Court File No.: T-604-16

IN THE FEDERAL COURT OF CANADA

BETWEEN:

DONALD BEST

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

and

HONOURABLE MR. JUSTICE J. BRYAN SHAUGHNESSY

Respondents

NOTICE OF APPLICATION
(Pursuant to ss. 18-18.1 *Federal Courts Act*,
and ss. 24, 52 of the *Constitution Act, 1982*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this appeal be heard at **Toronto, Ontario.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the **Federal Courts Rules,** and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** of being served with this notice of application.

Copies of the **Federal Courts Rules,** information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

SHERRI ALLY
REGISTRY OFFICER
AGENT DU GREFFE

Date: April 14, 2016

Issued by: _____

Address of
Local office:

180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

180, rue Queen Oue
bureau 200
Toronto, Ontario
M5V 3L6

TO: Attorney General of Canada
Department of Justice
Toronto Regional Office
First Canadian Place
Box 36
Toronto, Ontario M5X 1K6

AND TO: The Honourable Mr. Justice J. Bryan Shaughnessy
c/o The Ministry of the Attorney General
720 Bay Street
Toronto, Ontario
M7A 2S9

and

c/o Judges Reception
Superior Court of Justice
150 Bond Street East
Oshawa, Ontario
L1G 0A2

AND TO: Canadian Judicial Council
Ottawa, Ontario
K1A 0W8
Fax #: (613) 288-1575

APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF the decision of the Executive Director ("ED"), of the Canadian Judicial Council (the "CJC"), Norman Sabourin, to commence a proceeding on a day and at a time and place to be set by the Court, pursuant to s. 18 and 18.1 of the *Federal Court Act*, R.S.C. 1985, c. F-7 as amended, seeking declaratory, and prerogative relief from the decision of the ED, purportedly acting for and through the authority of the CJC, dismissing the Applicant's complaint, dated January 28, 2016, but received and therefore "communicated" on March 29, 2016, and which decision was on was rendered at the City of Ottawa, 150 Rue Metcalfe, 15th Floor, Ottawa, Ontario K1A 0W8, in Canadian Judicial Council file # 15-0514.

THE APPLICANT MAKES APPLICATION FOR:

(a) a declaration that:

i) It is contrary to the law and the Constitution of Canada to permit an administrative tribunal, including the Canadian Judicial Council (the "CJC"), to act or refuse to act in respect of an application for statutory redress for the alleged violation of constitutional rights, without legal standards or criteria dictated by statute or subordinate legislation;

ii) The Applicant's complaint concerned the conduct of Justice Shaughnessy in a criminal or quasi-criminal proceeding (application to set aside a finding of civil contempt) that violated the Applicant's constitutional rights. The constitutional rights violated include one or more of the following rights in respect of or under:

(A) the unwritten constitutional principles of:

1) the Rule of Law, generally; and/or
2) Judicial Independence, generally; and/or
3) the following specific rights that flow from these principles:
    a) non-arbitrary application of the law;
    b) the duty to act judicially;
    c) the judicial duty to act with diligence, integrity, independence and impartiality; and/or

d) the open court principle; and/or

(B) the *Canadian Charter of Rights and Freedoms* (the "*Charter*") pursuant to:

1) section 7 (liberty and security of the person interests) contrary to the fundamental justice principles, *inter alia*:

a) non-arbitrary application of the law;

b) the duty to act judicially;

c) the judicial duty to act with diligence, integrity, independence and impartiality;

d) the open court principle;

e) the judicial duty to ensure the presence of a person accused of a criminal or quasi-criminal act, in circumstances may impact on liberty or security of the person during a judicial hearing;

f) the right to make full answer and defence; and/or

g) the right to a fair hearing; and/or

2) Section 9 (arbitrary detention); and/or

3) 11(d) (right of a person charged with an offence to a fair hearing before a fair and impartial tribunal;

in circumstances that cannot be justified under s. 1 of the *Charter*, if applicable.

The Applicant seeks a declaration that his constitutional rights were so violated by Justice Shaughnessy and which the rights set out above were violated;

iii) The summary dismissal of the Applicant's complaint violated his rights under unwritten constitutional principles of the Rule of Law and Judicial Independence and his rights under sections 7, 9 and/or 11(d) of the *Charter*;

iv) The Director of the CJC did not have lawful authority to summarily dismiss any complaint of alleged judicial misconduct and, in particular, the Applicant's complaint;

v) In the alternative to (iv), if the Director of the CJC had lawful authority to summarily dismiss a complaint of alleged judicial misconduct, this authority did not permit such dismissal where the conduct alleged could potentially constitute judicial misconduct;

vi) In the alternative to (iv), if the Director of the CJC had lawful authority to summarily dismiss a complaint of alleged judicial misconduct, this authority could not be based on any CJC policy, including the "Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges" (the "Review Procedure"), purporting to authorize such dismissal based on a definition of "conduct" that excludes judicial decision-making;

vii) The Applicant's complaint that a judge changed his sentence by signing a warrant of committal against a self-represented person without notice or an opportunity to address or challenge such an act constituted judicial misconduct;

viii) In the alternative to (iv), if the Director of the CJC had lawful authority to summarily dismiss a complaint of alleged judicial misconduct, this authority could not be based on any CJC policy, including the Review Procedure, purporting to authorize such dismissal based on the "public interest" as this term is unconstitutionally vague, arbitrary or overbroad, contrary to section 7 of the *Charter*;

ix) In the alternative to (viii), if the Director of the CJC had lawful authority to summarily dismiss a complaint based on the "public interest", it was not in the public interest to summarily dismiss the Applicant's complaint as the complaint warranted consideration by a Committee of the CJC; and/or

x) The CJC, through its Director, erred in law, acted contrary to law and refused to exercise its jurisdiction in failing to refer the complaint for consideration on its merits by a CJC Committee;

(b) an order (in the nature) of *certiorari* quashing the decision of the ED of the CJC summarily dismissing the Applicant's complaint;

(c) an order (in the nature) of *mandamus* returning the matter to the CJC, and requiring the CJC to investigate or to refer the matter to a Committee for consideration on the merits of the complaint in accordance with the directions and declarations of this Court; and/or

(d) an order (in the nature) of *quo warranto* requiring the ED of the CJC to demonstrate his authority to hold office as a member of the CJC authorized to dismiss the complaint, failing which a declaration that he has no such authority; and

(e) solicitor-client costs of this application; and

(f) such further relief as counsel may advise and this Court grant.

THE GROUNDS FOR THE APPLICATION ARE:

A. BACKGROUND

1. The Applicant was a shareholder and officer of a Corporation, Nelson Barbados Group Ltd. ("NBGL") in an Ontario action.

2. The Honourable Mr. Justice Shaughnessy ("Shaughnessy, J." or "Justice Shaughnessy") heard a series of motions in respect of the jurisdiction to hear the action brought by NBGL in Ontario. He ruled that there was no basis for an Ontario Court to exercise jurisdiction. This has not been and is not being challenged.

3. In November 2009, there was a motion for costs against the Applicant personally after the action was stayed. As a part of that motion, the Defendants sought to examine the Applicant and sought documents to facilitate such examination. The Applicant was not represented by counsel. The Applicant did not provide such documentation or attend for such examination.

4. Another motion requiring him to do so (this time with examination before Shaughnessy, J.) was brought. The Applicant did not provide such documentation or attend for such examination.

5. An application was brought to hold the Applicant in Contempt of Court (civil) before Shaughnessy, J. in January 2010. The Applicant did not attend and was found to be in contempt and was sentenced to 3 months in jail as punishment. There was no mention of remission in the order or warrant of committal.

6. The Applicant provided evidence under oath that he never received the orders nor knew of them in time to comply and that he did not receive the materials and was not aware of the contempt application in January 2010. He applied to set aside the finding of contempt. He had counsel, for a short period of time, who applied to have the warrant of committal stayed pending the application.

7. The application to set aside contempt proceeded with the Applicant as a self-represented litigant. The hearing took place on April 30 and May 3, 2013. At the end of the hearing, Justice Shaughnessy removed the stay and gave effect to the original 2010 warrant of committal. He provided reasons, Judgment and orders to this effect. The new order merely gave effect to the original 2010 order and the original warrant of committal and there was no mention of remission or requiring the Applicant to be brought before Justice Shaughnessy in the future.

8. Although this decision was appealed to the Ontario Court of Appeal, the appeal was never heard because it was administratively dismissed for non-payment of costs. The validity of the contempt order, the dismissal of the motion to set aside the contempt order and the attempt to appeal in respect of these issues are not in issue on the within application for judicial review. The issues that arise in this within judicial review application were not addressed or determined by the Court of Appeal for Ontario.

9. In 2011, the Applicant filed a complaint to the Canadian Judicial Council ("CJC") about the manner in which the contempt process was handled in 2009 and 2010. This did not and could not address the wording of the 2013 warrant of committal, which did not yet exist. This complaint was dismissed. That complaint forms no part of the present complaint or judicial review. That complaint had nothing to do with the present complaint which deals only with issues that arose in 2013.

10. At the end of the May 3, 2013 proceeding, Justice Shaughnessy ordered that the applicant be taken into custody and that he have no input in respect of the order. He ordered that anything further to do with the case was to be brought before another judge, and not him. Justice Shaughnessy left the courtroom and then the Applicant was taken into custody.

11. Thereafter, a new warrant of committal was signed by Justice Shaughnessy which added the words: "no remission is ordered". This new warrant created a new sentence that was inconsistent with the previous order and warrant in 2010 and inconsistent with the sentence, order and reasons made that same day May 3, 2013.

12. This new warrant and the issue of remission were not addressed in open court that day or on any prior occasion. There was no notice to the Applicant that such a wording might be inserted and no opportunity to address it before Justice Shaughnessy, who had directed that he no longer be involved in the case.

13. The Ontario Ministry of Corrections, though the Central East Detention Centre, took the position that the insertion of these words required that the Applicant serve the entire 3 month term without remission that would otherwise be available under the *Prisons and Reformatories Act* (federal legislation).

14. After having served almost two (2) months in jail (in administrative segregation because the Applicant is a former police officer), the Applicant applied through counsel for *habeas corpus* and s. 24(1) *Charter* relief in the Superior Court of Justice in Ontario. The Honourable Madam Justice Molloy (Molloy, J. or Justice Molloy) granted an order under s. 24(1) of the *Charter* to the effect that the wording of "no remission" was ineffective in precluding remission. She ruled that s. 6(1) of the *Prisons and Reformatories Act* only precludes remission if the person is ordered to be returned to the judge at the end of the sentence (presumably to see if there would be compliance with the order in respect of which contempt was found). As a result of this order Mr. Best received full remission and served 63 days of the three (3) months in jail in administrative segregation.

15. As Justice Molloy noted, the words "no remission is ordered" is grammatically ambiguous. Grammatically, it could mean: 'no order as to remission is made' or 'an order of no remission is made'. Justice Molloy dealt with the latter interpretation. The former interpretation, while grammatically open, is not a reasonable interpretation under the circumstances because remission is not something ordered by a judge but is something available by operation of law, unless the person becomes disentitled, though misconduct, in jail.

16. After Mr. Best finished his time in jail and attempted (unsuccessfully) to sue persons for, *inter alia*, his wrongful incarceration, he made a complaint to the Canadian Judicial Council ("CJC") on January 5, 2016 regarding:

    - the secret creation of a new warrant of committal reading "no remission" that changed the sentence imposed;
    - the exclusion of the self-represented Applicant from the process of review of orders and warrants, thereby precluding the Applicant from any opportunity to address or respond to the "no remission" issue;
    - the order that Justice Shaughnessy have no further involvement in the case.

    This issue of judicial misconduct in respect of "no remission" was not a part of the lawsuit. No judicial determinations have been made in respect of the issue, except favourably to the Applicant on the *habeas corpus* and *Charter* application by Justice Molloy.

17. In a letter dated January 28, 2016, but only received on March 29, 2016, the Executive Director and Senior General Counsel of the CJC, Norman Sabourin ("ED") summarily dismissed the complaint of the Applicant on the bases that:

    - He was applying the Review Procedure of the CJC (pp. 1-2). Item 5 of this procedure purports to allow the Executive Director of the CJC to summarily dismiss a compliant if it: is frivolous, vexatious or abusive (5(a)); does not relate to "conduct" (5(b)); or it is not in the "public interest" to proceed (5(c)).

- the CJC "complaints process is not concerned with judicial decision-making or the exercise of judicial discretion. The allegations concerned the judicial decision-making process and not conduct" (p.1);
- the complaint "does not involve misconduct" (p.2).

B. GROUNDS OF REVIEW

1. Judicial Misconduct Includes Judicial Decision-Making

18. The CJC erred in treating the complaint as being outside the scope of judicial misconduct because it was a part of judicial decision-making.

(a) Whether as part of the Executive Director's ("ED") approach to and definition of "conduct" under Item 5 (b) of the Review Procedure or otherwise, this decision excludes conduct that is part of the "judicial decision-making process".

(b) It is clear from past CJC cases that judicial misconduct can include conduct that is part of the judicial decision-making process (see Marshall; Bienvenue; Boilard; Matlow (re failure to recuse); Cosgrove; Thompson (Slansky); and several Provincial Judicial Council cases).

(c) The exclusion of judicial decision-making from judicial misconduct is contrary to the CJC's own guide to judicial misconduct, the Ethical Principles For Judges ("EPFJ"). It is clear from the EPFJ, pages 7 (4); 9 (3/4), 17 (1), 18 (3), 19 (5/6), 27 (A1 and A3), 30 (A2) that judicial misconduct includes the decision-making process of judges in open court and in the administration of judicial functions.

(d) Leaving aside the unconstitutionality of this approach for now (see **Section 3**, *infra*), this approach of dismissing a complaint based on the fact that it was a part of the judicial decision-making function was an error of law and a refusal to exercise jurisdiction per *Federal Courts Act* ("FCA"), ss18.1(4)(a), (b), (c) and (f).

(e) In addition to the definition of conduct as excluding conduct in judicial decision-making as unconstitutional (see **Section 3**, *infra*), this decision was unreasonable.

(f) While the signing of a new warrant of committal was not necessary it was an administrative act, not a part of the judicial decision-making process. However, the purported change of sentence was an injudicious and impermissible act of judicial decision-making that was contrary to law (*Chiang v. Chiang*, [2009] O.J. No. 41 (C.A.), at paras 123-125).

(g) This is not a situation where the CJC can legitimately say that this is a matter for appeal. The issue was already dealt with by way of *habeas corpus* and relief was obtained, and, in respect of which, no appeal was filed. This is clearly a legitimate

complaint about misconduct in respect of the improper creation of a new warrant of committal imposing a new sentence and doing so without notice or opportunity for input.

2. Complaint disclosed Judicial Misconduct

19. The determination that there was no judicial misconduct is also an error of law, contrary to law and a refusal to exercise jurisdiction contrary to s. 18.1(4) of the FCA, in that:

(a) It is clear from the Complaint and the documents incorporated therein and the EPFJ that this was or was arguably a breach by Justice Shaughnessy of the judicial duties in respect of:

- Judicial Independence (See EPFJ, pp.7 (4), 9 (3 and 4) and 10(5));
- Integrity (see EPFJ, pp. 13, 14 (1 and 3);
- Diligence (see EPFJ, pp. 17 (1 and 4), 18 (1 and 3), 19 (5 and 6), 20 (7 and 8) and 21 (12);
- Impartiality (see EPFJ, pp. 27 (A1 and A3), 30-31 (A1 and A2), 31 (A3) and 33 (B1);

(b) Shaughnessy, J. also failed in respect of these duties considered in respect of the special needs of self represented litigants. The CJC has had a "Statement of Principles on Self-Represented Litigants and Accused Persons" since 2006 that requires judges to ensure that self represented persons have an opportunity to "understand and meaningfully present their case" as part of a "court process" that should "be, as much as possible, open, transparent...and accommodating" so that such litigants can "participate actively and effectively in their own litigation" and to "provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons'(see pp. 2-7).

(c) By adding time in jail without notice and after specifically ordering that the Applicant not have input, when he was hauled out of the courtroom in custody, and in precluding any opportunity for input, Justice Shaughnessy actively harmed the Applicant in a way that was contrary to his duties in respect of the principles of Independence, Integrity, Diligence and Impartiality and abused the Applicant's rights and special needs as a self-represented litigant. But for the order of Justice Molloy, the Applicant was exposed to an additional month in jail as result of the actions of Justice Shaughnessy.

3. Approach to Screening, through the "Review Procedure" or otherwise, was Unlawful, Unconstitutional and/or Jurisdictional error

20. The duties of a judge that define judicial misconduct flow from the rights of litigants before the Courts to, *inter alia*, independence, impartiality, diligence and integrity. These rights of the litigants flow from unwritten constitutional principles such as the Rule of Law and Judicial Independence regardless of the nature of the proceeding.

21. The duties of a judge that define judicial misconduct flow from the rights of litigants before the Courts to, *inter alia*, independence, impartiality, diligence and integrity. These

rights of the litigants also flow from and from the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), sections 7, 9 and 11(d). Although civil contempt is in respect of a civil proceeding, it is criminal or quasi-criminal in nature (*Bhatnager* SCC). Accordingly, under s. 11(d) someone facing sentence under civil contempt is charged with an offence under s. 11(d) of the *Charter*. However, in any case, it is clear that a litigant facing a sentence of jail in respect of civil contempt has his/her liberty and security of the person interests at stake. A judge also may not act to arbitrarily detain a person without violating s. 9 of the *Charter*. In this context, if a judge does not act in accordance with his duties of independence, impartiality, diligence and integrity, s/he violates the s.7, 9 and/or 11(d) *Charter* rights of the litigants and commits judicial misconduct. Regardless of whether the violation of liberty is rectified, the person whose rights were violated has a *Charter* right to have the judge's conduct reviewed or at least a right to have the statute (*Judges Act*) applied in a manner consistent with the *Charter* and principles of fundamental justice.

22. The CJC was purporting to have lawful authority to summarily dismiss a compliant. It appears that the Review Procedure is not law but was treated as law by the Executive Director of the CJC. It had no such authority, or if it had such authority it had no authority in these circumstances. Acting under the Review Procedure was unlawful, unconstitutional, unreasonable and jurisdictional error. Regardless of the Review Procedure, the purported exercise of discretion was unlawful, unconstitutional, unreasonable and jurisdictional error on the following bases:

(a) Since the Review Procedure is not a law but a policy, then the act of summary dismissal is without legal authority and is unlawful under, s. 18.1(4)(f) of the FCA. Parliamentary Supremacy, the Rule of Law (incorporated through principles of judicial review per *Dunsmuir*) and the *Charter* demand that any discretion in the application of statutory authority must be based on the law. While policy can be considered by any tribunal, any act under a statutory scheme must have authority in law. There is no lawful authority in the *Judges Act* or subordinate legislation that authorizes a summary dismissal of a complaint by the Director of the CJC nor any lawful authority setting out the bases for such a dismissal if such a power exists;

(b) In the alternative to (a), whether pursuant to law or as a purported exercise of lawful discretion, the discretion pursuant to the Review Procedure was unconstitutional as it permits screening out of legitimate complaints based on:

(i) the definition of "conduct" (Item 5 (b) of the Review Procedure), which is unconstitutionally vague, arbitrary or overbroad:

(A) It is unconstitutionally vague if its meaning can be limited to exclude judicial decision-making. The case law (see above), the EPFJ (pages 7 (4); 9 (3/4), 17 (1), 18 (3), 19 (5/6), 27 (A1 and A3), 30 (A2)) and the CJC website all describe judicial misconduct including conduct on the bench and administrative functions.

(B) Under *Bedford*, the SCC made it clear that a law that does not serve its purpose is arbitrary and is contrary to principles of fundamental justice. Similarly, the SCC in *Bedford* found that a law that goes further than necessary to achieve its purpose is overbroad and is contrary to principles of fundamental justice .The purpose of the CJC provisions of the *Judges Act* is to ensure judicial accountability for misconduct.

(1) If the largest sphere of misconduct, judicial decision-making, is excluded from the ambit of the Act, then the purpose of the Act is not served and this approach to or definition of conduct is arbitrary and unconstitutional;

(2) Alternatively, if judicial decision-making is excluded from the ambit of the Act, then the exclusion goes farther than it needs to go to prevent dealing with complaints that do not allege judicial misconduct and this approach to or definition of conduct is overbroad and unconstitutional;

(ii) the "public interest" (Item 5 (c) of the Review Procedure), which is unconstitutionally vague, arbitrary or overbroad:

(A) The same wording was struck as unconstitutionally vague in the bail context (*Morales* SCC);

(B) As applied, this term allows the dismissal of legitimate complaints and therefore exceeds its legislative objectives (arbitrary or overbroad);

Accordingly, the dismissal of the Applicant's complaint was an error of jurisdiction or refusal to exercise jurisdiction, a violation of natural justice and/or fairness and error of law and was contrary to law and must be quashed and relief be granted under ss. 18.1(4)(a), (b), (c) and (f) of the FCA.

(c) In the alternative to (a), if the discretion to summarily dismiss is lawful, regardless of whether the decision was guided by Item 5 of the Review Procedure, the discretion was not exercised lawfully in this case because it was exercised unconstitutionally. Under *Slaight Communication* (SCC) any law that provides for a discretion that is not, on its face, unconstitutional, cannot provide a discretion that allows for the violation of the Constitution. The discretion to dismiss the complaint was exercised unconstitutionally and unlawfully in that:

(i) There is a basis for the complaint (see paragraph 19 *supra*) and the summary dismissal was unreasonable contrary to *Dunsmuir* and *Baker*;

(ii) The behavior of Justice Shaughnessy was unconstitutional and therefore beyond the jurisdiction of the CJC to screen out or summarily dismiss based on:

(A) The Unwritten constitutional principles:

- Rule of Law (see *Quebec Succession Reference* and *Dunsmuir* and EPFJ, pp. 10 (5), 14 (3), 30 (A1));
- Judicial Independence (*Provincial Court Judges Reference* and EPFJ, pp. 30-31);
- the following rights flowing therefrom:
    - non-arbitrary application of the law;
    - the duty to act judicially;
    - the judicial duty to act with diligence, integrity, independence and impartiality;
    - the open court principle;

(B) Sections 7, 9 and/or 11(d) of the *Charter*:

- non-arbitrary application of the law and non-arbitrary detention;
- the duty to act judicially;
- the judicial duty to act with diligence, integrity, independence and impartiality;
- the open court principle;
- the judicial duty to ensure the presence of a person accused of a criminal or quasi-criminal act, in circumstances may impact on liberty or security of the person during a judicial hearing; and/or
- the right to make full answer and defence; the right to a fair hearing); and/or

(iii) The summary dismissal of the Complaint was an unreasonable fettering of discretion.

Accordingly, the dismissal of the Applicant's complaint was an error of jurisdiction or refusal to exercise jurisdiction, a violation of natural justice and/or fairness and error of law and was contrary to law and must be quashed and relief be granted under ss. 18.1(4)(a), (b), (c) and (f) of the FCA.

23. That the CJC erred in law, acted contrary to law, failed to act in accordance with natural justice or the duty of fairness and/or refused to exercise and otherwise exceeded its jurisdiction in fulfilling its statutory duties contrary to ss. 18.1(4) (a), (b), (c) and (f) of the FCA;

24. That in so doing, the CJC made perverse and capricious findings, conclusions, and inferences without evidence and in total disregard to the evidence ss. 18.1(4) (d) of the FCA;

25. That the CJC made an unreasonable decision contrary to *Dunsmuir* and *Baker*;

26. Such further grounds as counsel may advise and this Court may accept.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

(a) the Affidavit of the Applicant, including the exhibits made available to the CJC;

(b) Any additional tribunal record materials that may exist from the CJC through Rules 317 and 318;

(c) a memorandum of fact and law;

(d) such further evidence as counsel may advise and this Court permit.

THE APPLICANT REQUESTS, pursuant to Rules 317 and 318 of the *Federal Court Rules*, that the Tribunal (Canadian Judicial Council) send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Tribunal (Canadian Judicial Council) to the Applicant and to the Registry, including:

1. a copy of any and all documents, memos, electronic or otherwise, with respect to the complaint, investigation, if any, and decision at the CJC with respect to the Applicant's complaint, except to the extent that such items are clearly privileged;

2. a copy of the Tribunal's entire file(s) with the Tribunal touching upon the decision the subject of the within judicial review, except to the extent that such items are clearly privileged.

THE APPLICANT proposes that this application be heard in Toronto in the English language.

Dated: April 14, 2016

[redacted]

Paul Slansky
Barrister and Solicitor
SLANSKY LAW PROFESSIONAL CORP.
1062 College Street, Lower Level
Toronto, Ontario, M6H 1A9

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

Counsel for the Applicant

Court File No.:

FEDERAL COURT OF CANADA

BETWEEN:

DONALD BEST

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

and

THE HONOURABLE MR. JUSTICE
J. BRYAN SHAUGHNESSY

Respondents

SERVICE OF A COPY
ADMITTED THIS 14 DAY OF April
Crown Law Office (Civil Law)
MINISTRY OF THE ATTORNEY GENERAL
FOR ONTARIO
Per [redacted] Time 4:18 p.m.
720 BAY STREET
TORONTO, ONTARIO M7A 2S9

SERVICE OF A TRUE COPY ADMITTED ON
APR 14 2016 @ 3:50
ON BEHALF OF THE
DEPUTY ATTORNEY GENERAL OF CANADA
WILLIAM F. PENTNEY
per: [redacted]
Department of Justice

NOTICE OF APPLICATION
(Pursuant to ss.18-18.1 of the ***Federal Courts Act,*** and ss. 24, 52 of the ***Constitution Act,*** 1982)

I HEREBY CERTIFY that the above document is a true copy of the original issued out of the Federal Court on APR 14 2016
day of ____ A.D. 20__
Dated this ____ day of APR 14 2016 20__
[redacted]

Paul Slansky
Barrister and Solicitor
SLANSKY LAW PROFESSIONAL CORP.
1062 College Street, Lower Level
Toronto, Ontario, M6H 1A9

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

Counsel for the Applicant