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Court File No. 141/07 (Barrie Action)

SUPERIOR COURT OF JUSTICE

NELSON BARBADOS GROUP INC.

- and -

RICHARD COX *ET AL*

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

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

APPEARANCES:

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

1 FRIDAY, MAY 3, 2013

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

(9:45 AM)

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

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

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

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

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

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

24 **THE COURT:** All right.

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

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

27 **THE COURT:** Yes, sure.

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

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

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

3 *Upon reading your factum, I understand that*
4 *there are questions that I have not answered.*
5 *Please write these questions down and send*
6 *them to me.*
7

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

12 *Mr. Silver is in court and as such, I am*
13 *writing on our joint behalves to respond to*
14 *your letter dated April 22, 2013.*
15

16 *Neither Mr. Silver nor I have asked you any*
17 *questions with respect to the subject-matter*
18 *of Justice Shaughnessy's orders dated*
19 *November 2nd and December 2nd, 2009.*
20

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

23 *These orders are at Tabs 25 and 30 of our*
24 *responding motion record for the motion*
25 *returnable April 30, 2013.*
26

27 Continuing in the main paragraph:

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

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

10
11 I might say that the words "requires you to
12 appear before the Honourable Justice Shaughnessy
13 to answer questions" is in bold.

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

17
18 Mr. Silver and I look forward to hearing from
19 you in advance of our attendance before
20 Justice Shaughnessy next Tuesday, April 30th.
21 Additionally, I note that I have not heard
22 from you with respect to the settlement offer
23 contained in my letter dated April 12, 2013.

24
25 So those letters will be marked as the next
26 lettered exhibits on these motions, madam
27 registrar.

28 **REGISTRAR:** Collectively, Your Honour?

29 **THE COURT:** Yes.

30 **REGISTRAR:** Exhibit F.

31 **THE COURT:** Thank you.
32

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

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

8
9 REASONS FOR JUDGMENT

10
11 SHAUGHNESSY J. (Orally)

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

19
20 Donald Best knowingly and wilfully breached the
21 orders of this court dated November 2 and
22 December 3, 2009. As a result, on January 15,
23 2010, I found Donald Best in contempt and amongst
24 other relief, I ordered that a warrant be issued
25 for his committal.

26
27 At the time of issuing the contempt order, I
28 granted Donald Best a further opportunity to
29 purge his contempt by complying with the previous
30 orders that he had breached. Donald Best failed
31 to purge his contempt. He chose instead to live
32 outside Canada in an unknown location until his

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1 then lawyer, Mr. Brian Greenspan, brought an
2 application to permit Mr. Best to return to
3 Canada to deal with the contempt order.
4

5 **BACKGROUND CIRCUMSTANCES**

6 My involvement in this proceeding extends over
7 several years and multiple motions made to the
8 court, all within the context of a jurisdictional
9 motion. I provided extensive written reasons
10 which detail the background information relating
11 to this litigation.
12

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

- 14 1. *Nelson Barbados Group Ltd. v. Commonwealth Construction Inc.*
15 [2009] O.J. No. 1845
- 16 2. *Nelson Barbados Group Ltd. v. Cox* [2008] O.J. No. 454
- 17 3. *Nelson Barbados Group Ltd. v. Cox* [2008] O.J. No. 2410
- 18 4. *Nelson Barbados Group Ltd. v. Cox* [2010] O.J. No. 278
19

20 Therefore, as these reasons are extensive and
21 outline the history of the facts relating to this
22 proceeding, I do not purport to review those
23 facts as I think they are reasonably and
24 succinctly stated in those reasons that I have
25 referred to.
26

27 Donald Best claims to be the sole officer,
28 directing mind and shareholder of Nelson Barbados
29 Group Ltd., an Ontario corporation, which I will
30 herein after refer to as Nelson Barbados. This
31 company was incorporated by its former counsel,
32 K. William McKenzie, and its head office was

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1 Mr. McKenzie's law office in Orillia.

2
3 In the course of the litigation, Nelson Barbados
4 was represented by K. William McKenzie.
5 Ultimately, Mr. McKenzie came off the record and
6 counsel for LawPRO became involved. Transcripts
7 of those proceedings are available in the court
8 file.

9
10 While I do not wish to recite the history of the
11 proceedings as this is available in the reasons
12 detailed above, I can, by way of summary, state
13 that Nelson Barbados went to extraordinary
14 lengths to resist, complicate and delay the
15 adjudication of the jurisdiction motions brought
16 to stay the Ontario action. Rather than agreeing
17 to facts and proceeding on a cooperative basis,
18 Nelson Barbados raised countless objections and
19 procedural roadblocks including:

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

25
26 B. Bringing a motion requesting that Cable and
27 Wireless (Barbados) Ltd. preserve and
28 produce to plaintiff's counsel all data and
29 information regarding threats on a web blog
30 against Mr. McKenzie, including the names
31 of the sources of the threats, or that the
32 said company submit to examination by way

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1 of commission or letters rogatory with
2 power to compel witnesses.

3
4 C. Bringing a motion for leave to appeal of
5 the above motions when the relief sought by
6 Nelson Barbados was denied.

7
8 D. Bringing a motion to strike the affidavit
9 of the defendant Peter Simmons.

10
11 E. Bringing a motion to introduce transcripts
12 from the examination of a non-party,
13 Mr. Nitin Amersey.

14
15 F. Bringing a motion to ask the court "to
16 consider, rectify, clarify or reconsider"
17 portions of the reasons released on
18 February 8, 2008.

19
20 G. Refusing to produce an affidavit sworn by
21 Donald Best at any time in the action and
22 refusing to provide any explanation for why.

23
24 H. Objecting to virtually all questions on the
25 cross-examination of John Knox, the affiant
26 produced on behalf of Nelson Barbados,
27 including the question of whether
28 Mr. Knox's answers were binding on Nelson
29 Barbados.

30
31 I. Delivering a notice of discontinuance
32 against 38 of the defendants at the

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eleventh hour, just before the hearing of
the jurisdiction motion.

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

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

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

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

*His Honour ordered you to attend on Tuesday,
November 17th, 2009 at 10:00 a.m. at Victory
Verbatim in Toronto, Ernst and Young Tower,
222 Bay Street, Suite 900, Toronto, Ontario,*

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1 to be examined. That order became valid and
2 enforceable on November 2nd, 2009, the day it
3 was made by His Honour. You must attend this
4 examination. You must also bring with you the
5 documents set out in the Notice of Examination
6 for Donald Best, which is enclosed.

7
8 We also enclose a copy of the draft order. We
9 expect to have the draft order approved in
10 substantially the same form.

11
12 Mr. Ranking's letter and enclosures were served
13 in accordance with the protocol for substituted
14 service provided for in the order of November 2,
15 2009. More particularly, Mr. Ranking's letter was
16 sent to Mr. Best's post office box located at
17 427 Princess Street, Suite 200, Kingston, Ontario
18 K7L 5S9.

19
20 On November 16, 2009, Mr. Best spoke to the trial
21 coordinator, Jackie Traviss, concerning his
22 obligation to attend at Victory Verbatim.
23 Mr. Best wrote a letter to Ms. Traviss stating:

24 Then you (Jackie Traviss) said that the judge
25 ordered me to appear tomorrow (Tuesday, the
26 17th) in Toronto at Victory Verbatim at
27 10:00 a.m. at 222 Bay Street to answer all
28 questions from:

29 Sections a, b, c, d.

30
31 In the same letter, Mr. Best acknowledged his
32 obligation to attend stating:

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1 Once again, I want to emphasize that I will
2 make myself available for questioning by the
3 lawyers tomorrow, Tuesday, November the 17th,
4 2009.

5
6 Mr. Best then had full knowledge of his
7 obligations arising from the November 2, 2009
8 order and in particular, the obligation to be
9 examined by counsel to the defendants in the
10 Ontario action.

11
12 Mr. Best did not produce any documents at or in
13 advance and did not attend his examination on
14 November 17, 2009. Instead, Mr. Best telephoned
15 Victory Verbatim on November 17, 2009 and advised
16 that he would neither attend the examination in
17 person nor attend the examination at a date in
18 the future. Mr. Best refused to provide counsel
19 for the defendants with any information
20 concerning his whereabouts. Despite requests,
21 Mr. Best also refused to provide a time when he
22 would attend an examination.

23
24 Mr. Ranking sent Mr. Best a letter dated
25 November 18, 2009 offering to conduct Mr. Best's
26 examination on November 25, 2009. The letter
27 enclosed *inter alia* a new Notice of Examination.
28 Mr. Ranking's letter clearly stated:

29 If you fail to appear on that date
30 (November 25, 2009), we will move for contempt
31 and our motion will be returnable in Whitby
32 before the Honourable Justice Shaughnessy on

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Wednesday, December 2, 2009 at 9:30 a.m.

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

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

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

Mr. Best failed to attend court on January 15, 2010 as ordered by me. Accordingly, a finding of contempt was made and a committal warrant was also issued on that date. At the time, Mr. Best was ordered to pay a fine of \$7500 and to pay costs in the following amounts.

a) \$50,632.90 to PricewaterhouseCoopers;

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- 1 b) \$13,230 to Kingsland Estates and
2 Mr. Silver's other clients;
3 c) \$5,512.50 to Eric Iain Stewart Deane and the
4 estate of Colin Ian Estwick Deane; and,
5 d) \$3,500 to First Caribbean International Bank.
6

7 My reasons of January 15, 2010 state:

8 *Donald Best may apply to purge his contempt by*
9 *appearing before me on or before February 22,*
10 *2010 and answering questions and making*
11 *productions as detailed in my orders of*
12 *November 2 and December 2, 2009.*
13

14 Mr. Best failed to purge his contempt or attend
15 that hearing.
16

17 Following my decision on the jurisdiction motion,
18 the defendants in the action sought costs against
19 Nelson Barbados and others, including Donald Best,
20 and I have outlined those cost orders.
21

22 Mr. Best then, for all intents and purposes,
23 disappears and nothing is heard from him until
24 his then counsel, Mr. Brian Greenspan, called the
25 trial coordinator to request an appointment
26 before me concerning his client, Donald Best.
27

28 On August 9, 2012, Mr. Greenspan attended before
29 me *ex parte* with an application for direction.
30 The grounds of this application accurately
31 outlined that on January 15, 2010 I issued
32 contempt order against the applicant, Donald Best

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1 and *inter alia* imposed a sentence of three months
2 incarceration and a fine of \$7,500. This
3 application, brought by Mr. Greenspan on
4 Mr. Best's behalf, stated that:

5 The applicant wishes to apply for an order
6 setting aside the contempt order issued on
7 January 15, 2010. In the alternative, the
8 applicant seeks an order varying the contempt
9 order of January 15, 2010.

10
11 The applicant then sought directions as to which
12 parties ought to be served on the *ex parte*
13 application and, at the request of Mr. Greenspan,
14 I made the following order and directions:

- 15 1. That counsel listed on the contempt hearing
16 transcript of January 15, 2010 were to be
17 served with the application and supporting
18 materials.
- 19 2. The execution of the warrant for the arrest
20 of Donald Best was "temporarily stayed until
21 October 12, 2012 to permit Mr. Donald Best
22 to return to Canada to instruct counsel and,
23 if required, to be available for cross-
24 examination on his affidavit filed".
- 25 3. The application was adjourned to October 12,
26 2012 before me.

27
28 Thereafter, Mr. Greenspan prepared an application
29 record to:

- 30 a. Set aside the contempt order of January 15,
31 2010.
- 32 b. Alternatively, for an order varying the

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1 contempt order.

2 c. Staying the operation of the warrant of
3 committal pending the determination of the
4 application.

5
6 On the October 12, 2012 return date of the
7 application, counsel, Mr. Gerald Ranking and
8 Mr. Lorne Silver, appeared on behalf of their
9 respective clients. Mr. Greenspan appeared on
10 behalf of Mr. Best. The application was adjourned
11 to November 16, 2012 to permit cross-examination
12 of Mr. Best and then to set a date for a hearing.
13 On October 12, 2012, I made an order extending
14 the date set for the actual hearing of the
15 application brought by Mr. Best.

16
17 On November 16, 2012, counsel and Mr. Best
18 appeared. Mr. Greenspan, as the record will
19 indicate, wished to get off the record and
20 Mr. Best wished to retain new counsel. The
21 application was adjourned to December 11, 2012 to
22 permit Mr. Best to retain new counsel or,
23 alternatively, for Mr. Best to file a Notice of
24 Intention to Act in Person. Among other
25 directions, I ordered that cross-examination of
26 Mr. Best on his affidavit material in support of
27 this application was set for January 11, 2013.
28 The application was adjourned to January 25, 2013
29 to set a date for the hearing.

30
31 On December 11, 2012, Mr. Best, now unrepresented,
32 appeared, as well as Mr. Ranking for his clients

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1 and as agent for Mr. Silver. Mr. Greenspan was
2 then removed as counsel of record. Mr. Best had
3 filed a Notice of Intention to Act in Person.
4 Leave was granted to Mr. Best to late file his
5 affidavit sworn December 10, 2012.
6

7 In my endorsement of December 11, 2012, I stated:
8 *I have already, by order dated November 16,*
9 *2012, directed cross-examination of Mr. Best*
10 *to take place on January 11, 2013. Based on*
11 *the affidavit of Mr. Best and the various*
12 *letters attached to the affidavit, he has been*
13 *in contact with the Law Society of Upper*
14 *Canada lawyer referral services. His*
15 *difficulty in retaining a lawyer appears to*
16 *relate to the degree of experience of the*
17 *lawyer that he wants to retain, as well as the*
18 *requirement that the lawyer be experienced in*
19 *"malpractice". I am not satisfied that*
20 *Mr. Best cannot retain a lawyer as he suggests.*
21 *The application brought is to purge my*
22 *contempt findings and set aside the order. As*
23 *I explained to Mr. Best, this application is*
24 *not a relitigation of the Nelson Barbados v. Cox*
25 *proceeding. Therefore, the cross-examination*
26 *of Mr. Best shall proceed on January 11, 2013*
27 *regardless of whether he retains counsel. In*
28 *light of the further material filed by*
29 *Mr. Best, the cross-examination may extend*
30 *beyond January 11, 2013.*
31

32 Mr. Best, Mr. Ranking and Mr. Silver next

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1 appeared before me on January 25, 2013. At that
2 time, I made the following endorsement:

3 *Hearing date set for April 30, 2013 at*
4 *9:30 a.m., one day only.*

5
6 *A judicial mediation date is to be set by the*
7 *trial coordinator on a date prior to April 30,*
8 *2013. Mr. Best and counsel to contact trial*
9 *co-ordinator within five days to arrange this*
10 *judicial meeting which all parties and*
11 *Mr. Best have jointly requested.*

12
13 *Mr. Best wishes to cross-examine Mr. Silver,*
14 *Mr. Roman and Mr. Ranking and their clients.*
15 *That application is denied. Mr. Best has not*
16 *demonstrated on a reasonable or principled*
17 *basis why such an order should be granted.*

18
19 *Mr. Ranking and Mr. Silver now seek an order*
20 *that Mr. Best pay into court those costs*
21 *ordered by me on January 15, 2010. This is a*
22 *variation of a prior request that the costs be*
23 *paid to the respondents directly. I find it is*
24 *necessary not to make an order at this time so*
25 *that Mr. Best will be able to argue the purge*
26 *of his contempt.*

27
28 *As I explained to Mr. Best and counsel, I*
29 *order and direct that the hearing date and*
30 *judicial mediation date are peremptory. I have*
31 *no other time available for this matter due to*
32 *other commitments.*

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

3
4 *Further, I order and direct that Mr. Best*
5 *answer refusals, undertakings and questions*
6 *under advisement on or before March 15, 2013.*

7
8 *Applicant's factum to be served and filed by*
9 *March 29, 2013. Respondents to serve and file*
10 *their factum by April 16, 2013. Factums to be*
11 *limited to 30 days,*
12 *which obviously was an error and I meant 30 pages.*
13 *All of the above dates are peremptory.*

14
15 The respondent, Kingsland Estates Limited,
16 represented by Mr. Lorne Silver and
17 PricewaterhouseCoopers East Caribbean Firm,
18 represented by Mr. Gerald Ranking, filed a joint
19 factum. On this application, Donald Best has
20 filed and relies on his affidavits as follows:

- 21 1. Affidavit sworn April 18, 2012
22 2. Affidavit sworn September 13, 2012
23 3. Affidavit sworn December 10, 2012
24 4. Affidavit sworn January 10, 2013

25
26 Mr. Best was cross-examined on his affidavits on
27 January 11, 2013 and January 23, 2013 and
28 transcripts of those examinations are filed on
29 this application. There are also transcripts
30 relating to the various attendances before me.

31 I am advised that the judicial mediation request
32 by Mr. Best and counsel did take place before

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Mr. Justice Mark Edwards.

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

Attached as exhibits to this affidavit is *inter alia* an examination of Nitin Amersey by Mr. William McKenzie on January 10, 2008 in Bay City, Michigan. Further attached as an exhibit to Mr. Best's affidavit are many pages of blogs on the internet apparently posted October 30, 2009 and the first of which is titled "The Secretive World of Peter Andrew Allard and the Graeme Hall Nature Sanctuary: Does Barbados Need Any Of It?" There are other internet postings as well. I point out these items as they are illustrative of the type of irrelevant material filed on this application and to which I will make further comment.

The December 10, 2012 affidavit of Donald Best is comprised of 46 pages, 310 paragraphs, with numerous attachments lettered as Exhibits A to Z, which includes my reasons on the motion for

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1 contempt dated January 15, 2010. In this
2 affidavit and the subsequent affidavit of
3 January 10, 2013 is a vitriolic attack of
4 Mr. Ranking and Mr. Silver and their respective
5 law firms and clients by Mr. Best. There are
6 accusations of false, fabricated, perjured
7 affidavits related to the main proceedings and
8 accusations of obstruction of justice,
9 fabricating evidence, conspiracy and fraud upon
10 the court by Messrs. Ranking, Silver, their law
11 firms and clients.
12

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

- 15 1. Mr. Best does not wish to represent himself.
16
- 17 2. Comments of Mr. Best concerning the Notice of
18 Intention to Act in Person form.
19
- 20 3. Title: "I Am Not A Flight Risk", which
21 comprises paragraphs 25 to 34.
22
- 23 4. Title: "No Lawyer Retained To Date. Not
24 Qualified To Act For Myself", which is
25 comprised of paragraphs 35 through 66.
26
- 27 5. The date of January 11, 2013 is "so unfair
28 and so unjust in all the circumstances" as
29 well as other perceived inequities by
30 Mr. Best, which is paragraph 67 through 69.
31
- 32 6. Title: "Submissions of letters to court as
unsworn un-cross-examinable, seek unserved

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1 'quasi evidence'", which is comprised of
2 paragraphs 70 to 87.

3
4 7. Title: "I Donald Best Am Not An 'Experienced
5 Litigator'", which covers paragraphs 88 to
6 101, which in many respects, is a
7 reiteration that Mr. Best does not wish to
8 represent himself in this application.

9
10 8. Title: "Audio Recording Submitted For
11 Forensic Verification. Time Needed", which
12 covers paragraphs 102 to 110 of Mr. Best's
13 affidavit.

14
15 9. Title: "Court File 'A Mess' And Missing
16 Important Documents. Need More Time And My
17 Lawyer To Examine The Court File", which
18 covers paragraphs 111 to 120 of the
19 affidavit.

20
21 10. Title: "Fears For Safety And Security Of
22 Family, Witnesses And Relevant" is the word
23 used, which is paragraphs 121 to 143.

24
25 11. Title: "Gerald Ranking And Fasken Martineau
26 DuMoulin LLP's Purported Client Is False And
27 A Non-Entity", which relates to paragraph
28 144 to 259 and paragraphs 263 and 264.

29
30 12. Title: "Confusing Court Order January 15th,
31 2010", which is detailed in paragraphs 260
32 to 262.1.

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

6
7 14. Title: "Conviction For Contempt Of Court
8 Based On Provably False Evidence", which is
9 paragraphs 274 to 294. This portion of the
10 affidavit of Donald Best is in respect of
11 allegations mentioned previously in the
12 affidavit and *inter alia* wherein Mr. Best
13 states (Paragraph 276) "I verily believe
14 that I was convicted by the Honourable Court
15 based upon multiple instances of false
16 evidence placed before the court".

17
18 15. Title: "Intent To Submit A Further Affidavit
19 About The November 17th, 2009 Call", and this
20 comprises paragraphs 296 to 298.

21
22 16. Title: "December 2nd, 2009 transcript" and
23 this consists of paragraphs 299 through 307
24 of the affidavit.

25
26 Then there is the affidavit of Donald Best sworn
27 January 10, 2013. This affidavit consists of 53
28 pages and 314 paragraphs. In addition to this
29 material, there is filed voluminous bound
30 material consisting of the originating motion
31 records of May 24, 2007 and affidavits of persons
32 such as John Knox and references to material of

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1 November 7, 2011 and August 28, 2012, excerpts
2 from legal publications and various other
3 publications.

4
5 Suffice to say this affidavit of January 10, 2013
6 and the exhibits to the affidavit comprises four
7 banker boxes of materials. A summary of the
8 affidavit of Donald Best of January 10, 2013 is
9 as follows:

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

19
20 2. Title: "My Request of the Court". Commencing
21 at paragraph 18, Mr. Best requests:

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

31
32 If this request is not granted, then

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1 Mr. Best seeks an order that
2 PricewaterhouseCoopers East Caribbean Firm
3 and Kingsland Estates Limited and their
4 respective lawyers and law firms not be
5 permitted to "act as prosecutors in my
6 current application" and that is references
7 to paragraph 22 of the affidavit.

8
9 Further, that neither Gerald Ranking or
10 Lorne Silver be able to act for their
11 respective clients, which relates to
12 paragraph 23 of the affidavit.

13
14 Requests are made for production of
15 corporate registrations of the defendants
16 and government registrations, which relates
17 to paragraph 24 of the affidavit.

- 18
19 3. Title: "PricewaterhouseCoopers East Caribbean
20 Firm and PricewaterhouseCoopers (Barbados)
21 do not exist and never have", and this
22 comprises paragraphs 26 through 35 of the
23 affidavit and references the same material
24 and position as outlined in the December 10,
25 2012 affidavit. As acknowledged by Mr. Best,
26 the material is repetitive.

27
28 I pause to note that Nelson Barbados sued the
29 Pricewaterhouse Company. Regardless of what
30 name we are using "Firm" "East Caribbean" or
31 "Barbados", they are a named defendant.
32 Mr. Best was president of the plaintiff company.

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1 I find it extraordinary that he suggests now
2 that he sued or his company, Nelson Barbados,
3 sued a non-entity. It is illogical.
4

5 4. Title: "Fasken Martineau DuMoulin LLP's and
6 Gerald Ranking's clients/witnesses,
7 committed fraud upon the court and other
8 crimes", and there is paragraphs 36 to 42 of
9 the affidavit and also paragraphs 47 through
10 49.
11

12 5. Title: "Cassels Brock and Blackwell,
13 Mr. Silver's clients/witnesses committed
14 fraud upon the court and other crimes" and
15 that comprises paragraph 43 and 44 of the
16 affidavit and paragraphs 51 through 69.
17

18 6. Title: "Costs payments are proceeds of crime
19 as defined in the Criminal Code of Canada",
20 paragraphs 45 through 46 of the affidavit.
21

22 7. Title: "Forensic verification of audio
23 recordings", which is paragraphs 70 to 78 of
24 the affidavit.
25

26 8. Title: "Court appearances in August, October,
27 November and December 2012", paragraphs 79
28 through 136, with a considerable number of
29 sub-paragraphs related thereto.
30

31 9. Title: "I have not been able to find a
32 lawyer: Over 50 lawyers have rejected my

- 1 request to represent me", paragraphs 137
2 through 147 of the affidavit.
3
- 4 10. Title: "I am not an 'Experienced Litigant' or
5 'Experienced Litigator'", which is
6 paragraphs 148 through 161 of the affidavit.
7
- 8 11. Title: "The Honourable Court is not the Court
9 of Appeal but the court can hear new
10 evidence and act if the court so desires",
11 paragraph 162 to 168 of the affidavit.
12
- 13 12. Title: "Misuse of Costs Hearings and Contempt
14 Prosecution to further other agendas",
15 paragraphs 168 through 198 of the affidavit.
16
- 17 13. Title: "Personal Safety, Security and Well
18 Being", which is paragraphs 199 to 216 of
19 the affidavit.
20
- 21 14. Title: "Reasons for Conviction", paragraphs
22 217 through 220 of the affidavit.
23
- 24 15. Title: "Massive violation of lawyer/client
25 privilege by Mr. Ranking, Mr. Silver,
26 Mr. Roman and other law firms," which is
27 paragraphs 221 to 267.
28
- 29 16. Title: "Mr. Silver and Mr. Ranking's deceit
30 to me and the Court regarding the private
31 investigator Jim Van Allen. Further proof
32 now exists," paragraphs 268 through 278.

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

3
4 I would also comment that in the course of oral
5 submissions on April 30, 2013, I was made aware
6 that Mr. Best made a complaint to the Durham
7 Regional Police that Mr. Gerald Ranking had
8 harassed him by standing in line to order a
9 transcript. Mr. Ranking, at the request of the
10 Durham Regional Police, attended before the
11 police officer, who conducted an interview. The
12 police did not lay any charges.

13
14 18. Title: "No complaint to the Law Society of
15 Upper Canada," which is comprised of
16 paragraphs 284 through 286.

17
18 19. Title: "Examinations of Mr. Rankings,
19 Mr. Silver, Mr. Roman and their clients,"
20 paragraphs 287 through 300.

21
22 20. Title: "My passport", paragraphs 301 to 308
23 of the affidavit.

24
25 21. Title: "Cross-examination", paragraphs 309 to
26 311 of the affidavit.

27
28 22. Title: "This affidavit is incomplete,"
29 paragraphs 312 to 314.

30
31 Mr. Best then filed, on this application, a
32 25 page, small type, single spaced factum

1 followed by 12 pages in even smaller print,
2 single spaced, purported to be footnotes but are
3 in fact a continuous running argument of his
4 views, thoughts and wishes.
5

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

8 *Justice Shaughnessy ordered me to answer all*
9 *questions and I have done so. I have noticed*
10 *that a great number of the questions engage my*
11 *solicitor/client privilege and other privacy*
12 *issues, but because I do not want to disobey*
13 *the court, I am reluctantly answering these*
14 *questions under duress. I wish to be very*
15 *clear that I am not waiving any rights I may*
16 *have by doing this but it appears that I have*
17 *no choice.*
18

19 I cite this paragraph as I made direct inquiries
20 on April 30, 2013 of Mr. Best and Messrs. Ranking
21 and Silver as to whether Mr. Best had sought to
22 purge his contempt by complying with my orders of
23 November 2, 2009 and December 2, 2009. Mr. Best
24 assured me that he had answered all of the
25 questions and produced all documentation relating
26 to my previous orders. However, the truth is
27 otherwise.
28

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

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1 this transcript:

2 Question: Are you prepared, sir - for example,
3 once we've had an opportunity to review the
4 documentation on the memory stick, satisfy
5 ourselves whether it complies with paragraph 4
6 of Mr. Justice Shaughnessy's order, are you
7 prepared to attend on an examination to deal
8 with the questions and areas set out in
9 paragraph 3 of Justice Shaughnessy's order?

10 Answer: Sir, what we've been doing here for
11 two days now is answering questions to fulfill
12 Justice Shaughnessy's November 2nd, 2009 order.

13 Question 1177: No, we haven't.

14 Answer: Are you sliding something in on me?
15 What have you done? I mean what kind of --

16 Question: Sir--

17 Answer: No, that's -- no, no way.

18 Question: -- you brought an application to set
19 aside Justice Shaughnessy's order and you
20 filed affidavits and we've exercised our right
21 to examine you on those affidavits. You know
22 this. So we've exercised our right to cross-
23 examine on those affidavits. You filed three.
24 We started on the 11th, we didn't get finished
25 so we're here to complete the cross-
26 examination on three affidavits that you filed
27 in support of an application to set aside
28 Justice Shaughnessy's order. I'm encouraged to
29 hear finally that you're willing to comply
30 with Justice Shaughnessy's November 2nd order.
31 I think that's a step in the right direction.
32 But we don't think you've fulfilled it at all

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1 yet. To the extent that we get to review those
2 documents -- because you need Shaughnessy's
3 order which respectfully I say is ridiculous
4 but, you're going to make your own bed in that
5 regard -- we then have the right to examine
6 you pursuant to paragraph 3 of the order and
7 we're going to exercise that right. It would
8 be nice to know that you agree that we're
9 going to have that right and we're going to
10 complete that examination. Instead what I'm
11 hearing from you is you think that we've been
12 doing this for the last day and a half. I'm
13 telling you you're wrong.

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

15 Question: Sure. I mean --

16 Answer: The whole purpose --

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

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

26 Question: I'm glad to hear --

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

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

31 Answer: I -- Please let me continue. I think
32 there's some -- I think you're -- I think

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1 you're trying to have some theatre here.

2 Mr. Ranking: Have some what?

3 The Witness: Theatre.

4 Mr. Silver: Theatre for Carol?

5 The Witness: I fulfilled the order of Justice
6 Shaughnessy and that's what we're here now.

7 Now, if there's some question I need to answer
8 to fulfil it more please let's give me the
9 next question, sir.

10 Question: I'm not going to do that.

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

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

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

23

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

31 This computer stick was handed over ultimately by
32 Mr. Best and contains, to quote Mr. Best in his

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1 materials, "over 100,000 documents" relating to
2 the Nelson Barbados proceedings. It goes without
3 saying that my order of November 2 and December 2,
4 2009 never encompassed such a production, nor
5 would the material be necessarily relevant.
6 Mr. Best made the comment that "they already have
7 this material" and by "they", I interpreted it to
8 mean Mr. Silver and Mr. Ranking. I find that this
9 "tactic" of producing a computer stick with
10 allegedly 100,000 documents and then telling the
11 court that there has been compliance with my
12 order of November 2 and December 2, 2009 is
13 offensive and is part of an ongoing litigation
14 strategy to mislead and deceive the court.

15
16 Further, my orders direct Mr. Best to attend and
17 answer questions in relation to the matters
18 specifically outlined in the orders. As late as
19 Tuesday afternoon, April 30, 2013, the
20 respondents proposed an order for the Warrant of
21 Committal to be suspended and for Mr. Best to
22 attend an examination related to the matters
23 outlined in the orders of November 2 and
24 December 2, 2009 and to pay the costs past and
25 present. Mr. Best advised me that he refused to
26 do so, maintaining that he had purged his
27 contempt.

28
29 Regretfully, Mr. Best has again attempted to
30 manipulate the court process by:

- 31 1. Suggesting he had answered all questions
32 relating to the November 2 and December 2'

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1 2009 orders when in fact he had not.
2 As detailed in the transcript of the cross-
3 examination, he was clearly being cross-
4 examined on the affidavit material filed in
5 support of this application to set aside or
6 purge the order for contempt already made,
7 yet Mr. Best was prepared to stand before me
8 and state several times that he had attended
9 and answered all the questions relating to
10 my November 2 and December 2, 2009 order. I
11 would like to characterize Mr. Best's
12 comment as a mis-statement. However, I find
13 in fact he lied.
14

15 2. Further evidence of Mr. Best's attempt to
16 manipulate and frustrate the court process
17 is a production of a computer stick, or I
18 guess it is more properly called a memory
19 stick, containing 100,000 documents and
20 effectively saying to the respondents'
21 counsel and the court, "You figure it out."
22

23 3. At the hearing of April 30, 2013, Mr. Best
24 passed up a several hundred page brief
25 titled "Answers to Undertakings, Under
26 Advisements, Refusals By Donald Best
27 Relating To His January 11th And January 23rd,
28 2013 Cross-Examination". With 15 years of
29 experience sitting on the bench and in
30 reviewing the materials, I query why this
31 cross-examination could have been so long.
32 However, after a review of the transcripts

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1 and the brief filed by Mr. Best mentioned
2 above, it is readily apparent that Mr. Best
3 took an enormous number of questions under
4 advisement. His brief (marked as Exhibit D)
5 contains 119 pages alone in relation to
6 refusals and matters taken under advisement.
7 I have described Exhibit D in much greater
8 detail on the record at the April 30, 2013
9 hearing. Suffice to say the brief contains
10 ongoing arguments relating to his position.
11 Much of the material is irrelevant and
12 unresponsive.

13
14 While there are numerous examples to
15 illustrate my finding on this point, I will
16 refer but to one example at page one, Tab 2,
17 under the title "Answers To Undertakings,
18 Under Advisements Refusals" as follows.
19 Again, I am reading from Tab 2, page one,
20 the last paragraph.

21 *Throughout this application and during my*
22 *cross-examination, I have been subject to*
23 *abuse and deceit and outright lies by*
24 *lawyers as well as innuendo and false*
25 *quasi evidence improperly placed before*
26 *the court. The lawyers, some of the*
27 *defendants and some of their supporters*
28 *also used intimidation tactics intended*
29 *to frighten and intimidate my witnesses,*
30 *my family and myself. Mr. Ranking,*
31 *Mr. Silver, some of the defendants and*
32 *their supporters also directly targeted*

1 my children and other family members who
2 have nothing to do with anything.

3
4 4. As yet a further tactic, Mr. Best made an
5 application at the commencement of the
6 April 30, 2013 hearing that there was an
7 "undocumented, secret, private or 'on the
8 side' (whatever it may be called) court
9 police investigation" involving Durham
10 Regional Police and others relating to
11 alleged events in December 2009 which has
12 caused a "miscarriage of justice and
13 probably means that this court had to
14 disqualify itself then and has to now."

15
16 In support of the application, Mr. Best swears an
17 affidavit of April 29, 2013 and then produces it
18 to the defence on April 30, 2013 after I enter
19 the courtroom. This affidavit is marked as
20 Exhibit C. The affidavit of Mr. Best states
21 (paragraph 12) that there has been a cover-up or
22 a conspiracy in order to prevent a full hearing
23 into this situation.

24
25 Neither Mr. Ranking or Mr. Silver or I have any
26 knowledge of any such circumstances alleged.
27 Mr. Best's affidavit is illustrative of the
28 ongoing history related to this action of using
29 any argument, suggestion or innuendo to cause
30 this proceeding to be delayed or sent off the
31 rails. As I ruled on the record, the affidavit
32 material is not cogent or relevant to the issue

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1 before me at the hearing of April 30, 2013.

2
3 Mr. Best spent considerable time in his
4 submissions and his affidavits to argue that
5 PricewaterhouseCoopers Caribbean Firm is not a
6 legal entity. Documents, including government
7 filings, which have been filed, clearly
8 demonstrate otherwise. The lengthy submissions of
9 Mr. Best and his affidavit material do no merit
10 further comment and I dismiss the argument on
11 this point. As I have indicated previously,
12 Nelson Barbados sued the PricewaterhouseCoopers
13 entity.

14
15 Mr. Best then argued what are two incongruous
16 positions. He submitted that he had no notice of
17 the contempt proceedings. However, his letters to
18 me (uninvited), the trial co-ordinator,
19 Ms. Jackie Traviss, and the telephone
20 conversation at Victory Verbatim on November 17th,
21 2009 and the acknowledgement of material sent to
22 him by Mr. Ranking do not support his position.
23 As stated previously, I have provided extensive
24 reasons relating to the method of service of the
25 contempt application due to the intricate network
26 of post office boxes set up by Mr. Best. Far more
27 significantly is that Mr. Best's correspondence
28 and his spoken words in a telephone conversation
29 with counsel on November 17, 2009 illustrate and
30 satisfied me that Mr. Best was aware of the
31 contempt proceedings.

32 Now with this information at hand, Mr. Best tells

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1 me April 30, 2013 that he apologizes for not
2 complying with my order of November 2, 2009 or
3 December 2, 2009 or attending the hearing on
4 January 15, 2010 or the subsequent date of
5 February 2010 to purge his contempt. He states he
6 apologizes but he had to flee Canada and take up
7 residence in what we now understand to be, based
8 on his affidavit, New Zealand for the safety of
9 his family.

10
11 I reject Mr. Best's suggestion that his family
12 was at risk. This is a continuation of the same
13 sort of suggestions of threats and conspiracies
14 advanced by his former counsel, William McKenzie,
15 which involved many days of hearing and to which
16 again I provided written reasons.

17
18 Further, I do not accept Mr. Best's apology as
19 genuine. It is apparent that this is contrived in
20 light of the malicious accusations detailed in
21 his affidavit material. Mr. Best never explained
22 how conditions were so unsafe for him and his
23 family in 2009 but is now sufficiently safe in
24 2013 that he wishes to have my contempt order set
25 aside and resume residency in Canada.

26
27 Mr. Best made other submissions that the cost
28 order by me on January 15, 2010, as well as any
29 costs to be ordered, amount to "double dipping".
30 The Minutes of Settlement entered into after the
31 involvement of counsel for LawPRO clearly
32 demonstrate that there has been no double dipping.

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1 Mr. Best is not impecunious. In the prior
2 proceedings, at a time when Mr. McKenzie was
3 acting on behalf of Nelson Barbados, I made a
4 cost order against Nelson Barbados in an amount
5 of approximately \$200,000 and this cost order was
6 satisfied. Mr. Best, on his own initiative,
7 details in an affidavit on this application that
8 he paid a significant retainer to Mr. Greenspan
9 and he details the amount. Mr. Best states that
10 he cannot retain a lawyer. He never suggests that
11 this is due to impecuniosity and I have
12 previously detailed wherein the basis of his
13 inability to retain a lawyer lies.

14
15 **ANALYSIS**

16 At a time when Mr. Best was represented by
17 Mr. Greenspan, I granted Mr. Best a further
18 opportunity to purge his contempt. I begin this
19 analysis then relating to this application by
20 referencing my reasons at [2010] O.J. No. 278,
21 found in the materials filed by both sides,
22 including Tab 4 of the Book of Authorities of the
23 respondents.

24
25 In the Reasons of January 15, 2010, which I state
26 are found at O.J. No. 278, paragraph 2 and
27 following, I stated:

28 At the hearing of this application on
29 January 15, 2010, I made a finding that
30 Donald Best was in contempt of the orders of
31 November 2, 2009 and December 2, 2009. I made
32 a further finding that Donald Best had actual

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1 notice of the orders of November 2, 2009 and
2 December 2, 2009 and that he also was on
3 notice of this contempt application and yet he
4 failed to attend on the return date of this
5 matter to answer questions and make production
6 as required and detailed in the orders of this
7 Court.

8
9 [3] Donald Best is the President of the
10 Plaintiff, Nelson Barbados Group Ltd. The
11 substantive jurisdictional motion in this
12 action was heard and Reasons were delivered
13 dated May 4, 2009. Thereafter Counsel were
14 invited to make submissions on the issue of
15 costs. A cost hearing has been set for
16 February 22, 23 and 24, 2010 at the Durham
17 Regional Courthouse. The Defendants have put
18 the Plaintiff and the Court on notice that
19 they will be seeking a cost award against
20 inter alia, K. William McKenzie and the law
21 firm of Crawford, McKenzie, McLean, Anderson &
22 Duncan LLP, former solicitors for the
23 Plaintiff.

24
25 **Order of November 2, 2009**

26 [4] The Defendants brought a motion returnable
27 November 2, 3, and 4, 2009 seeking an award of
28 costs to the Defendants on a full indemnity
29 scale, or in the alternative on a substantial
30 indemnity scale, fixed and payable forthwith
31 by the plaintiff, the plaintiff's officer
32 Donald Best, K. William McKenzie and

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1 Mr. McKenzie's law firm, Crawford, McKenzie,
2 McLean, Anderson & Duncan LLP on a joint and
3 several basis. In addition thereto the
4 Defendants sought an order, validating service
5 of the motion material upon Donald Best and
6 compelling Donald Best to appear on an
7 examination on November 17, 2009 in Toronto to
8 answer questions:

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

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

18 (c) all questions which the Court directed to
19 be answered at the hearing of the substantive
20 motion on April 8, 2009 and all questions
21 reasonably arising therefrom;

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

32 (e) all questions concerning the shares of

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1 Kingsland Estates Limited, including without
2 limiting the generality of the foregoing, the
3 security over and ownership rights held by
4 Nelson Barbados Group Ltd. in the common
5 shares of Kingsland and all questions arising
6 therefrom.

7
8 [5] There was also a request for an order
9 compelling Donald Best to deliver two weeks
10 prior to the examination, all documents by
11 which Nelson Barbados Group Ltd. allegedly
12 acquired security or an ownership interest in
13 Kingsland Estates Limited, all trust documents,
14 the minute book, director's register,
15 shareholder's register, banking documents
16 (including bank account opening documents,
17 operating agreements and bank statements) and
18 all books of account, ledgers and financial
19 statements from the date of incorporation of
20 Nelson Barbados Group Ltd through to the
21 present.

22
23 [6] The grounds advanced for the motion is
24 that all the Defendants were forced to incur
25 extraordinary legal expenses to respond to
26 unmeritorious claims and what are alleged to
27 be obstructionist tactics of the plaintiff and
28 its counsel, Mr. William McKenzie. It is
29 further alleged that this action was brought
30 by a shell corporation with a head office
31 address of Mr. McKenzie's law firm in Orillia,
32 Ontario and the action was devoid of merit and

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1 had no connection to Ontario and which issues
2 were or continue to be the subject of civil
3 proceedings in Barbados. Accordingly the
4 Defendants seek "the highest scale of costs to
5 compensate them for hundreds of thousands of
6 dollars of legal fees thrown away."

7
8 [7] An Order issued from this Court on
9 November 2, 2009 directing Donald Best to
10 attend an examination in Toronto on
11 November 17, 2009. A transcript of the
12 examination indicates that Donald Best called
13 into the special examiners office shortly
14 before the examination was to commence.
15 Mr. Best was placed into a conference call
16 with the counsel present at the examiner's
17 office. Mr. Ranking placed on the record of
18 the examination a narrative of the
19 conversation with Mr. Best, which is not
20 disputed by counsel and which I accept as an
21 accurate account. Mr. Best advised counsel
22 that he was not going to attend the
23 examination but he wanted the examination to
24 take place over the telephone. It was
25 explained to Mr. Best that this was not
26 acceptable and was not in accordance with the
27 order of the Court. Mr. Best asked if there
28 was surveillance of him and he was advised
29 that there was no surveillance. Mr. Best then
30 made reference to blog entries concerning him
31 and he was concerned for his own safety.
32 Mr. Best was assured by Defense counsel

1 present that they did not have any knowledge
2 what he was referring to. Defense Counsel also
3 offered to delay the examination to the
4 afternoon of November 17, 2009 to which
5 Mr. Best responded that he could not attend.
6 Mr. Best refused to answer all questions as to
7 where he resides. Counsel also offered other
8 dates for the examination but Mr. Best refused
9 to commit to another date. Mr. Best insisted
10 that the examination proceed over the
11 telephone. When Mr. Silver asked Mr. Best if
12 he had the records of Nelson Barbados,
13 Mr. Best refused to answer and he then asked
14 Mr. Silver what his next question was. Counsel
15 advised Mr. Best that this telephone
16 conversation was not compliance with the
17 November 2, 2009 order of the Court and the
18 telephone call was terminated.

19
20 [8] Notwithstanding the non-compliance with
21 the order of November 2, 2009 and despite the
22 fact that Mr. Best did not attend the
23 examination of November 17, 2009, Defense
24 counsel served on him by mail another
25 appointment for the examination on November 25,
26 2009. Mr. Best did not attend on this further
27 appointment.

28
29 [9] Mr. Best never produced the documents
30 detailed in the November 2, 2009 order.
31
32

1 **Order of December 2, 2009**

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

6
7 [11] On December 2/09 defense counsel attended
8 at the Courthouse in Whitby to secure an order
9 validating service of the November 27, 2009
10 motion record and authorizing substitutional
11 service of the contempt motion. Donald Best
12 did not attend the December 2, 2009 hearing
13 although he was on notice of the same.

14
15 [12] The order of December 2, 2009 provided
16 that the contempt motion was to be served upon
17 Donald Best by an alternative to personal
18 service. The endorsement of December 2, 2009
19 reads:

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

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

32 Further, it is apparent from correspondence

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1 sent by Mr. Best, including conversations he
2 states he had with the Trial Coordinator at
3 Whitby, that Mr. Best is aware of all aspects
4 of this proceeding including my order of
5 November 2, 2009.

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

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

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

17 I find that Donald Best is deliberately
18 avoiding personal service of the contempt
19 motion. There are no other steps that can be
20 taken by the defendants to locate Mr. Best.

21 In these unusual and unique circumstances I
22 find that an Order for substitutional service
23 of the contempt application is appropriate
24 and it is so granted.

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

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

30 2) at the UPS address at the Cloverdale
31 Mall in Toronto.
32

1 The contempt motion is now set to be heard by
2 me on January 15, 2010 at 9:30 am at Whitby
3 Ont.

4 Costs of today's attendance and costs thrown
5 away are reserved to the January 15, 2010 date.
6 The cross-examination of Mr. McKenzie has been
7 delayed pending this aspect of the proceeding.
8 Further, 3 days for the hearing of costs have
9 been reserved for the end of February 2010. It
10 is therefore necessary that dates and
11 timelines be adhered to in order that this
12 matter can be completed in both a fair and
13 expeditious manner.

14
15 [13] The order of December 2, 2009 directed
16 Donald Best to attend on January 15, 2010 at
17 Whitby, Ontario to give evidence viva voce
18 before Shaughnessy J. and produce the
19 documentation referred to in the November 2,
20 2009 order (and which is repeated in the
21 December 2, 2009 order). The order further
22 provides that the contempt hearing would also
23 proceed on January 15 2010. It further
24 provides that in the event that Donald Best
25 fails to attend on January 15, 2010 the
26 contempt motion will proceed in his absence.

27
28 [14] On December 4, 2009 the defense served
29 Donald Best by mail addressed to the 2 UPS
30 address boxes, the December 2, 2009 order and
31 my endorsement. On December 15, 2009
32 Mr. Ranking on behalf of all participating

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1 counsel forwarded correspondence to
2 Donald Best at both UPS addresses in Kingston
3 and Toronto enclosing the Motion Record dated
4 November 27, 2009; the Notice of Return of the
5 Amended Motion; a Supplemental Motion Record
6 dated December 14, 2009 and a Notice of
7 Examination returnable before me on January 15,
8 2010. Once again the request was made to
9 Mr. Best that he produce the documentation
10 previously requested and detailed in the Court
11 orders and the Notice of Examination.
12 Mr. Ranking's correspondence of December 15,
13 2009 states that, if Mr. Best did not attend
14 on January 15, 2009, "I will proceed with the
15 contempt motion in your absence and seek a
16 warrant for your arrest." On December 23, 2009
17 Mr. Best was served by mail with the
18 defendant's Factum and Book of
19 Authorities.

20
21 [15] Donald Best did not attend court on
22 January 15, 2010 and he has not produced the
23 documents that are the subject of the
24 November 2 and December 2, 2009 orders.

25
26 **Is Donald Best in contempt of the Court Orders**
27 **of November 2, 2009 and December 2, 2009?**

28 [16] I am satisfied, based on all the material
29 filed including Mr. Best's correspondence to
30 this court and the trial coordinator, that he
31 has actual knowledge of these proceedings and
32 the orders of this court. On November 16, 2009

May 3, 2013

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1 Mr. Best wrote to the Trial Coordinator's
2 Office:

3 ...the judge ordered me to appear tomorrow
4 (Tuesday 17th) in Toronto at Victory Verbatim
5 at 10am at 222 Bay Street to answer all
6 questions from "sections a, b, c, d".
7

8 [17] Mr. Best did not attend on the
9 examination of November 17, 2009 choosing
10 instead to play a cat and mouse game over the
11 phone. He also did not attend the November 25,
12 2009 date for the examination. On December 4,
13 2009 a copy of my order of December 2, 2009
14 and my endorsement were forwarded to Mr. Best.
15 He did not attend on January 15, 2010 as
16 required by the December 2, 2009 order and he
17 did not produce the documentation detailed
18 under both court orders.
19

20 I am going to take a short break right now
21 because I think I need it and then we will resume.
22

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

27 [36] It is further an order of this court that
28 Donald Best may apply to purge his contempt by
29 appearing before me on or before February 22,
30 2010 and answering questions and making
31 productions as detailed in my orders of
32 November 2, 2009 and December 2, 2009.

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1 That is the end of the quotation of that
2 paragraph.

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

4
5 U P O N R E S U M I N G (11:40 AM)

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

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

13
14 Therefore, it remained open to Donald Best, in
15 his application returnable September 5, 2012, to
16 seek to set aside my contempt order of January 15,
17 2010.

18
19 Since the commencement of the within application
20 and instead of attempting to comply with my
21 orders and attempting to purge his contempt,
22 Donald Best has engaged in a course of improper
23 conduct, as I have particularized, that has
24 unduly complicated the proceedings, raised
25 irrelevant issues, defamed lawyers and their
26 clients, all in an attempt, I find, to avoid
27 complying with my orders.

28
29 In respect to the within application, Mr. Best
30 swore four affidavits dated:

- 31 • April 28, 2012
32 • September 13, 2012

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- December 10, 2012
- January 20, 2013.

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

Mr. Best has been advised by me (on more than one occasion) that his allegations against counsel are not relevant to the application to set aside the contempt order. Indeed, as recently as January 25, 2013, I stated to Mr. Best as follows:

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

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

9
10 Mr. Best was cross-examined on his affidavits on
11 January 11, 2013 by Mr. Silver. I have noted that
12 Mr. Best was evasive. He took most questions
13 under advisement. When Mr. Best chose to respond,
14 his answers were self-serving and often contained
15 aggressive, irrelevant and improper allegations
16 of misconduct designed to further impugn the
17 integrity of both Messrs. Silver and Ranking.
18 Aside from the defamatory comments, Mr. Best's
19 comments were not responsive and I find they were
20 intended to frustrate his cross-examination.

21
22 Not surprisingly, the cross-examination was not
23 completed on January 11, 2013. The cross-
24 examination was continued on January 23, 2013, at
25 which time the same improper conduct by Mr. Best
26 continued unabated.

27
28 On or about March 14, 2013, Mr. Best delivered
29 119 pages of "Answers to Undertakings, Under
30 Advisements and Refusals", as well as hundreds of
31 pages of exhibits. Consistent with his cross-
32 examination, most of Mr. Best's answers are

1 evasive, self-serving and non-responsive. In
2 addition, the answers are replete with repeated
3 and additional baseless allegations of misconduct
4 against Messrs. Silver and Ranking. Amongst many
5 of the unanswered questions, Mr. Best refused to
6 answer questions relating to Nelson Barbados'
7 purported security interest in the shares of
8 Kingsland.

9
10 Mr. Best's factum continues to advance baseless
11 allegations concerning Messrs. Silver and Ranking
12 rather than seeking to address the substance of
13 the orders made against him and in respect of
14 which he was found to be in contempt.

15
16 In my Reasons, previously referenced, I have
17 outlined the applicable principles of law related
18 to contempt. I see no necessity to relate the
19 principles of law again. Suffice to say I apply
20 those principles to the facts so found on this
21 application.

22
23 As the previous Reasons indicate, Mr. Best was
24 aware of the various proceedings. I find he had
25 full knowledge of his obligations and the
26 consequences of ignoring them.

27
28 On December 4, 2009, Mr. Best was served with my
29 December 2, 2009 order at the address Mr. Best
30 had provided and in accordance with the protocol
31 for substituted service ordered by me. Mr. Best
32 had approximately six intervening weeks before

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1 the January 15, 2010 contempt hearing.
2 Notwithstanding, no effort or attempt to comply
3 with my orders was made.
4

5 Both the November 2, 2009 and December 2, 2009
6 orders are directive. The orders require Mr. Best
7 to produce documents and attend on an examination.
8 Mr. Best failed to produce the documents or
9 attend the examination as required by the orders.
10

11 Today Mr. Best remains in contempt.
12 Notwithstanding that Mr. Best is well aware of
13 his obligations as prescribed by my orders, he
14 has done everything in his power to avoid
15 compliance with the same. Mr. Best has made some
16 documentary production. However, it remains to be
17 determined whether such is in compliance with my
18 orders and as yet, there has been no cross-
19 examination conducted in accordance with the
20 orders of November 2, 2009 and December 2, 2009.
21 Rather, as detailed in the facts and as referred
22 to previously, Mr. Best is engaged in a
23 self-serving and obstructionist campaign to
24 vilify and impugn the reputation and integrity of
25 counsel, their clients and this court, all in an
26 attempt to avoid compliance with my orders.
27

28 Further, and in any event, this court was never
29 misled concerning Mr. Best's possession of the
30 November 2' 2009 order. In fact, Mr. Ranking
31 advised the court on December 2, 2009 that he had
32 sent a draft order to Mr. Best on November 6,

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1 2009 rather than the signed order, and I quote
2 from the transcript of the proceedings before me
3 on December 2, 2009, which is contained in the
4 motion record, Tab 50. This is Mr. Ranking
5 speaking:

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

18
19 Although Mr. Best's course of conduct illustrates
20 a clear and consistent intention to avoid
21 compliance with my orders, it is not necessary to
22 prove that Mr. Best intended to breach or violate
23 the order and again, in this regard, I reference
24 the decision at paragraph 54 in *Sheppard and Sheppard*
25 [1976] 12 O.R.(2d) 4 at 8. I'm sorry, in that
26 regard, I am referencing the *Sussex Group* decision,
27 which is contained in the Respondents Book of
28 Authorities and which, in turn, refers at
29 paragraph 54 to the decision in *Sheppard and Sheppard*.

30
31 What is evident then is that there has been no
32 cross-examination conducted in accordance with

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1 the orders of November 2 and December 2, 2009 and
2 in attempt to answer a number of myriad issues
3 raised by Mr. Best in his materials and
4 submissions, I find that it is irrelevant whether
5 Mr. Best possessed an actual copy of the
6 November 2, 2009 order when he telephoned
7 Victory Verbatim and spoke to counsel on
8 November 17, 2009.
9

10 In the case of *Sussex Group Ltd. v. Fangeat* [2003]
11 O.J. No. 3348, Mr. Best need only have knowledge
12 of the terms of the order. Mr. Best admitted
13 having this knowledge in his November 16, 2009
14 correspondence to the trial coordinator,
15 Jackie Traviss, and in his conversation with the
16 respondents' counsel as recorded on November 17,
17 2009.
18

19 Mr. Best, by his words and actions and frankly
20 his attempts to manipulate the court process, has
21 effectively refused to purge his contempt. More
22 particularly, Mr. Best has refused to submit to
23 an examination in relation to my November 2 and
24 December 2, 2009 orders and has not paid the fine
25 or costs ordered by me. In this regard, Mr. Best
26 has shown continued disobedience of orders or
27 judgments.
28

29 Further, I find that Mr. Best's improper conduct
30 in the within application has caused enormous
31 expense to the respondents, has interfered with
32 the judicial proceedings and it has obstructed

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1 the court. Mr. Best's conduct has led to four
2 court appearances, a failed judicial mediation
3 and two days of cross-examination on voluminous
4 affidavits filed in support of the within
5 application. It is apparent that an enormous
6 amount of legal work had to be employed to
7 respond to this application.

8
9 Mr. Best's affidavits are replete with irrelevant
10 and baseless allegations of misconduct, deceit,
11 fraud and illegality by Mr. Ranking, Mr. Silver,
12 Mr. Andrew Roman and their respective law firms.
13 Again, this is the case, notwithstanding that
14 Mr. Best has been told repeatedly by me that
15 these allegations are irrelevant, and as I stated
16 previously, Mr. Best has persisted in his
17 campaign of baseless allegations during his
18 cross-examinations on affidavits and his "Answers
19 to Advisements, Undertakings and Refusals", and
20 as well as his factum and his submissions to this
21 court. I find that Mr. Best has shown a continued
22 and complete disregard for the court's
23 instructions, as well as a continued contempt for
24 the court's process.

25
26 Noted previously, Rule 60.11(8) confers on the
27 court a wide discretion to give orders for
28 directions and to make such other orders as is
29 just. This application has therefore proceeded on
30 no new or fresh evidence from Mr. Best. I find
31 that no steps have been taken by him to purge his
32 contempt. His contempt continues. No explanation

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1 is offered in mitigation or to explain his
2 non-compliance.

3
4 I am satisfied beyond a reasonable doubt that
5 Mr. Best remains in contempt. Sufficient time has
6 passed for him to comply with my orders. His
7 affidavits, factum and submissions continue to
8 flout the authority of the court. Therefore, I
9 find that the finding of contempt stands.

10
11 Therefore, the application of Donald Best to set
12 aside the Warrant of Committal issued January 15,
13 2010 is dismissed. Mr. Best will, accordingly, be
14 taken into custody and begin serving a sentence
15 of three months imprisonment today. My order that
16 he report to Durham Regional Police is vacated in
17 view of the sentence being served.

18
19 I note that Mr. Greenspan has been holding his
20 passport pursuant to an order that I have made. I
21 am compelled to order that the passport be
22 returned to Mr. Best upon completion of serving
23 the sentence imposed by this court. If Mr. Best
24 appeals the order I make today, then the
25 appellate court will have to deal with the terms
26 of release, including surrender of the passport.
27 If Mr. Best does not appeal or is not granted
28 interim release pending appeal, then his passport
29 shall be returned to him by Mr. Greenspan on
30 August 1, 2013.

31
32 Approval of the order by Mr. Best will be

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1 dispensed with and I direct that this order shall
2 be prepared by Messrs. Ranking and Silver and
3 presented to me for signature by Monday, May 6,
4 2013.

5
6 Now, costs. Counsel, I heard your submissions on
7 costs yesterday. I did not hear submissions from
8 Mr. Best. I think I have to hear from him in that
9 regard. Is there anything further on the issue of
10 costs?

11 **MR. RANKING:** There is, Your Honour.

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

15 **MR. RANKING:** Your Honour, there is. I make very
16 brief submissions. If I could just hand up to the
17 court - there was an offer to settle that was
18 advanced by PricewaterhouseCoopers and you will
19 recall in Mr. Best's submissions that he made
20 reference and filed today the Exhibit F.

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

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

25 **THE COURT:** More than 10 days before the hearing.

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

32

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Submissions - Costs

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

4 THE COURT: Right.

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

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

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

19
20 I go on to say - express PwC's concerns with
21 respect to the allegations that had been made but
22 then I say that - and of course, this would
23 obviously be subject to you - that the terms of
24 settlement would be to agree to an examination,
25 subject to your agreement, of course, that we
26 would not oppose setting aside the fine of \$7,500
27 and that we were asking for costs on a
28 substantial rather than a full indemnity scale.
29 And at the top of page two, I then detail the
30 actual monetary benefit were both of those to
31 occur and as of that date, it would have resulted
32 in a saving to Mr. Best of some \$26,000.

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

17 **THE COURT:** Mr. Silver.

18 **MR. SILVER:** I support that. I just remind you
19 that we dealt with this in our factum in the
20 special...

21 **THE COURT:** Yes.

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

29
30 The other issue I don't know if you want us to
31 readdress is this sanction for payment. We had
32 handed up a draft order that proposed that the

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1 costs be paid within a certain time. I guess you
2 have to now factor in the period of incarceration
3 and that the bench warrant - the potential
4 sanction of incarceration doesn't go away until
5 the costs are paid because otherwise, I suspect,
6 we are going to have a significant collection
7 problem and that in the circumstances of this
8 case and the conduct and what you've just spent
9 two hours reviewing, that kind of order is
10 warranted.

11 **THE COURT:** Mr. Best, costs.

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

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

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

18 With great respect, Your Honour, I was most
19 stunned that Your Honour, I think, said, if I
20 understood it correct, that I had vilified the
21 reputation of the court and I - I - I can't
22 imagine the specifics of that.

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

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

27 **THE COURT:** I am dealing with costs.

28 **MR. BEST:** Sorry?

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

31 **MR. BEST:** Well, I'm just not clear on a couple of
32 things, Your Honour. I - I - I've heard what you

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1 said and I - I don't...

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

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

5 **THE COURT:** I have made a judgment. I have made a
6 decision.

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

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

14 **MR. BEST:** Yes.

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

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

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

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

24 May I speak to the jail, Your Honour?

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

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

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

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

5 THE COURT: And you can pursue your remedies there.

6 MR. BEST: If I could say here is my concern about
7 the Court of Appeal, Your Honour. Your Honour,
8 I'm asking that you suspend the jail sentence and
9 other penalties and costs until the appeals have
10 been exhausted. As you know, I have no lawyer and
11 to try and find one for the appeal even - I'll
12 try but I will probably have no luck. I have to
13 do research about appeals and get the transcripts
14 and that will take time and right now I'm the
15 only person who has all the records and knowledge
16 and my computer needed to do up the documents and
17 if I go to jail, I will not have access to these
18 records. So essentially, I will be out of luck
19 putting together these appeal documents and in
20 all fairness, Your Honour, please allow me the
21 ability to access my materials, the internet, the
22 law research or I'll be unable to effectively use
23 my computer and have access to the internet and
24 my materials to make an appeal. And if these
25 materials are taken to jail, they will
26 undoubtedly be lost, as will years of work and
27 research and evidence. I'll still report to the
28 police, Your Honour, as I always have. I'm not
29 going anywhere. Mr. Greenspan has my passport and
30 as you're aware, sir, I returned of my own
31 volition to address this conviction knowing that
32 I might or might not go to jail. And if, at the

1 end of the process, I have to go to jail, I will.
2 I'm not a flight risk, Your Honour. I'm an
3 honourable man.
4 **THE COURT:** Mr. Best.
5 **MR. BEST:** I'm pretty well...
6 **THE COURT:** The decision...
7 **MR. BEST:** I'm not going anywhere.
8 **THE COURT:** Sir, sir, the decision now - I mean
9 let's understand. There are limitations. You may
10 wish at some other time to bring a further
11 application to purge your contempt. I am not
12 saying that you have to do that but if you wish
13 to, you may do so. I explained to you on the
14 record the other day that none of this goes away.
15 The orders, the applications can be made that you
16 attend on an examination in compliance with my
17 order. If you don't, I guess there will be
18 further applications brought but I want you to
19 understand that nothing changed and that is what
20 I tried to explain to you at some length at the
21 end of the day on April 30th, to reconsider your
22 position, to consider your position very
23 carefully. I gave you that opportunity. Frankly,
24 Mr. Best, this record is replete with numerous
25 opportunities that I have extended and provided
26 to you and I am sorry, but I have made a decision.
27 Your position in terms of an appeal, getting back
28 your passport, your interim judicial release,
29 well they are matters for the Court of Appeal. I
30 am *functus*. I have made a decision.
31 **MR. BEST:** I hear you, sir, but I am asking to
32 allow me to fairly exercise my right to appeal,

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1 which I wouldn't be able to do unless I had my
2 materials. By throwing me in jail right away, the
3 court would be taking away all my rights to seek
4 justice and have an appeal and frankly,
5 Your Honour, this is a surprise. I believe I
6 understood you told me you were not sending me to
7 jail.

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

9 **MR. BEST:** Well...

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

18 **MR. BEST:** Well, I hear you, Your Honour, but I -
19 if you could give me some time.

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

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

31 **THE COURT:** First of all, I am quite confident
32 that once you are taken into custody at Central

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1 East Region and they have the responsibility for
2 you, the superintendent of the jail - your
3 circumstances will certainly be assessed and your
4 needs will be assessed and including your
5 background as being a former police officer. All
6 of that will be assessed.

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

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

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

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

32 **MR. BEST:** Can you tell me where I'll be jailed,

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1 sir?

2 **THE COURT:** Sorry?

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

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

9 **MR. BEST:** Okay.

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

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

15 **THE COURT:** No.

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

17 **THE COURT:** You will have to make that application.
18 You speak to the superintendent. There are issues
19 with that as to where they are stored, how they
20 are stored. You can make that to the
21 superintendent.

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

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

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

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

31

32

RULING AS TO COSTS

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

While the respondents submit, at least in their written materials, that I should find under Rule 57.01(1)(f)(i) that steps taken by Mr. Best in this proceeding were improper, vexatious or unnecessary, I do not accede to this request as the original application brought by Mr. Greenspan on Mr. Best's behalf was both proper and necessary. However, in light of my earlier findings, there is no doubt that Mr. Best has made baseless allegations as against Mr. Ranking and Mr. Silver and their respective law firms, which I certainly would describe as vexatious in nature. Nevertheless, in the exercise of my discretion, I choose not to engage in this analysis.

A bill of costs has been provided by Cassels Brock Blackwell and Fasken Martineau DuMoulin and are attached as Schedule C and D respectively to the joint factum. After reviewing the bill of costs submitted and the submissions of counsel and Mr. Best and applying the factors under

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1 Rule 57, as well as the principle of
2 proportionality, which does play a significant
3 role, I hereby assess and order costs payable by
4 Donald Best within 30 days as follows:

- 5 1. To the respondent Kingsland Estates Limited,
6 \$60,250 inclusive of fees, disbursements and
7 HST
- 8 2. To PricewaterhouseCoopers East Caribbean
9 Limited, \$50,250, inclusive of fees,
10 disbursements and HST.

11
12 If I am not using the appropriate term, it is the
13 applicable taxes however they are now styled.
14

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

- 17 1. That the application of Donald Best is
18 dismissed without prejudice, of course, to
19 Mr. Best's ability to bring a new
20 application when he has complied with my
21 orders of November 2, 2009 and December 2,
22 2009, and including the costs orders of
23 January 15, 2010 and all costs that I have
24 now awarded up to and including the present
25 day. Indeed, it is a condition precedent to
26 bringing a further application to purge his
27 contempt that those costs be paid.

28
29 Further, I will also notate that I am no longer
30 seized of this matter and I hereby direct that
31 any further and other applications relating to
32 this proceedings are to be heard by another judge.

May 3, 2013

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1 I will make a further endorsement just for
2 clarity. The suspension of the warrant for
3 committal is lifted and Mr. Best will now be
4 taken into custody to begin serving his
5 three-month sentence as provided in the
6 January 15, 2010 order of this court.

7
8 I guess the offer or letter that was referred to
9 should be marked as an exhibit. That is the
10 letter of Fasken Martineau dated April 12, 2013.

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

13 **EXHIBIT NO. G:** LETTER FROM G. RANKING, FASKEN
14 MARTINEAU DUMOULIN LLP TO DONALD BEST - APRIL 12,
15 2013 - Produced and Marked.

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

18
19 All right, so Mr. Best, you will be now taken
20 into custody.

21 **A D J O U R N E D**

(12:20 PM)

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FORM 2

Certificate of Transcript

Evidence Act, subsection 5(2)

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

5 May, 2013

Maxine Newell, C.C.R.

**Released May 7, 2013