bankruptcy trustee and I mean I can't tell you
11 what this has done to me. It's just...

12 **THE COURT:** Well, sir...

13 **MR. BEST:** ...destroyed me.

14 **THE COURT:** You have never said in one affidavit
15 that you are impecunious, that you can't pay this.
16 You have disclosed information about your payment
17 even to Mr. Greenspan, which is none of my
18 business. You disclosed it in affidavit material.
19 You have disclosed - and the fact is I have a
20 very clear recollection now of the order that I
21 made back - oh, I can't even remember the year
22 now where I ordered costs in excess of 200,000
23 that were paid. I don't know where you are going,
24 Mr. Best, in the sense that you can't argue
25 impecuniosity and frankly - well, I say no more.
26 I have done my very best. I want to stop. There
27 is no more I can say to you to ask you to
28 reconsider or to consider your position more
29 carefully. I have given that invitation probably
30 five to six times in the last 15 minutes and if
31 you are not interested, well then, you are not
32 interested and sir, that is your decision and

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 that is fine. I can say no more.

2 Is there any further points you wish to raise in
3 reply to the arguments of either Mr. Ranking or
4 Mr. Silver?

5 **MR. BEST:** Your Honour, an innocent man cannot
6 plead guilty when someone has fabricated evidence
7 against them. I cannot do that.

8 **THE COURT:** Fine. Anything else, sir?

9 **MR. BEST:** Well, I had - just that I had things I
10 was going to say over a number of days but it
11 doesn't - it hasn't worked out and...

12 **THE COURT:** I don't catch you by surprise. I even
13 made an endorsement this would be one day and
14 quite surprisingly, it is going to be more than
15 one day because I am going to have to bring you
16 back. I am going to give an oral judgment. I am
17 not typing a judgment. I am afraid I have got
18 enough on my plate right now that I cannot
19 possibly - and to be quite candid with you, my
20 typing is...

21 **MR. BEST:** I apologize, Your Honour. I didn't mean
22 to...

23 **THE COURT:** It is not up to speed and I have got
24 many other matters I have to deal with. So it
25 will be an oral judgment and we will now have to
26 talk about a date, unless there is anything else
27 you wish to say to me, Mr. Best.

28 **MR. BEST:** Well, I just had no intent to offend
29 the court, Your Honour. I - I did the best I
30 could possibly do to answer - to fulfill your
31 orders and I - I knew that nothing I did would be
32 good enough for these gentlemen and it's their

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 prosecution. They are the prosecutors and - and
2 well, that's - that's it, sir.

3 **THE COURT:** Thank you.

4 **MR. BEST:** Thank you, Your Honour.

5 **THE COURT:** Well, it is now 4:30, 4:31. You say
6 you can't be here tomorrow, Mr. Silver. You are
7 in front of another judge.

8 ... DISCUSSION RE: SCHEDULING A TIME TO GIVE
9 REASONS FOR JUDGMENT

10 ... MAY 3, 2013 AT 9:30 A.M. IS THE DATE AGREED TO

11 **THE COURT:** I think for the purposes of the - I
12 don't know if it is really necessary. I think I
13 identified the affidavit of Mr. Donald Best sworn
14 yesterday which began this entire process. I
15 would think it is part of the court record now. I
16 don't think I have to mark it in any other way. I
17 will leave it there with you.

18
19 So there is the application, that endorsement on
20 top. I think what I would like, though, is for
21 the purposes of appellate review, I would like Mr.
22 Best's draft order that he asked the court to
23 make to be marked as Exhibit A on this motion and
24 the respondent's draft order proposed marked as
25 Exhibit B on this motion.

26 **REGISTRAR:** Yes, Your Honour.

27 **EXHIBIT NO. A:** DRAFT ORDER PREPARED BY DONALD
28 BEST - Produced and Marked.

29 **EXHIBIT NO. B:** PROPOSED DRAFT ORDER PREPARED BY
30 RESPONDENTS - Produced and Marked.

31 **MR. RANKING:** Your Honour, if we are marking
32 exhibits, would it make sense to mark Mr. Best's

April 30, 2013

Nelson Barbados v. Cox et al
Reply Submissions on Application to Purge Contempt (Best)

1 affidavit as Exhibit C?

2 **THE COURT:** Well, maybe because we did refer to it
3 and it's not in any of the materials. Yes.

4 **EXHIBIT NO. C:** AFFIDAVIT OF DONALD BEST SWORN
5 APRIL 29, 2013 - Produced and Marked.

6 **THE COURT:** I think also, since we are marking
7 exhibits, the "Answers to Undertakings, Under
8 Advisements and Refusals by Donald Best", which
9 was also introduced today to me will be exhibit
10 number D.

11 **EXHIBIT NO. D:** ANSWERS TO UNDERTAKINGS, UNDER
12 ADVISEMENTS AND REFUSALS BY DONALD BEST -
13 Produced and Marked.

14 **THE COURT:** I guess the binder was referred to, so
15 we will mark it as an exhibit.

16 **REGISTRAR:** Exhibit E.

17 **THE COURT:** That's the blue binder put in by
18 Mr. Best.

19 **EXHIBIT NO. E:** BLUE BINDER - COMPENDIUM INDEX -
20 Produced and Marked.

21 **THE COURT:** Okay, thanks everyone. So I will see
22 you Friday.

23 **R E C E S S**

(4:35 PM)

24


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 v. Cox et al* in the Superior Court of Justice held at 150 Bond St. E., Oshawa, Ontario, taken from Recording number 2812-206-400668-20130430-090859, which has been certified in Form 1.

5 May, 2013


Maxine Newell, C.C.R.