

IN THE FEDERAL COURT OF CANADA

BETWEEN:

DONALD BEST

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

and

THE HONOURABLE MR. JUSTICE J. BRYAN SHAUGHNESSY

Respondents

AFFIDAVIT OF THE APPLICANT

VOLUME ONE OF TWO

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Court File No.: T-604-16

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AFFIDAVIT OF THE APPLICANT

I, Donald Best, of the City of Barrie, MAKE OATH and SAY:

1. My name is Donald Best. I am 61 years of age, a Canadian born in Ontario. I have never been charged with or convicted of any criminal offense. I have had a few parking tickets, and two speeding tickets perhaps 15 or 20 years ago.
2. I was self-supporting at age 17, and married and looking after family, children and relatives since age 22. At 21 years old I joined the Toronto Police as a Constable 4th class and served for 15 years. I was well respected in the police service, promoted early and often given increased responsibility well beyond that typical for my service and rank. I received numerous official recognitions and awards including the 'Merit Mark', second only to the Medal of Honour.
3. When I resigned honourably from the police service in 1990 for family reasons, I was a Sergeant (Detective) performing internal investigations for one of the Deputy Chiefs. I was also the staff investigator for the Ontario Association of Chiefs of Police and project director working with the Attorney General, Law Society of Upper Canada and other agencies on the successful pilot project of the first court video remanding system in Canada.
4. In the 1990's I ran two businesses, including a private investigation company, and employed about 20 people. I have over 30 years total service in public and private law enforcement and investigations.

Background to my complaint to the Canadian Judicial Council

5. On January 15, 2010, Justice J. Bryan Shaughnessy convicted me *in absentia* of civil contempt of court in a civil case costs hearing involving a lawsuit where one of my companies was plaintiff. I was in Asia at the time, unaware of the hearing and unrepresented in court. Justice Shaughnessy sentenced me *in absentia* to three months in jail as punishment, and signed a Warrant of Committal for my arrest and imprisonment dated January 15, 2010.
6. In 2012, Justice Shaughnessy placed a stay on the January 15, 2010 Warrant of Committal so that I could return to Canada from Asia and present myself for a hearing to ask the court to set aside my conviction.
7. On May 3, 2013, I was self-represented in court when Justice Shaughnessy refused to set aside my conviction and punishment. Justice Shaughnessy ordered that the stay on the January 15, 2010 warrant of committal was lifted, and that I was to be imprisoned according to his order of January 15, 2010. Justice Shaughnessy also ordered on the record that I was to have no input into approving of the formal court order, and that any further hearings into the matter were to be heard by another judge. This is clear from the transcript of May 3, 2013 proceedings at Exhibit 3 (S) of this affidavit that was a part of the Complaint. The detailed transcript page and line references are listed in my Complaint.
8. When Court ended, everyone stood as Justice Shaughnessy left the court and then the court staff packed up. The Court Officers allowed me about 10 minutes to pack up my court files, boxes and computer. I was then handcuffed and taken to the basement cells. Many hours later I was transported from Oshawa Court to the Central East Detention Centre to serve my prison sentence.
9. Later, at the prison, I was taken before a group of supervisors who were holding the May 3, 2013 Warrant of Committal for my incarceration. The jail supervisors told me that none of them had ever seen such a warrant in 25 years of service. They asked what I had done to anger the judge so much.
10. It was then for the first time that I learned that after Justice Shaughnessy left court, he created and signed a new Warrant of Committal, dated May 3, 2013, that increased my sentence by about a month through the addition of the words "No remission is ordered". I was advised by Ministry of Corrections officials at the Central East Detention Centre that I would be incarcerated until the completion of a full three (3) month term. No remission would be considered in light of the "no remission" wording of the new May 3, 2013 warrant of committal.
11. The wording, "no remission is ordered" was not part of the January 15, 2010 warrant of committal or court order. The issue of remission was never discussed or mentioned in any of the court hearings and transcripts from 2009 up to and including my May 3, 2013 hearing before Justice Shaughnessy.

12. This secret new May 3, 2013 warrant of committal was also contrary to the orders issued in court by Justice Shaughnessy that very day on May 3, 2013, and contrary to the 'Judgment Order' dated May 3, 2013 that he would later sign on or about May 6, 2013. Those orders did not involve a new finding of contempt or purport to impose a new sentence, but merely allowed the January 15, 2010 contempt order and sentence to take effect.
13. Not having any knowledge of Justice Shaughnessy's intention to secretly substitute a new and changed Warrant of Committal ordering 'No Remission' and increasing my time in prison by a month, I did not have an opportunity at my hearing to make submissions about this issue.
14. Further, an expert examination of the court file, in my presence, in late 2013 revealed that the no copy of the new May 3, 2013 Warrant of Committal was in the official court records; only the original January 15, 2010 Warrant of Committal was found. The Central East Detention Centre had the only 'No remission is ordered' May 3, 2013 Warrant of Committal.

The Complaint to the CJC

15. On January 5, 2016, I submitted a complaint about Justice J. Bryan Shaughnessy's May 3, 2013 conduct to the Canadian Judicial Council via email. ('The CJC Complaint'). A copy of the January 5, 2016 email that attached the Complaint is attached hereto as Exhibit 1. The Complaint itself was a 12-page letter enclosed with the email (Exhibit 1), a copy of which is attached hereto as Exhibit 2.
16. A copy of the Exhibits that form a part of the Complaint, items A-V, is attached hereto as Exhibit 3 of this affidavit. The 22 items that form Exhibit 3 (A through V) were too large to attach as an email, so I made them available for the CJC to download from a private online storage area. I included the private URL internet address in the email to the CJC, which I had established only for the use of the CJC.

CJC Decision

17. The decision and reasons of the CJC are reflected in a letter dated January 28, 2016 from CJC Executive Director Norman Sabourin, which was delivered via Canada Post ordinary mail and received on March 29, 2016. A copy of this letter is attached hereto as Exhibit 4.
18. The letter indicates that the decision was made pursuant to the Review Procedure, an internal CJC document. A copy of that document was downloaded from the CJC website and is attached hereto as Exhibit 5.

19. The decision of the CJC, in the letter of Sabourin, said that the complaint related to the judicial decision-making process. While it may be true that a finding of contempt or sentencing decision is part of the decision-making process, it is my understanding that the act of signing a warrant of committal is an administrative act of a judge. However, the purported change of my sentence through the addition of the words "no remission is ordered" was a part of the judicial decision-making process. Further, the decision to not give me notice of this intended change of sentence was a part of the judicial decision-making process. A copy of the CJC document, Ethical Principles for Judges, ("EPFJ") electronically dated September 16, 2004, available from the CJC website at the time of the complaint (January 2016) and at the time of conduct (May 3, 2013), appears to indicate that judicial ethics and judicial conduct and misconduct includes acts that are a part of the judicial decision-making process. As of April, 2016, the CJC website reads, in part, under the heading, 'What do Judges do?', that:

"A judge's role is to make a decision between parties in a legal dispute, based on the facts of the case and the law that applies to the facts".

The website also says:

"How long can a judge remain a judge? ... A judge can be removed from office only if an independent investigation shows that they have not met the high standard of personal conduct required of judges, **both in court and in public...**".

I do not purport to state, as a matter of law, what constitutes judicial conduct or judicial misconduct, but merely point out the fact that the website and the EPFJ document appears to state this as a matter of fact. A copy of the CJC document, Ethical Principles for Judges, downloaded from the CJC website in March 2016 is attached hereto and is marked as Exhibit 6. A copy of the CJC website page 'What Do Judges Do?' is attached hereto and marked as Exhibit 7.

20. The decision of the CJC, in the letter of Sabourin, indicated that the complaint was dismissed but did not address the fact that I was self-represented in the May 3, 2013 process and in respect of my complaint,. I am aware that there is a CJC document that states that self-representation should be considered as a matter of judicial ethics. The document is called "Statement of Principles on Self-represented Litigants and Accused Persons". On its face it says that it was adopted by the CJC in September 2006. A copy of this document is attached hereto and is marked as Exhibit 8. Again, I offer no opinion on whether, as a matter of law, this is so. I merely point out the fact that the document exists and that this is part of what it states.

Receipt of CJC Decision

21. On March 29, 2016 I received an unregistered ordinary mail letter from CJC Director Norman Sabourin sent via Canada Post.
22. Apparently, Canada Post took almost eight weeks to deliver the letter from Ottawa to Barrie, Ontario, assuming it was placed in the mail shortly after the February 3, 2016 office postage meter stamp was applied. I note that the postal code shown on the envelope, and inside in the letter, is obviously incorrect.
23. Although the letter states "By email: info@donaldbest.ca", no such email was received by me. In fact, I sent emails to Mr. Sabourin on January 21st and February 4th, 2016 to enquire about the status of my complaint and did not receive an emailed reply to either of them.

Communications with the CJC since January 5, 2016

24. As Exhibit 1 shows, on January 5, 2016, when I emailed my complaint to the CJC, I also asked that the CJC communicate with me via email.
25. On January 7, 2016 at 1:22 pm when I had not received an acknowledgement from the CJC that they had received my January 5, 2016 email and complaint, I sent another email requesting acknowledgement of receipt. The email contained a copy of the email originally sent to the CJC on January 5, 2016. A copy of this January 7, 2016 email to CJC is attached hereto as Exhibit 9.
26. Some nineteen minutes later, on January 7, 2016 at 1:41 pm, I received a reply from Melanie McKinnon, Registry and Communications Support Officer at the CJC. Ms. McKinnon confirmed the receipt of the January 5, 2016 email with the attached 12-page complaint, and informed me that a file number had been assigned: 15-0514. A copy of this January 7 email from CJC is attached hereto as Exhibit 10.
27. On January 21, 2016 at 5:22 pm, I sent an email to Mr. Norman Sabourin, Executive Director of the CJC, with an attached letter in .pdf format. A copy of the email to Sabourin dated January 21, 2016 is attached hereto as Exhibit 11. A copy of the letter to Sabourin dated January 21, 2016 is attached hereto as Exhibit 12.
28. The January 21, 2016 email and attached letter to Mr. Sabourin also asked for simple confirmation of receipt, but I did not receive any acknowledgement or response from the CJC.
29. On February 4, 2016 at 7:02 pm, I sent another email to Mr. Sabourin, along with a 3 page attached letter. A copy of the email to Sabourin dated February 4 is

attached hereto as Exhibit 13. A copy of the letter to Sabourin dated February 4, 2016 is attached hereto as Exhibit 14.

30. Again the email asked for a simple confirmation of receipt, but neither the CJC nor Mr. Sabourin acknowledged receipt or responded to the communication.
31. As indicated above, on March 29, 2016 I received an unregistered ordinary mail letter from CJC Director Norman Sabourin sent via Canada Post. The letter was dated January 28, 2016 and had an office postage meter mark of February 3, 2016. The postal code on the envelope and enclosed letter were incorrect and were obviously so to any Canadian. A copy of the envelope is attached hereto as Exhibit 15.
32. Apparently, Canada Post took almost eight weeks to deliver the letter from Ottawa to Barrie, Ontario, assuming it was placed in the mail shortly after the office postage meter stamp was applied.

SWORN before this 20th day
of April, 2016, at the City of
Toronto, Ontario


A Commissioner of Oaths


Donald Best

This page is intentionally left blank.

Submitting Complaint: Justice J. Bryan Shaughnessy

Donald Best.CA

Tue 2016-01-05 1:06 PM

To:info@cjc-ccm.gc.ca <info@cjc-ccm.gc.ca>;

This is EXHIBIT 1 to the
Affidavit of Donald Best,
sworn April 27, 2016



A Commissioner, etc.

1 attachment (156 KB)

20160105 CJC Complaint Shaughnessy SENT.pdf;

RE: Submitting Complaint about Justice J. Bryan Shaughnessy

Date of Misconduct: May 3, 2013

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

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

Dear Canadian Judicial Council,

Attached please find a .pdf file containing a complaint about the conduct of Justice J. Bryan Shaughnessy on May 3, 2013.

The supporting exhibits are available online for downloading until February 8, 2016, along with a copy of the complaint.

The complaint (same as attached) can be downloaded here:



The supporting exhibits (all court documents in .pdf format and contained in one .zip file) can be downloaded here:



Please be aware that these links are for CJC use only, and that the documents contain Identity Information as defined in the Criminal Code and therefore must not be distributed to the public without redacting the Identity Information.

My Expectations of the CJC

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

Several senior Canadian lawyers, including a serving Bencher of the Law Society of Upper Canada, reviewed the evidence/exhibits attached to this complaint.

Without exception, these senior lawyers are appalled at Justice Shaughnessy's misconduct. As an example, one senior Ontario lawyer said, "In all my years of practicing law, this is the most disgusting thing I have ever seen a judge do." These lawyers await the timely decision of the CJC about this complaint as do I.

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

Based upon the court record alone, Justice Shaughnessy's conduct is so egregious that he should be suspended immediately (with pay), pending the results of a complete investigation. A judge capable of doing what Justice Shaughnessy did should not be allowed to adjudicate any further matters.

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

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

I expect and demand that the Canadian Judicial Council will:

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

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

Yours truly,

Donald Best



Barrie Ontario,

L4N 0Z7

Email: info@donaldbest.ca (prefer email for primary communication)

This is EXHIBIT 2 to the
Affidavit of Donald Best,
sworn April 28, 2016

Donald Best

A Commissioner, etc.

132 Commerce Park Drive, Unit K
Suite: 115
Barrie Ontario, L4N 0Z7
Email: info@donaldbest.ca
(prefer email for primary communication)

January 5, 2016

Canadian Judicial Council
Ottawa, Ontario K1A 0W8
tel. (613) 288-1566; fax (613) 288-1575
info@cjc-ccm.gc.ca

Attention: Complaints Investigations

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

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

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

Date of misconduct: May 3, 2013

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

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

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

Dear Sir or Madam:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Detailed Account of Misconduct

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

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

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

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

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

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

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

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

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

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

"For the reasons provided, I impose on Donald Best a sentence of 3 months incarceration to be served in a provincial correctional institution. In addition to the sentence of incarceration I impose a fine of \$7,500 to be paid by Donald Best to the Treasurer of Ontario plus the statutory surcharge thereon. A warrant for committal to issue forthwith." (Exhibit E, Reasons On Motion For Contempt dated January 25, 2010, para #35)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On May 3, 2013, Justice Shaughnessy said:

"This application, brought by Mr. Greenspan on Mr. Best's behalf, stated that: The applicant wishes to apply for an order setting aside the contempt order issued on January 15, 2010. In the alternative, the applicant seeks an order varying the contempt order of January 15, 2010." (Exhibit S: May 3, 2013 transcript, pg 14, line 3)

"... the application of Donald Best to set aside the Warrant of Committal issued January 15, 2010 is dismissed. Mr. Best will, accordingly, be taken into custody and begin serving a sentence of three months imprisonment today." (Exhibit S: May 3, 2013 transcript, pg 57, line 11)

The judge further said, "I am not prepared to set aside the order and so the result of all that is the stay of the warrant is about to be lifted at this moment." (Exhibit S: May 3, 2013 transcript, pg 62, line 28)

"The suspension of the warrant for committal is lifted and Mr. Best will now be taken into custody to begin serving his three-month sentence as provided

in the January 15, 2010 order of this court." (Exhibit S: May 3, 2013 transcript, pg 70, line 2)

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

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

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

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

(Exhibit T: Judgment dated May 3, 2013)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Justice Molloy reversed Justice Shaughnessy's perfidy and ordered:

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

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

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

Justice Shaughnessy said:

"Approval of the order by Mr. Best will be dispensed with and I direct that this order shall be prepared by Messrs. Ranking and Silver and presented to me for signature by Monday, May 6, 2013." (Exhibit S: May 3, 2013 transcript, pg 57, line 32)

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

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

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

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

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

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

"Further, I will also notate that I am no longer seized of this matter and I hereby direct that any further and other applications relating to this proceedings are to be heard by another judge." (Exhibit S: May 3, 2013 transcript, pg 69, line 29)

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

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

My Expectations of the CJC

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

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

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

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

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

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

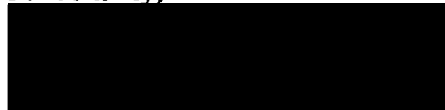
Given the egregious nature of the misconduct, and that the supporting evidence is irrefutable, there is no need for a Stage 1 screening, so please immediately refer this complaint to a Stage 2 review by a Judicial Conduct Committee Member.

I expect and demand that the Canadian Judicial Council will:

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

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

Yours truly,



Donald Best

Exhibits

Can be downloaded in .PDF format online from Hightail:



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

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



A

This is EXHIBIT 3A to the
Affidavit of Donald Best,
sworn April 29 2016

Court File No.: 07-0141

A Commissioner, etc.

BETWEEN:

ONTARIO
SUPERIOR COURT OF JUSTICE

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC
ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE,
MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH,
GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES
a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY,
R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO.,
KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE,
ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM
DEANE, LIONEL NURSE, LEONARD NURSE,
EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY,
OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN,
BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED,
GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED,
CLASSIC INVESTMENTS LIMITED, THORNBROOK
INTERNATIONAL CONSULTANTS INC., THORNBROOK
INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION,
THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX
ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND
COMPANY, C. SHOREY AND COMPANY LTD., FIRST
CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE
WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL
OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25
PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANS,
DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS,
G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC.,
OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and
LIFE OF BARBADOS LIMITED c.o.b. as LIFE OF BARBADOS HOLDINGS,
LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY,
PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM,
VECO CORPORATION, COMMONWEALTH CONSTRUCTION
CANADA LTD and COMMONWEALTH CONSTRUCTION, INC.

Defendants

WARRANT OF COMMITTAL

TO ALL POLICE OFFICERS in Ontario

AND TO THE OFFICERS OF provincial correctional institutions in Ontario

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

YOU ARE ORDERED TO ARREST Donald Best and deliver him to a provincial correctional institution, to be detained there for a period of 3 MONTHS *JB.*

[REDACTED]

Justice Shaughnessy

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

WARRANT OF COMMITTAL

FASKEN MARTINEAU DuMOULIN LLP

Barristers & Solicitors
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P.O. Box 20
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Toronto, Ontario
M5K 1N6

Gerald L.R. Ranking [LSUC#23855J]

Emmeline Morse [LSUC#56879M]

Phone: 416 366 8381

Fax: 416 364 7813

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of,
all Defendants

This is EXHIBIT 3B to the
Affidavit of Donald Best,
sworn April 29, 2016



A Commissioner, etc.

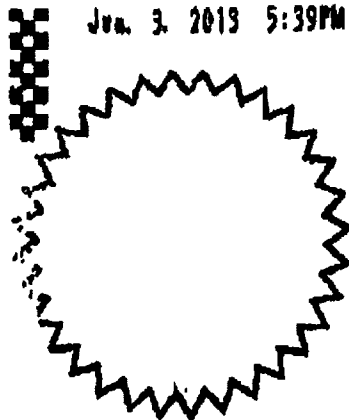
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PAGE 02/02

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No. 1391 P. 1



FORM 60L
Courts of Justice Act
WARRANT OF COMMITTAL

CV-07-141 (Barrington)

Superior Court of Justice
 150 Bond Street East, Oshawa, ON L1G 0A2


*The Honourable Justice Shoughnessy*Friday, May 3rd, 2013*Nelson Barbados Group Ltd vs. Cox, Richard et al***WARRANT OF COMMITTAL****TO ALL POLICE OFFICERS in Ontario****AND TO THE OFFICERS OF Central East Correctional Centre**

WHEREAS I have found that *Donald Best* is in contempt of this court and have ordered imprisonment as punishment for the contempt, (754-06-07)

YOU ARE ORDERED TO ARREST *Donald Best* and deliver him to a provincial correctional institution, as he is ordered there for 3 months.

Mr. Best is a former Police Officer and therefore, such arrangements as maybe necessary, shall be considered by the Superintendent of the correctional facility.

No Remission is Ordered


The Honourable Justice Shoughnessy

BCP-S 60L (November 1, 2005)


A Commissioner, etc.

Court File No. 141-07

SUPERIOR COURT OF JUSTICE

5 B E T W E E N:

NELSON BARBADOS GROUP LIMITED

Plaintiff

- and -

10 RICHARD IVAN COX, et al.
(as listed in Schedule A)

Defendants

15 C O N T E M T H E A R I N G

BEFORE THE HONOURABLE JUSTICE J. B. SHAUGHNESSY
20 on January 15, 2010 at Whitby, Ontario

APPEARANCES:

25 H. Rubin

Counsel for the Plaintiff

L. Silver

Counsel for the Defendants

A. Roman

Counsel for the Defendants

G. Ranking

Counsel for the Defendants

E. Morse

Counsel for the Defendants

30 S. Clarke

Counsel for the Defendants

Nelson Barbados Group Limited Plaintiff

Heidi Rubin for K. William McKenzie and Crawford,
McKenzie, McLean, Anderson & Duncan L.L.P.

-and-

5

Richard Ivan Cox
Gerard Cox
Alan Cox
Philip Vernon Nicholls
Eric Ashby Bentham Deane
Owen Basil Keith Deane
10 Marjorie Ilma Knox
David Simmons
Elneth Kentish
Glyne Bannister
Glyne B. Bannister
Philip Greaves a.k.a. Philip Greaves
Gittens Clyde Turney
R.G. Mandeville & Co.
15 Cottle, Catford & Co.
Keble Worrell Ltd.
Eric Iain Stewart Deane
Estate of Colin Deane
Lee Deane
Errie Deane
Keith Deane
20 Malcolm Deane
Lionel Nurse
Leonard Nurse
Edward Bayley
Francis Deher
David Shorey
Owen Seymour Arthur
25 Mark Cummins
Graham Brown
Brian Edward Turner
G.S. Brown Associates Limited
Golf Barbados Inc.
Kingsland Estates Limited
Classic Investments Limited
Thornbrook International Consultants Inc.
30 Thornbrook International Inc.
S.B.G. Development Corporation
The Barbados Agricultural Credit Trust
Phoenix Artists Management Limited

David C. Shorey and Company
C. Shorey and Company Ltd.
First Caribbean International Bank (Barbados) Ltd.
Price Waterhouse Coopers (Barbados)
Attorney General of Barbados
The Country of Barbados
John Does 1-25
5 Philip Greaves
Estate of Vivian Gordon Lee Deane
David Thompson
Edmund Bayley
Peter Simmons
G.S. Brown and Associates Ltd.
GBI Golf (Barbados) Inc.
10 Owen Gordon Finlay Deane
Classic Investments Limited and Life of Barbados
Limited c.o.b. as Life of Barbados Holdings
Life of Barbados Limited
David Carmichael Shorey
Price Waterhouse Coopers East Caribbean Firm
Veco Corporation
Commonwealth Construction Canada Ltd. and
15 Commonwealth Construction Inc.

Defendants

Lorne S. Silver; for the Defendants, Richard Ivan Cox, Gerard
Cox, Alan Cox, Gittens Clyde Turney, R.G. Mandeville & Co.,
20 Kingsland Estates Limited, Classic Investments Limited et al.

Gerald L.R. Ranking and Ms. E. Morse; for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Andrew Roman; for the Defendants Eric Ian Stewart Deane,
Estate of Colin Ian Estwick Deane

25 **Sarah Clarke;** for the Defendant First Caribbean International
Bank

30

FRIDAY, JANUARY 15, 2010

THE COURT: All right; Mr. Ranking, Mr. Silver, who else do we have?

MR. ROMAN: Roman.

MS. CLARKE: Sarah Clarke.

THE COURT: I'm sorry, I....

MR. RANKING: I'm sorry, Ms. Emmeline Morse, my junior, Your Honour.

THE COURT: Sorry, I missed your name again?

MR. ROMAN: Andrew Roman...

THE COURT: Roman.

MR. ROMAN: ...for Deane and Deane.

THE COURT: You look different, have you lost weight or something?

MR. ROMAN: Hopefully.

MS. RUBIN: Heidi Rubin for Bill McKenzie and the law firm.

THE COURT: I'm sorry, the last name is?

MS. RUBIN: Rubin, R-U-B-I-N.

THE COURT: So, you're for Mr. McKenzie and who else?

MS. RUBIN: And his firm.

THE COURT: Should I be looking at this supplemental motion record now, or is it necessary?

MR. RANKING: I think it will be necessary, Your Honour, what I was going to do is lead off on behalf of the defence.

THE COURT: So I take it, Mr. Ranking, notwithstanding my great expectations for today to finally see what Mr. Best looks like, I take it he's not attended?

Nelson Barbados Group Limited v. Richard Ivan Cox, et al.

MR. RANKING: He has not attended.

THE COURT: Has he contacted any of the counsel that you're aware of?

MR. RANKING: He has not.

THE COURT: And has he - just to follow technicalities correctly, Madam Registrar, would you just have him paged three times, Donald Best, in the outside?

...MADAM REGISTRAR PAGES DONALD BEST.

THE COURT: All right, Mr. Ranking.

MS. RUBIN: Justice Shaughnessy, if I may just stand up for a moment, it might speeds things up...

THE COURT: Yes, Ms. Rubin.

MS. RUBIN: ...on Mr. Ranking's part. Finally we are able to come here today and take the position that we do not oppose the relief being sought against Mr. Best. The procedure - all - Mr. Best has been given all the procedural rights to ensure that he had notice and that he was able to retain counsel, had he wanted do so he would have and he had the opportunity to do all of that and be here today, and if he does not appear today we are in no position to oppose the order that Mr. Ranking and the other parties are requesting as against him.

THE COURT: Thank you, Ms. Ranking.

MS. RANKING: So, hopefully that will assist.

THE COURT: It will. If it helps too I've read all the materials that I had prior to today.

MR. RANKING: Right.

THE COURT: That's why I just asked about the supplemental motion record, but go ahead Mr. Ranking.

MR. RANKING: Your Honour, in view of the fact that Mister - let me tell you what I was going to do and see if this is in accord with your wishes. I was going to deal with the contempt motion from a factual perspective and just satisfy yourself that all of the materials have been properly served, and then go through the facts briefly and indicate why, in my respectful submission, a contempt order and a committal order was appropriate. I was then going to ask my colleague, Ms. Morse, to deal with the authorities and I know that Your Honour has dealt with these contempt matters in the past by reason of the comments you've made from the bench and it may be that you don't need us to deal with that. After that we have a draft order dealing with the production of documents by Mr. McKenzie in his cross-examination. I'm happy to say that we have made some amendments to that today and we have resolved that subject to one, and one issue only, that has to be argued which should take no more than ten minutes in my submission, both counsel I should think, and then we then have the issue of costs on the contempt motion which we will be seeking on a substantial indemnity scale and I have a cost outline, which I can hand up to you, and I would propose to do that after Ms. Morse's

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submissions on the law. So, I would speak to the contempt issue from a factual perspective, have Ms. Morse speak to the law, depending upon your order, of course, I could then speak to costs and then deal with the one hand up - I have a copy of the order which has been notated, hand up the draft order so you could satisfy yourself as to its' appropriateness and deal with the one outstanding issue that I have with Ms. Rubin.

THE COURT: Very good.

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MR. RANKING: All right. So, just dealing with satisfying the court of - with respect to the service of the materials and just to remind Your Honour how it is that we come before you, the motion record of December the 2nd, which is before you, that was, in fact - it's - the motion was returnable December 2nd, it's the notice of motion that was dated November 27th and that material was mailed and couriered to Donald Best on November the 27th, and the reference for that, Your Honour, is in the supplemental motion record at Tab 2. You will see at that tab at paragraph 3 it's an affidavit of Mr. Butler, one of my associates, that he refers to the affidavit of Joanne Burgos and states that, "I'm informed and do believe that on November 27th Joanne Burgos served Donald Best with the November 27th motion record", that's the motion record, Your Honour, returnable December 2nd, "by mailing and couriering a copy thereof to Donald Best", and then if you turn up the exhibit,

Exhibit A, Your Honour, you'll see the affidavit of service and you'll see in the first paragraph that the motion record was couriered to Mr. Best at 427 Princess Street, that's the post office box in Kingston, and turning to page - it was also sent by courier to Mr. Best at the Cloverdale Mall address, and it was also sent by mail, in paragraph 5, to the Kingston address. So, with respect to the motion returnable November - excuse me, returnable December 2nd it was served by courier to both addresses and by mail to the Kingston address, and as well - and I don't think I need to take you to it, but under Exhibit B it was also served on all counsel. That deals with the service of the motion record for the December 2nd attendance. Mr. Best did not attend on December 2nd, and on December 2nd your order - Your Honour made an order that appears under Tab C at page 31, and your endorsement appears under Tab D of the motion record and I pause briefly because this is the order in paragraph 3, Your Honour, which compels Mr. Best to attend and I refer you to paragraph 3 of that order. You provide for validation of service in paragraph 1, with respect to substitutional service in paragraph 2, and I'll come to the service that we have affected momentarily, but importantly for today you'll see your handwritten notes in paragraph 3 compelling Mr. Best to attend, and that paragraph also requires him to produce the documents referred to in paragraph 4 of the

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order. I should also say, and I think it was dealt with in our introductory comments, in a way in terms I haven't heard nor am I aware of any other counsel having heard from Mr. Best, but in all of my submissions none of the materials that were couriered or mailed to these addresses were ever returned. And you will also see, Your Honour, relevant for today's motion for contempt that paragraph 4 of your order, just to refresh your memory, that it was made clear to Mr. Best that the contempt motion would proceed and be argued before Your Honour today, the same date set for the hearing, that was if he were to attend, immediately following the hearing. So, there can be no doubt that certainly from the terms of your order that Mr. Best was aware that that was going to take place.

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Now, with respect to service of the order in the endorsement, just to ensure that we got this to him quickly, there were a number of communications with Mr. Best. The first appears under Tab E, which is my letter that was sent by mail to Mr. Best and that was in accordance with your order and I then served with him [sic] a copy of the handwritten and typed endorsement together with a copy of your order dated December 2nd. And you will see I was rather - I have another letter which is a little more fulsome, but on December 4th, I think it was a Friday, I wanted to get it out to Mr. Best, we

5 indicate that, "Justice Shaughnessy has ordered
you to appear to be cross-examined viva voce in
open court and the date for your attendance is
January the 15th." So, that was sent at least
five weeks before the return of today's motion.
The affidavit of service for that letter appears
under Tab F, and that is the affidavit, again,
of my assistant Ms. Oullette and it indicates in
10 paragraph 1, under Tab F, that Ms. Oullette
served Donald Best with the endorsement and the
order by sending two copies by regular mail to
Donald Best care of 427 Princess Street, and
again although not covered by Justice Eberhard's
order, but covered by your order, we also sent -
served it on paragraph 3, the top of page 56 of
15 the motion record, to the Cloverdale Mall
address.

20 So, that deals with the service of the order and
the endorsement, which we did quickly. Now, in
the rush to get materials pulled together I did
not include, and I'm going to pass up to the
court, a copy of my letter dated December 15th,
and this now deals with the further letter, once
25 I've had an opportunity to put together the
materials that now appear before you. And the -
what I what here, Your Honour, in the package
that I've handed up, I tend to put the affidavit
of service on the back. So, you see the letter
30 that I wrote, there is a notice of examination
requiring Mr. Best to attend today and then
there is the affidavit. What is not attached,

5 simply because it's already in the court file,
is the supplemental motion record, but if you
look at paragraph 1, firstly, this was served by
mail at both addresses, and I - in this I served
a further copy of the December 2nd motion,
because you'll recall, Your Honour, there was
short service of that. So, just to make sure
that he actually had all that material, I served
that again. I also served the notice of return
10 of amended motion, which is included in the
supplemental motion record and I enclosed the
notice of examination. I then went on - and to
the extent that Mr. Best might have some day
said that he couldn't understand the terms of a
court order, I went to some pains to explain to
15 Mr. Best that, "We expected him to attend",
reading from paragraph 2, "before His Honour on
January 15th with all documents in your
possession, power or control relating to Nelson
Barbados. We expect to examine you", and it
20 goes on. But what's important, I think, is the
last paragraph on the first page, "If you do not
attend I will proceed with the contempt motion
in your absence and seek a warrant for your
arrest. In addition I will be seeking an order
25 compelling Mr. McKenzie and his firm to produce
all books, contracts, letters, et cetera,
dealing with, or relating to, Nelson Barbados.
In other words, if you fail to attend on January
30 15th, or if you fail to produce the documents in
Nelson Barbados, I will be seeking such
production directly from Mr. McKenzie and his

5 firm. You are therefore on notice of my
intention to seek production of the document
directly from your former counsel", and I refer
to the amended notice of motion. So, that is
the - and there's an affidavit of service, Your
Honour, that is attached to that that was sworn
December 16th, and you'll see if we turn that up,
paragraph 1a, this is the second time I've
10 served the motion record dated November the 27th,
and you will also see at the top of page 2 that
I served the supplemental motion record, that is
before you, dated December 14th and the notice of
examination. And again, as in prior occasions,
I served both the Cloverdale Mall and the 427
15 Princess Street address.

Finally, Your Honour, and I don't know that I
need to pass this up, but I also can advise you
that we served the factum and book of
20 authorities on December the 23rd and because that
was served on the 23rd after the supplementary
brief, the affidavit of Ms. Courtney Hermann
(ph) should be in the court file. I have
another copy if you'd like me to hand it up, but
25 I can inform the court that we served Mr. Best
with the factum and brief of authorities by
regular mail, both the - excuse me, and this
time - on this occasion we served the factum and
book of authorities by regular mail to the
30 Princess Street address, and in fact I believe
that that - there's an error, because they -
paragraph 1 and 2, I've only noticed this today,

5 Your Honour, Ms. Hermann's (ph) affidavit indicates the same thing in paragraph 1 and 2, if you look at that paragraph, I certainly believe that the affidavit should read it was sent to the Cloverdale Mall address as well in accordance with our normal practice, but in any event the good news is that it was served at the address at 427, that's only dealing with the factum and book of authorities, but the reason I raise that is that we went to some pains to make sure that we got this material to Mr. Best before the Christmas break so that he would have view and ample opportunity to retain counsel and to attend today.

10 So, those are my submissions just going through the affidavits of documents. I now intend, Your Honour, just to speak briefly to the facts of the contempt. I'm not going to go through the facts in detail. You've indicated I've - we've delivered a factum, you have that factum. I think that - I do want to emphasize - really just a few points, and if I could ask you to turn up the December 2nd motion record? This was the motion record that was originally compiled for the purposes of the contempt and Your Honour is well aware of the orders that you made and I - as I say I'm not going to go through that. It's set forth in the factum. The terms of your orders really - everything starts at paragraph 6 of the factum, and I'm only going to take you to really two exhibits, which I think are

determinative of the issue of contempt and those exhibits are letters that Mr. Best himself wrote to the court to indicate, in my respectful submission, that he was well aware of the order to attend at Victory Verbatim and chose simply not to do so, and that letter is the letter of November 16th, Your Honour, and that appears at Tab K. If I could just ask you to turn that up, because I think this is a very significant letter for the purposes of the contempt. For your bench brief it was your order of November the 2nd. It required paragraph 3 that required Mr. Best to attend on November 17th and with that by way of backdrop Mister - we know that Mr. Best was served a number of times and on November the 16th he then writes to Ms. Jackie Traviss in the operative section, this is the day before he is to be examined, the operative section of the letter which I wish to bring to the courts attention is at page 2, paragraph 80 of the motion record, and in the third full paragraph you will see that Mr. Best states, and I quote - speaking - she's now referring to what Ms. Traviss told him; "Then you said that the judge ordered me to appear tomorrow, Tuesday 17th in Toronto at Victory Verbatim at 10:00 a.m. at 222 Bay Street to answer all questions from Sections A, B, C and D." And what Mr. Best is referring to is he is referring to paragraph 3 of your order of November the 2nd. The next operative paragraph is two down when he's then referring to Ms. - his discussions with Ms.

5 Traviss, and he states, "You selected a further
part of the order", and read that the judge said
that, "I had to answer all questions. I replied
that I have nothing to hide or fear and I always
obey an order by a judge", I pause for the
pregnant silence, "to the best of my ability and
I would continue to do so, and if the judge says
I am to be questioned by lawyers tomorrow 17th I
will make myself available." That's the fourth
10 full paragraph. Interestingly, I think the next
paragraph is instructive in that Ms. Traviss had
suggested that he might want to - Mr. Best might
want to contact either Mr. McKenzie's office or
Mr. Ranking's office as he was the one that took
out the order. I can't speak to Mr. McKenzie,
15 but I can inform the court that Mr. Best has
never contacted my office and the only
discussion I had with him was on the morning of
the 17th at Victory Verbatim. And finally, the
last paragraph on page 81 is relevant. "I want
to emphasize that I will make myself available
for questioning by the lawyers tomorrow, Tuesday
November 17th, 2009." That's what the - the last
paragraph of the letter, Your Honour.

25 THE COURT: I'm sorry, on page 3?

MR. RANKING: Yes. Your Honour, the only other
letter I want to refer you to is my letter of
November the 18th, that appears under Tab N, and
I don't spend any time on any of the letter
30 through the bottom of page two. That's
certainly - I put my position on the record to
Mr. Best, but what I think is important, again,

for the perspective of seeking a contempt order is our efforts to let Mr. Best know that we considered him to be in contempt. I can tell you that Mr. Silver and I had expressed that when we were speaking with him, and I indicate having not appeared, "You are now in contempt of Justice Shaughnessy's order dated November 2nd. You're very own letter dated November 16th confirms your knowledge of that order, which you flagrantly disregarded." Then I try to resolve it and we suggest November the 25th. We didn't want to come back immediately. I thought it would be appropriate for Mr. Best to try to purge his contempt and this is relevant from a contempt position, because while Mr. Best was not in contempt of any court order by failing to appear on November the 25th, it will in my respectful submission support a pattern of conduct which shows a flagrant disregard to the process of this honourable court and even though Mr. Silver and I offered him a number of different days that week, none of which were taken up, and even though we said, "Give us a date that you would like to come", and all of this is in the transcript in the materials, Your Honour, I won't take you to it, they weren't taken up we said, "Fine, let's just pick another date ourselves and we'll serve him", and Mr. Silver and I considered that to be the appropriate way, which is how we went before or proceeded. I then say, "This is a very serious matter. We urge you to retain counsel. Seek

5 the advice with respect to the matters in issue
and the seriousness of your having failed to
attend to be examined pursuant to a court
order." I don't think that Mr. Silver and I
could have done anything more than we did to
bring the gravity of the situation to Mr. Best's
attention, and I complete the second full - or
the first full paragraph, I should say, "But let
there be no misunderstanding we expect you to
10 appear to be examined on Wednesday, November
25th, and we will move forthwith for a contempt
order if you do not appear." And I then invite
him to attend on the other cross-examination of
Mr. McKenzie, which was ultimately adjourned.
So, needless to say Mr. Best did not attend, as
15 you well know, and the certificates of
nonattendance and the transcripts, et cetera,
are there. We have gone through those in the
past, Your Honour, I do not intend to - to take
you through them.
20

So, we now appear and we not only have Mr. Best
in contempt of the December 2nd order, excuse me,
the November 2nd order by failing to appear on
November the 17th, but he is now in contempt of
25 the December 2nd order by failing to attend today
and while I will not take you back there you'll
recall that's the paragraph where in which you
handwrote January the 15th. So, I don't believe
30 in my respectful submission there can be any
case where the contempt is more palpable than
this one, but - and that's really all I have to

say and I'm going to turn to Ms. Morse and ask her to review the law, subject to your direction, but I want to finish with a few more observations which stand back from the unique and specific circumstances of the last couple of months. And I want to do this, because I think that it's important for this court to have the conduct of Mr. Best in perspective. We started down this road when I wanted to examine Mr. Best in support of a cost motion that was returnable November 2nd, 3rd and 4th, and that was adjourned by Your Honour when we filed affidavit material indicating that we had not been successful in being able to locate Mr. Best despite having retained a private investigator and despite the various efforts of my student, Sebastien Kwidzinski, doing motor vehicle searches, 411 searches, and the like, all of which are in the court record in the earlier motion records, but I make the point because this is the conclusion of what was otherwise a long process to try to find Mr. Best, and I also make the point that the information we were seeking to obtain, namely the books and records of Nelson Barbados, whether or not there was a legitimate business, whether or not there was any security or ownership interest in the very shares which formed the foundation to bring this case to Ontario, namely the interest alleged to be held by Nelson Barbados over the shares of Kingsland, we had been trying to secure that information for more than a year. And that fact is

relevant, I respectfully submit, in the context of the contempt motion because it demonstrates a pattern of conduct and the pattern of conduct is that neither Nelson Barbados, at first instance, and then Mr. Best, had any regard to the process of the rules and procedure or the process for the rules of this honourable court, and you will recall, Your Honour, and I need only take you to any of the motions where we deal with the various attempts that were made and you will recall that we first attempted to obtain this information on a cross-examination of John Knox on November 4th. Mr. Roman then attempted to obtain information, and I'll give you the dates and if you want me to go back and tie them in for your pinpoints for your bench brief, I'm happy to do it, but Mr. Roman's examination was March the 20th in a Rule 39-03 examination. Although the case had been dismissed as against my client, so I wasn't present, I have read and there is in the materials the transcript of your request of Mr. McKenzie on April 7 and 8th, 2009. Again, asking for production of the documents or an affidavit from Mr. Best explaining why they couldn't be produced. The fourth instance, November the 17th; the fifth instance, November the 25th, and the final instance today.

So, what we see is - and for your reference, is the - while I won't take you to individual - in the supplementary motion record you will see that's how I actually drafted the notice of

5 motion, which has been before you a number of times, but if I just refer you, Your Honour, to page 3 under Tab 1, that may be just a handy reference and I can take you again to your transcripts, et cetera, if you'd like them, but if you look at the notice of motion, paragraph C, you'll see in subset (i)(ii) and (iii) those are the first three occasions.

THE COURT: I'm sorry, I'm at Tab 1.

10 MR. RANKING: This is the supplemental motion record.

THE COURT: Notice of return of amended motion.

MR. RANKING: Yes.

THE COURT: And then what page?

15 MR. RANKING: Page - it starts at the bottom of page 2, Your Honour, where....

THE COURT: Specifically - oh yeah, I see.

MR. RANKING: Exactly.

THE COURT: Right.

20 MR. RANKING: Specifically, and - and what I set forth there, these are - and I only take you there, because it is a handy summary of the - the first three attempts we tried to get the material and that was the - those dates that I've referred you to the November 4th, the March 20th and the April 8th, in fact you asked - you gave Mr. McKenzie two opportunities to try to get it from Mr. Best and he was not successful on either. That was the April 7th and 8th, we only refer to April 8th in the notice of motion.

25

30

So, that's the request. There's also - the

5 second point, again in the pattern of conduct,
in trying to hide information is the fact that
Mr. Best himself was not put forth as an
affiant, remember it was Mr. Knox who was put
forth as an affiant, and I say that that is
entirely consistent with Mr. Best's desire and
the desire of the plaintiff to shield
information and not to be transparent and
disclose relevant information to this honourable
10 court.

The third point, and I've alluded to this, is
that we could not find Mr. Best despite the
efforts of the private investigator.

15 The fourth point, and this is well - again, goes
to the highly irregular nature of this case, is
despite Mr. Best, who is now together with his
company facing a very significant cost award, he
elects not to engage counsel and that is
20 significant from this perspective, because had
he engaged counsel he would have had someone
representing him from whom we could have sought
information, and counsel would have been quite
clear to Mr. Best what his obligations were to
25 this court, but instead Mr. McKenzie removes
himself as counsel and presumably on
instructions - and I'll come back to that
momentarily, presumably on instructions provides
a post office box, again highly irregular. This
30 then comes to the matter of cost, because when
we find out about the post office box number we

5 then are required, again, to run around, try to
find out why there's a post office box, we can't
find out, and we're ultimately back before this
court asking for a UPS Store to disclose
information, which is ultimately disclosed, and
what we then find is that's another sham,
because the post office box was opened up two
weeks before Justice Eberhard's order and all
that mail is then returned to another post
10 office box at Cloverdale Mall.

15 Now, what I find even more offensive in the
context of all of this history is that by
contrast to, what I call now the, illusive Mr.
Best and his self-serving conduct. We know full
well that he knows of this court proceeding. He
speaks to Jackie Traviss on the phone, and he
seems to have no difficulty writing to the
court, notwithstanding your admonition that he
not do so, when it suits his purposes and I can
20 refer you to his letter of October 30th and his
other letters, they're in the record and I'm
happy to pull them out, but Your Honour is well
aware of them and I just say that having regard
to the fact that Mr. Best seems to want to use
this for his own purposes when it suits him and
yet we can't find him. So, all of these factors
I submit are relevant and important background
25 facts to be considered in the nature of the
contemptuous act. The contemptuous act being a
disregard to the courts order, to its process
and to the requirement to produce materials that
30

5
10
15
have been so ordered that the rules of procedure require to be produced. It is a clear pattern of conduct that has been exhibited by Nelson Barbados and Mr. Best from the outset of litigation and the pattern of conduct is one of refusing to disclose any information with respect to Nelson Barbados or to permit us to do anything within our reasonable powers to find him. And it is with that context and that history that the current contemptuous behaviour must be assessed. It is not, in my respectful submission, a single or limited instance of contempt that can be explained. It is a continuation of a pattern of behaviour that has been contemptuous to the process of this court from the outset.

20
25
30
Now, I make one other overriding concept which even adds to this. We're not dealing with a situation where somebody is at a family law proceeding and they don't understand the process and - and they're ignorant and they get caught in the middle of something. We dealt with those issues before. We are here dealing with a man who - we have no idea whether he's the principle of Nelson Barbados or not, but someone who is, on record, the principle of Nelson Barbados who has seen fit to commence a 500 million dollar action against no fewer than 64 defendants. The reason I emphasize that, Your Honour, in my submission, is we are dealing with a very significant claim where when it suited Nelson

Barbados and Mr. Best they had no problem retaining counsel, suing numerous defendants, many high profile defendants including my own client, seeking very significant damages and making very serious allegations of conspiracy and misfeasance. Those claims required us, as defendants collectively, to retain no fewer than eight law firms. No expense was spared as we will speak to when we come back on the 22nd and 23rd and 24th of February, but eight law firms argued a motion for more than two years. So, it's just - in the context of what's good for the goose is good for the gander this gentleman sees fit to commence that type of proceeding and yet when it then comes time to pay the piper, Mr. Best is nowhere to be seen. But in my respectful submission Mr. Best, and Ms. Morse will speak to this, he ought to be fined, there ought to be a warrant for committal of three months, he has been on notice of that, and he ought to pay all costs that we have incurred on a substantial indemnity scale, and I'll come back....

THE COURT: I don't - for how long did you say?

MR. RANKING: I beg your pardon?

THE COURT: How long did you say for the committal?

MR. RANKING: Three months, Your Honour, and Ms. Morse will speak to a similar case where an order was made for 15 months and that's why I'm going to leave it to her to speak to those issues.

THE COURT: That's right. So, I interrupted you; that he ought to be fined, committal for three months, and what else did you say?

MR. RANKING: And substantial indemnity costs, and I will come back to speak to costs once we have Your Honour's decision. But I make also one final point; notwithstanding all of the efforts that we've had, and we've spent a lot of time having to try to run this down as you well know, we have never once received an apology. There's been no attempt. Notwithstanding the length of time this has been outstanding since our last attendance on December 2nd and the early service of the motion records for Mr. Best who knows Your Honour's email, who knows my email and fax numbers, there's been no attempt at contrition whatsoever and that, as Ms. Morse will refer to, is another factor which the court should and ought to take into consideration. Subject to Your Honour and any questions you may have, I'm going to ask Ms. Morse to deal with the law.

THE COURT: Thank you.

MR. RANKING: Thank you, Your Honour.

THE COURT: Ms. Morse.

MS. MORSE: Good morning, Your Honour. It's my intent to briefly walk through the main points of the factum that Your Honour has before you and read, and just spend some time dealing particularly with the factors that should be considered in just determining a remedy on a finding of contempt and as well the

appropriateness of committal as well as fines, given that that's the specific order that we're seeking. So, subject to any particular questions that's how I'm intending to proceed, is that helpful?

THE COURT: That's fine.

MS. MORSE: Just for Your Honour's reference the portions of the factum that address the law with respect to contempt are found at pages 6 through 13.

THE COURT: Right.

MS. MORSE: And the issue, just in short, that will be before Your Honour to determine is whether or not Mr. Best is in contempt and then if in fact it's found that he is in contempt, what the appropriate remedy is in light of the contemptuous behaviour. And quickly, Your Honour, the test for contempt as set out in our factum is a three part test. It has to be shown that the contemnor, or alleged contemnor, had knowledge of the terms of the order. The order must said to be - or shown to be directive and not simply permissive, and then there must be shown to be conduct in contravention of that order. And quickly, as set out in our factum, it's our submission that all three parts of this test have been satisfied in this case beyond a reasonable doubt, which is the standard of proof required on a contempt motion.

THE COURT: It's beyond a reasonable doubt.

MS. MORSE: Yes, or excuse me - yes, it must be established beyond a reasonable doubt. Excuse

me. So, as Mr. Ranking went through today we've established Part 1 of the test, which is that Mr. Best had knowledge of the orders and I just point out to Your Honour that the case law is clear that the alleged contemnor must only have knowledge of the terms of the order, he doesn't have to have the order expressly served upon him, and even - I make that reference to support Mr. Ranking's arguments with regards to the November 16th correspondence to this court in which Best confirmed that he was made aware of the contents of the order.

Part 2 of the test; the order is clearly directive. Mr. Best is ordered to attend and to produce documentation in both the November 2nd order and the December 2nd order, and finally as Mr. Ranking went through today, the conduct is clearly in contravention of the order. Also it's helpful, I think, to highlight the fact that Part 3 of the test requires that the conduct, or that the - that orders be followed both in letter and in spirit, and certainly neither have been followed in this case. I make that point particularly with regard to Mr. Best's failure to attend on November 25th, although that wasn't expressly set out in an order, it was certainly within the spirit of the order that he would appear for attendance.

I also would like to point out for Your Honour that it's not necessary to establish intent not

5 to comply with an order in order to pass Part 3
of the test, that that is considered in the
remedy section. However, I submit to you that
based on Mr. Ranking's submissions earlier today
it's clear that Mr. Best intended not to comply
with the orders. Subject to any further
questions with respect to the test that need -
that's required to be met....

THE COURT: No, I'm satisfied and I hear you.

10 MS. MORSE: I'm going to move on to the issue of
remedy. So, as set out in our factum at
paragraph 24 that the remedy in a contempt
motion - or where contempt is found, excuse me
Your Honour, is a two part purpose. First - the
15 first purpose is set out to coerce individuals
into obeying court orders and the second purpose
is punishment. And at paragraph 25 of our
factum we set out a list of factors that the
court shall consider when determining remedies
where contempt is found, and I'd like to pay
20 particular attention at this point with respect
to whether or not - it's in our factum at
paragraph 24, it's subsection (d), which is the
consideration of whether the breach is a single
act or an ongoing pattern of behaviour. As Mr.
25 Ranking set out, and I won't review the facts,
we have a situation where two orders of this
court have been breached and in addition to that
the conduct of Mr. Best has in part of a series
of attempts to frustrate this court process. I
30 would also note that it's an aggravating factor
when determining remedy if the contemnor

knowingly and deliberately breached the order, which again, is the case at bar.

And now I'm going to speak to the issue of specific remedies specifically with respect to, first, our request that Mr. Best be submitted to a correctional facility for three months and our second request that a fine of \$7,500 be ordered against Mr. Best. We have three cases in our materials in which the courts have determined that prison sentences are appropriate, and to those three cases, just for Your Honour's benefit, are the Sussex case.

THE COURT: Just one second.

MS. MORSE: It's found at Tab 2 of our brief of authorities.

THE COURT: Yes.

MS. MORSE: And just to provide Your Honour with a brief background as to the facts in that case. In that case there was a court order enjoining a particular employee from interfering with the business of a company and that company's interests, and particularly with regard to - and intentionally interfering with court appointed individuals and interim manager's duties with respect to that company. And the individual in question there in that case went on a - through a series of events sought to undermine the business of the company in question. In there the court found it appropriate to order six months incarceration. At paragraph 70 of that case, I'll just take Your Honour quickly to it; the court states that the incarceration is

appropriate in this - oh, excuse me Your Honour.

THE COURT: I just want - yes, I just want to catch up to you here. Paragraph 70, yes.

MS. MORSE: Paragraph 70; it reads,

"Incarceration is appropriate because of the deliberate willfulness in the contempt, because of the serious harm and prejudice to the applicant and the interim manager in fulfilling its court appointed mandate." Similarly in this case the evidence shows that the contempt has been deliberate and willful, and it has also provided serious harm to the defendants in their attempts to respond to the allegations and make submissions with respect to their cost submissions.

THE COURT: Just before - just because I don't want to forget it.

MS. MORSE: Mm hm.

THE COURT: You don't have to deal with it now...

MS. MORSE: Yes, Your Honour.

THE COURT: ...but I want to hear from you in due course. Can an order not be fashioned that the - there is a certain period of incarceration which is directed by the order, but the contempt may be purged by an attendance before me in compliance with my orders?

MS. MORSE: I - there's not a specific example of that in the case law that we've provided to you. However, I see nothing to suggest that we cannot craft an order in that fashion, and certainly there are cases - I can direct Your

Honour to them, where it was ordered a certain amount of incarceration as well as, and in addition to, the examination that was to take place. In fact, I believe that that was the case in the Lech case, which is the case I'm going...

THE COURT: Okay.

MS. MORSE: ...to direct Your Honour to now.

THE COURT: You'll bring me back to that then?

MS. MORSE: Yes.

THE COURT: Okay.

MS. MORSE: And just to dispense with the issue, it's my understanding from the case law that we can, in fact, craft an order that would allow....

THE COURT: Well, I think it's in everyone's best interest, quite candidly, if there's a way that an individual - if I grant the order, if there's a way he can purge his contempt, but also answer and comply with the orders of the court. It seems to me it's a win-win situation and so I'm probably signaling now that I would like to see that available, because what we ultimately want, or I would think the party's want, is the information. There's nothing to be gained by having somebody languishing in a jail if they're otherwise prepared to come to grips and comply with the orders made by the court.

MS. MORSE: Certainly.

THE COURT: Okay.

MS. MORSE: And certainly with respect - and certainly if Mr. Best appears prior to the costs

hearing in this matter.

THE COURT: I'm not even worried about the cost component. I'm taking it to the next step that he's incarcerated. I would think that if he is incarcerated he comes up for a show cause hearing in the normal course...

MS. MORSE: Mm hm.

THE COURT: ...and that may not be before me, but it may be something that you want to have before me, but I'm not - I want to be very careful about that, because I won't be in the country for the month of March and presumably if the order was acted on and I'm out of the country I don't want somebody languishing in jail if the matter can be dealt with otherwise. In any event, I'm just casting signals to other counsel. You go ahead with your argument.

MS. MORSE: Thank you, Your Honour. Perhaps it might be useful then to move on to the case - the Lech case which is found at Tab 5 of Your Honour's brief of authorities, that's the Milligan re Lech case.

THE COURT: I think I know about this case, because I - Justice McKinnon is in our region. Yes, the repeat offender and disclosure issues. Go ahead, yes, go ahead.

MS. MORSE: So, as Your Honour knows based on your familiarity with the case, this is a case in which, as Your Honour just stated, there was a repeat offender for failure to attend and provide documents and therefore the facts are very similar to the facts that we're dealing

5
with here today, and it is indeed - he had failed to comply at this point with two orders of the court and therefore in this particular judgment the contemnor was ordered to prison for an additional 15 months. This is on top of other sentences that have already been brought against him. The first sentences were first 8 months for contempt and then 15 months, this is an additional 15 months.

10
THE COURT: Yes, but this is case where somebody - I mean, I may have glanced at it and I'm not sure that I did...

MS. MORSE: Mm.

15
THE COURT: ...a month ago, but I thought this was a case where an individual had fleeced a number of people of their money...

MS. MORSE: Yeah, this....

20
THE COURT: ...in a so called investment advisor and what the judge wanted was disclosure of his assets so that these parties could be recompensed to some degree and the individual willfully refused to do so.

25
MS. MORSE: Yes sir, and that's my understanding. Although it's not on the facts of this particular decision, and this decision is just dealing with the....

THE COURT: Oh it is - the facts aren't in here. I see.

30
MS. MORSE: No, unfortunately. I do, however, in my own notes have the facts - the earlier decisions in the Lech matter and I'm happy if on the break you would like me to take a look at

those and then provide Your Honour with a summary of the facts, just to ensure that they are....

THE COURT: Well, if it's wrong...

MS. MORSE: Indeed.

THE COURT: ...what I'm saying, you can correct me, but I - I think - I was the Regional Senior Judge when this matter took place and so I recall this particular individual and...

MS. MORSE: The situation.

THE COURT: ...what was happening in terms of appearances before Justice McKinnon. In any event, go ahead.

MS. MORSE: Thank you, Your Honour. And just quickly to point out then that - that in this case it was found that because there was no other appropriate way to compel attendance that all other approaches had been dealt with, other orders had been given in an attempt to have the contemnor either attend to purge his contempt, or attend to give the evidence that was at issue. Those attempts had been exhausted, and I suggest to Your Honour that similarly in this case we've exhausted the attempts to get Mr. Best to attend before this court, December 2nd, 2009 order was a second attempt to allow Mr. Best to attend, or even to contact counsel, or retain counsel, and begin a dialog. None of which happened.

And finally, Your Honour - just for Your Honour's benefit there was also an incarceration

awarded in the Oakley Manufacturing matter, which is found at Tab 7 of Your Honour's brief of authorities. The incarceration in the Oakley matter was significantly shorter incarceration. It was a 10 day incarceration that was ordered. However, in that case there were circumstances that mitigated in favour of a shorter prison sentence order primarily being that the contemnor attended to the court, he apologized to the court, there was no open defiance of the court.

THE COURT: Yes.

MS. MORSE: I'll just highlight for Your Honour that even that case where an apology was given and where the contemnor appeared before the court, the court still felt it was appropriate to give an incarceration of some amount of time, granted at a far reduced length than the other cases that I've drawn your attention to.

Subject to any further questions from Your Honour those are my submissions with respect to the appropriateness of the prison sentence.

THE COURT: Right. That's fine.

MS. MORSE: I'm just going to move quickly onto the issue of fines.

THE COURT: Yes.

MS. MORSE: As with the prison sentences the case law has many and varied fines, the range is quite large from the cases before Your Honour. The range begins at Canada Metal with fines for 700 and 350. That case is at Tab 1 of Your Honour's brief of authority.

THE COURT: What was it for Canada Metal?

MS. MORSE: Canada Metal, the fines against the individual were \$700 and \$350. So, fairly nominal. Granted that case was in 1974, I believe.

THE COURT: Mm hm.

MS. MORSE: On the other side of - or the higher side of fines being awarded the Boucher re Kennedy case at Tab 6 of Your Honour's bench brief, their fine was awarded of \$30,000.

THE COURT: There has to be an inquiry, though, about an ability to pay or information before the court as to an ability to pay, doesn't there?

MS. MORSE: Your Honour, that's one of the factors that is to be considered. It doesn't have - according to the case law before me and for Your Honour it's not something that has to - expect at an inquiry. It's just one of the factors that's enumerated in the list of ten factors.

THE COURT: Does the Ferrier outline those factors?

MS. MORSE: Factors are outlined....

THE COURT: Did I say Justice Ferrier? It's the Boucher case is what I'm referring to.

MS. MORSE: Yes. Yes, it's at paragraph 69 of the Boucher decision. Excuse me.

THE COURT: Yes. All right.

MS. MORSE: And I suggest to you that the case law where - where more significant fines are awarded against individuals or cases similar or

5 more analogous to our case, there are cases
where individual contemptnor's (ph) [sic]
engaged in activity on a continued basis that
was in direct contempt of court orders, and
specifically showed a willful disregard for the
courts' authority as opposed to a case such as
Canada Metal, for example, where individual
employee's at various marketing, or excuse me,
television and radio agencies failed to properly
10 edit material in accordance with an injunction.
And those are my submissions with respect to the
law in this matter, subject to any questions
Your Honour may have.

THE COURT: No, that's fine. Thank you. Mr.
Silver?

15 MR. SILVER: I have - very briefly, I support my
friend Mr. Ranking and his colleague both in
their written materials and in their oral
submissions. I do note that, and it may be Mr.
Ranking meant to cover this, but in terms of a
20 pattern of conduct and knowledge of process and
differentiating this case and this conduct from
family law litigant who's thrown into a world
that's new to them. I remind you of Mr.
Kwidzinski's evidence that was filed for the
25 November 2nd motion, an affidavit of Mr.
Kwidzinski sworn October 27th where there's a
whole section on the association between Mr.
McKenzie and Mr. Best, and I stop there to point
30 that - that I'm taking you to this to just
highlight that Mr. Best is a seasoned litigator.
He's been around the courts. He knows how to -

and I only go to the evidence that was located in respect of his association in lawsuits with Mr. McKenzie, it may go beyond that, but in Mr. Kwidzinski's affidavit starting at paragraph 22....

THE COURT: Just where do I find that? I'm sorry.

MR. SILVER: That's in the amended notice of motion and reply motion record, which was filed by my friend for the November 2nd motion, and I don't know if you have that or not.

MR. RANKING: We have a second file.

THE COURT: Thank you.

MR. SILVER: And it's at Tab 3.

THE COURT: Sorry, amended notice of motion and reply motion record of the defendant's?

MR. SILVER: Yes, for motions returnable November 2nd, 3rd and 4th.

THE COURT: Tab 3.

MR. SILVER: Tab 3, and page 8 of the affidavit of Mr. Kwidzinski.

THE COURT: Sorry, page 8?

MR. SILVER: Yes. Section E of the affidavit starting at paragraph 22, and you'll see that evidence is submitted of a close association between the two gentlemen that goes back and with reference to cases that both Mr. McKenzie and Mr. Best were involved in. Paragraph 23, Mr. Kwidzinski speaks of this ExpressVu case where Mr. McKenzie was the lawyer and Mr. Best was one of the affiants on behalf of the plaintiff, and then lower down the WIC premium

case, fresh evidence put in by Mr. McKenzie's counsel whose affidavit evidence of Mr. Best, that's a decision from the year 2000. And so on, I note that at paragraph 28, the Fidelski (ph) and Love (ph) case, Mr. McKenzie represented the plaintiff as well as Mr. Best in the Nelson Group Limited, and there was a whole issue there about substituted service and difficulties in serving Mr. Best and his company, all of which is remarkably similar to the difficulties that we're having. And so it seems to me, in my submission, that what we're really dealing with is a seasoned litigator who knows the court, knows the systems, knows the processes and to put it as frankly as I can, we're being abused over here on this side of the courtroom. Our clients have rights. We pursue them through process, we get court orders and they get ignored. I mean, it's a - and I don't want to repeat Mr. Ranking's submissions, but knows how to send a letter or to speak to a trial coordinator, has at least 13 years of experience in the Ontario Courts and Canadian Courts, he knows the system, he knows the courts and we're being abused, and the only remedy that we have is in the nature of the request that Mr. Ranking has advanced on all of our behalf's.

Secondly in respect of remedy, Your Honour, I support the concept of still wanting to keep our eye on what's really at stake, and in fact, in my experience, my understanding, is that if you

imposed a court - a jail sentence, a period of incarceration, that doesn't, sort of, replace the obligations under the orders that were made. He could spend that time in prison and still come out and be obliged, and so - to comply with your orders, and so, a remedy that tackles both of them I - both aspects I think is appropriate, and so in my respectful submission, I support the request for a period of incarceration of three months, or such shorter period of time if Mr. Best purges his contempt by submitting to a cross-examination before you on a date prior to the return of the costs hearing which is now scheduled for February 22nd. And to be practical about it he can save some time, and we could have this information for the costs submission without delay of the cost submission. All of which assumes that we'll be able to serve him, or he'll be able to be served with the warrant for the committal, and we'll have to see how that goes and what affect that has on the proceeding. My instructions at present are to not seek any further postponements of the February 22nd date, and so, we'll have to see whether he can be found before February 22nd. But it doesn't change the submission I make on what the - what an appropriate remedy may be and that is three months or such shorter period of time if he purges his contempt before you prior to the start of the cost submission on February 22nd.

THE COURT: I've got to be very careful when I'm

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ordering people to jail. I - it's got to be a fixed term. I don't think I want to make any reference to a shorter time. It will be three months, if I grant the request, it will be three months with the proviso that the accused - that Mr. Best will be able to attend me to purge his contempt and at that time I may very well be able to vary the sentence, and I think I can, but I think I would be criticized if I had a sentence that was, sort of, open ended.

MR. SILVER: But - and....

THE COURT: But I want the element of purging there.

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MR. SILVER: I think that works just as well, and that - and then when - if he does that, when he does it, would dictate the submissions that we make and the determinations you make at that time.

THE COURT: At that time.

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MR. SILVER: That seems acceptable to....

THE COURT: All right.

MR. SILVER: So, those are the brief additional submissions that I have.

THE COURT: Thank you. Mr. Roman?

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MR. ROMAN: I just have a couple of points, Your Honour. Had I been bringing the motion Mr. Ranking brought I would have been seeking a considerably longer term of incarceration. My friends have clients like Mr. Silver's case, the Government of Barbados; Mr. Ranking's case, Pricewaterhousecooper's; my client is a small individual defendant who has spent half of his

adult life in this litigation, and if you look at the history of it it's always cost him a great deal of money, and all of the previous litigation has been chasing costs and trying to get costs for expensive proceedings which are eating up this individuals income. So what you see is Mr. Best with a history of hit-and-run tactics where those tactics are particularly punitive and prejudicial to the victims who are hit and then are unable to collect when he runs, and I would submit to you if there's any question about ability to pay the people who are willing to mount that litigation for other people in a proxy basis, where those other people do not appear themselves, can be handsomely paid for doing this kind of work. It's work that a lot of people are not willing to do, but if somebody's feeling sufficiently vengeful in a family feud, or for whatever reason, to try and impose these costs on other people that could be something for which compensation is sought. I don't think you have any evidence on the record before you, but it would seem to me remarkable if Mr. Best would put himself through all of this entirely gratuitously and with no compensation. So, there can be little doubt, I think, as a practical matter of being people of the real world that he has been compensated somewhere, somehow, for the risks he has taken and the inconvenience of having been the President of Nelson Barbados in this proceeding. So, I think

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you should be aware that there are large and small defendants and the impact on the small defendants is considerably greater than the impact on the large defendants and I'm sure Mr. Best must be aware of that, because it would have been he who gave Mr. McKenzie the instructions as to who to sue and who not to sue, and also as to who to discontinue against and who to take right to the wire, which was done, and if you recall from the final argument Mr. McKenzie presented in relation to our client, the only point he made was something to do with blogs in Barbados and made no point of substance as to why the court should have any jurisdiction over a resident of England. So, I put that before you because I think that my friends have sought a period of incarceration and a fine that is quite modest in the circumstances of this case and given all of the circumstances, and those are my submissions, Your Honour.

THE COURT: Thank you.

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MR. ROMAN: I'm sorry, just - I forgot one other note, if I may? Mr. Silver mentioned that he thought - or would suggest that the contempt could be purged by appearance before you for cross-examination; I would go one step further that given the history of refusals to answer questions that the contempt would be purged by appearing in cross-examination before you and answering all reasonable questions.

THE COURT: Well, I think that's implied.

MR. ROMAN: All right.

THE COURT: Since I would be presiding over that examination.

MR. ROMAN: Thank you.

MR. SILVER: It would actually be to answer the questions that you previously ordered, which were particularized...

THE COURT: Yes.

MR. SILVER: ...in the November 2nd and December 2nd.

THE COURT: I previously ordered and as set out in that notice of motion, in the supplemental notice of motion. Ms. Carr? [sic]

MS. CLARKE: Your Honour, I - as Mr. Silver, support the admissions of Mr. Ranking and Ms. Morse and echo Mr. Silver's request that we attempt to have Mr. Best examined before the cost motions in February so that these proceedings are no longer delayed. Other than that, those are my submissions. I know that - just as - that may not be possible depending on when and if Mr. Best is located, but if it is possible that he come before you before the cost motion at the end of February that would - those would be my submissions.

THE COURT: Ms. Rubin?

MS. RUBIN: As I said at the outset, Your Honour, I think at this point my client must step back and must be - take comfort in the fact that - to the extent he owed any duties to his former client that they have been met, and that the client has been afforded all of the fair

5 procedural rights that he's entitled to, to
appear here and to retain counsel to answer
proper questions. And so, my client takes no
position on the present motion apart to say that
those procedural fairness requirements have been
met and in my submission I believe this court
can take comfort in that as well. As for -
there is further relief being sought by the
defence on this motion, and I wonder if, just to
10 speed things up, I could make my submissions on
those as well and we could hand up the draft
order if there's no other submissions on the
part of the defence?

15 MR. RANKING: I have no difficulty with that,
Your Honour, but I do have one comment with
respect to your comment with - on the purging of
the contempt.

THE COURT: Yes.

20 MR. RANKING: I have no difficulty and I support
what Mr. Silver said and Your Honour's point
saying that there has to be a date certain for
the committal. What I strenuously object to
though is if, in my respectful submission, Mr.
Best, if he's going to purge his contempt, has
25 to do it, in my respectful submission, before
the cost hearing on the 22nd of February, because
if he doesn't then, in fact, he's achieved his
objective, because we need, in our respectful
submission, the defendants collectively, need
30 that evidence with respect to Nelson Barbados
and what it did or didn't do in its books and
records in order to make - and it may or may not

change our submissions, but we need that information because they're pivotal, or could be pivotal, to our submissions on the 22nd, 23rd, and 24th of February. So that if Mr. Best gets this order, should it be granted, and he then says, "Well, that's fine, I can actually stay in the weeds until the motion is dealt with and then I'll attend before Mister Justice Shaughnessy and try to purge my contempt." I think it should be made clear that - that that - and certainly in my respectful submission would not be an appropriate outcome from the position of the defendants. So, I just wanted to make that submission, Your Honour.

THE COURT: I think what - if you don't mind, I'd like to break at this point. I'd like to decide the first issue, give an endorsement. It will be an endorsement with reasons to follow and then we can go on to Part 2.

MS. RUBIN: Okay. I think, Your Honour, point taken. I think we can get quickly past Part 2 and Your Honour could have the whole matter to mull over, over the break. It's a very...

THE COURT: All right.

MS. RUBIN: ...maybe three minutes of submissions. I don't think there's any more than that, but I'm in Your Honour's hands.

THE COURT: Is the staff alright for a few more minutes? All right.

MS. RUBIN: Okay. So, in terms of....

MR. RANKING: Your Honour, what we did - we prepared a draft order and I'm handing up the

original with my - my changes that we agreed to with Ms. Rubin.

5 MS. RUBIN: And so, just to speak for a couple of minutes about the draft order; on paragraph 1 to 5, those deal with Mr. Best, and as I said, my client takes no position on those. Paragraph 6 to 8, the amended paragraph 8, these are orders made against Mr. McKenzie. That's because Mr. Best did not appear to answer questions today about certain documents that Mr. McKenzie, despite any solicitor/client privilege or duty of confidentiality that may attach to these documents, this court's going to order that Mr. McKenzie produce these documents to the defendants, and there's a list of the documents there. My client, again, because of the actions of Mr. Best will abide by any order that's made by this court to produce the documents that are listed there. The only issue comes at paragraph 20 number 9, and on that front the only issue that we do not have instructions to agree to that paragraph, it requires Mr. McKenzie to sit down and make a list of any documentation that has ever been, or he's ever - has ever been in his possession, or he no longer has, and in my 25 submissions that's a proper question for cross-examination. Of course to the extent that we can - prior to Mr. McKenzie's cross-examination that we can produce documentation to the 30 defendants to - in the interest of efficiency, we will make reasonable efforts to do so, and you know, as counsel do, but at this - today....

THE COURT: You'll make reasonable efforts to do what?

5 MS. RUBIN: To produce any of this documentation to the defendants in advance of Mr. McKenzie's cross-examination. But I can't consent to a term in the court order that Mr. McKenzie does Number 9, and I can't commit on Mr. McKenzie's behalf to a specific date that anything will be produced, except to say that we will make our best efforts to produce this documentation to the defendants reasonably in advance of Mr. McKenzie's cross-examination.

10 THE COURT: Just give me a second so I can read 9.

15 MS. RUBIN: Yes.

THE COURT: Anything else, Ms. Rubin?

MS. RUBIN: No, that's it and the rest - as I said the rest of the order is fine with us. Number 8 - no, excuse me, Number 7, which has been added in, also fine, and that is that this court orders Mr. McKenzie, despite and privilege or confidentiality, to answer questions that are put to him with respect to the documents listed and we agreed.

25 THE COURT: Mr. Ranking?

MR. RANKING: Your Honour, with the greatest of respect to my friend I think that she's confusing two of the paragraphs. Paragraph 6 is the paragraph by which Ms. Rubin has agreed to have Mr. McKenzie produce the documents. Such production has to be made within seven days of the order. We've agreed on that...

MS. RUBIN: No, I'm....

MR. RANKING: ...and unless my friend is resiling from the agreement that we've got - and I'll finish my submissions first, if I might, Ms. Rubin. That is what is in paragraph 6. Paragraph 6 is what we agreed upon, and if my friend is now taking position different then she can advise me over the break and we'll take it up after the break. But paragraph 6 is intended to deal with the production of documents that we didn't get from Mr. Best that we're now seeking from Mr. McKenzie. Paragraph old 8, new 9, is not dealing with the production of documents at all. It is dealing with a requirement to prepare what we would otherwise say is a Schedule C to an affidavit of documents, stating, "If you don't have the documents, tell us what became of them because you incorporated the company, you should have put the documents together; did you, and if you did when did you do it, and if you no longer have them, what became of them, and to whom did you give them and when?" And so - and that's what we on the defence side are saying, "Okay, if you've got them you've agreed to produce them", subject to Ms. Rubin changing that position, but if you don't have them we would like to know - to be able to prepare and perhaps to bring further motions to see if these documents have been given to a third party, or to a non-party, we may well want to be before you to say, "Wait a minute, why did that happen? That individual

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wasn't listed as an officer or director why do they have the documents and have there been steps taken to try to get rid of these documents so we can't get them?" So, that's the purpose of paragraph 8, old paragraph 8, new paragraph 9 simply put, and we see no reason why Mr. McKenzie, as the solicitor and as the firm that prepared these documents, shouldn't be under an obligation, given the relevance of the documents should this court so find, to give us that kind of information before Mr. McKenzie is cross-examined.

THE COURT: Mr. Silver?

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MR. SILVER: The only thing I have to add is that we had an agreement where - on the date of Mr. McKenzie's cross-examination, which was February 3rd, and my respectful submission is that should find its way into the order, because it all then, sort of, connects - if you make an order that the firm produce the documentation within seven days then that will come before February 3rd and it's - because everybody's agreed on it, I think it should be in the order. February 3rd for Mr. McKenzie's cross.

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THE COURT: Mr. Roman?

MR. ROMAN: No. No submissions, Your Honour.

MS. CLARKE: No, Your Honour.

THE COURT: Ms. Rubin?

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MS. RUBIN: Your Honour, just to stand up. I agree with the February 3rd date for Mr.

McKenzie's cross-examination, that's not a problem, and it may have been a misunderstanding

5 on my part, I thought after we had discussed the
time - timing for delivering the documents that
I had come back into the courtroom and - after I
had spoken with Mr. Duart (ph) and confirmed
that we don't have these documents in our
office, and we believe Mr. McKenzie's out of the
country at present. So, I had thought that I
had relayed the message that we cannot commit to
a specific date, because we don't know what's
10 there and we don't have any of it. If I have -
if I didn't communicate that, I apologize, and I
don't mean to resile from any agreement that we
made, but it's - as a practical matter, I'm not
sure that the documents can be delivered within
seven days, but as I said, we would agree,
15 obviously, to deliver them reasonably in advance
of the cross-examination and make our best
efforts to deliver them as soon as possible.

20 THE COURT: Well - all right. I just want you
to help me for a second, because I'm getting
confused from your initial submissions to where
you are now. So, the documents you have in your
possession...

MS. RUBIN: Yes.

25 THE COURT: ...there shouldn't be any problem in
producing those within seven days of this order.

MS. RUBIN: We - okay, and I can confirm that
we, counsel for Mr. McKenzie, have no - none of
Mr. McKenzie's original file with respect to
30 Nelson Barbados in our - in our firm's
possession. So, all of the documents with
respect to this litigation are not in our

possession and there's nothing that I know of, standing here today, that we could produce from our files.

THE COURT: So, the hold up - or the hang up...

MS. RUBIN: Yes.

THE COURT: ...is seven days?

MS. RUBIN: Yes, that's all.

THE COURT: Right. Got that. So - so today is what? The 15th of January? So, the last time I remember there is 16 days left in this month, then you said the examination is 3, so that's 19 days. When is Mr. McKenzie expected back in the country?

MS. RUBIN: I don't - I don't know, I'm sorry. But I imagine that through channels with his former firm we could arrange some sort of reasonable timing on the delivery of the documents...

THE COURT: Well, what....

MS. RUBIN: ...otherwise - I just don't want to be committed to seven days, because I don't know...

THE COURT: All right.

MS. RUBIN: ...if that's possible.

THE COURT: It's not 7, and we can't go out beyond 19, so pick a number.

MS. RUBIN: Why don't we get - why don't we give us two weeks at the - and - and in that two weeks we will undertake to make our best efforts to deliver them as soon as possible.

THE COURT: Fourteen days then from today. So, that will put it just towards the end of the

month. That works?

MR. SILVER: That - well - sorry. Two weeks....

THE COURT: I haven't got to the second step yet. I want to come back now - then to paragraph 9.

MR. SILVER: Well, two weeks from today is the 29th...

THE COURT: Right.

MR. SILVER: ...which would be the Friday before the Wednesday the 3rd. Just because of my own schedule I would ask that it be the 27th, which is one week - a full week before. I happen to be out of the country on the....

THE COURT: So, you're asking to move it back two more days?

MR. SILVER: Back two more days and put - not seven days, but by or before January 27th, which would be exactly one week before the cross-examination.

THE COURT: Well, you may not be able to agree with it, but I think that's reasonable and I have to make the call, so that's reasonable. That gets that out of the way. So, it will be January 27th. Now, with respect to paragraph 9, is it the seven days is the issue there?

MS. RUBIN: I'm sorry, Your Honour, the only issue there is that I don't have Mr. McKenzie's consent to this term. I don't have instructions on this, and so to be - again, this is a consent order, I can't agree to it, and the reason - basis for my - what I say - one of the reasons in my submission Your Honour shouldn't make the

order is that this is a question for cross-examination, this is a question that can be asked to Mr. McKenzie on cross-examination.

5 THE COURT: You know, I'd be real obliging in that regard if I was talking to you and this was September with an examination to take place in February, but if I have to look back over two and a half years of this litigation and the number of stops and starts, and - I think it's extremely unfair to counsel and the other side. I think it's unfair to the parties, particularly, and frankly a little unfair to the court process to keep leaving things unattended and directed. This has got to come to conclusion. I have made the substantive
10 decisions in the matter. This is coming down to cost, it's coming down to productions, I heard your submissions but nevertheless in terms of paragraph 9 I'm making it the same date, January 27th.

20 MS. RUBIN: And Your Honour, just so there's no misconception, my client also takes the position that the motion date in this matter should not adjourned again. That it should - that the matter - the motion on costs should be - ought to be heard on the February dates and that there....

25 THE COURT: Amen.

MS. RUBIN: Yes. Thank you.

30 THE COURT: Even when I hear it I have to write on it, and I think I told you I'm not going to be around for the month of March and things are

5 heating up in terms of other obligations. So, I mean, I've got to bring this to a conclusion. All right, anything else? I need a break, then I want to at least make an endorsement about what has been decided and with reasons to follow, and I'll put that - I guess I'll go back to the original motion record, will I? Where I have an endorsement of December 2nd?

10 MR. RANKING: Yes. I think that is where your endorsement is, Your Honour.

THE COURT: Right.

MR. RANKING: Sorry, which endorsement are you looking for, Your Honour?

THE COURT: I'm going to make an endorsement...

15 MR. RANKING: Right.

THE COURT: ...I just want to make sure I've got it on the right record, so it'll be on the December 2nd - where...

MR. RANKING: I think it's....

20 THE COURT: ...I've already made an endorsement on December 2nd. It's on the motion record, motion returnable...

MR. RANKING: Right.

THE COURT: ...December 2nd, 2009.

25 MR. RANKING: For the purposes of today it might be better that you make it on a supplemental motion record...

THE COURT: All right.

30 MR. RANKING: ...which is the motion record for....

THE COURT: January 15th.

MR. RANKING: I think January the 15th might be

more appropriate, Your Honour.

THE COURT: All right. Well, we're going to be a little longer than 15 minutes.

MR. RANKING: Thank you, Your Honour, for agreeing to sit.

THE COURT: All right. I'll be at least 25 minutes sorting this out and getting it in the form that I want.

MR. RANKING: Your Honour, you'll see - you'll see this when you read it. We have purposely left a period of incarceration blank, when you read the draft order.

THE COURT: Thank you.

R E C E S S

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

THE COURT: I've made the following endorsement on the supplemental motion record returnable this date; for written reasons to be delivered at a later date I find that Donald Best is in contempt of the orders of this court, namely the order of November 2nd, 2009, and paragraph 3 therein as well as the order of December 2nd, 2009, and paragraph 3 therein. I am satisfied on the material filed that Mr. Donald Best had actual notice of the orders of November 2nd, 2009, and December 2nd, 2009. I am further satisfied that Mr. Donald Best was on notice of this days motion for contempt yet he failed to attend to answer questions and make productions as detailed in the court order of December 2nd,

2009. I am satisfied that the three part test outlined in Sussex Group Limited v. Fangeat, [2003] OJ No. 3348, paragraph 53, have been satisfied. Mr. Best has contravened both the letter and spirit of this courts' orders. He has knowingly acted in a contravention of the court orders. I find that Mr. Best is intentionally contemptuous of the court orders and thereby he intended to interfere with the administration of justice. In determining the appropriate remedy I have considered, A) the nature the contemptuous act, B) the fact that the contemnor has admitted his breach, C) the fact that the contemnor has not tendered an apology to the court, D) the fact that the breaches are part of an ongoing pattern of conduct in which there are repeated breaches and E) the fact that the breach occurred with full knowledge and understanding of the contemnor and is not the result of a mistake or misunderstanding, F) the conduct of the contemnor exhibits defiance of the orders of this court. I've also considered the decisions in Milligan v. Lech [2006] OJ No. 3127; Boucher v. Kennedy [1998] OJ No. 1612 and Oakley Manufacturing Inc. v. Bowman [2005] OJ No. 5318 in considering the appropriate remedy. The material filed in this application indicates that Donald Best is a seasoned litigator and therefore has knowledge concerning the necessity for compliance with court orders and the consequences for noncompliance with court

orders. Therefore it is the order of this court that Donald Best be committed to a Provincial Correctional Institution for a period of three months. A warrant for committal to issue. Further it is the order of this court that in addition to the term of incarceration that Donald Best pay a fine of \$7,500. It is further an order of this court that Donald Best may apply to purge his contempt by appearing before Mister Justice Shaughnessy on or before February 22nd, 2010, and answering questions or making productions in terms of the orders of Justice Shaughnessy dated November 2nd, 2009, and December 2nd, 2009. I signed a draft order that has further provisions relating to the attendance of Mr. McKenzie on an examination now set for February 3rd, 2010. The cost hearing in this proceeding remains fixed to proceed on February 22nd, 23rd, and 24th, 2010 at Whitby. It should say - we're moving, aren't we? Is it February 22nd the moving date? I think it is, isn't it?

COURTROOM REGISTRAR: I believe it's the 21st.

THE COURT: 21st, for this court?

COURTROOM REGISTRAR: I believe so.

THE COURT: All right. I think I better correct that and say at Oshawa. All right, the issue we haven't dealt with is cost. I should - let's - just before we go onto that part. So, I - do you all have a copy of this order that - the draft order? If you don't I'll just pass down what I've got and let you look at it

collectively and tell me if it's fine. Is that better? I think Ms. Rubin might want to look at that, because it does affect her.

MR. RANKING: That's fine, Your Honour.

THE COURT: All right. Okay, costs.

MR. RANKING: Your Honour, I've prepared and handed up a cost outline. The cost outline deals with all the costs that were incurred to prepare for the various matters that unfolded over the months of November and December, and coming up to today's date. And I have provided for - in the cost outline the cost on a partial indemnity and a substantial indemnity scale. If I could just ask you to turn to the paragraph - excuse me, page 2, I can briefly take you through each of the paragraphs dealing - and we're seeking these costs as against Mr. Best and the reason for what I've identified here, why we are seeking costs on a substantial indemnity scale is that in furtherance of what Your Honour has just ruled, with respect to his contemptuous conduct, virtually all of the costs and they have been significant, have been incurred in order to try to deal with this matter. I also note by way of example that we were required to spend a lot of time and when you look to the next page, I'll come back to some of the factors momentarily, but if you look to the next page just with the individual lawyers while....

THE COURT: Sorry, for interrupting you.

MR. RANKING: Yes.

THE COURT: I've just looked at it this moment, but persuade me otherwise, but why shouldn't I then - if I look at page 2...

MR. RANKING: Yes.

THE COURT: ...the first box you're asking for costs against Best without prejudice to the right to seek recovery against McKenzie and if I'm going to deal with that, am I not February 22nd, 23rd, 24th? Should these costs not move over? I mean....

MR. RANKING: Your Honour, I think that....

THE COURT: You're not going to be collecting them.

MR. RANKING: No, I'm not going to be collecting them. I'm happy to put it over. I don't want to overstate my case. While I say that it's without prejudice to recovering some of the costs against McKenzie I think that a fraction of these costs may, in fact, be recovered against Mr. McKenzie. The lion's share of them are referable to Mr. Best. So, I put that in simply to preserve the ability if that - to seek some of the costs, but I can't stand before you and say that I would be advocating strenuously to recover these costs against Mr. McKenzie or his firm.

THE COURT: All right. Then continue.

MR. RANKING: So, it's really more out of an abundance of caution. The issue here, Your Honour, is whether we start with the efforts that I had with Mr. Kwidzinski, the student, trying to find this individual, finding people

in Kingston, looking at this UPS store, then having to bring on the motion for the UPS and then having to continue to coordinate - there was a lot of time. What I tried to do as senior counsel was I tried to delegate it as best I could, and if you look at page 3 I had Mr. Butler who when it came time to dealing with the UPS stores and putting that into evidence, I asked him as an associate to attend to that in addition to Mr. Kwidzinski, because I wanted to make sure that things were handled appropriately. But you'll see to the extent that I've used others; I've used a student, Mr. Butler a 2006 call, and to assist prepare for today and deal with the legal research and get things out in a timely fashion before Christmas I asked Ms. Morse, who was a 2009 call. So, that's how I dealt with the matter and I say while this - the matters that we had to deal with were not legally complex. I think they were factually complex. I can tell Your Honour that, you know, with respect to trying to get into social insurance numbers and telephone numbers and driver's licences, and things of that nature, we did a lot of work and that is what is reflected through this material. As well I asked you court clerk to hand up the materials of the separate folder of materials for the November 2nd motion to give you a sense, you actually did refer to some of that earlier, but to give you a sense of what it is we did. And then we had the various attendances and

preparation at Victory Verbatim. And you'll also see attached to the bill of costs the disbursements, which in and of themselves are in excess of \$5,000 and I've attached the invoices from Victory Verbatim and the invoices for the private investigator, Mr. Van Allen. I will also make this other comment, while my client is not an individual like Mr. Roman's, I can tell you that the amount of costs that my client has incurred trying to move this forward has been - I don't want to say extraordinary, but they had been far more significant than any of us would have contemplated at first instance. It's one thing when you, you know, start a cost proceeding and are trying to recover costs against Mr. McKenzie for the reasons that we'll argue in later submissions, but when all you're trying is get some documents, when you start down that road you certainly never would have thought you would have been dealing with a matter that would have dragged out for another two to three months at solicitor client costs well in excess of \$100,000. So, that's my cost outline. I do want to refer you to two cases though, Your Honour, and they're cases that I think will be of assistance to you, and I don't need to spend much time on them, but if I could just ask you to turn to the brief of authorities in the contempt motion. You certainly referred to one of the cases, if not both of them, but the first case I'd ask you to turn to is the decision of Mister Justice Cumming in the Sussex

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Group case and I refer you to both these cases, Your Honour, because they stand for the proposition that where an individual is found to be in contempt it is appropriate to award costs on a substantial indemnity scale. And under Tab 2, if I could ask you to turn to the last page, page 16 of the decision, paragraph 78, where Mister Justice Cummings says, "Submissions have been made as to legal costs, a draft bill of costs has been considered. In my view costs are properly ordered to be on substantial indemnity bases given the deliberate and willful nature of the continuing contempt. I fix costs payable to the applicant on a substantial indemnity basis of \$45,000", and he deals with other matters in terms of the specifics of that case. But what is of significance, in my respectful submission, is that there was a finding there by Mister Justice Cumming that substantial indemnity costs were appropriate given the deliberate and willful nature of the continuing contempt. In a further case, which is certainly in terms of quantum more significant or closer to our case, is that in the decision of Oakley Manufacturing and Bowman, the decision of Mister Justice Stinson in 2005. In that case there was imprisonment of only ten days, but Justice Stinson deals with costs commencing at paragraph 25, and I think that his decision is helpful and I urge you to look at paragraph 25 and following, it's really paragraph 25 through to the end, but at paragraph 25 His Honour makes

the point that these contempt proceedings were occasioned entirely by the intentional decision of the defendants to disregard the order of Carnworth, J. (ph), that misconduct warrants the imposition of an order requiring them to pay the cost of the contempt proceeding on a substantial indemnity basis, and he then references the Sussex Group case to which I've already drawn reference. Here, Your Honour, we couldn't have gone to greater lengths to make sure that Mr. Best was aware of the contempt proceedings and his need to come to deal with them, and as Your Honour has so found he was in breach of two court orders and he's both in breach not only in the orders themselves, but in the spirit of the orders by not attending on the 25th. So, in my respectful submission the facts of this case fall squarely within the decision of Justice Cumming and Justice Stinson. Justice Stinson goes on, and while the facts clearly are distinguishable the concept, I think it's the same, in paragraph 26 the plaintiff was required to go to considerable length to gather the evidence necessary to prove its case. In this case I respectfully submit, without taking to all the facts, that the same applies. And what I think is significant is the last sentence of that paragraph, "To the extent the defendants find themselves facing a significant cost order, they largely have themselves to blame." Had Mr. Best come forward and simply proffered the information we wouldn't be here and none of this

would have been incurred. So, to the extent there is concern I actually rely on what Justice Stinson said, that that concern was brought to Mr. Best by his own doing.

Your Honour I don't think I need to take you through paragraphs 28 through 33. It talks about the defendants going to appear on two separate dates, the contempt motion, the same applied with respect to, you know, Mr. Best not attending and in this case, if you'd turn to paragraph 23, Mister Justice Stinson reached the conclusion that the amounts claimed in the bills of costs were fully justified and that it was fair and reasonable for the defendants to pay those sums and he fixed the costs of those contempt proceedings at \$97,000 inclusive of disbursements and GST. In my respectful submission the time and effort that we dedicated to the case was appropriate and we have been successful at each court attendance. Your Honour has adjourned the various earlier attendances through today. I've provided my cost outline and subject to any questions I would ask that the costs be awarded in favour of Pricewaterhousecoopers....

THE COURT: What - I mean I have it all in my computer, but I don't bring my computer to court, what did I award you in costs on the previous occasion where I - there was multiple submissions with respect to costs and we had to get into the entire issue of relating to the

security matter, and I know - I don't want to know - I know the disbursement for the expert was significant, but I - apart from that, what did I award you in fees?

MR. RANKING: My recollection that overall - the overall cost award was something in excess of \$200,000 for all parties...

THE COURT: I know that.

MR. RANKING: ...for all disbursements. If - I know that it is in the record, I can find it for you, my recollection was that you awarded Pricewaterhousecoopers something either in the low forties or high thirties together with \$25,000 for Dr. Sharon Smith's (ph) report. My recollection was that the - the net payment that had to be made by Mr. McKenzie's client was something around \$70,000 for Pricewaterhousecoopers.

THE COURT: That's my recollection. I just wanted to make sure I was on the page.

MR. RANKING: Yeah, and....

THE COURT: So, I think it was about forty, forty-five, and twenty-five, am I right?

MR. RANKING: Forty-five I think would be high. I think it was about - either the high thirty's or the low thirty's, Your Honour. And I can't remember, because there was some other disbursements in there...

THE COURT: Yes.

MR. RANKING: ...as to what the actual fee was, but certainly around forty, I think, is a fair ballpark.

THE COURT: Yeah. All right. Thank you. Mr. Silver?

MR. SILVER: In respect of that same question my recollection - my recollection was that they were varying amounts per counsel, because different people did different things, but that the award in favour of my client was in that same range, I think, forty-two to forty-five.

THE COURT: I actually think you were around thirty, if I recall, but I may be wrong.

MR. SILVER: No.

THE COURT: I don't know why I don't - we don't just look this up, because it's easy to look at, but....

MR. SILVER: I can find it.

THE COURT: In any event....

MR. SILVER: But it was partial indemnity.

THE COURT: Yes. What's your submissions now?

MR. SILVER: My - firstly Your Honour, I don't have a cost outline. I'm going to make one submission on substantial indemnity in addition to what Mr. Ranking has to say, and it sounds smart, but it's actually from case law that I don't have for you, but my recollection from a prior contempt proceeding is that substantial indemnity is the rule, or more the regular course, not only in situations where there's deliberate and intentional conduct, but also because - and the courts have recognized this, and it's in case law, that counsel are the parties who retain counsel to bring a contempt on are actually assisting the court in the

5 administration of justice, and that compliance
with orders is so fundamentally important to the
administration of justice that where parties
through their counsel bring on contempt
proceedings successfully and there are findings
that another party isn't complying with the
court orders and process that the regular order
for costs is substantial indemnity, because that
part is assisting with the proper administration
10 of justice and it's so important that orders be
complied with, that the court recognizes that in
the costs award to be made following the
contempt hearing.

15 In respect of quantum there is no doubt, it's
perfectly obvious to you and everybody else that
Mr. Ranking carried the lion's share of the
work. He did all the records and put the bulk
of the material together, and so, my costs are -
my time is significantly reduced from that of
20 Mr. Ranking. Having said that I did prepare
for, and attended, on November - in court on
November 2nd, December 2nd and today. I also
attended, as you know, on November 17th and then
again on November 25th at the special examiner's
25 office and I submit and certify as an officer of
the court that in excess of six hours were spent
in respect of those four categories. Namely
November 2nd - I combine November 17th and 25th
together, December 2nd and January 15th, and so,
30 I'm seeking costs for 24 hours of my time at a
substantial indemnity rate of \$525, which

amounts to \$12,600 plus GST of \$630 for a total cost award payable by Mr. Best of \$13,230. No disbursements.

THE COURT: Thank you. Mr. Roman?

MR. ROMAN: I think, Your Honour, I have to echo what Mr. Silver just said about Mr. Ranking doing the heavy lifting. There's no way my client could have done what his client did and we are grateful to him for having done it. I would submit in response to Your Honour's question about whether this should have been dealt with, or should be dealt with on the 22nd, and it's important that it be dealt with now because clients such as Mr. Ranking's who see the bills mounting, but don't see any orders for cost awards will be more reluctant to continue to pay those bills if there isn't any order from the court saying someone should pay them. With respect to the scale of costs I would take the proposition Mr. Silver made and take it one step further, I submit that it would be difficult to justify an order of partial indemnity costs in a contempt case such as this one. I don't have a formal cost order, Your Honour, I attended the last effort where we were trying to get Mr. Best to appear and I had to prepare for this event, I would be seeking the same hourly rate as Mr. Silver for ten hours.

THE COURT: What's the GST on that?

MR. ROMAN: Sorry, I don't have that. I can work that out though.

MR. SILVER: Well, it would be...

MR. RANKING: Five percent....

MR. SILVER: ...200 - it would be ten hours at 525 is 52.50 times five percent, which is about - I can give you that. It's 52.50 times .05, it's \$262.50, and so combined it's \$5,512.50.

THE COURT: Thanks, Mr. Silver. Ms. Carr? [sic]

MS. CLARKE: It's actually Ms. Clarke, Your Honour.

THE COURT: Clarke, I'm sorry.

MS. CLARKE: It's okay. I, like Mr. Silver and Mr. Roman, unfortunately do not have a cost outline for Your Honour today, but I attended as Mr. Silver at those of dates that he spoke to minus the preparation time for the anticipated examination of Mr. Best. So, a cost outline will be forthcoming to Your Honour, but I'm going to ask the courts indulgence and Mr. Silver's handy Blackberry to do some math for me, but I estimate my time to be roughly 20 hours, Your Honour, and my hourly rate at 335 an hour and I think that works out to roughly....

MR. SILVER: \$6,700.

MS. CLARKE: Thank you, Mr. Silver.

THE COURT: When were you called to the bar?

MS. CLARKE: 2009.

THE COURT: When was your call to the bar, Mr. Roman?

MR. ROMAN: 1973, Your Honour.

THE COURT: I thought so, good year. Thank you. I don't think you have a position on costs, would you?

MS. CLARKE: No. You're right, Your Honour, I'm

not going to claim our costs against Mr. Best, but I reserve the right to claim costs, should it be fit to do so, in the motion in February against the defendant's, Number 1.

THE COURT: Oh, I'm sure they're aware of that.

MS. CLARKE: Yes, Your Honour. And on a second front just insofar as the draft - cost outline which I haven't seen, makes any reference to Mr. McKenzie, as Your Honour pointed out at the outset of this, I would ask that no window be left open to claim these costs for the contempt motion as against Mr. McKenzie and so this order made today is made, for lack of better language, with....

THE COURT: Well, I - yeah.

MS. CLARKE: With prejudice.

THE COURT: Mr. Ranking really wanted to keep it open, but I don't think it's open. I'm making the order now.

MS. CLARKE: Right.

THE COURT: I'm making it now, it's now, and it's going to be against Mr. Best.

MS. CLARKE: All right.

THE COURT: So, let's sort of - that's the end of that story.

MS. CLARKE: Thank you, Your Honour.

THE COURT: All right. Under costs in the continuation of the endorsement, a bill of costs has been filed by Mr. Ranking and in light of the findings of a deliberate, willful and continuing contempt I find an award of costs on a substantial indemnity basis is appropriate.

Nevertheless, the guidelines provided under the rules as well as the principles of proportionality still must apply in this matter. It's apparent that Mr. Ranking did the substantial work in relation to this proceeding. After hearing submissions I hereby make the following order of costs on this proceeding as against Donald Best payable within 30 days.

Number 1, to Mr. Ranking's clients - I had to do it that way, because I'm not - I know who you represent, but when I get into Mr. Silver it's a little bit more difficult. Mr. Ranking's clients cost of \$50,632.90 comprised of \$45,000 in fees and \$5,632.90 in taxable disbursements. To Mr. Silver's clients, \$13,230 inclusive of GST. To Mr. Roman's clients, \$5,512.50 inclusive of GST. To Ms. Clarke's clients, \$3,500 inclusive of GST. All right? And I've added that to the order, I've signed the order.

MR. RANKING: I have one last housekeeping matter. Attached to the order is a schedule, being the warrant of committal. Can I pass up a warrant of committal and have Your Honour sign it so that we can....

THE COURT: Yeah, just on that though, I know the registrar was working on, because we sign all sorts of warrants and you're going to use his? You've looked at it? That's fine. I just want to make sure it's in the proper form.

MR. RANKING: It - well this, in fact, we've done in blank, Your Honour, because we didn't know the period.

5 THE COURT: That's the order that goes back to
them. It occurs to me, Madam Registrar, you
could help us - I know you come from the family
side of the court, but when we issue these
warrants for committal in family proceedings is
there not information that counsel provide for
the arresting officers? The details; what the
person looks like and other such criteria, do
you have that here? Just before you leave,
10 then, this registrar comes from the family
section of our Superior Court and we make these
orders from time-to-time, reluctantly, but we
make them, usually for nonpayment of support and
there is a form which, I think - just to make
sure matters are expedited and perceived that
15 she will perhaps secure for you where you
provide the police with certain information and
- relevant information that they need for the
purposes of an arrest. If they don't have that
then, you know, you can see what would happen.
20 The committal might just find its way on a desk
and collect dust and if I've issued the order -
the committal I want it acted on as quickly as
possible. So, I'll leave that to discuss with
her. I'll be still in the courthouse if there's
any problems in that regard.

25 MR. RANKING: Sorry Your Honour, will you need
to sign something other than what we put before
you....

30 THE COURT: No, it's just information you should
provide. So, there's the committals and get
everything back to me, I'll be appreciative.

Nelson Barbados Group Limited v. Richard Ivan Cox, et al.
Certification

M A T T E R A D J O U R N E D

FORM 2

Certificate of Transcript
Evidence Act, subsection 5 (2)

I, Brenda Wakelin, certify that this document is a true and accurate transcript in the recording of Nelson Barbados Group Limited and Richard Ivan Cox, et al., in the Superior Court of Justice, held at 601 Rossland Road, Whitby, Ontario taken from Recording No. 2812-3-003/2010, which has been certified in the Form 1.

May 1, 2012
(Date)


(Signature of authorized person(s))

Brenda Wakelin, B.Sc., B.Ed., OCT, CCR, ICDR
Certified Court Reporter, CRAO
Internationally Certified Digital Reporter, IAPRT

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Thank you.

This is EXHIBIT 3D to the
Affidavit of Donald Best,
sworn April 2, 2016

A black rectangular redaction box covering the signature of the Commissioner.

A Commissioner, etc.

Court File No.: 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)	FRIDAY, THE 15 th DAY
)	
MR. JUSTICE SHAUGHNESSY)	OF JANUARY, 2010

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

**RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC
ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE,
MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH,
GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES
a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY,
R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO.,
KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE,
ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM
DEANE, LIONEL NURSE, LEONARD NURSE,
EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY,
OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN,
BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED,
GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED,
CLASSIC INVESTMENTS LIMITED, THORNBROOK
INTERNATIONAL CONSULTANTS INC., THORNBROOK
INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION,
THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX
ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND
COMPANY, C. SHOREY AND COMPANY LTD., FIRST
CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE
WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL
OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25
PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANS,
DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS,
G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC.,
OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and
LIFE OF BARBADOS LIMITED c.o.b. as LIFE OF BARBADOS HOLDINGS,
LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY,
PRICewaterhouseCOOPERS EAST CARIBBEAN FIRM,
VECO CORPORATION, COMMONWEALTH CONSTRUCTION
CANADA LTD and COMMONWEALTH CONSTRUCTION, INC.**

Defendants

ORDER

THIS MOTION made by the defendants, PricewaterhouseCoopers East Caribbean Firm ("PwC"), and the other defendants, for, among other things, an order finding Donald Best ("Mr. Best") to be in contempt of this Honourable Court, and an order requiring K. William McKenzie ("Mr. McKenzie") to produce relevant documents, was heard this day in Whitby, Ontario.

ON READING the Motion Record dated November 27, 2009, the affidavit of the Richard D. Butler sworn November 27, 2009, the Supplemental Motion Record dated December 14, 2009, the Supplemental Affidavit of Richard D. Butler sworn December 14, 2009, the Factum of the defendants dated December 22, 2009, and the Brief of Authorities of the defendants dated December 22, 2009, and upon hearing the submissions of counsel,

1. **THIS COURT DECLARES** that Mr. Best is in contempt of this Honourable Court by reason of his failure to attend to be examined on Tuesday, November 17, 2009 and Wednesday, November 25, 2009 at 10:00 a.m. at Victory Verbatim in Toronto, in breach of paragraph 3 of the November 2, 2009 order of the Honourable Justice Shaughnessy (the "November 2, 2009 Order").
2. **THIS COURT FURTHER DECLARES** that Mr. Best is in contempt of this Honourable Court by reason of his failure to produce documents at least one (1) week prior to his examination on November 17, 2009, in breach of paragraph 4 of the November 2, 2009 Order.
3. **THIS COURT FURTHER DECLARES** that Mr. Best is in contempt of this Honourable Court by reason of his failure to attend to be examined before the Honourable Justice Shaughnessy and produce all documents referred to in paragraph 4 of the November 2, 2009 Order on Friday, January 15, 2010 at the Courthouse in Whitby, in breach of paragraph 3 of

the December 2, 2009 order of the Honourable Justice Shaughnessy (the "December 2, 2009 Order").

4. **THIS COURT ORDERS** that a warrant be issued for the arrest and committal of Mr. Best in the form attached hereto as Schedule "A", and that Mr. Best be committed to a provincial correctional institution for a period of *3 months* ✓ [REDACTED]

5. **(*) THIS COURT FURTHER ORDERS** that Mr. Best pay a fine in the amount of \$7,500.00.

6. *DONALD BEST MAY BRING AN APPLICATION BEFORE JUSTICE SHAUGHNESSY ON OR BEFORE FEBRUARY 22 2010 TO PURGE HIS CONTENT* [REDACTED]

6. **THIS COURT FURTHER ORDERS** that notwithstanding any solicitor-client or other privilege between Nelson Barbados Group Ltd. ("Nelson Barbados") and Mr. Best (collectively, the "Clients") and Mr. McKenzie, Crawford, McKenzie, McLean, Anderson & Duncan LLP ("Crawford McKenzie"), and any member or employee of Crawford McKenzie (collectively, the "Lawyers"), and notwithstanding any duties of confidentiality owed by the Lawyers to the Clients under the Rules of Professional Conduct or otherwise, the Lawyers shall produce to the moving parties copies of *the following documents:* ~~all books, contracts, letters, statements, records, and~~ *copies of same* of Nelson Barbados in the possession, power or control of Mr. McKenzie and Crawford McKenzie *ON OR BEFORE JANUARY 27 2010* ~~within seven (7) days of this order, including:~~ [REDACTED]

- (a) the incorporation documents for Nelson Barbados, minute books, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements), non-privileged correspondence, notes, memoranda and other business documents and emails from the date of incorporation through to the present;

- (b) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;
- (c) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland Estates Limited ("Kingsland") from the date of incorporation through to the present;
- (d) all trust documents;
- (e) the retainer agreement between Nelson Barbados and Mr. McKenzie and/or Crawford McKenzie; and
- (f) all professional accounts for service provided by Mr. McKenzie and/or his firm,

with respect to the action.

7. *THIS COURT FURTHER ORDERS that Mr. McKenzie may not*
 8. *subject to conventions on the basis of confidentiality at his cross-examination with respect to the documents referred to in paragraph 6 above.*
THIS COURT FURTHER DECLARES that the documents referred to in paragraph 6 above are not the subject of litigation privilege or solicitor-client privilege. *paragraph 6 above.*

9. **THIS COURT FURTHER ORDERS** that in the event that Mr. McKenzie and Crawford McKenzie had, but no longer have, the documentation referred to in paragraph 6 above, Mr. McKenzie and Crawford McKenzie shall identify, with particulars, the date each document was prepared, the name of the individual who prepared the document, and they shall produce the last electronic version of the document in their possession, power and control, and they shall provide the names of individual(s) or person(s) to whom each document was provided, the date the document was provided to each individual/person, the reason why the possession, power and control over each document was lost, and the present location of each document. Mr.

- 5 -

McKenzie and Crawford McKenzie shall provide this information ^{ON OR BEFORE} ~~within seven (7) days of this~~
~~order.~~ JANUARY 27 2010. 

16. 9. THIS COURT FURTHER ORDERS that the costs of this motion be paid by

Mr. Best personally, on a substantial indemnity basis ^{WITHIN 30 DAYS AS FOLLOWS}

- (A) To Mr. Ranking's clients \$50,632.90
- (B) To Mr. Silver's clients \$13,230.00
- (C) To Mr. Roman's clients \$5,512.50
- (D) To Ms. Clark's clients ^{Justice Shaugnessy} \$3,500.00


 JUSTICE SHAUGHNESSY / 

Schedule "A"

Court File No.: 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE****BETWEEN:****NELSON BARBADOS GROUP LTD.****Plaintiff****- and -**

**RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC
ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE,
MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH,
GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES
a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY,
R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO.,
KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE,
ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM
DEANE, LIONEL NURSE, LEONARD NURSE,
EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY,
OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN,
BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED,
GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED,
CLASSIC INVESTMENTS LIMITED, THORNBROOK
INTERNATIONAL CONSULTANTS INC., THORNBROOK
INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION,
THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX
ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND
COMPANY, C. SHOREY AND COMPANY LTD., FIRST
CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE
WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL
OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25
PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANS,
DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS,
G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC.,
OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and
LIFE OF BARBADOS LIMITED c.o.b. as LIFE OF BARBADOS HOLDINGS,
LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY,
PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM,
VECO CORPORATION, COMMONWEALTH CONSTRUCTION
CANADA LTD and COMMONWEALTH CONSTRUCTION, INC.**

Defendants**WARRANT OF COMMITTAL**

- 2 -

TO ALL POLICE OFFICERS in Ontario

AND TO THE OFFICERS OF provincial correctional institutions in Ontario

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

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

Justice Shaughnessy

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barric

ORDER

FASKEN MARTINEAU DuMOULIN LLP

Barristers & Solicitors

Toronto Dominion Bank Tower

P.O. Box 20

Toronto-Dominion Centre

Toronto, Ontario

M5K 1N6

Gerald L.R. Ranking [LSUC#23855J]

Emmeline Morse [LSUC#56879M]

Phone: 416 366 8381

Fax: 416 364 7813

Lawyers for the Defendant,

PricewaterhouseCoopers East Caribbean Firm

**Prepared for, and on behalf of,
all Defendants**

Plaintiff

Defendants

Court File No. 07-0141

(1)
Jan 15/10

Mr. G. Ranking + Mr. E. Morris

Mr. L. Silver

Mr. A. Roman

Mr. S. Carr

Mr. Rankin for Mr. Kenzie & McKenzie Law Firm

For further reasons to be delivered at a later date I find that Donald Best is in contempt of the Orders of this Court namely the Order of November 2 2009 and paragraph 3 therein as well as the Order of December 2 2009 and paragraph 3 therein.

I am satisfied on the material filed that ^{Donald} Mr. Best had actual notice of the Orders of November 2 2009 and December 2 2009. I am further satisfied that Mr. Donald Best was in notice of this charge notice for contempt yet he failed to attend ^{to} and ~~has~~ answer questions and make production as detailed in the Court Order of Dec 2 2009.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Barrie

SUPPLEMENTAL MOTION RECORD

FASKEN MARTINEAU DuMOULIN LLP
Barristers & Solicitors
Toronto Dominion Bank Tower
P.O. Box 20
Toronto-Dominion Centre
Toronto, Ontario
M5K 1N6

Gerald L.R. Ranking [LSUC#23855J]
Phone: 416 865 4419
Fax: 416 364 7813

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

(2)
 I am satisfied that the 3 points outlined in *Sumner Thompson Ltd v Forges* [2003] O.J. No. 3348 para 53 have been satisfied. Mr. Bess has not conformed with the letter and spirit of the Court's orders. He has knowingly acted in contravention of the Court orders. I find that Mr. Bess is intentionally contemptuous of the Court orders and thereby he intended to interfere with the administration of justice.

In determining the appropriate remedy I have considered:

- (a) the nature of the contemptuous act
- (b) the fact that the contemnor has ~~not~~ admitted his breach
- (c) the fact that the contemnor has not tendered an apology to the Court
- (d) the fact that the breaches are part of an ongoing pattern of conduct in which there are repeated breaches.
- (e) the fact that the breach occurred with full knowledge and understanding of the contemnor and is not the result of a mistake or misunderstanding.
- (f) the conduct of the contemnor exhibits defiance of the orders of the Court.

I have also considered the decisions in *Mulligan v Leck* [2006] O.J. No 3127; *Daniel v Kennedy* [1998] O.J. No. 1612 and *Oakley Manufacturing Inc vs. Bannan* [2005] O.J. No. 5318 in considering

(3)
The material filed on this application indicates that Donald Best is a seasoned litigator and therefore is knowledgeable concerning the necessity for compliance with Court Orders and the consequences for non-compliance with Court Orders.

Therefore it is the Order of this Court that Donald Best be committed to a provincial correctional institution for a period of 3 months. Warrant for Commitment to issue.
Further it is the Order of this Court that in addition to the terms of incarceration that Donald Best pay a fine of \$7,500.

It is further an order of this Court that Donald Best may apply to purge his contempt by appearing before Mr. Justice Shymura ^{on or before February 22, 2010} and answering questions and making production in terms of the Order of Justice Shymura dated ~~November 2~~ Nov 2 2009 and December 2 2009. ~~and compliance with~~

I have signed a draft Order that has further provisions relating to the attendance of Mr. McKinnon on an examination now set for February 3 2010.

The cost hearing in this proceeding remains fixed to proceed on February 22, 23 & 24 2010 at ~~Whitby~~ Oshawa Ont.

Costs

A bill of costs have been filed ^{by Mr. Rantey} in light of the finding of a deliberate ~~act~~ willful and

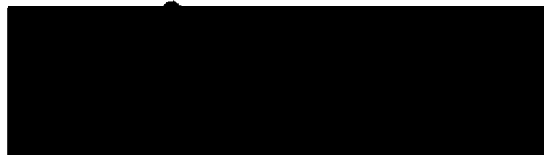
Containing contempt I find that an award of costs on a substantial indemnity basis is appropriate.

Nevertheless the ^{qualitative} ~~quantitative~~ provisions provided under the rules as well as the principle of ~~pro~~ proportionality ~~to~~ still must apply in this ~~matter~~ matter.

It is apparent that Mr. Rankin has done the substantial ~~work~~ work in relation to this proceeding.

After hearing submissions I hereby make the following Order of costs on this proceeding as against Donald Beal payable within 30 days.

- (1) To Mr. Rankin's client's costs of \$50,632.90 (comprised of \$45,000 in fees and \$5,632.90 in taxable disbursements)
- (2) To Mr. Selman's client's \$13,230 inclusive of GST.
- (3) To Mr. Romano's client \$5,812.50 inclusive of GST
- (4) To Mr. Clarke's client \$3,500 inclusive of GST.



Court File No.: 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

**RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC
ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE,
MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH,
GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES
a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY,
R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO.,
KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE,
ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM
DEANE, LIONEL NURSE, LEONARD NURSE,
EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY,
OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN,
BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED,
GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED,
CLASSIC INVESTMENTS LIMITED, THORNBROOK
INTERNATIONAL CONSULTANTS INC., THORNBROOK
INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION,
THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX
ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND
COMPANY, C. SHOREY AND COMPANY LTD., FIRST
CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE
WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL
OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25
PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANS,
DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS,
G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC.,
OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and
LIFE OF BARBADOS LIMITED c.o.b. as LIFE OF BARBADOS HOLDINGS,
LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY,
PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM,
VECO CORPORATION, COMMONWEALTH CONSTRUCTION
CANADA LTD and COMMONWEALTH CONSTRUCTION, INC.**

Defendants

ENDORSEMENT

December 2, 2009

Mr. G. Ranking and Ms. E. Morse
Mr. L. Silver
Mr. A. Roman

Ms. S. Clark
 Ms. Rubin for McKenzie and McKenzie Law Firm

For written reasons to be delivered at a later date, I find that Donald Best is in contempt of the orders of this Court namely the order of November 2, 2009 and paragraph 3 therein, as well as the order of December 2, 2009 and paragraph 3 therein.

I am satisfied on the material filed that Mr. Donald Best had actual notice of the orders of November 2, 2009 and December 2, 2009. I am further satisfied that Mr. Donald Best was in notice of this day's motion for contempt, yet he failed to attend to answer questions and make production as detailed in the court order of December 2, 2009.

I am satisfied that the 3 part test outlined in *Sussex Group Ltd. v. Fangeat* [2003] O.J. No. 3348, para. 53 have been satisfied. Mr. Best has contravened both the letter and spirit of the Court's orders. He has knowingly acted in contravention of the court orders. I find that Mr. Best is intentionally contemptuous of the court orders and thereby he intended to interfere with the administration of justice.

In determining the appropriate remedy I have considered:

- (a) the nature of the contemptuous act;
- (b) the fact that the contemnor has admitted his breach;
- (c) the fact that the contemnor has not tendered an apology to the Court;
- (d) the fact that the breaches are part of an ongoing pattern of conduct in which there are repeated breaches;
- (e) the fact that the breach occurred with full knowledge and understanding of the contemnor and is not the result of a mistake or misunderstanding;
- (f) the conduct of the contemnor exhibits defiance of the orders of this Court.

I have also considered the decisions in *Milligan v. Lech* [2006] O.J. No. 3127; *Boucher v. Kennedy* [1998] O.J. No. 1612 and *Oakley Manufacturing Inc. v. Bowman* [2005] O.J. No. 5318 in considering the appropriate remedy.

The material filed on this application indicates that Donald Best is a seasoned litigator and therefore is knowledgeable concerning the necessity for compliance with court orders and the consequences for non-compliance with court orders.

Therefore it is the order of this Court that Donald Best be committed to a provincial correctional institution for a period of 3 months. Warrant for Committal to issue. Further it is the order of this Court that in addition to the terms of incarceration that Donald Best pay a fine of \$7,500.

It is further an order of this Court that Donald Best may apply to purge his contempt by appearing before Mr. Justice Shaughnessy on or before February 22, 2010 and answering

questions and making production in terms of the orders of Justice Shaughnessy dated November 2, 2009 and December 2, 2009.

I have signed a draft order that has further provisions relating to the attendance of Mr. McKenzie on an examination now set for February 3, 2010. The cost hearing in this proceeding remains fixed to proceed on February 22, 23 and 24, 2010 at Oshawa, Ontario.

Costs

A bill of costs have been filed by Mr. Ranking. In light of the finding a deliberate and wilful and continuing contempt, I find that an award of costs on a substantial indemnity basis is appropriate.

Nevertheless the guidelines provided under the rules as well as the principle of proportionately still must apply in this motion.

It is apparent that Mr. Ranking did the substantial work in relation to this proceeding.

After hearing submissions I hereby make the following order of costs on this proceeding as against Donald Best payable within 30 days:

2. To Mr. Ranking's clients costs of \$50,632.90 (comprised of \$45,000 in fees and \$5,632.90 in taxable disbursements;
3. To Mr. Silver's clients \$13,230 inclusive of GST;
4. To Mr. Roman's clients \$5,512.50 inclusive of GST;
5. To Ms. Clark's clients \$3,500 inclusive of GST.

Justice Shaughnessy

E

2

MODE = MEMORY TRANSMISSION

START=JAN-25 16:41

END=JAN-25 17:09

FILE NO. = 107

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	#	914165917333	015/015	00:04'43"
002	OK	#	914166403010	015/015	00:05'29"
003	OK	#	914163647013	015/015	00:05'30"
004	OK	#	914165950655	015/015	00:05'07"
005	OK	#	914169470066	015/015	00:04'44"

-JUDGES CHAMBERS WHITBY -

***** -905 430 5822 - ***** 905 430 5822- *****

Superior Court of Justice
801 Roseland Road East
Whitby, Ontario
L1N 9G7
Phone: (905) 430-5820
Fax : (905) 430-5822

JUDGES CHAMBERS

This is EXHIBIT 3E to the
Affidavit of Donald Best,
sworn April 2, 2016

Fax

A Commissioner, etc.

To: Heidi Rubin	From: C. Turnbull, Judicial Secretary
Fax: (416) 591-7333	Pages: 15
Phone:	Date: 1/25/2010
Re: Nelson Barbados Group Ltd. v. Cox et al - Court File No. 07-0141	Cc:
	Lorne Silver - (416) 540-3018
	Gerald Ranking - (416) 364-7813
	Andrew Roman - (416) 505-8095
	Sarah Clarke - c/o Adrian Lang - (416) 947-0866

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

Counsel:

Attached please find Reasons on Motion for Contempt in the above matter of the Honourable Mr. Justice J.B. Shoughnessy, released on January 25, 2010.

C. Turnbull, Judicial Secretary

Superior Court of Justice
 601 Rossland Road East
 Whitby, Ontario
 L1N 9G7
 Phone: (905) 430-5820
 Fax : (905) 430-5822

JUDGES CHAMBERS

Fax

To: Heidi Rubin	From: C. Turnbull, Judicial Secretary
Fax: (416) 591-7333	Pages: 15
Phone:	Date: 1/25/2010
Re: <i>Nelson Barbados Group Ltd. v. Cox et al</i> – Court File No. 07-0141	Cc: Lorne Silver – (416) 640-3018 Gerald Ranking – (416) 364-7813 Andrew Roman – (416) 595-8695 Sarah Clarke – c/o Adrian Lang – (416) 947-0866

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

Counsel:

Attached please find Reasons on Motion for Contempt in the above matter of the Honourable Mr. Justice J.B. Shaughnessy, released on January 25, 2010.

C. Turnbull, Judicial Secretary

Nelson Barbados 2010 ONSC 569

COURT FILE NO.: 07-0141

DATE: 2010/01/25

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Nelson Barbados Group Ltd.

Plaintiff

-and-

Richard Ivan Cox, Gerard Cox, Alan Cox, Philip Vernon Nicholls, Eric Ashby Bentham Deane, Owen Basil Keith Deane, Marjorie Ilma Knox, David Simmons, Elneth Kentish, Glyne Bannister, Glyne B. Bannister, Philip Greaves a.k.a. Philip Greaves, Gittens Clyde Turney, R.G. Mandeville & Co., Cottle, Catford & Co., Keble Worrell Ltd., Eric Iain Stewart Deane, Estate of Colin Deane, Lee Deane, Errle Deane, Keith Deane, Malcolm Deane, Lionel Nurse, Leonard Nurse, Edward Bayley, Francis Deher, David Shorey, Owen Seymour Arthur, Mark Cummins, Graham Brown, Brian Edward Turner, G.S. Brown Associates Limited, Golf Barbados Inc., Kingsland Estates Limited, Classic Investments Limited, Thornbrook International Consultants Inc., Thornbrook International Inc., S.B.G. Development Corporation, The Barbados Agricultural Credit Trust,

)
)
)
) Heidi Rubin for K. William McKenzie and Crawford, McKenzie, McLean, Anderson & Duncan L.L.P.

Lorne S. Silver, for the Defendants, Richard Ivan Cox, Gerard Cox, Alan Cox, Gittens Clyde Turney, R.G. Mandeville & Co., Kingsland Estates Limited, Classic Investments Limited et al

Gerald L.R. Ranking and Ms. E. Morse, for the Defendant, PricewaterhouseCoopers East Caribbean Firm

Andrew Roman, for the Defendants Eric Ian Stewart Deane, Estate of Colin Ian Estwick Deane

Sarah Clarke for the Defendant First Caribbean International Bank

**Phoenix Artists
 Management Limited, David C.
 Shorey and Company, C.
 Shorey and Company Ltd., First
 Caribbean International
 Bank (Barbados) Ltd., Price
 Waterhouse Coopers
 (Barbados), Attorney General of
 Barbados, the Country
 of Barbados, and John Does 1-25,
 Philip Greaves, Estate
 of Vivian Gordon Lee Deane, David
 Thompson, Edmund
 Bayley, Peter Simmons, G.S. Brown
 and Associates Ltd.,
 GBI Golf (Barbados) Inc., Owen
 Gordon Finlay Deane,
 Classic Investments Limited and Life
 of Barbados
 Limited c.o.b. as Life of Barbados
 Holdings, Life of
 Barbados Limited, David Carmichael
 Shorey, Price
 Waterhouse Coopers East Caribbean
 Firm, Veco
 Corporation, Commonwealth
 Construction Canada Ltd., and
 Commonwealth Construction Inc.,**

Defendants

)
)
) **HEARD : January 15, 2010**
)

Justice J. Bryan Shaughnessy

REASONS ON MOTION FOR CONTEMPT

[1] The moving party PricewaterhouseCoopers East Caribbean and the other participating defendants have brought a motion for an Order finding Donald Best to be in contempt of the orders of this court dated November 2, 2009 and December 2, 2009.

[2] At the hearing of this application on January 15, 2010, I made a finding that Donald Best was in contempt of the orders of November 2, 2009 and December 2, 2009. I made a further finding that Donald Best had actual notice of the orders of November 2, 2009 and December 2, 2009 and that he also was on notice of this contempt application and yet he failed to attend on the return date of this matter to answer questions and make production as required and detailed in the orders of this Court.

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

Order of November 2, 2009

[4] The Defendants brought a motion returnable November 2, 3, and 4, 2009 seeking an award of costs to the Defendants on a full indemnity scale, or in the alternative on a substantial indemnity scale, fixed and payable forthwith by the plaintiff, the plaintiff's officer Donald Best, K. William McKenzie and Mr. McKenzie's law firm, Crawford, McKenzie, McLean, Anderson & Duncan LLP on a joint and several basis. In addition thereto the Defendants sought an order, validating service of the motion material upon Donald Best and compelling Donald Best to appear on an examination on November 17, 2009 in Toronto to answer questions:

- (a) refused or taken under advisement at the cross-examination of John Knox (a non-party affiant produced by the Plaintiff) held on November 4, 2008 and all questions reasonably arising therefrom;
- (b) all questions refused or taken under advisement at the Rule 39.03 examination of Donald Best held on March 20, 2009 and all questions reasonably arising therefrom;
- (c) all questions which the Court directed to be answered at the hearing of the substantive motion on April 8, 2009 and all questions reasonably arising therefrom;
- (d) all questions relating to Donald Best's appointment and subsequent duties/responsibilities as an officer of Nelson Barbados Group Limited; his relationship, if any, to the matters pleaded in the within action (and the related actions in Barbados), and his association and/or relationship with K. William McKenzie and/or the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP; and
- (e) all questions concerning the shares of Kingsland Estates limited, including without limiting the generality of the foregoing, the security over and ownership rights held by Nelson Barbados Group Ltd. in the common shares of Kingsland and all questions arising therefrom.

[5] There was also a request for an order compelling Donald Best to deliver two weeks prior to the examination, all documents by which Nelson Barbados Group Ltd. allegedly acquired security or an ownership interest in Kingsland Estates Limited, all trust documents, the minute book, director's register, shareholder's register, banking documents (including bank account opening documents, operating agreements and bank

statements) and all books of account, ledgers and financial statements from the date of incorporation of Nelson Barbados Group Ltd through to the present.

[6] The grounds advanced for the motion is that all the Defendants were forced to incur extraordinary legal expenses to respond to unmeritorious claims and what are alleged to be obstructionist tactics of the plaintiff and its counsel, Mr. William McKenzie. It is further alleged that this action was brought by a shell corporation with a head office address of Mr. McKenzie's law firm in Orillia Ontario and the action was devoid of merit and had no connection to Ontario and which issues were or continue to be the subject of civil proceedings in Barbados. Accordingly the Defendants seek "the highest scale of costs to compensate them for hundreds of thousands of dollars of legal fees thrown away."

[7] An Order issued from this Court on November 2, 2009 directing Donald Best to attend an examination in Toronto on November 17, 2009. A transcript of the examination indicates that Donald Best called into the special examiners office shortly before the examination was to commence. Mr. Best was placed into a conference call with the counsel present at the examiner's office. Mr. Ranking placed on the record of the examination a narrative of the conversation with Mr. Best, which is not disputed by counsel and which I accept as an accurate account. Mr. Best advised counsel that he was not going to attend the examination but he wanted the examination to take place over the telephone. It was explained to Mr. Best that this was not acceptable and was not in accordance with the order of the Court. Mr. Best asked if there was surveillance of him and he was advised that there was no surveillance. Mr. Best then made reference to blog entries concerning him and he was concerned for his own safety. Mr. Best was assured by Defense counsel present that they did not have any knowledge what he was referring to. Defense Counsel also offered to delay the examination to the afternoon of November 17/09 to which Mr. Best responded that he could not attend. Mr. Best refused to answer all inquiries as to where he resides. Counsel also offered other dates for the examination but Mr. Best refused to commit to another date. Mr. Best insisted that the examination proceed over the telephone. When Mr. Silver asked Mr. Best if he had the records of Nelson Barbados, Mr. Best refused to answer and he then asked Mr. Silver what his next question was. Counsel advised Mr. Best that this telephone conversation was not compliance with the November 2, 2009 order of the Court and the telephone call was terminated.

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

[9] Mr. Best never produced the documents detailed in the November 2, 2009 order.

Order of December 2, 2009

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

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

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

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

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

Further, it is apparent from correspondence sent by Mr. Best, including conversations he states he had with the Trial Coordinator at Whitby, that Mr. Best is aware of all aspects of this proceeding including my order of Nov. 2/09.

Mr. Best called the Verbatim office on the day of the scheduled examination and attempted to conduct the examination over the telephone. Mr. Best has sent material to the Trial Coordinator and me which is not in Affidavit form.

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

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

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

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

- 1) the UPS address in Kingston Ont. as detailed in the order of Eberhard J.
- 2) at the UPS address at the Cloverdale Mall in Toronto.

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

Costs of today's attendance and costs thrown away are reserved to the January 15, 2010 date.

The cross-examination of Mr. McKenzie has been delayed pending this aspect of the proceeding. Further, 3 days for the hearing of costs have been reserved for the end of February 2010. It is therefore necessary that dates and timelines be adhered to in order that this matter can be completed in both a fair and expeditious manner.

[13] The order of December 2, 2009 directed Donald Best to attend on January 15, 2010 at Whitby, Ontario to give evidence viva voce before Shaughnessy J and produce the documentation referred to in the November 2, 2009 order (and which is repeated in the December 2/09 order). The order further provides that the contempt hearing would also proceed on January 15 2010. It further provides that in the event that Donald Best fails to attend on January 15, 2010 the contempt motion will proceed in his absence.

[14] On December 4, 2009 the defense served Donald Best by mail addressed to the 2 UPS address boxes, the December 2, 2009 order and my endorsement. On December 15, 2009 Mr. Ranking on behalf of all participating counsel forwarded correspondence to Donald Best at both UPS addresses in Kingston and Toronto enclosing the Motion Record dated November 27, 2009; the Notice of Return of the Amended Motion; a Supplemental Motion Record dated December 14, 2009 and a Notice of Examination returnable before me on January 15, 2010. Once again the request was made to Mr. Best that he produce the documentation previously requested and detailed in the Court orders and the Notice of Examination. Mr. Ranking's correspondence of December 15, 2009 states that, if Mr. Best did not attend on January 15, 2009, "I will proceed with the contempt motion in your absence and seek a warrant for your arrest." On December 23, 2009 Mr. Best was served by mail with the defendant's Factum and Book of Authorities.

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

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

[16] I am satisfied, based on all the material filed including Mr. Best's correspondence to this court and the trial coordinator, that he has actual knowledge of these proceedings and the orders of this court. On November 16, 2009 Mr. Best wrote to the Trial Coordinator's Office:

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

[17] Mr. Best did not attend on the examination of November 17/09 choosing instead to play a cat and mouse game over the phone. He also did not attend the November 25/09 date for the examination. On December 4/09 a copy of my order of December 2/09 and

my endorsement were forwarded to Mr. Best. He did not attend on January 15, 2010 as required by the December 2, 2009 order and he did not produce the documentation detailed under both court orders.

Law related to Contempt

[18] In *Canada Metal Co. Ltd. v Canadian Broadcasting Corp (No.2)* (1974), 4 O.R. (2d) 585 at 603 (H.C.J.); *aff'd* (1975), 11 O.R. (2d) 167 (C.A.) Mr. Justice O'Leary stated the importance of obeying court orders:

To allow Court orders to be disobeyed would be to tread the road to anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn. Daily, thousands of Canadians resort to our courts for relief against the wrongful acts of others. If the remedies that the courts grant to correct those wrongs can be ignored, then there will be nothing left but for each person to take the law into his own hands. Loss of respect for the Courts will quickly result in the destruction of our society.

[19] There is a three part test for a finding of contempt:

- (a) the person has knowledge of the nature of the terms of the Order;
- (b) the Order is directive and not simply permissive; and
- (c) the person's conduct is in contravention of the Order.

[20] The principles governing contempt as detailed in *Canada Metal supra* and *iTrade Finance Inc. v Webworx Inc.* [2005] O.J. No.1200 (Ont. Sup.Crt.) at para. 12 can be summarized as follows:

- (a) an order must be implicitly observed and every diligence must be exercised to observe it to the letter;
- (b) the order must be obeyed, not only in the letter, but also in the spirit of the order; and
- (c) knowledge of the existence of an order is sufficient to obligate persons to obey it (including non-parties if they know the substance or nature of the Order.)

[21] I find that all of the above principles governing contempt are met in the present case. Mr. Best did not observe either order of this Court. He contravened both the letter and spirit of the orders. Donald Best had knowledge of the orders as evidenced by his November 16, 2009 correspondence to the Trial Coordinator.

[22] Contempt must be proven beyond a reasonable doubt, but it is not necessary to establish that the alleged contemnor is intentionally contemptuous or that he intends to interfere with the administration of justice. (*Re Sheppard v Sheppard*, (1976), 12 O.R. (2d) 4 at 8-9 (C.A.).

[23] The breach of an order is not excused because the person committing the contempt had no intention to disobey or deprecate the authority of the Court. The absence of contemptuous intent is a mitigating factor but not an exculpatory factor. It is not a defence that the breach was done reasonably, with all due care and attention, even where that belief is based on legal advice. (*Canada Metal supra* at 603).

[24] Mr. Best stated his intention not to appear on the examination of November 17/09 when he called counsel the same day. He also failed to attend the examinations of November 25, 2009 and January 15, 2010 all of which I find beyond a reasonable doubt are contemptuous acts.

Remedy

[25] In determining what sanctions should be imposed for a contempt of court the case law refers to a number of factors that should be taken into account:

(a) *the nature of the contemptuous act*: Mr. Best has flagrantly ignored the orders of this Court. He has caused the defendants to incur unnecessary costs and this Court to spend valuable resources to enforce compliance. Mr. Best's contemptuous acts strike at the heart of the administration of justice.

(b) *whether the contemnor has admitted his breach* : Mr. Best admitted his intention not to attend to be examined on November 17, 2009.

(c) *the court should also take into account whether the contemnor has tendered a formal apology to the court* : Mr. Best has not tendered any apology to the Court.

(d) *the court must consider whether the breach was a single act or part of an ongoing pattern of conduct in which there were repeated breaches*: Donald Best is in contempt of two court orders. He also failed to attend an examination on November 25, 2009 which is indicative of a pattern of conduct that is not in keeping with the spirit of the November 2, 2009 order. Mr. Best has also refused to provide his contact information (address, e-mail, telephone number) or to provide alternative examination dates or to disclose his whereabouts all of which are actions calculated to frustrate these proceedings.

(e) *the court should take into account whether the breach occurred with the full knowledge and understanding of the contemnor such that it was a breach rather than as a result of a mistake or misunderstanding*: Donald Best knew that he was required to attend an examination on November 17, 2009. Mr. Best wrote to the Court on November 16, 2009. He confirmed in that correspondence that he knew he had to attend the examination on November 17/09 and that he would attend. Mr. Best in his correspondence has demonstrated that he is in receipt of court materials. He is also aware

that court materials are being sent to his UPS box in Kingston (which is re-directed to his UPS box at the Cloverdale Mall in Toronto). Mr. Best has also deliberately breached the court order of December 2, 2009 by not appearing before this court on January 15, 2010. His refusal to comply with the Court orders is flagrant and deliberate.

(f) the court must also consider the extent to which the conduct of the contemnor has displayed defiance. I find that Donald Best has been openly defiant of this Court's orders throughout these proceedings.

(g) the court should consider whether the order was a private one affecting only the parties to the suit or whether some public benefit lays at its root. I find that this contempt strikes at the heart of the administration of justice.

[26] In assessing the appropriate remedy the Court should consider a sanction that is commensurate to the gravity of the wrongdoing. The sentence should not reflect a marked departure from those imposed in like circumstances and the court must consider any mitigating and aggravating factors relating to the offender and the offence. However, as in the present case, the intentional violation of a Court order is an aggravating factor in the determination of an appropriate sanction.

[27] One of the purposes in sentencing in contempt proceedings is specific and general deterrence as well as denunciation of the conduct of the contemnor. I find that these principles of sentencing are of the utmost importance in the present case.

[28] The Supreme Court of Canada in *United Nurses of Alberta and Attorney General for Alberta* [1992] A.J. No. 979, 1992 Carswell Alberta Reports 10 at para.75 stated that the criminal contempt power should be used sparingly and with great restraint. It follows then that the civil contempt power should be used even more sparingly and only in the clearest of circumstances where it is required to protect the rule of law. I find that this is one of those special circumstances. Donald Best has been and continues to be in defiance of the orders of this court.

[29] The Court must consider as well all other sanctions other than imprisonment in considering an appropriate remedy. However, the willful, deliberate and defiant conduct of Donald Best in his refusal to comply with the orders of this Court and a consideration of the principles of sentencing lead me to the conclusion that the only appropriate remedy in the circumstances is a sentence of incarceration. I find that any other sanction would diminish, rather than enhance, respect for the administration of justice. Further, I find that other measures of ensuring compliance by Donald Best with the Court orders have been exhausted.

[30] There is filed in this proceeding the affidavit of Sebastien J. Kwidzinski, an articling student at Mr. Ranking's law firm, sworn October 27, 2009. This affidavit details that a search of the case law indicates an association of Donald Best and K. William McKenzie that dates back some 13 years and which is summarized as follows:

- (a) *Expressvu Inc. v NII Norsat International Inc.*, [1997] F.C.J. No. 276. This action involved certain parts of six affidavits filed by the plaintiffs. Mr. McKenzie represented the plaintiffs. Donald Best was one of the affiants on behalf of the plaintiffs. The Reasons note that Mr. Best's affidavit was sworn on October 30, 1996 indicating that he and Mr. McKenzie were acquainted at some point before this time.
- (b) *WIC Premium Television Ltd. v. General Instrument Corp.* (2000), 8 C.P.R. (4th) 1 (Alta. C.A.). This action involved an appeal brought by the defendants to appeal the dismissal of their applications to set aside service *ex juris* and to strike the claims brought against them by the plaintiffs. Mr. McKenzie represented the plaintiffs. Mr. McKenzie sought to introduce fresh evidence in the appeal. Part of this fresh evidence was the affidavit evidence of Donald Best.
- (c) *Bell ExpressVu. Ltd. Partnership v Rex*, [2002] 2 S.C.R. 559. This case involved an appeal to the Supreme Court of Canada brought by the plaintiffs relating to wording in the *Radiocommunication Act*. Mr. McKenzie represented the plaintiffs and he presented affidavit evidence of Mr. Best sworn November 15, 1999 and he cited Mr. Best in his factum.
- (d) *Kudelski S.A. v. Love*, [2002] MBQB 65. This matter involved a motion to extend service and to approve substituted service. Mr. McKenzie represented the plaintiffs as well as Mr. Best and The Nelson Group Limited. Mr. McKenzie, Mr. Best, and The Nelson Group Limited, among others, were third parties. Mr. Best had been retained to assist in the execution of an Anton Pillar order. The defendants were successful in obtaining an order for substituted service on Mr. Best and The Nelson Group Limited. The defendants were unable to locate Mr. Best. At paragraph 26 of the Reasons the presiding judge states : "Mr. McKenzie, when asked by me whether he knew where Mr. Best was, indicated that he "believed" that Mr. Best is now in Thailand. Mr. Best, according to corporate documents filed with the Companies Branch in Ontario, would appear to be the operating mind of The Nelson Group Limited." A corporate search of The Nelson Group Limited details that a "Donald Robert Best" is listed as a Director and Officer. The company was incorporated on March 15, 1993 and its last annual return was filed in 2003.
- (e) *CAMT Speed-I-Com Inc. v Pace Savings & Credit Union Ltd.* (2005) WL 2158674 (Ont. S.C.J.). This action involved applications by both parties for interlocutory injunctions as well as to request the appointment of a receiver. Mr. McKenzie represented the plaintiff. Mr. Best was involved in an accounting investigation on behalf of the plaintiff and he is described in the Reasons as being a retired police officer with some experience in forensic financial matters.
- (f) *Love v News Datacom. Ltd.*, (2006) MBCA 92. This matter involved an appeal to the Manitoba Court of Appeal brought by the plaintiffs after the motions court struck a third party notice as disclosing no reasonable cause of action. On the appeal, Mr. McKenzie was a third party respondent and he also

acted as representative to the other third parties in the action, which included Donald Best and The Nelson Group Limited.

[31] The affidavit material filed on this motion indicates that a motor vehicle license search was conducted on "Donald Robert Best" and which disclosed an address of 122-250 The East Mall, Apt. 1255 which is the address for the mailbox of the UPS store located in the Cloverdale Mall in Toronto.

[32] The information detailed in paragraphs 30 and 31 herein do not form any basis of the finding of contempt. The information is provided as a narrative of the context in which the defendants, in part, are advancing a cost award against Mr. McKenzie, Mr. Best and Nelson Barbados Group Ltd.

[33] However the information detailed in paragraphs 30 and 31 does lead me to the conclusion that Donald Best is a seasoned litigator and therefore is knowledgeable concerning the necessity for compliance with Court orders and likewise the consequences for non-compliance with Court orders.

Imposition of a Fine

[34] The defendants also seek the imposition of a fine as yet another measure to give effect to specific and general deterrence in relation to the proven acts of contempt. However, one of the first criteria is to determine whether the contemnor has the ability to pay a fine. Donald Best on behalf of the Plaintiff had the resources to commence this action against 63 defendants for \$ 500 million and pursue it to its conclusion on an application relating to jurisdiction. In relation to other interlocutory proceedings, costs awarded to the defendants and payable by the Plaintiff of approximately \$ 250,000.00 were in fact paid. Therefore I am satisfied that there is an ability of Donald Best to pay any fine imposed by this Court. In addition to a sentence of incarceration, I also impose a fine of \$ 7,500 payable by Donald Best.

Conclusion

[35] For the reasons provided, I impose on Donald Best a sentence of 3 months incarceration to be served in a provincial correctional institution. In addition to the sentence of incarceration I impose a fine of \$ 7,500 to be paid by Donald Best to the Treasurer of Ontario plus the statutory surcharge thereon. A warrant for committal to issue forthwith.

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

[37] I have signed an order that relates to the attendance of K. William McKenzie on an examination now set for February 3, 2010.

[38] I have heard the submissions of defence counsel on the costs for attendances and argument of this motion for contempt. In light of my findings of a deliberate, willful and continuing contempt on the part of Donald Best, I find an award of costs on a substantial indemnity basis is appropriate. It is acknowledged by defence counsel that Mr. Ranking and his law firm did the substantial work on this application. I have considered the guidelines under the Rules of Civil Procedure and the principle of proportionality in assessing the cost award. After reviewing the bill of costs and hearing the submissions of counsel I made the following award of costs payable by Donald Best within 30 days:

- (a) To Mr. Ranking's clients costs of \$ 50,632.90 inclusive of GST (comprised of \$ 45,000 in fees and \$ 5,632.90 in taxable disbursements).
- (b) To Mr. Silver's clients costs of \$ 13,230 inclusive of GST
- (c) To Mr. Roman's clients costs of \$ 5,512.50 inclusive of GST
- (d) To Ms. Clarke's clients costs of \$ 3,500 inclusive of GST.

Dated: January 25, 2010


Justice J. Bryan Shaughnessy

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Nelson Barbados Group Ltd.

Plaintiff

-and-

**Richard Ivan Cox, Gerard Cox, Alan
Cox, Phillip Vernon
Nicholls, Eric Ashby Bentham Deane,
Owen Basil Keith
Deane, Marjorie Iima Knox, David
Simmons, Elneth
Kentish, Glyne Bannister, Glyne B.
Bannister, Phillip
Greaves a.k.a. Phillip Greaves,
Gittens Clyde Turney,
R.G. Mandeville & Co., Cottle, Catford
& Co., Keble
Worrell Ltd., Eric Iain Stewart
Deane, Estate of Colin
Deane, Lee Deane, Errie Deane,
Keith Deane, Malcolm
Deane, Lionel Nurse, Leonard Nurse,
Edward Bayley,
Francis Deher, David Shorey, Owen
Seymour Arthur, Mark
Cummins, Graham Brown, Brian
Edward Turner, G.S. Brown
Associates Limited, Golf Barbados
Inc., Kingsland
Estates Limited, Classic Investments
Limited,
Thornbrook International
Consultants Inc., Thornbrook
International Inc., S.B.G.
Development Corporation, The
Barbados Agricultural Credit Trust,
Phoenix Artists
Management Limited, David C.
Shorey and Company, C.
Shorey and Company Ltd., First
Caribbean International
Bank (Barbados) Ltd., Price**


Waterhouse Coopers
(Barbados), Attorney General of
Barbados, the Country
of Barbados, and John Does 1-25,
Philip Greaves, Estate
of Vivian Gordon Lee Deane, David
Thompson, Edmund
Bayley, Peter Simmons, G.S. Brown
and Associates Ltd.,
GBI Golf (Barbados) Inc., Owen
Gordon Finlay Deane,
Classic Investments Limited and Life
of Barbados
Limited c.o.b. as Life of Barbados
Holdings, Life of
Barbados Limited, David Carmichael
Shorey, Price
Waterhouse Coopers East Caribbean
Firm, Veco
Corporation, Commonwealth
Construction Canada Ltd., and
Commonwealth Construction Inc.,

Defendants

REASONS FOR JUDGMENT

Justice J. Bryan Shaughnessy

Court File No. 141/07


A Commissioner, etc.

SUPERIOR COURT OF JUSTICE

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD COX et al

Defendants

BEFORE THE HONOURABLE JUSTICE SHAUGHNESSY,
AT THE COURTHOUSE IN OSHAWA, ONTARIO
ON THURSDAY, AUGUST 9, 2012.

MOTION WITHOUT NOTICE

APPEARANCES:

B. GREENSPAN

Counsel for Donald Best

1 THURSDAY, AUGUST 9, 2012

2 **THE COURT:** Good morning, Mr. Greenspan.

3 **MR. GREENSPAN:** Good morning, Your Honour. Your
4 Honour, first of all, I'd like to thank you and
5 your office for arranging for what I hope will be
6 just a brief moment of your time and I apologize
7 for interrupting the flow of what's happening.

8 **THE COURT:** Oh, you don't have to apologize. I'm
9 always happy to accommodate you. By the way,
10 just while I'm thinking of it, congratulations on
11 the honorary doctorate that you just received.

12 **MR. GREENSPAN:** Thank you, sir.

13 **THE COURT:** I just read about it in the
14 *Law Society Gazette* yesterday.

15 **MR. GREENSPAN:** Thank you, Your Honour.

16 **THE COURT:** So heartiest congratulations. We're in
17 very esteemed company.

18 **MR. GREENSPAN:** Thank you. It's interesting.
19 Unfortunately, I am going to be attending a
20 funeral today later on in the day. Justice
21 Trotter's mother passed away but Justice Trotter
22 sent me a website when I got the doctorate and it
23 was "Now that you're a doctor you can perform
24 surgeries," and there is a website of self-
25 surgeries that is really quite spectacular. I
26 haven't done that yet but thank you very much,
27 sir. I appreciate it.

28
29 Anyway, it's interesting and I wasn't going to
30 mention it but because we're starting informally,

you know, it's quite unusual for me to be on a
case where Her Majesty the Queen doesn't come

first and there have been times throughout my career where I have appeared on civil contempt matters.

The very first civil matter I ever did was, quite nostalgically, a case called City of Sault Ste. Marie versus Ann Young and Mr. Kurisko, later Mr. Justice Kurisko, from Sault Ste Marie was on the other side on behalf of the City of Sault Ste. Marie and I was in the Civil Court of Appeal in Osgoode and Justice Jessop was in the middle, so it's the early eighties at the time, and he looked at me and said, "Is this your baptism in the Civil Court of Appeal?" And I said, "It is, sir," and he said, "Picked the wrong vehicle." So there is a history of perhaps civil contempt issues.

THE COURT: Well, it would be interesting to be on a case with Stan Kurisko as well.

MR. GREENSPAN: It was. It was very. It was very, no question about it.

Sir, what brings me here today is to seek your directions because the civil case that led to the civil contempt...

THE COURT: Yes.

MR. GREENSPAN: The matter of Nelson Barbados Group Ltd. and 63 defendants were named.

THE COURT: Yes.

MR. GREENSPAN: ...in that action. That case has now been resolved and settled and it's over. And now, in an attempt to seek - and you will see we not only have the application before you today

1 but we have a draft application of the release
2 that we will seek in the main motion that we want
3 to bring before you that we are at a bit of a
4 loss as to who we ought to serve.
5

6 To just remind you, at the time of what was
7 occurring, at the relevant time, Your Honour held
8 Mr. Best in contempt on January the 15th of 2010.
9 You sentenced him at that time to three months'
10 incarceration and a fine of \$7500. At that time,
11 counsel - four sets of counsel appeared on behalf
12 of the defendants during that timeframe.

13 **THE COURT:** Yes.

14 **MR. GREENSPAN:** But they only represented 11 of
15 the defendants or at least the record reflects
16 that they represented 11 of the 63 defendants.
17 The rest of the defendants were apparently
18 unrepresented or didn't actually participate in
19 response to the action by Nelson Barbados. As a
20 result - and quite frankly, now that it is
21 settled, we are not confident, although we are
22 happy to serve them, that Mr. Silver or Mr. Roman,
23 Mr. Ranking or Mr. Clarke have much interest in
24 returning to court to respond or to make
25 representations with respect to the application
26 which we seek. But at the same time, we wanted to
27 do it right. We wanted to make sure that we
28 served any interested party who might want to
29 attend for whatever reason they want to attend.
30 Our inclination was to serve only the defendants
31 who were appearing at the time as the transcript
32 reveals.

5
Submissions

1 **THE COURT:** Yes.

2 **MR. GREENSPAN:** That was our first inclination but
3 we wanted to make sure that we weren't remiss in
4 our obligation to serve other parties if
5 Your Honour thought, as a matter of practice, we
6 ought to. So that's the first and most important
7 part of the reason for my attendance this morning,
8 just who ought we to serve.

9
10 The other one is perhaps a little bit more
11 controversial and there is this very lengthy
12 affidavit that we have served that will be the
13 primary affidavit in the main motion once we
14 schedule that and we hope to schedule it
15 certainly no later than the end of October. We
16 would like to schedule it early in the fall,
17 subject to Your Honour's availability and your
18 schedule.

19
20 In that lengthy affidavit, there are positions
21 that are taken that may impact - and I must say
22 in terms of his recollection and what occurred,
23 it may impact upon some of the counsel who were
24 active at the time in this matter in terms of
25 their recollection, his recollection and again,
26 we thought, as a matter of fairness, all of those
27 counsel ought to be aware of it and ought to be
28 served with this affidavit in order that they
29 might, if they choose, respond to the position
30 that Mr. Best takes in his affidavit. So that was
31 that aspect of it.
32

1 The other aspect is, as his affidavit reveals, he
2 has primarily, with his family, lived in
3 New Zealand.

4 **THE COURT:** I found out for the first time after I
5 read the material.

6 **MR. GREENSPAN:** Well, quite frankly, we didn't
7 know until this affidavit and I must say I am
8 unaware of where he currently resides.

9 **THE COURT:** I am not asking you.

10 **MR. GREENSPAN:** He contacts us either by email and
11 we arrange for telephone calls and I must say,
12 and I don't think we've been remiss, but it's
13 been a very very difficult process since we were
14 first approached about getting involved in this
15 matter. It's been a difficult process to come to
16 the level of knowledge that we now have to be
17 able to produce this affidavit, which was only
18 sworn in April of this year, and we were retained
19 in May of last year. So it's taken us all...

20 **THE COURT:** May of last year?

21 **MR. GREENSPAN:** May of 2011 is when we were - the
22 end of May, 2011 is when we were first retained
23 but it took us about 10 months really to get our
24 hands around this and to understand it and be
25 able to produce the affidavit as we see it
26 primarily because there was - the telephone
27 nature of the relationship and the desire to get
28 materials together so that we could understand it
29 and present it properly to you. But in the
30 interim, what we now see is this.

31
32 He has got to return to Canada. There is a

Submissions

1 warrant that Your Honour issued, subject to your
2 order of January 15, 2010, for his arrest. What
3 we respectfully would suggest or request from
4 Your Honour is that the execution of that order
5 be lifted to October 31st, 2012 or the date of the
6 application, whichever is the earlier, so that we
7 might be permitted the opportunity for Mr. Best
8 to return to Canada, come before the court out of
9 custody and be able to make the representations
10 and be subject to potential cross-examination on
11 his affidavit out of custody and therefore, be in
12 a position that when we come before you - if
13 Your Honour, at the end of the day, chooses to
14 re-incarcerate, so be it but that at least the
15 preparations, the cross-examinations, potentially,
16 and the appearance in court and his movement
17 through Immigration, that that can be made out of
18 custody.

19
20 We don't anticipate that he would come to Canada
21 prior to early September, so we're just talking
22 about a period of perhaps four to six weeks at
23 the maximum where he would be at large in Canada
24 and not subject to the execution of the arrest
25 warrant. That is really the only secondary issue
26 and I leave that with Your Honour and at your
27 discretion, sir, and those are the two issues
28 that I wanted to raise before you on this matter.

29 **THE COURT:** Well, my first comment, Mr. Greenspan,
30 is that this contempt hearing was not on my
31 initiative. So it was not one made at the
32 instance of the court. It was brought primarily,

Submissions

1 I'm going to say, by Mr. Silver and Mr. Ranking
2 and if anything, the way the case was conducted -
3 and frankly, there was - I mean I have got three
4 transcripts here. I'm telling you there must have
5 been eight, maybe eight transcripts or more of
6 various attendances, not always directly. Well,
7 Mr. Best was the principal of Nelson Barbados.
8 Mr. McKenzie was the lawyer representing the
9 corporation up to a point. So I can't remember at
10 this point in time who actually put it before me
11 or whether it was joint or how many persons were
12 on it. I would think, though, as a starting point,
13 that there should be notice. Are they no longer
14 interested? You know the parties, who they
15 represented in these proceedings, presumably, and
16 do they have any appetite? I really don't know.

17
18 The second part is do they have standing, in any
19 event? My sense - I am not making a ruling on it.
20 I am going to let them come. I am going to ask
21 you to serve at least the individuals who
22 appeared on the contempt hearing.

23 **MR. GREENSPAN:** Yes, sir.

24 **THE COURT:** And I can't tell you which law firms
25 those are from looking at it.

26 **MR. GREENSPAN:** It would appear...

27 **THE COURT:** There is another - sorry.

28 **MR. GREENSPAN:** I'm sorry, sir. It would appear -
29 well, in the three transcripts that we do have,
30 on all of them it appears to be the same. On
31 January the 15th, which is when the contempt
32 citation took place, at that time, if you can

Submissions

1 look to page three of the transcript, you will
2 see that the usual suspects were all there, and
3 that is at Schedule A.

4 **THE COURT:** Yes. As I looked at the other
5 transcripts, Motion, December 2nd, they seem to be
6 the same but when I went over...

7 **MR. GREENSPAN:** Yes, sir.

8 **THE COURT:** ...to November 2nd, there is somebody
9 called Butler, Conklin and Kewan and they may
10 have been alternative representatives to the
11 others. There is many more counsel who
12 participated in the proceedings but not in that
13 contempt proceeding. So I think we would be safe
14 at least on the contempt motion is what I am
15 looking at, the contempt hearing, at least Silver,
16 Roman and Ranking. Those three I distinctly
17 remember. Morse, Clarke I think were - riding the
18 rails would be my term.

19 **MR. GREENSPAN:** Morse was with Ranking.

20 **THE COURT:** Maybe that's the case.

21 **MR. GREENSPAN:** Okay, so it's Mr. Ranking and
22 Ms. Morse for the defendant, Price Waterhouse,
23 who we believe actually initiated the contempt.

24 **THE COURT:** That may very well be. My memory is
25 just light on this and I must tell you I don't
26 have the file or the transcript. I didn't order
27 it up. But if you have any difficulty, I will get
28 the court file for you. I'm sure it's gone to
29 storage somewhere.

30 **MR. GREENSPAN:** If you might, sir, if you look at
31 January 15th for a moment.

32 **THE COURT:** January 15th, yes.

10
Submissions

1 **MR. GREENSPAN:** Yes, if you look at January 15th...

2 **THE COURT:** Got it.

3 **MR. GREENSPAN:** Go to the second page, Schedule A,
4 you will see that for the defendants...

5 **THE COURT:** Yes.

6 **MR. GREENSPAN:** ...were Lorne Silver, Mr. Ranking
7 and Ms. Morse for Price Waterhouse, Mr. Roman and
8 then Ms. Clarke.

9 **THE COURT:** Now what are we going to do about
10 Nelson Barbados because Mr. McKenzie and his law
11 firm, well, they have parted ways is what I'm
12 told but something erupted, as you know, after
13 this.

14 **MR. GREENSPAN:** Yes.

15 **THE COURT:** ...where Mr. McKenzie had to leave and
16 not only that but counsel, a very leading counsel
17 and I forgot his name, had to get off the record.
18 So I don't now who represents Nelson Barbados at
19 this point in time.

20 **MR. GREENSPAN:** Well, I think no one does at this
21 point but I am more than happy - I will tell you,
22 sir, that I know Mr. McKenzie personally. I think
23 he's now retired from practice but there is no
24 problem in ensuring that Mr. McKenzie is aware of
25 the proceedings and is given notice of the
26 proceedings as well.

27 **THE COURT:** I think it would helpful for other
28 reasons and I suppose if Mr. Best is still a
29 Director of Nelson Barbados, which is the
30 representation to the court, and that status
31 hasn't changed, then Nelson Barbados Group Ltd.
32 is on notice by Mr. Best being on notice.

11
Submissions

1 **MR. GREENSPAN:** Yes, sir.

2 **THE COURT:** So I think that would probably do it.

3 **MR. GREENSPAN:** Thank you.

4 **THE COURT:** I think you are quite right that
5 Mr. Ranking and certainly Mr. Silver and Mr.
6 Roman - but those three were the three lead
7 counsel and as the many applications proceeded,
8 other counsel just dropped off or they didn't
9 even gown. They just watched what was going on in
10 the courtroom. So I think if you've got that
11 group, I think we've got service out of the way.

12 **MR. GREENSPAN:** So the last one, just for
13 certainty...

14 **THE COURT:** Ms. Clarke?

15 **MR. GREENSPAN:** Ms. Clarke. Should I, just as a
16 matter of caution, add her?

17 **THE COURT:** I think so. We might as well.

18 **MR. GREENSPAN:** ...because she did appear at the
19 time.

20 **THE COURT:** Yes, and that is the First Caribbean
21 International Bank.

22 **MR. GREENSPAN:** Yes.

23 **THE COURT:** But boy, they had...

24 **MR. GREENSPAN:** I'm sure they will have no
25 interest, sir.

26 **THE COURT:** ...little or no interest whatsoever
27 here.

28 **MR. GREENSPAN:** No, no. I'm sure their first
29 question will be, "Who is paying the bill?"

30 **THE COURT:** And I am always cognizant of that but
31 in any event, it may be we will see who, if any,
32 shows. So that would be the first step.

12
Submissions

1 The second is a date. We may have to get the
2 trial co-ordinator on the phone here because she
3 is the real boss. Would you mind getting Jackie
4 on the phone just for a moment? I am just going
5 to put out some dates and Mr. Greenspan can tell
6 me how it works. It looks to me the week of
7 October 1st could be available because I am duty
8 judge that week but then I start criminal the
9 weeks of October 8th, 15th. There is the week of
10 October 22nd. I am doing civil pre-trials but they
11 can rearrange or squeeze cases around that week.
12 So maybe we could get her on the phone and find
13 out which...

14 **MR. GREENSPAN:** So that was October 22nd?

15 **THE COURT:** The week of. The only day I would not
16 want it is the 25th. I am doing a very lengthy
17 sentencing that day or I'm having a sentence
18 hearing. I don't know if I will be doing the
19 sentencing that day.

20 **COURT REGISTRAR:** How long?

21 **THE COURT:** I am going to say half a day. I think
22 the 22nd might be better if we could go into that
23 week but I don't know how that works for
24 Mr. Greenspan. Of course, we don't know what
25 works for the other counsel either. That is the
26 problem.

27 **COURT REGISTRAR:** October 23rd in the a.m. She
28 also has October 12th, either a.m. or p.m.

29 **MR. GREENSPAN:** That may be better. October...

30 **COURT REGISTRAR:** 12th.

31 **MR. GREENSPAN:** That's a Friday.

32 **THE COURT:** I think she is thinking at the end of

13
Submissions

1 a criminal sitting. I have a reputation for
2 finishing early so I think they are thinking they
3 will squeeze a day in.

4 **MR. GREENSPAN:** Sir, I'll tell you, I'm scheduled
5 that day to be the final day of a motion in
6 Newmarket and I think that is a safe - like there
7 was a couple of days that were added on as safety
8 days and I have co-counsel on that one, so I'm
9 really comfortable with Friday, October 12th.

10 **THE COURT:** So am I.

11 **MR. GREENSPAN:** All right, that's good.

12 **THE COURT:** So would you tell her the 12th and are
13 we going in the morning then, Mr. Greenspan?

14 **MR. GREENSPAN:** Yes, sir.

15 **THE COURT:** Thank you. I will mark Nelson Barbados
16 at 9:30 a.m. re: Best. Now, I come to the third
17 item. It gives me some concern in terms of the
18 history of Mr. Best but I suppose what I'd like
19 to hear is that Mr. Best would surrender himself
20 into custody when I go to hear this but that may
21 be too extreme. But it is the history that
22 bothers me, which is still alive in my mind. This
23 is not a case I could possibly ever forget
24 because I think I began it in 2008 and it ended
25 in 2010. But on the other hand, counsel may very
26 well want to cross-examine him and so, with your
27 advice that he will be in attendance, I don't see
28 where I have any difficulty. So I am prepared to
29 make an interim order. I will make it on the
30 motion or the application record here, I guess.
31 We will get you a copy of this, Mr. Greenspan,
32 but so far I have ordered:

14
Submissions

1 1. I hereby order that the counsel listed on
2 the contempt hearing transcript of
3 January 15, 2010 shall be served with the
4 application and supporting materials.

5 2. The application is adjourned to Friday,
6 October 12, 2012, 9:30 a.m. before me.

7 3. It is further ordered that the execution of
8 the arrest warrant shall be temporarily
9 stayed until October 12, 2012 to permit
10 Mr. Donald Best to return to Canada,
11 instruct counsel and, if required, to be
12 available for cross-examination on his
13 affidavit.

14 **MR. GREENSPAN:** Thank you, sir.

15 **THE COURT:** That's it on that?

16 **MR. GREENSPAN:** Thank you, I appreciate it. I
17 take it, unlike my usual practice, I have to
18 prepare a formal order, I suspect, for the court
19 to execute it.

20 **THE COURT:** I'm afraid that's how it happens in
21 this arena. I want to raise an issue with you
22 right now.

23 **MR. GREENSPAN:** Yes, sir.

24 **THE COURT:** ...which, frankly, is of no
25 consequence or importance to me but I suspect you
26 would know because you have a client who you have
27 been dealing with for some time. Mr. Best and
28 Mr. McKenzie filed a complaint with the Canadian
29 Judicial Council.

30 **MR. GREENSPAN:** I'm aware, sir.

31 **THE COURT:** You know from representing judges and
32 other people throughout the time, I don't know

15
Submissions

1 that they file a complaint. I am never told. It
2 was reviewed by the Chief Justice of Manitoba and
3 I received notification May, June of this year
4 that - my Chief Justice, Heather Smith, sent me a
5 copy advising that the Judicial Council did not
6 wish any comments from me and that they had
7 closed their file and I was given the decision -
8 I will call it that - of the Chief Justice of
9 Manitoba.

10
11 I just want to point that out. I'm sure you knew
12 and frankly, it is of no importance or
13 consequence because every person that comes
14 before this court has the absolute right to
15 register a complaint before the Judicial Council.
16 So I, frankly, want to just tell you that at the
17 outset but I think you know and further, as I say,
18 it is of no consequence. It doesn't influence me
19 whatsoever.

20 **MR. GREENSPAN:** Sir, I want to make it clear for
21 the record that I was fully aware of the
22 complaint having been made. I in fact received a
23 copy through Mr. Best of the decision of the
24 Judicial Council. I have also reviewed that. I am
25 fully aware of it. Had I had any concerns, you
26 would have heard the concerns expressed and I,
27 from the outset of this application, sir, made it
28 clear that our view was that this matter should
29 come back before you and we are content that this
30 matter come before you and that you make the
31 determination on the motion.

32 **THE COURT:** Great. I must tell you I don't think

1 there is any judge upstairs who is exactly
2 hankering to try to go in and understand this
3 case and its history.

4 **MR. GREENSPAN:** No.

5 **THE COURT:** So they are relieved, I can tell you.
6 I had a discussions with my colleagues about that
7 event and I said, "I don't know what
8 Mr. Greenspan is going to say and if he does say
9 it," and then all I saw was this aghast look from
10 all of them saying, "Come on, don't push this on
11 to us. It's going to take us days to understand
12 the history." I mean the history, what happened,
13 is very much alive in my head because of the very
14 unusual circumstances of the case.

15 **MR. GREENSPAN:** I appreciate that and we're fully
16 aware of it and we're, as I say, totally content
17 that the matter proceed before you.

18 **THE COURT:** And I also want to tell you,
19 Mr. Greenspan, in terms of any procedural matters
20 because you serve these counsel and you know,
21 several of them are very very busy, if they are
22 going to run into a problem about it, we can
23 simply convene a conference call if you call
24 Jackie Traviss, the Trial Co-ordinator. I would
25 convene a conference call to try to work out
26 dates. I found, in that particular case, it was
27 extraordinary the number of leaps and bounds we
28 had to go to get everybody together in the
29 courthouse at the same time. But if it will be of
30 any assistance - but I will not discuss anything
31 else other than scheduling.

32 **MR. GREENSPAN:** Yes, sir.

A D J O U R N M E N T (9:39 AM)

Maxine Newell, C.C.R.

This is EXHIBIT 3G to the
Affidavit of Donald Best,
sworn April 29, 2016

**SUPERIOR COURT OF JUSTICE
(Central East Region)**

A Commissioner, etc.

IN THE MATTER OF a Contempt Order issued against Donald Best on
January 15, 2010 by the Honourable Justice Shaughnessy.

APPLICATION RECORD

GREENSPAN HUMPHREY LAVINE
Barristers
15 Bedford Road
Toronto, Ontario
M5R 2J7

Tel: (416) 868-1755
Fax: (416) 868-1990
E-mail: bhg@15bedford.com

BRIAN H. GREENSPAN
Of Counsel for the Applicant

counsel and if required to be available for
cross-examination on his Affidavit filed.

[REDACTED]

J

COURT OF ONTARIO
(SUPERIOR COURT OF JUSTICE)
(Central East Region)

APPLICATION RECORD

GREENSPAN HUMPHREY LAVINI

15 Bedford Road
Toronto, Ontario
M5R 2J7

Tel: 416.868.1755
Fax: 416.868.1990

Brian H. Greenspan
Counsel for the Applicant

AT OTTAWA - A OTTAWA

JUL 3 0 2012

BY/MR
SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

August 9 2012
Mr. B. Greenspan - ex parte.

1. It is hereby ordered that the Counsel
listed on the Contempt Hearing Transcript
of January 15th 2010 shall be
served with the Application and
supporting materials.

2. The application is adjourned to
Friday 05/12/2012 at 9:30 AM
before Shynsby J.

3. It is further ordered that the execution
of the arrest warrants shall be
~~stay~~ temporarily stayed until
05/12/2012 to permit Mr.
Donald Best to return to Canada intent

Court File No.

181-07

**SUPERIOR COURT OF JUSTICE
(Central East Region)**

THE HONOURABLE JUSTICE SHAUGHNESSY

THURSDAY, the 9th DAY
OF AUGUST, 2012

**IN THE MATTER OF a Contempt Order issued against Donald Best
on January 15, 2010, by the Honourable Justice Shaughnessy**

NELSON BARBADOS GROUP LIMITED

This is EXHIBIT 3H to the
Affidavit of Donald Best,
sworn April 27, 2016

Plaintiff

-and-

RICHARD IVAN COX, et al.

Defendants

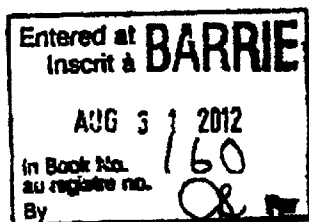
A Commissioner, etc.

ORDER

THIS *ex parte* APPLICATION, made by counsel on behalf of the Applicant Donald Best for directions with respect to an application for an order setting aside the contempt order, issued on January 15, 2012 against the Applicant, was heard on Thursday, August 9, 2012, at the Superior Court of Justice, Durham Region Courthouse, 150 Bond Street East, Oshawa, Ontario, by the Honourable Justice Shaughnessy.

ON READING the Notice of Application for directions, the Draft Notice of Application, the Affidavit of the Applicant Donald Best, and the transcript of proceedings from November 2, 2009, December 2, 2009, and January 15, 2010, and on hearing the submissions of counsel for Donald Best.

1. THIS COURT ORDERS that the counsel listed in the Contempt Hearing Transcript of January 15, 2010, shall be served with the Application and supporting materials;
2. AND THIS COURT FURTHER ORDERS that the Application is adjourned to Friday, October 12, 2012, at 9:30 a.m. before the Honourable Justice Shaughnessy for the application to be heard;
3. AND THIS COURT FURTHER ORDERS that the execution of the arrest warrant shall be temporarily stayed until October 12, 2012, to permit Donald Best to return to Canada, instruct counsel, and if required, to be available for cross-examination on his affidavit filed.



**IN THE MATTER OF a Contempt Order issued against Donald Best on
January 15, 2010, by the Honourable Justice Shaughnessy**

Court File No.

**COURT OF ONTARIO
(SUPERIOR COURT OF JUSTICE)
(Central East Region)**

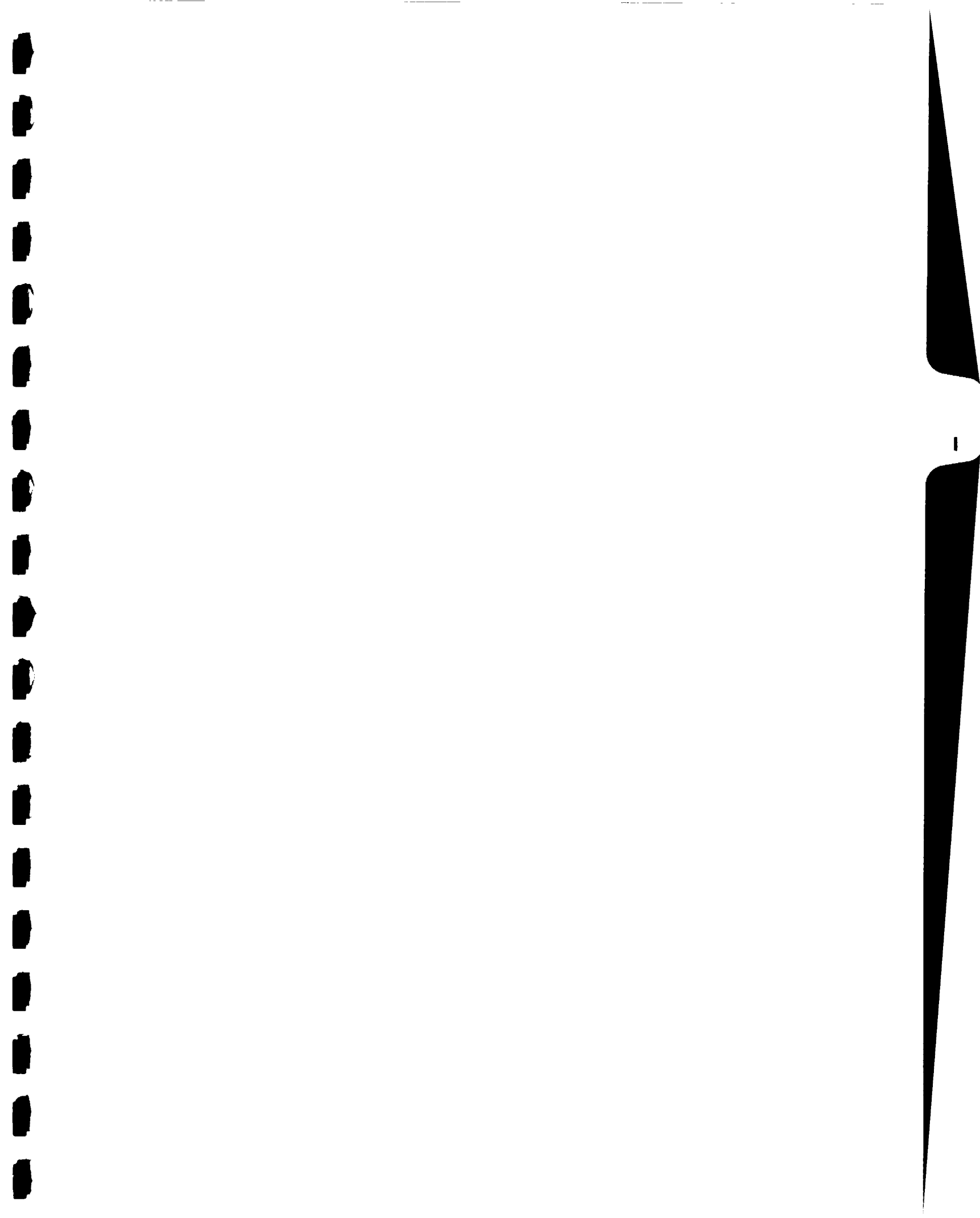
ORDER

GREENSPAN HUMPHREY LAVINE

**15 Bedford Road
Toronto, Ontario
M5R 2J7**

**Tel: 416.868.1755
Fax: 416.868.1990**

**Brian H. Greenspan
Counsel for the Applicant**



File No. CV141-07


A Commissioner, etc.

SUPERIOR COURT OF JUSTICE

NELSON BARBADOS GROUP LIMITED

Plaintiff

- against -

RICHARD IVAN COX ET AL

Defendants

* * * * *

PROCEEDINGS AT MOTION

BEFORE THE HONOURABLE Mr. JUSTICE SHAUGHNESSY
on October 12, 2012,
at OSHAWA, Ontario

* * * * *

APPEARANCES

BRIAN GREENSPAN

Counsel for the Plaintiff

LORNE SILVER

Counsel for the Defendant

* * * * *

Barbados v Cox
October 12, 2012

Friday, October 12, 2012

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

(9:44 a.m.)

5

THE COURT: Yes, Mr. Greenspan?

10

MR. GREENSPAN: Thank you, Your Honour. Your Honour, pursuant to our last appearance five parties were served, actually six parties but Mr. McKenzie was served as a matter of courtesy. Of the five parties served with respect to this matter, three responded that they did not wish to participate in the matter and that was Mr. Schabas, Ms Rubin and Mr. Roman. We're not retained to further participate in this matter or the application that's brought before you. The two remaining counsel Mr. Silver and Mr. Ranking have advised that they do wish to participate.

15

20

We've had - we've exchanged a number of communications and had a conference call several days ago and that's when we sought a new date for the matter and to at least put it over to set a date to - a date to set a date for the hearing of the application.

25

THE COURT: A date to set a date.

MR. GREENSPAN: Mr. Silver was unable to be here today. I've undertaken to address the Court with respect to what progress has been made.

30

We - subject to Mr. Silver and Mr. Ranking filing a notice of appearance on behalf of their respective

Barbados v Cox
October 12, 2012

clients, and that's not yet occurred and hopefully
that'll be worked out in the next several days; the
proposal is that they wish to cross-examine Mr.
Best on his affidavit and we've tentatively, and I
think agreed that that would take place on November
12th and 13th. Actually November 12th; November 13th
if necessary, and your office provided us with a
date of November 16th to return before you to
provide a progress report at that time and
hopefully at that time, to set a date for the
actual application before you, or the re-opening of
the issue of Mr. Best's contempt.

That's what we wish to do today along with the
following, and that is pursuant to the last
appearance and Your Honour's order staying the
warrant of arrest and staying the execution of the
warrant of arrest, Mr. Best is here today and
present before the Court pursuant to that order,
and what we would wish is a further extension of
that stay of the arrest warrant and rather than
simply making it to November 16th, if we could make
it - and the draft order that I've got before me is
that the Court first of all orders that the
matter's adjourned to November 16th, at which time a
date for the hearing of this application will be
set, and that the Court further orders that the
stay of the execution of the arrest warrant be
extended to the date set for the hearing of the
application.

Barbados v Cox
October 12, 2012

That means that we won't have to make multiple appearances but rather simply put the arrest warrant over to the date of the application directly, and Your Honour that - that's really all I have to say this morning to the matter and I think that that again, hopefully, there will be worked out or at least in the near future will receive proper notices of appearance from both counsel and we can proceed with the cross-examination.

They've not indicated what further material or whether they'll be filing any material. That may be subject to cross-examination as well but they haven't indicated yet what material will be filed.

THE COURT: All right. Well then I've made an endorsement, Mr. Greenspan. Messrs Silver and Ranking will be responding on behalf of clients.

MR. GREENSPAN: I might indicate Your Honour, that Mr. Silver's indicated that his client is Kingsland Estates Limited. Mr. Ranking's not yet indicated precisely the name of his client but I don't think it's necessary for the time being.

THE COURT: No, I got pretty good knowledge of the history and there may be some changes in names ...

MR. GREENSPAN: Yes, sir.

THE COURT: ... but I'm aware of who Mr. Ranking's client was. Was, yes. So in any event, adjourned to November 16th, 2012, at 9:30 a.m. to permit cross-examination and to then set a date for hearing. The arrest warrant for Mr. Best is

Barbados v Cox
October 12, 2012

extended to a date set for the actual hearing of
the matter.

MR. GREENSPAN: Thank you, sir. That's the draft
order.

5 THE COURT: The order's signed. Thank you, Mr.
Greenspan.

MR. GREENSPAN: Thank you, sir. Unfamiliar as I
am with civil procedure in this building, I take it
I'm supposed to take this somewhere?

10 THE COURT: Actually if you want, if there's a
second copy what I might just do is sign the second
copy. That'll be the file copy and you can take
the original with you now.

MR. GREENSPAN: And I don't have to do anything?

15 THE COURT: No.

MR. GREENSPAN: That's terrific. Thank you so
much. Appreciate it, sir.

* * * * *

20

Barbados v Cox
October 12, 2012

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

I, Deborah Tinmouth, certify that this document is a true and accurate transcript of the recording of Barbadoes v Cox in the Superior Court of Justice held at 150 Bond Street, Oshawa taken from Recording No. 2812 501 400795 20121012 0917

Certified on Form One

November 28, 2012

Deborah Tinmouth
Court Reporter

Transcript ordered.....October 24, 2012
Transcript completed.....November 28, 2012
Transcript approved for release.....NA

THIS IS NOT A CERTIFIED COPY UNLESS ORIGINALLY SIGNED


Court File No. 141-07

~~A Commissioner, etc.~~

**SUPERIOR COURT OF JUSTICE
(Central East Region)**

THE HONOURABLE JUSTICE SHAUGHNESSY

**FRIDAY, the 12th DAY
OF OCTOBER, 2012**

**IN THE MATTER OF a Contempt Order issued against Donald Best
On January 15, 2010, by the Honourable Justice Shaughnessy**

NELSON BARBADOS GROUP LTD.

Plaintiff

-and-

RICHARD IVAN COX, et al.

Defendants

ORDER

THIS Application, made by counsel on behalf of the Applicant, Donald Best, for an Order setting aside the contempt order of January 15, 2010, was scheduled to be heard on October 12, 2012 at the Superior Court of Justice, Durham Region Courthouse, 150 Bond Street East, Oshawa, Ontario, by the Honourable Justice Shaughnessy.

ON READING the Notice of Application, and on hearing submissions from counsel,

1. THIS COURT ORDERS that this matter is to be adjourned to November 16, 2012, at which time a date for the hearing of this Application will be set;
2. AND THIS COURT FURTHER ORDERS that the stay of the execution of the arrest warrant shall be extended to the date set for the hearing of this Application.


The Honourable Mr. Justice Shaughnessy

IN THE MATTER OF a Contempt Order issued against Donald Best on
January 15, 2010, by the Honourable Justice Shaughnessy

Court File No. 141-07

Mr. B. Greenspan

Oct 12/12.

Mrs. Silver & R. only will be responding on behalf of their clients
Adjourned to Nov 16/12 at 9:30 AM
to permit C/L. & to then set a date for hearing

The arrest warrant is further for
Mr. Best is returned to a
date set for the actual
hearing of the matter

[REDACTED]

Nov 16/12
Mr. B. Greenspan for Donald Best
Mr. L. Silver & Co. legal for Mr. D. Ranking.
Mr. Best wishes to retain new counsel.
I hereby adjourn the Application to
December 11 2012 at 9:30 AM to permit
Mr. Best to retain new counsel or alternatively
to confirm that Mr. Best has filed

COURT OF ONTARIO
(SUPERIOR COURT OF JUSTICE)
(Central East Region)

APPLICATION RECORD

GREENSPAN HUMPHREY LAVINE

15 Bedford Road
Toronto, Ontario
M5R 2J7

Tel: 416.868.1755
Fax: 416.868.1990

Brian H. Greenspan
Counsel for the Applicant

A Commissioner, etc.

This is EXHIBIT 3K to the
Affidavit of Donald Best,
sworn April 29 2016

a Notice of Intention to Ask in Person.

Mr. Hunsper and shall remain Counsel of Record until 5 less December 11 2012 and being the return date of this opposition.

Mr. Hunsper shall provide to Mr. Rankin and Mr. Selim the address of the residence at which Mr. Best is residing on or before noon hour Monday November 19 2012. Mr. Rankin and Mr. Selim will keep the address and telephone number confidential & will use the information only for the purpose of conducting this ~~but~~ personal litigation.

The Cross-examination of Mr. Best on his Affidavit material is set for January 11 2013 on Notice re location & time.

I hereby find and deem that Messrs Rankin & Selim ^{on behalf of their respective clients} may file a Notice of Appearance without this step being viewed as an abrogation of the jurisdiction. I further find and deem that Messrs Rankin and Selim on behalf of their respective clients may bring any motion to strike the application without such step being considered a final step in the ~~the~~ proceedings.

(3)

9 further order and direct that my Order
 saying the execution of the Warrant
 shall be amended to further provide
 that (1) Mr. Donald Beas shall surrender his
 Canadian passport or any other passport to
 Mr. Brian Thompson and ~~he shall retain~~
 Mr. Thompson shall retain the passport
 until further order of the Court. The
 passport to be surrendered to Mr. Thompson
 on or before Monday Nov 19/12. at
 12:00 noon.

(2) Mr. Beas will present himself
 at the Durham Regional Police Station
 77 Centre Street Oshawa every
 1st and 3rd Monday of the month
 to confirm his current address and
 telephone number.

Mr. Beas will also promptly notify Messrs
 Rankin and Sehn of any change in
 his address or telephone number.

The Application will be adjourned to
 January 25th at 9:30 AM F.B.S.F.
 re setting date for hearing.
 Costs of today reserved to the hearing of the application.

This is EXHIBIT 3L to the
Affidavit of Donald Best,
sworn April 2, 2016



A Commissioner, etc.

SUPERIOR COURT OF JUSTICE

B E T W E E N :

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON
NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH
DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH
KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP
GREAVES, a.k.a PHILIP GREAVES, GITTENS CLYDE TURNEY,
R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL
LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE
DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL
NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER,
DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS,
GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN
ASSOCIATES LIMITED, GOLF BARBADOS INC., KINGSLAND ESTATES
LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK
INTERNATIONAL CONSULTANTS INC., THORNBROOK
INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION,
THE BARBADOS AGRICULTURAL CREDIT TRUST, PHEONIX ARTISTS
MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY,
C. SHOREY AND COMPANY LTD., FIRSTCARIBBEAN INTERNATIONAL
BANK (BARBADOS) LTD., PRICEWATERHOUSECOOPERS
(BARBADOS), ATTORNEY GENERAL OF BARBADOS, THE COUNTRY OF BARBADOS,
AND JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF
VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY,

PETER SIMMONS, G.S. BROWN & ASSOCIATES LTD.,
GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC
INVESTMENTS LIMITED AND LIFE OF BARBADOS LIMITED c.o.b. as
LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED,
DAVID CARMICHAEL SHOREY, PRICEWATERHOUSECOOPERS EAST
CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH
CONSTRUCTION CANADA LTD. AND
COMMONWEALTH CONSTRUCTION, INC.

Defendants

P R O C E E D I N G S A T H E A R I N G

BEFORE THE HONOURABLE JUSTICE B. SHAUGHNESSY
on November 16, 2012 at OSHAWA, Ontario

APPEARANCES:

B. Greenspan

L. Silver

Counsel for Donald Best

Counsel for the Co-defendants

1.

Nelson Barbados Group Ltd. -and- Cox et al

FRIDAY, NOVEMBER 16, 2012

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

...

THE COURT: Good morning, Mr. Greenspan.

MR. GREENSPAN: Good morning, Your Honour.

THE COURT: Mr. Silver.

MR. SILVER: It's nice to see you again, Your Honour.

THE COURT: Yes. It's been a while.

MR. SILVER: A couple of years. Mr. Ranking, I think he sent you a letter.

THE COURT: He did.

MR. SILVER: But he expresses his regrets.

THE COURT: I got all of the correspondence and I understood that. And I also understood that today's attendance was simply to set up further another date, I thought perhaps the hearing date in this matter. Now, is Mr. Best here?

MR. GREENSPAN: Yes, he is, sir.

THE COURT: Come forward, Mr. Best. Now, just have a seat, sir. I'm just trying to get you to the forefront. I'll make sure you hear everything that's going on here.

MR. BEST: Thank you, sir.

MR. GREENSPAN: Your Honour, if I may briefly just simply give you a very brief background? You may recall, Your Honour, on the last occasion perhaps, when I made the appearance before you on October 12th, that Your Honour commented on the apparent foreign territory that I had entered into. And I indicated that in relation to this matter that I

2.

Nelson Barbados Group Ltd. -and- Cox et al

had some experience in matters purely relating to

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civil contempt and I was content to proceed.

Having said that, subsequent to that appearance it became apparent very shortly thereafter that there was a dimension to the matter which would enter into areas that were for me foreign territory.

THE COURT: I suspected once you saw Mr. Silver and Mr. Ranking you might have reason to posit.

MR. GREENSPAN: Right.

THE COURT: But that doesn't take away from the feelings I have about this right now. I'm just going to leave it at that. I interrupted you. You continue.

MR. GREENSPAN: No, sir, and quite frankly, I want to make clear I attempted to get the assistance and engage civil counsel to become involved with me in the matter to see whether we could work it out in that fashion. And that did not unfortunately work out and become an approach that was a viable approach to dealing with this.

THE COURT: And there was a Mr. Davis.

MR. GREENSPAN: Yes, that's correct.

THE COURT: Is that not referred to?

MR. GREENSPAN: That's correct. Mr. Davis became briefly involved in the matter. Having said that, I now find myself, and it is unfortunate for the matter, unfortunate for Mr. Best, unfortunate in terms of proceeding, where I really feel it would be inappropriate for me to continue in this matter. And that's been fully explained to Mr. Best during the course of the last several weeks. And there are aspects to this matter, which quite frankly in

5 terms of the civil rules the matter in which one
must - the myriad of rules with which I'm totally
unfamiliar and the manner in which this matter
appears to be proceeding, which are simply outside
my area and my scope of experience. And I think
that Mr. Best would not be well-served by my
continuing in any capacity, so that perhaps the
10 position that I find myself in, that has been
explained to Mr. Best, there has subsequently been
- we advised Mr. Silver and Mr. Ranking at the - as
soon as that decision was made. There has been
now, subsequent to that decision, there has been
some direct communication between Mr. Best and Mr.
15 Silver and Mr. Ranking. And the one matter I would
indicate is that Mr. Best did provide and has
provided to Mr. Silver and Mr. Ranking a method of
communication by way of facsimile and a place where
he can be properly served by way of fax service.
20 And that is the current state of where the matter
lays. It would appear that - and I apologise
because I didn't appreciate this aspect of it, but
I understood that my departure from the record
would be on consent, consent of Mr. Best. And in
25 those circumstances I was advised, I hope not
incorrectly, that it was necessary for me to
actually file a formal motion with the Court to be
removed. If I have been remiss in that regard, I
apologise for being unfamiliar with the rules. But
30 I was told by civil counsel that I needn't actually
provide materials in circumstances where my removal
was on consent, at least with the consent of the

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client. Unless Your Honour has any questions of me, I really have no submissions to make.

THE COURT: I will, but I'm going to hear from Mr. Silver first, but I definitely have questions.

MR. SILVER: Well, Your Honour, you know, and I won't remind you, because I don't think it's necessary today, of the history of this matter and Nelson Barbados bringing an action in Ontario that was ultimately, permanently stayed and really found to be an abuse of process, a forum-shopping exercise. And through that process and in respect of costs we sought certain relief against Mr. Best, which resulted in orders that required him to attend for examinations and produce documents relevant to the issues, and the contempt finding that followed that. And so, you know, after a lull of a couple of years of not having heard and as you recall, we actually spoke to a settlement before you and filed with you minutes of settlement settling the action as against all of the other parties. And Mr. Best was nowhere to be seen through that period. Mr. Greenspan then obtains a kind of ex-parte order or an ex-parte attendance for directions. And one of the directions that he obtains or that you provide him, August of this year is a temporary lifting of the repercussions of the contempt finding, namely the bench warrant.

THE COURT: And on for the purposes of instructing Mr. Greenspan in relation to this matter.

MR. SILVER: Yes.

THE COURT: That was the basis of the application.

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5 MR. SILVER: Right. And the matter was returnable
on October 12th. We got notice of it a couple of
weeks before that. And Mr. Greenspan and I, it may
be coming from the different backgrounds, civil and
criminal, there was a miscommunication about the
October 12th date. But on October 12th, Mr.
Greenspan appeared, not believing that it was
really necessarily a consent matter and obtained an
10 order from you, putting it over to today. And as
you say, it was really to be spoken to today
because the game plan at that time was we, Ranking
and I, made it clear that we wanted to cross-
examine on the affidavit that's been filed in
15 support of the request.

THE COURT: Yes.

MR. SILVER: And that was going to take place
before today. And then we were going to come back
and speak to it today to set a schedule that took
20 your schedule into consideration and Mr.
Greenspan's. And so that was what we were
intending to do. Of course, that didn't happen
because now Mr. Greenspan is getting off the
record. And Mr. Best writes a letter to you, I
25 think, or to all of us indicating that he now needs
three or five more months and more time. And so,
in the context of that it seems as though your
direction is required to ensure that this motion
that's been brought to set aside the contempt
30 finding is dealt with on an expeditious and proper
basis because right now there's a lifting from the
October 12th order. The October 12th order,

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paragraph two, orders the stay of the execution, the arrest warrant shall be extended to the date set for the hearing of this application. And so, if Mr. Best has his way based upon the letter that he wrote, he'd like this thing put off for three months to find new counsel, start a process, and all the while there would be a lifting of the arrest warrant. And we're not comfortable with that. In my respectful submission, and I don't stand here today seeking that it be lifted immediately, the stay of execution, what I propose is as follows: that Mr. Best be provided with a reasonable period of time to retain new counsel, a couple of weeks, maybe three, in my submission; if by that time he's retained new counsel, a notice of change of solicitors could be filed and we'll have new counsel who we can speak with; if new counsel hasn't been located or retained, a notice of intent to act in person should be filed. I'm not sure of Mr. Greenspan's position in the interim because we know, he may not, that until either one of those documents or an order removing him from the record is filed he remains counsel of record. And that's not a situation that I want to force on him or I'm asking to force on him. But in the meantime, if he's removed from the record today, for example, then Mr. Best is acting on his own in the meantime. And we would be entitled to, as Mr. Ranking has set out in letters, not a fax number for service, but knowledge as to where he is residing and where he can be served properly with papers. That goes away

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if a notice of change of solicitors comes in, in which case he can be served by serving his counsel. And so, I say that there should be a reasonable period of time to retain counsel, a couple of weeks, and then some clarification of whether Mr. Greenspan is remaining the counsel of record until then or until then he's acting on his own. Secondly, there was a cost award made in the context of the contempt proceedings. And you won't remember all of this, but there were really three orders that you made that are involved here: November 2nd, 2009; December 2nd, 2009; and January 15th, 2010. And in your January 15th order, paragraph 10, cost awards are made payable within 30 days. Fifty-odd grand - I have the precise numbers, but it's a total of about \$70,000, most of it to Mr. Ranking's clients because, as you recall, he took the lead on all this, and 13,230 to my clients, Mr. Roman's clients and Ms. Clarke's clients. So, secondly, I would submit that there should be an order that within that same period of time to retain counsel or file a notice of intent to act in person the cost awards reflected in paragraph 10 of your January 15th, 2010 order should be satisfied. There should be no ability to play the game, the litigation, or be involved in the litigation forum without at a minimum satisfying those cost awards. Thirdly, I submit that it would be appropriate to schedule a date for and order a date for the cross-examination of Mr. Best on his affidavit filed in respect of this

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5 application. And in that regard, Mr. Ranking and I
are available on any of December 3rd, 5th and then
this is our second choice, January 8th, 9th, 10th or
11th. Next, I submit that it would be appropriate
to, once we've determined if you order a date for
the cross-examination to take place, that you then
also order a new date to come back and speak to the
matter again, similar to what we were intending to
do today, but it just gets pushed back to a date
after the cross-examination. And if you made those
orders, it would be reasonable to extend the
temporary stay to that date, i.e. the date that you
order it to be returned before you to be spoken to,
again. One other item that I would ask be
addressed is neither Mr. Ranking nor I have filed
notices of appearances, specifically because we had
asked Mr. Best through Mr. Greenspan to confirm
that they wouldn't be seen as an attornment to
jurisdiction and/or a fresh step in the event that
it was decided that a motion to strike be brought.
We haven't gotten that from Mr. Best. And so, I'd
request an indication in your endorsement that we
may both file the notices of appearances with those
reservations in that it wouldn't be an attornment
to jurisdiction and it wouldn't be - it would be
without prejudice to a motion to strike.

THE COURT: Just one second. Yes.

MR. SILVER: And then last comment is that in
respect of costs, I would ask that costs be
reserved, costs of today be reserved to the return
of the application or to the to-be-spoken-to

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attendance. I guess it's more appropriate to the return of the application. Subject to any questions....

5 THE COURT: Yes, I have one, Mr. Silver. The history, and my concerns are well documented in the prior proceedings, I can't give you a date, chapter and verse, but it's there, do you have an actual address for Mr. Best? I mean where he's residing and a telephone number. I'm told you've been given
10 a fax number, but I don't want to get into the same type of difficulty that we encountered back in late December 2009/early January 2010. So, do you have that information?

15 MR. SILVER: No, sir. The only thing that we have is a fax number, the fax number that was provided to us through Mr. Greenspan. And Mr. Ranking has made repeated requests for the additional
20 information, but it hasn't been forthcoming. And then as I look back in the order there was an address that you ordered would constitute valid service.

25 THE COURT: But this is what I'm referring to, is the whole postal box.

30 MR. SILVER: You got around - you found a way around the postal box because I think Ranking found an address, I recall, on Princess Street. And you ordered that if anything is sent to Princess Street - but that was in '09 and we've had no contact with Mr. Best and we have no idea. I note that his affidavit, one of them, seemed to be sworn while he was in Singapore. And then there's some

indications in his current material that he hasn't been around.

5 THE COURT: That's what concerns me. And I'm speaking to both counsel. Mr. Greenspan is held in highest regard by this court. And on his representation - on his representation, I permitted an ex-parte application to be heard in August on his representation that Mr. Best was out of the country. It's obvious to me he couldn't come back into the country because there was a warrant for his arrest. I, nevertheless, suspended it. And the reason I suspended it was for Mr. Best to instruct Mr. Greenspan. It was on that representation, which is a - coming from Mr. Greenspan is a very significant representation, one I took very seriously. But I am dismayed about where we are now and the kind of letters that Mr. Best has sent to the trial co-ordinator and for which I'll file all those letters in for the purposes of the record so any court review can look at exactly what's been exchanged here. But what I'm concerned about is I've been through this process before and I'm not prepared to play a cat-and-mouse game any further in relation to this proceeding. And I might say, Mr. Greenspan, as you know, the civil contempt is a quasi-criminal. It's a quasi-criminal proceeding. But I want as a minimum today the address at which Mr. Best resides and until Mr. Best - until counsel are able - and a telephone number that he can be reached at. And until Mr. Best - counsel, Mr. Silver and Mr.

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Ranking, it looks like the only two, until they can confirm that, I'm sorry, but you'll remain on the record until we get to the proper procedure here of a notice of intent to act in person. And so, I am prepared to give Mr. Best some time to retain counsel. The correspondence I read from him I found quite difficult to appreciate. Maybe Mr. Greenspan can enlighten me, but I don't know why it would take 15 months to get a lawyer here. I'm not re-doing - I'm not hearing an appeal of the *Nelson Barbados* case. It's been done. I don't know over how many years I had it, but it seems to me two to three years. I'm not an appellant court. I'm dealing with a singular issue, by the way, in which Mr. Greenspan's office has filed good, voluminous material. The material is there. There is not much more that has to be filed. I'm dealing with a singular issue, which is Mr. Best wants to purge his contempt. That's not neurosurgery here. So, in any event, that's the first step I want done today. I want the address. And I want Mr. Silver and Mr. Ranking to confirm that in view of the history that I've had with this. I'm not trying to fault with you, Mr. Greenspan, but I must say we can't - the amount of resources we've devoted to this case in terms of hours is insurmountable over the years. And I'm just not - and now, when I know that the issue is focused and narrow and what it is, I want there to be a proper way to deal with this as it would be in any other litigation matter. And until, as I say, that that information can be

verified and a notice of intent to act in person is filed, Mr. Greenspan, you're staying on the record. I'm sorry, but I really don't have much other levers to hit here.

MR. GREENSPAN: Sir, let me indicate, you know, obviously I'm dismayed by the fact that you're dismayed. And it's an uncomfortable situation for me to be in and virtually one that is unprecedented in my career. Having said that, I think I would be remiss if I didn't point out two - or at least respond in the following fashion: one, in the material that was filed on behalf of Mr. Best on the original application to seek directions from you and that's currently before the Court, Mr. Best deals with, I think quite extensively, his concerns with respect to his personal safety and the safety of his family, which motivated his desire not to reveal his residential address or the place where he, in fact, resided either in Canada or out of Canada. What is very, very clear, and I want to confirm to Your Honour when we made the representation to you in August that we needed to stay the arrest warrant in order for Mr. Best to return to Canada. I want to make it clear that, in fact, representatives of my office met Mr. Best at the airport on his return to Canada, after the order that Your Honour made, in order to ensure that he would not face any problems in relation to clearing Customs and Immigration if there had been some notation in the computer records with respect to the arrest warrant. And so, we wanted to make

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5 sure that there would be no problem. And, in fact,
a member of my staff was present in order to ensure
the smooth passage back into Canada. So, in fact,
he was out of the country until that time. He
returned subsequent to Your Honour's order in
August. And that should be clear on the record.
Subsequently, quite frankly, I don't have his
address. We've communicated by telephone or email
10 and his attendances at my offices. But he has
always had and continues to have safety concerns.
In terms of how or what might satisfy Your Honour,
what might satisfy Mr. Silver and Mr. Ranking as to
how many contact numbers might be available, I
15 think that if you might consider either email or a
telephone and a fax rather than an actual
residential address....

20 THE COURT: I can't. I can't. And I'll tell you
why. Mr. Greenspan, just as a reminder, a great
deal of time dealt with the whole issue of the
safety of Mr. Best. And then Mr. McKenzie, the
counsel, apparently was representing Mr. Best. And
an extraordinary amount of money is spent obtaining
former FBI individuals, who were then consultants,
25 who rendered opinions, who examined this in great
detail. I can think of one. There was probably
two. And frankly, I made decisions. There was no
substance to any of that. So, why - why am I - why
30 would I get concerned now? And it's not Mr. Best
is walking around with private security guards at
the present time. But having said that I've been
through that issue in detail. And I found no

substance to it, whatsoever.

5 MR. GREENSPAN: In that case, sir, again, I felt obliged to make that submission. I didn't fully appreciate it, appreciate that that matter had been fully canvassed before you in the past. It is in - you know, again, that material is in the affidavit that we prepared on Mr. Best's behalf. And otherwise, Your Honour, I'm obviously - I will remain available and make appearances as Your Honour requires. And I'm hopeful that this matter can be moved to other counsel expeditiously. Here you are.

10 THE COURT: Do you have other comments to make or maybe I should be asking Mr. Best about some of the terms though that Mr. Silver outlined, for example, the costs, I don't even know what the total is, but it looks like it's around 83 to \$100,000. I'll get it more specifically from Mr. Silver, why those costs should not be paid.

20 MR. GREENSPAN: Your Honour, I think with respect to these issues, these were some of the issues that arose, which I felt were outside my area of both expertise and experience. I want you to know that my entire career, I think, I've spoken to costs once and that was with respect to a Charter motion. I really don't feel comfortable addressing it. And that was one amongst other issues that kept emerging, which was what caused my concern and the difficulty that I thought I faced. So, I think that Mr. Best is best to deal with or address that issue.

THE COURT: Mr. Best.

MR. BEST: Good morning, Your Honour.

THE COURT: Why should the costs not be paid?

MR. BEST: I'm sorry, I didn't hear you, Your Honour.

THE COURT: Why should the costs that I directed in orders, I guess it's the January 15th, 2010 order, why should they not be paid?

MR. BEST: Your Honour, I'm frightened to death to speak. I uh, I need a lawyer. I - I'm not qualified. If Mr. Greenspan doesn't know about costs, how could I? I - I would like to point out, Your Honour, that I did not send you a letter this week uh....

THE COURT: You sent it to the trial co-ordinator, didn't you?

MR. BEST: No, no, sir.

THE COURT: Oh, to counsel.

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

THE COURT: No, you sent it to counsel.

MR. BEST: Yes, Your Honour, but you specifically ordered all counsel and me not to send you letters. So, I didn't do that.

THE COURT: No and you're right about that in the past. I wanted it stopped.

MR. BEST: Yes, you said it was improper. And I - I didn't want to do that, Your Honour. I - I have the letter that I sent to the counsel, but I did not intend that it go to you, Your Honour. And - and I would never disobey your order.

THE COURT: All right, well, then the fact is I've

got it and....

5 MR. BEST: I need a lawyer, Your Honour, and after
- Mr. Greenspan, he's a wonderful man, but after 16
months and 40 or \$50,000, I - I'm told I need a
civil lawyer and I - he's right. He's right. And
I need uh, time to - to get the uh, lawyer, Your
Honour.

10 THE COURT: You know, Mr. Best, though I also
recall just by memory - there's so many transcripts
I can't pull them out right now, but I actually
found and made a specific finding that you are a
very knowledgeable and experienced litigant having
15 been involved in a number of major pieces of
litigation similar to this one. And you were the
plaintiff or nominee plaintiff in those cases and
in some of them you acted with Mr. McKenzie. Am I
wrong about that?

20 MR. BEST: Your Honour, to be a witness or a
retired police officer is one thing. To be a
lawyer is another. I need a lawyer. I just can't
- I'm - I'm qualified. I - I don't know what to do
or say. The lawyers sent me papers that I got. I
don't know what to do with them except give them to
25 my lawyer. I uh, I've set up a fax so that I can
receive materials, Your Honour.

30 THE COURT: No, the fax is not going to work. So,
we might as well have this out right now. I want
the address, where you're - and where you're
presently residing. Secondly, I want a telephone
number you can be reached at. It can be given to
Mr. Silver. Mr. Silver and Mr. Ranking are from

5 major law firms in Toronto. They're not about to disseminate the information. And if we're going to go back into the whole argument about your safety issue, which you put in the affidavit, well, you heard my comments to Mr. Greenspan. I have spent days, in fact, I would say weeks on that issue, indeed had to review expert reports, et cetera. And I frankly dismissed that concept.

10 MR. BEST: Your Honour, I - I hear you. I know that just a few weeks ago one of uh, my witnesses, Mr. John Knox, was kidnapped at his home, tied up, pistol whipped. He has uh, brain injuries. And he was told, I am told, by the Royal Barbados Police Force, who uh, became involved or made arrests, that one of the suspects is by coincidence or otherwise associated with Mr. Cox, one of the defendants.

15 THE COURT: How many Cox are there on that island? And they're all, one way or another, related to one another.

20 MR. BEST: I understand. I'm told he lives on the land, the Kingsland, Your Honour. But in any event, I - I need a lawyer. I - I'm not qualified and I need a lawyer. I uh....

25 THE COURT: Well....

MR. BEST: I need a lawyer, Your Honour.

30 THE COURT: I hear you. I'm going to get you a chance to get a lawyer, but you're also going to give Mr. Ranking your address where you're residing and a telephone number that you can be reached at. And that's going to happen today, now.

MR. BEST: With respect, Your Honour, that would put my family in jeopardy.

THE COURT: And I'm satisfied it would not.

MR. BEST: Then I must go to jail.

THE COURT: Well, then right now, Mr. Best, I'm going to ask that you enter into the prisoner's dock.

MR. BEST: Yes, Your Honour.

THE COURT: And I need security. I think we're just going to let matters cool down here for a few minutes, so counsel are going to have to just - while I briefly speak to other matters. I'll call you back and we'll deal with this, again.

...OTHER MATTERS SPOKEN TO

THE COURT: Mr. Greenspan, do you want to speak to Mr. Best?

MR. GREENSPAN: If I could just a minute, Your Honour? And I would ask, if possible, if we could do it momentarily. I had not anticipated the time that this has....

THE COURT: I'm prepared to give a brief recess for you to speak to him.

MR. GREENSPAN: Thank you very much, sir.

THE COURT: Just while I'm doing it so I don't forget to do it, the correspondence then that's been sent to me from Faskens Cassels Brock, which includes correspondence of Mr. Best, for the purposes of the record today will be marked as exhibit A for identification purposes.

EXHIBIT A: Correspondence to His Honour from Faskens Cassels Brock - Produced and Marked.

R E C E S S

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

THE COURT: Mr. Greenspan.

10 MR. GREENSPAN: Your Honour, I've had a discussion with Mr. Best and I hope that this proposal meets with your approval. It's not quite what Your Honour had asked for, but it has the - I think it's in the same spirit, that I - and I'll provide - I'll remain active in this issue with respect to this issue in order to provide the conduit to Mr. Silver and to Mr. Ranking. It's proposed that no later than Monday noon I will provide to Mr. Silver and to Mr. Ranking an address and phone number. And in order to ensure speedy enforcement of any breach of that undertaking I would propose - and I don't know whether the date is convenient to you, but I would propose that failing - failing me providing Mr. Silver and Mr. Ranking with an address and phone number by noon Monday, Mr. Best will be required to attend in this court, nine-thirty, on Tuesday morning. I trust that that - I'm hoping to break the log jamb on this. There are - I appreciate Your Honour's previous rulings, but there are individual perceptions of things that have happened, both in the past and in the near past and in the end of the litigation, which lead Mr. Best to take a position that there is an issue with respect to the protection of his family. And this can accommodate both Mr. Best's concerns and

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the Court's concerns that an address and phone number be provided to counsel. And that's the only delay that's being sought is over the weekend. And by Monday noon that can be accomplished.

THE COURT: See, I have no difficulty asking or directing that Mr. Ranking and Mr. Silver would be required to keep that address in confidence and would only use it for the purposes of facilitating service in these proceedings and, of course, if I want the address as well for some other purpose. I suspect, Mr. Silver, that wouldn't pose a difficulty for you or Mr. Ranking. And you are speaking for Mr. Ranking, as well, today?

MR. SILVER: Yeah, I spoke to him on the phone during the recess and that would be fine. That would be understood, but it makes sense to direct it. In other words, then the only reason we want the address is for service purposes and for the purposes of the litigation.

THE COURT: Do you have any further submissions then on any other aspect of this?

MR. SILVER: Not without repeating the submission. I mean if I'm right, you would be directing in respect of this issue on the address and the phone number. And then....

THE COURT: I go back over your points, but...

MR. SILVER: Right.

THE COURT: ...right now this cost issue I think is going have to be left in advance. I don't know how to handle that. But I have another two matters that I do want to raise with you: one is I would

5 like Mr. Best to surrender his passport also by
Monday at noon; two, Mr. Greenspan's office and Mr.
Greenspan to hold his passport until he gets
further direction from this court. And also in
these circumstances because I don't know what kind
of residence Mr. Best is going to secure, but I
would like him reporting to the Durham Regional
Police on the first and third Monday of each and
every month to confirm his current address and
10 telephone number. And, Madam Registrar, the
station that is open and available I just want the
address for it, the one we see when we have a
probation order.

15 COURT REGISTRAR: It's at 77 Centre Street in
Oshawa, Your Honour.

THE COURT: 77 Centre Street, Oshawa. All right,
just give me a second here.

20 MR. GREENSPAN: Your Honour, sorry to interrupt. I
should point out just as a matter - I took a look.
This Monday is the third Monday. So, would you
want the report to take place this coming Monday,
as well? I just....

25 THE COURT: I think it could because he's going to
be out today. He's going to be out in three
minutes here.

30 MR. GREENSPAN: Yeah, so I just wanted to make sure
that we were on the same page and that we realise
that Monday, the 19th, is the third Monday.

MR. SILVER: Could I just address one - and you
might have made your decision to defer the costs to
another day, but I do point out that Mr. Best, in

his affidavit of April, the 12th, of 2012...

THE COURT: Mmhm.

MR. SILVER: ...which is I imagine the affidavit
that was first before you...

THE COURT: Yes.

MR. GREENSPAN: ...at paragraph 75 says that:

...that in the order of January 15th Justice
Shaughnessy further ordered that I pay the
costs of the motion as follows....

And he's got the - to Mr. Ranking he's got the
exact amounts set out in his affidavit. So, to the
extent that your concern is about his knowledge of
the obligation to pay and the amounts, he covers
that himself in his own affidavit.

THE COURT: There's another component here, Mr.
Silver. I don't - and I don't want to put Mr.
Greenspan in a disposition, I don't know about his
ability to pay. Certainly, he has knowledge of
what he has to pay. I never had a doubt about
that. But it's his ability to pay. And then I
have to put it into the context of him retaining
new counsel. So, at this point in time, I'm not
prepared to - I'm not prepared to deal with that
issue at this time. If I adjourn the - we have the
three-week sittings. When do they end, Jannine?

COURT REGISTRAR: They finish on the 7th of
December, Your Honour, the Friday. So, the Monday
is the 10th.

MR. SILVER: Tenth.

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5 MR. GREENSPAN: Your Honour - and I'm sorry to rise, but if you're contemplating a return date the week of December 10th for any aspect relating to this, in the event that I'm still on the record could you make it December 11th if possible?

THE COURT: Sure.

MR. GREENSPAN: I'd appreciate it.

THE COURT: That's not a problem.

10 MR. GREENSPAN: Yeah, no, it's the only day that week that I'm not in court elsewhere.

THE COURT: Well, hopefully you won't have to come, but....

15 MR. GREENSPAN: I'm hoping not, as well, but just in case I wanted to - and I'm sorry, I didn't ask Mr. Silver about that.

MR. SILVER: Well, my own situation is that I'm scheduled for a right-hip replacement on December 6th.

20 THE COURT: So, you won't be around on this date.

MR. SILVER: Well, I don't think I'll be around on the 11th, but there'll be some - either Mr. Ranking will come for both of us or I'll find somebody else in my office.

25 THE COURT: Let me read you what I've endorsed so far. You'll get a copy of the endorsement.

30 ENDORSEMENT

SHAUGHNESSY, J. (Orally):

5 Mr. Best wishes to retain new counsel. I hereby
adjourn this application to December 11th, 2012 at
9:30 a.m. to permit Mr. Best to retain new counsel
or alternatively to confirm that Mr. Best has filed
a notice of intention to act in person.

10 Mr. Greenspan shall remain counsel of record until
at least December 11th, 2012, being the return date
of this application.

15 Mr. Greenspan shall provide to Mr. Ranking and Mr.
Silver the address of the residence at which Mr.
Best is residing on or before noon hour on Monday,
November 19th, 2012.

20 Mr. Ranking and Mr. Silver will keep the address
and telephone number confidential and will use the
information only for the purpose of conducting this
present litigation.

25 The cross-examination of Mr. Best on his affidavit
material is set for January 11th, 2013 on notice re
location and time.

30 I hereby find and direct that Mr. Ranking and
Silver on behalf of their respective clients may
file a notice of appearance without this step being
viewed as an attornment to the jurisdiction.

I further find and direct that Mr. Ranking and

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5 Silver on behalf of their respective clients may bring any motion to strike the application without such step being considered a fresh step in the proceeding.

10 I further order and direct that my order staying the execution of the warrant shall be amended to further provide that: one, Mr. Donald Best shall surrender his Canadian passport or any other passport to Mr. Brian Greenspan. Mr. Greenspan shall retain the passport until further order of this court. The passport is to be surrendered to Mr. Greenspan on or before Monday, November 19th, 15 2012 at twelve noon.

20 Mr. Best will present himself at the Durham Regional Police Station, 77 Centre Street, Oshawa every first and third Monday of the month to confirm his current address and telephone number.

25 Mr. Best will also promptly notify Mr. Ranking and Silver of any change in his address or telephone number.

30 This application will be adjourned to January 25th, at 9:30 a.m. to be spoken to re setting date for hearing.

Costs of today reserved to the hearing of the application.

Anything else?

MR. SILVER: I'm just a little bit confused about the December 11th date. That's just to speak to it, again?

THE COURT: Yes, because I want to come back and understand that there aren't any difficulties with the cross-examination dates, that the counsel has been appointed, if the counsel hasn't been appointed, then Mr. Best has filed his notice of intention to act in person. It's a monitoring date.

MR. SILVER: It's a monitoring date with the cross-examination take place after that and come back and argue the motion on the 25th of January.

MR. GREENSPAN: Yes.

THE COURT: Yeah, cross-examination is...

MR. SILVER: The 11th.

THE COURT: ...January 11th.

MR. SILVER: Okay.

MR. GREENSPAN: Yes.

THE COURT: I just want to monitor what's going to - and I'd sort of like to get Mr. Greenspan out of this one way or the other. So, I thought I had to pinpoint a date.

MR. GREENSPAN: I appreciate that.

MR. SILVER: Thank you.

MR. GREENSPAN: And I thank you for that, Your Honour. And as I understood it, December 11th we would know who would then be appearing on January 11th, whether it be new counsel or Mr. Best in his personal capacity.

5 THE COURT: Yes. And I saw in the letters that they actually sent Mr. Best the notice of intent to act in person, as well as the rule. So, it's not that he's unaware of what's happening.

MR. GREENSPAN: Okay. Thanks, sir. I appreciate it.

THE COURT: Thank you.

MR. GREENSPAN: Thank you, Your Honour.

10 THE COURT: And Mr. Best can step out of the dock. Thank you very much, officer.

15 *****

20

25

30

FORM 2
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))
Evidence Act

I, Gail Burtch,
(Name of Authorized Person)

certify that this document is a true and accurate transcript of the recording of
Nelson Barbados Group Ltd. in the

and- Cox et al Superior Court of Justice
(Name of Case) (Name of Court)

held at 150 Bond Street East, Oshawa, Ontario
(Court Address)

taken from _____, which has been certified in Form

Recording 2812-206-400668-20121116 1.

November 28, 2012 _____
(Date) (Signature of Authorized Person(s))

Court File No. 0141/07

SUPERIOR COURT OF JUSTICE

This is EXHIBIT 3M to the
Affidavit of Donald Best,
sworn April 23, 2016

B E T W E E N :


A Commissioner, etc.

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON
NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH
DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH
KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP
GREAVES, a.k.a PHILP GREAVES, GITTENS CLYDE TURNEY, R.G.
MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL
LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE
DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL
NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER,
DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS,
GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN
ASSOCIATES LIMITED, GOLF BARBADOS INC., KINGSLAND ESTATES
LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK
INTERNATIONAL CONSULTANTS INC., THORNBROOK
INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE
BARBADOS AGRICULTURAL CREDIT TRUST, PHEONIX ARTISTS
MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C.
SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL
BANK (BARBADOS) LTD., PRICEWATERHOUSECOOPERS
(BARBADOS), ATTORNEY GENERAL OF BARBADOS, the COUNTRY
OF BARBADOS, and JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF
VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND

BAYLEY, PETER SIMMONS, G.S. BROWN & ASSOCIATES LTD., GBI
GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC
INVESTMENTS LIMITED and LIFE OF BARBADOS LIMITED c.o.b. as
LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED,
DAVID CARMICHAEL SHOREY, PRICEWATERHOUSECOOPERS EAST
CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH
CONSTRUCTION CANADA LTD. AND
COMMONWEALTH CONSTRUCTION, INC.

Defendants

M O T I O N P R O C E E D I N G

BEFORE THE HONOURABLE JUSTICE B. SHAUGHNESSY
on December 11, 2012
at OSHAWA, Ontario

30 APPEARANCES:

N. Lutes
G. Ranking

Counsel for the Plaintiff
Counsel for the Co-defendant

1.

Nelson Barbados Group Ltd. v. Cox et al
Submissions

MONDAY, DECEMBER 10, 2012

5 THE COURT: All right, the matter of Nelson
Barbados and Cox and I know it's eleven twenty in
the morning. I was given material, an affidavit of
Mr. Best at about nine twenty-five or so this
morning. I've spent all of this time reading, what
are 46 pages, 310 single-spaced paragraphs of an
affidavit, plus what I would say is conservatively
another 75 pages of attachments. So that's why,
10 unfortunately, I've had to come into court later.
Now, it's...

MS. LUTES: Your Honour....

THE COURT: ...Ms. Loutes, you're appearing for
Mr. Best?

15 MS. LUTES: Yes, I was just going to....

THE COURT: Mr. Ranking, are you ready to proceed?
Are you representing Mr. Silver as well?

MR. RANKING: I am as well and he extends his
apologies. He's just finished hip surgery so he
could not attend.

20 THE COURT: I knew - he told me that on the last
occasion.

MR. RANKING: Yes.

25 MS. LUTES: And I am here on Mr. Greenspan's behalf
Your Honour. He apologizes that he couldn't be
here in person this morning. He had a doctor's
appointment. I'm his associate so we're here,
still technically on the record, pursuant to Your
Honour's previous endorsement that we'd be on the
30 record until at least today and hopefully we can
see what transpires this morning in terms of
working things out as it's Mr. Best's instructions

2.
Submissions

still that we no longer act for him.

5 THE COURT: I understand that but can I ask you some questions? Just to expedite things and I'm sure Mr. Ranking will be raising it but with the time that's available to me, I thought we were doing a very soft appearance today. I didn't think we were getting into anything substantial.

10 Primarily, this appointment was arranged because of the situation that Mr. Greenspan was in. So the things I'd like to know right off the top is one, has the passport been filed or placed in Mr. Greenspan's....

MR. RANKING: It has.

MS. LUTES: Yes.

15 MR. RANKING: I can address a number of issues which I think...

THE COURT: Yes, sorry Mr. Ranking.

MR. RANKING: ...we can go through relatively quickly....

20 THE COURT: Good.

MR. RANKING: The passport being one of them. But to assist Your Honour, I don't know - do you have an extra copy of the draft order?

MS. LUTES: I do.

25 MR. RANKING: I'm going to pass up the draft order that's been approved. It has been submitted to the court for signature; I gather it has not yet been signed.

THE COURT: I didn't see it, so.

30 MR. RANKING: But we're content - this as I say, has been approved by...

THE COURT: All right.

3.
Submissions

5 MR. RANKING: ...all. What I was going to draw
your attention to though, is I'd like to deal with
the first paragraph, dealing with the Notice of
Intention to Act in Person because the background
here was I got an email from Mr. Greenspan
indicating that he was not planning to attend today
and I responded to him expressing some concern
because while Mr. Best has faxed a Notice of
10 Intention to Act in Person to me, there is no
evidence that it's been filed with the court. And
so I then responded to Mr. Greenspan and indicated
that I was certainly content that he not attend
provided I had evidence that the Notice of
Intention to Act in Person had been filed. And I
15 said, and if in fact it hasn't been filed then
regrettably I am going to ask you or one of your
colleagues to attend and indeed Ms. Loutes is here.
So the problem that I am confronted with Your
Honour, is if you look at paragraph of your order
dated November 16th, it's quite clear that the
20 application is adjourned - adjourned to December
11th...

THE COURT: Right.

25 MR. RANKING: ...for the applicant either to retain
new counsel or alternatively to confirm that he has
filed a Notice of Intention to Act in Person.

THE COURT: Right.

30 MR. RANKING: I spoke to Mr. Best today, who's
refused to speak with me, and he has refused to
confirm....

THE COURT: All right, well let me tell you, it
came right up to my office and I think Madam

4.
Submissions

Registrar, if you check what was brought down to you, you'll have - it's somewhat in a hand-written form.

MR. RANKING: It is.

THE COURT: You've seen it?

MR. RANKING: I have seen it; I just don't know that it's been filed and - and my....

THE COURT: Well....

MR. RANKING: Mr. Best would not confirm that it's been filed so that....

THE COURT: I can direct that it's filed, right now.

MR. RANKING: Right. As long as that's done....

THE COURT: Can I just see it? There's a note on top; "Justice Shaughnessy is dealing with this", so just a minute. We've got a Notice of Appearance from Mr. Silver. No there's another - is there not - there's another, like it's on a fax form. These are appearances of counsel. Did I bring it down?

COURT SERVICES OFFICER: I'm not sure.

THE COURT: Hold on, maybe I've got it here. Here it is. Now, this is dated December 7th to the trial coordinator and it says, "Per the order of Justice Shaughnessy, I am submitting a Notice of Intention to Act in Person sent to me by Mr. Ranking on November 14th. I also attach a fax transmission receipt, proving I sent copies to Mr. Ranking, Mr. Silver, Mr. Greenspan and Bill McKenzie." And on the Notice of Intention to Act in Person, I assume you have this copy?

MR. RANKING: I do.

THE COURT: Do you want to check it?

5.
Submissions

MR. RANKING: I will. I don't need to do it now
Your Honour. I'm delighted that it's been filed.
Mr. Best had not confirmed that to me this morning.

THE COURT: Yes, well....

MR. RANKING: If that's been filed then I think
that puts my friend in a position where I no longer
need to - to trouble her, and certainly from my
client's perspective, and I'm grateful, thank you
for your advice that the Notice of Intention has
been filed.

THE COURT: The - but I do have a question on it.

MR. RANKING: Okay.

THE COURT: Now the second requirement over which I
had to unfortunately deal on the last occasion, was
getting Mr. Best to provide an address. The
address that's shown on the Notice of Intention to
Act in Person is an address in Markham. I'd like
to know counsel, is that an apartment building or
is that an actual house?

MS. LUTES: Could I have a moment Your Honour?

THE COURT: Yes, please.

MS. LUTES: Your Honour, Mr. Best has advised that
that's a house.

THE COURT: A house.

MS. LUTES: So that's the address and if my friend
could confirm this, my recollection is that we were
all copied - or maybe I wasn't on the email, but
all the parties were advised of that address at
some point, but if my friend could confirm that?

THE COURT: The other thing I noticed, all right,
that's fine. So Madam Registrar then, if it hasn't
been, would you please just mark this Notice of

6.
Submissions

Intention to Act in Person as filed, as part of the court file?

COURTROOM REGISTRAR: Yes Your Honour.

THE COURT: Thank you. All right Mr. Ranking, that takes care of that.

MR. RANKING: Thank you very much Your Honour. The second matter deals with the passport. That is dealt with in paragraph 6 a) of the Order.

THE COURT: Yes.

MR. RANKING: I've spoken with my friend because if Mr. Greenspan is no longer counsel of record, we wanted to deal with that and my friend, on behalf of Mr. Greenspan's office, has indicated that they are content to continue to hold Mr. Best's passport, until such time as Mr. Best engages new counsel and I'm certainly content that that occur and that we just proceed on that basis.

THE COURT: Yes.

MR. RANKING: Those are the two administrative matters that I wanted to deal with. I do want to speak to the issue of late filing of material that I only received this morning. It was faxed through on six different faxes between nine and ten o'clock last night. I do have submissions on that. I don't know how you wish the - the morning to unfold so I'm in your hands.

THE COURT: Well I think that we have dealt with the Mr. Greenspan issue.

MR. RANKING: I think we have.

THE COURT: I think we can let counsel go.

MR. RANKING: Yes.

MS. LUTES: Thank you Your Honour.

7.
Submissions

THE COURT: Thank you.

MR. RANKING: I guess Mr. Best, you can move up to the counsel table so that I can hear - get all this recorded and try to find out what we're going - what he's asking for. I think I know from reading the materials, but - in fact, I think I'm going to direct this a little bit because everyone's entitled to their time in court. They're not entitled to an unlimited time in court and frankly, I am right in the middle of a civil jury trial and I'm trying to get ready to charge my jury tomorrow morning, so I'm going to have to direct this just a little bit, not too much, just a little bit. Mr. Best, you want to retain counsel?

MR. BEST: Yes, absolutely.

THE COURT: Your affidavit material, now, I've read it so I don't have to hear you again. But I want to indicate, I'm very - there's a number of things that you want to do, that to me appear completely irrelevant to what I'm dealing with. First of all, this was your application, brought after you retained Mr. Greenspan to purge the contempt. That's what the original application was. As I read your material, and you correct me if I'm wrong, the - you indicate now that you want to bring malpractice actions as - I'm using your words, against Mr. Ranking, Mr. Silver, I'm not sure who else. Is that right?

MR. BEST: May I - may I speak to you sir?

THE COURT: Yes, but you answer my question and then I'll hear you. Is that right? Is that not what your material indicates?

8.
Submissions

MR. BEST: Sir, it - my material indicates Your Honour, that I'm looking for a lawyer who's willing...

THE COURT: I know that but I'm also asking....

MR. BEST: ...to....

THE COURT: Can you answer my question first and then I'll hear you on the others.

MR. BEST: Sir I was looking for a malpractice lawyer...

THE COURT: Right, for...

MR. BEST: ...as to what....

THE COURT: ...what reason?

MR. BEST: As to what will come of that, I would have to take instructions and get advice from my lawyer. As I - if you could just give me a moment here sir, there's a section that I've written about that.

THE COURT: I read it. I've read it. You go ahead and look; I know what's in there.

MR. BEST: I wanted Your Honour to - ask your permission to file this with the recordings and all the evidence. I've served it on Mr. Ranking and Mr. Silver this morning. Mr. Ranking accepted it for Mr. Silver.

THE COURT: No, no, no. Mr. Ranking's already indicated that there's going to be issue about whether you can even file - have a late filing of the material.

MR. BEST: I see sir.

THE COURT: So I - I'm trying to understand; just get this focused. I think that's what I'm trying to get, is a focus here.

9.
Submissions

MR. BEST: Your Honour, perhaps if I could read you....

THE COURT: All right. Just forget my question then. Getting a new lawyer, what's the difficulty because you seem to have financial means based on the affidavit you've put before the court as to what you paid Mr. Greenspan. I don't...

MR. BEST: Your Honour....

THE COURT: ...know if I should be told all that. But I've been told, so you obviously have the financial ability, right?

MR. BEST: If I could - if I could read about my efforts to get a lawyer, that would answer your question Your Honour. Just - if I could just have a moment to find the particular section Your Honour. I have - there's a list of lawyers in here.

THE COURT: I saw it.

MR. BEST: Yes, thank you Your Honour, and my efforts to find and retain an experienced lawyer who's willing to represent me - they're serious and vigorous and they continue daily. And Your Honour, I've spoken with many more lawyers than are even indicated in the - in the list and of the - you've asked me what the difficulty is. Well of the lawyers who refused my case, some of the reasons given include conflicts of interests with the large law firms and lawyers, conflicts with some of the various companies, using the PricewaterhouseCoopers brand, lack of experience in civil contempt, a lack of experience in civil cases, a lack of experience in criminal cases where incarceration is a

10.
Submissions

5 possibility, and a reluctance to take legal steps
that could damage the careers of other lawyers and
fears that taking the case would damage their
business and/or social relationships. Some lawyers
refused my case and did not provide their reasons
or - or didn't return my calls. But as an example,
Mr. Will McDowell of Lenczner Slaght, I'm not sure
if I'm pronouncing the law firm's name correctly,
he - he - I had rather a - a communication with him
10 and he said, "Mr. Best, I'm afraid that by reason
of this firm's relationship with several of the
lawyers and the institutions on the list, including
current client relationships, we are unable to
represent you. We appreciate being advised of the
full dimensions of the problem so that we could do
15 a proper conflict search. All the best." And I
had sent him quite - some material. I've attempted
to retain a lawyer, Your Honour, and I've had many.
You - this is why I need a lawyer to speak for me
and put it all before the court since Mr. McKenzie
20 was taken from me.

THE COURT: Why - can I ask you....

MR. BEST: Yes, Your Honour.

25 THE COURT: In the material that you've filed, you
mentioned Mr. Greenspan brought a Mr. Davis on
board to assist him as it relates to the civil
parts of this. Is there any reason you can't
retain Mr. Davis, because obviously he must have
some knowledge as a result of his involvement with
Mr. Greenspan, according to your affidavit, which
30 is - what is the date this affidavit was sworn?
Just so we've got it on the record.

11.
Submissions

5
MR. BEST: May I just take a moment and have a glass of water here Your Honour? I'm trying to think of how to answer the question. I don't know how to answer the question in the proper way. I need a lawyer but....

THE COURT: You're answering it fine. I'm not having any difficulty understanding you. I'm just saying your affidavit....

MR. BEST: I hear you Your Honour.

10
THE COURT: I'm just looking for the date that the affidavit....

MR. BEST: I - I hear you Your Honour. I didn't retain Mr. Davis; Mr. Greenspan did.

15
THE COURT: Right, yes. Your affidavit dated December 10th is what I'm referring to.

MR. BEST: Your Honour, I don't know if I want to go there but if you order me to, I will tell you why.

20
THE COURT: No, if you don't - if you're saying you didn't meet Mr. Davis or Mr. Davis wasn't prepared to take on your case, that's fine. If you also feel that you don't have confidence in Mr. Davis, you can say that. That's fine; I can accept that. I'm just curious...

25
MR. BEST: Well Your Honour, I'll tell you....

THE COURT: ...as to why....

MR. BEST: I'll just tell you the truth; that's all I got. We're in a meeting....

THE COURT: No, no, no. You're going to....

30
MR. BEST: I - no, no.

THE COURT: You're going to get into matters of solicitor and client privilege and...

12.
Submissions

MR. BEST: I see.

THE COURT: ...I don't want to get into that.
Simply, I just asked a question; I think it can
have a simple answer without you getting into
solicitor/client detail. I....

MR. BEST: Mr. Davis made a statement that....

THE COURT: Is it your preference not to have
Mr. Davis?

MR. BEST: Sorry sir.

THE COURT: Go ahead.

MR. BEST: Mr. Davis made a statement. On the
basis of that, I decided I couldn't possibly hire
him.

THE COURT: All right.

MR. BEST: Your Honour, I've written to the - let
me continue here please. I contacted the Referral
Service of the Law Society of Upper Canada and I've
been told there's a list of lawyers who've
indicated they will engage in malpractice lawsuits.
That wasn't because I'm saying I decided to
introduce a malpractice lawsuit Your Honour. It's
just that I was having trouble and I figured that a
lawyer who engaged in that kind of work wouldn't
mind taking on other lawyers. And...

THE COURT: But Mr. Best....

MR. BEST: ...so I wrote them a letter and the
letters are exhibits. I wrote them two letters.

THE COURT: I see them; I've read them.

MR. BEST: And then I wrote Law-Pro and Your
Honour, as I say, I'm having difficulty, not
because I don't want a lawyer; I want a lawyer. I
desperately want a lawyer. I'm having difficulties

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Submissions

5 because it seems all the - all the senior lawyers I
talk to; everybody is - knows everybody and they
don't want to break any eggs. And the junior
lawyers, they - they - they say they are too junior
and for those reasons that I read. So - but Your
Honour, there must be someone. There must be
someone and I am working diligently - I really,
really am. It's so unfair and it's so unfair for
10 Mr. Silver and Mr. Ranking to claim, and I'm - let
me read this. It's just terribly unfair; it's
unjust. Before I - yes, there's also - I get
people who have 20 years' civil experience.
They're very senior and they say, oh, you could go
to jail; you need a criminal lawyer. But I've been
that route as we see. And - I'm sorry, I've lost
15 my - my train of thought here Your Honour. I
really do need a lawyer. I want a lawyer. It's -
it is unfair that they have indicated - I've got to
find it; give me a minute here Your Honour please.
It is very opportunistic and a false position taken
20 by Mr. Silver and Mr. Ranking that I somehow
engineered to be without a lawyer. They wrote -
Mr. Ranking wrote me a letter and said, oh it's all
your fault; you're responsible for it. It is no
fault of mine. It is unfair and unjust that I am
25 being penalized for something out of my knowledge
and control. I had - when Mr. Greenspan hired
Mr. Davis to advise Mr. Greenspan, it was a
surprise to me. When he told me he had already
spoken to Milt Davis, this was in late September of
30 2012, it was a terrible surprise to me. I had
already spent 18 months and 60 some odd thousand

14.
Submissions

dollars, borrowed, and then as soon as the - the -
I'll have to refer to them as "nasty emails",
started flying between Mr. Greenspan and
Mr. Ranking and Mr. Silver. Mr. Greenspan....

MR. RANKING: Your Honour....

MR. BEST: Mr. Greenspan....

THE COURT: Just a minute Mr. Best.

MR. RANKING: I am not aware of any nasty emails
passing between myself and Mr. Greenspan.

THE COURT: I'm not either.

MR. BEST: Well...

THE COURT: But you know...

MR. BEST: ...I don't even know if I can go there.

THE COURT: ...we're going to get off on a tangent.

MR. BEST: But I - but it....

THE COURT: Just let that go. Just go ahead Mr.
Best.

MR. BEST: In any event, it is unfair and unjust.
Now before Mr. Greenspan, I had another lawyer for
nine months and I paid him money too; he was a
civil lawyer. And at the end, he said, "I think
you need a criminal lawyer." A second opinion,
Mr. Greenspan, away I went. So Your Honour, I
desperately need a lawyer. My actions to date have
shown that I - I've - I'm desperate to find a
lawyer and I'm working diligently. It's Christmas;
it's Hanukah. I can't even get people to return my
calls so all I'm asking for Your Honour, are two
things really. For today, there's three - three
big things that concern me. One is I need time to
find my lawyer and I think it's - it's unfair and
unjust under all the circumstances that the cross-

15.
Submissions

5 examination go ahead until I can properly find and brief a lawyer. And I sent a letter, an email, to Mr. Ranking and Mr. Silver. I have it here. I proposed that things be put aside until February and that the cross-examinations be put aside.

February - by February, somebody's got to be my lawyer; after Christmas and Hanukah. And if that doesn't happen, I - I would be asking the court to appoint me a lawyer or help me find a lawyer.

10 THE COURT: That's not the role of the court.

MR. BEST: Well I don't know that Your Honour. I'm sorry if I've offended you. I - I don't know that. So I just ask for it to be laid over until February to let me find a lawyer, post-pone the cross-examinations. It would do no harm. And - and the other thing is, I got arrested the other day Your Honour. I got arrested and the outstanding warrant is still on CPIC.

15 THE COURT: Well how did you get - how did you get arrested?

20 MR. BEST: I went to the police station to report as you ordered me sir.

THE COURT: All right, and that's where they arrested you?

25 MR. BEST: And - and I got in there and they said, "Hey, there's a warrant outstanding for your arrest." And I said, "No, there's - carry a copy of this...."

THE COURT: A copy of the court order.

30 MR. BEST: A copy of the court order, right there.

THE COURT: Right.

MR. BEST: And the guy says to me, and rightly so,

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Submissions

5 he's a nice young man; he's sharp. He says,
"Anybody can do up that on a computer." And he
says, "I go by what's on this computer." Now Your
Honour, I don't know, I mean, you wrote an order to
put...

THE COURT: Well he....

MR. BEST: ...the arrest warrant out. I - and it
went...

THE COURT: Wait a minute.

MR. BEST: ...right to the police. I don't know.

10 THE COURT: Mr. Best, please, you are a retired
police officer...

MR. BEST: Yes sir.

THE COURT: ...or you were a police officer.

MR. BEST: Yes sir.

15 THE COURT: I don't know the basis upon which you
left but, and so you're fully aware of what the law
is and as it relates to warrants and you carry a
copy of the order in your pocket. You produced it
to the police officer. He didn't detain you in
20 custody, did he?

MR. BEST: Your Honour, he did for - I had....

THE COURT: Until you produced the order?

MR. BEST: Your Honour, I actually didn't have the
order with me and I had to have someone - I had to
25 call someone on the phone and have them come and
bring it to me.

THE COURT: Well that's....

MR. BEST: But here's the thing Your Honour, and
even then he wasn't sure, but here's the thing Your
Honour, there should be a procedure. There should
30 be - they obeyed your order to put it on - to put

17.
Submissions

the arrest warrant on the system, why won't they obey your order to - to put it in....

5 THE COURT: I have made an order, which was at the request of your then counsel, Mr. Greenspan, frankly without anyone being present. But - you produced the transcript of the attendance of Mr. Greenspan before me, in your materials. It was on the basis that Mr. Greenspan simply asked that the execution of the warrant be suspended until 10 certain dates, to enable you to come back into the country and to be able then to properly instruct counsel. That's what I did. And then there was asked, there was a request for a further extension in terms of execution of the warrant. I'm not setting aside the warrant. The warrant is still in place. You've been convicted. I think the point 15 your missing here, if I can just get you focused...

MR. BEST: Yes Your Honour.

20 THE COURT: ...is that you've already been convicted of contempt. Mr. Greenspan brought an application to purge the contempt. Now, without deciding the case, I already gave a date, maybe two dates, but certainly - I think it's two dates in the materials, for you to purge your contempt. You didn't come and you were - and I made a finding 25 that you were aware. So notwithstanding all of that, Mr. Greenspan sought the order. The order he requested is the order I gave. I'm not doing anything else with the order.

30 MR. BEST: Your Honour, I....

THE COURT: You're here for a limited purpose and frankly...

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Submissions

MR. BEST: Your Honour?

THE COURT: ...here to purge the contempt.

MR. BEST: I don't understand. I apologize, I just don't understand. I need a lawyer. I'm just asking for a fair shot to get a lawyer Your Honour.

THE COURT: When you say you don't understand....

MR. BEST: This is not my fault.

THE COURT: I just want to make one other comment.

In your own materials, this is your own affidavit materials filed today, and I'm not going to go through this, but on the reasons for motion for contempt, which is filed in the - next to your materials, you provide I think it's Exhibit Z, to your affidavit sworn December 10, 2012. You put in the reasons, my reasons on the motion for contempt, and they're written, and they're detailed. I detail in that, the difficulties and problems that were encountered throughout that litigation, in which you were President of Nelson Barbados, represented by Mr. McKenzie and the difficulties and problems we had with UPS post box addresses in Kingston, in Toronto; the Cloverdale Mall, the matters of answers to questions that should have taken place during the course of the litigation that didn't happen. And I - then the examination that came up, all of that is detailed in my reasons, including the background. And I also, in one of the reasons, which you also attach, which is - sorry, it's under the same decision. I refer at paragraph 30 of that decision to all of the cases in which you were involved with William McKenzie in one capacity or another, including third party,

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5 sometimes as an affiant in affidavits, and I
outline at least seven incidents that were put
before the court of your experience involving
litigation. So you come here Mr. McKenzie -
Mr. Best, and you say, "I need a lawyer." Well, I
would like you to have a lawyer. If there's
certain senior lawyers who just do not wish to take
on the case, that you consulted, then that's
unfortunate. But nevertheless, the Law Society of
10 Upper Canada referral has provided you with the
list of names of lawyers. You don't want a junior
lawyer; that may be unfortunate. But I cannot do
anything more than hear you on the issue but I -
it's your choice as to which lawyer to retain.
It's not that there's no lawyer that you can
15 retain. It's that you cannot retain the lawyers
you want; that's quite a difference. And might I
say, the application I think by Mr. Greenspan was
in August, to have you come into the country. Even
at that time in the transcript that you've
20 provided, there was a discussion about a hearing
date in October. Now Mr. Greenspan getting off the
record was a new development, no doubt about it.
But on the last occasion, when you're still
represented by Mr. Greenspan, and Mr. Silver was
25 here representing himself and Mr. Ranking, we began
the process of setting dates and we set the date
for the cross-examination. So I don't - while I'm
quite - while I hear you about your efforts, I
don't believe that you cannot retain counsel; you
30 cannot retain counsel, senior counsel of your
choice. You can retain counsel of your choice,

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Submissions

perhaps with less experience. That really is how I see the issue. Now you tell me what you have to say on that point.

MR. BEST: Yes Your Honour, let me - give me just a moment please. One moment Your Honour. I got this today Your Honour. It's a - just give me a moment. It's a transcript from my last appearance; I only got it today.

THE COURT: You got it today? I thought - I've got it in the affidavit material.

MR. BEST: No sir, this is from November 16th. The one that is in the affidavit material is from October 12th Your Honour.

THE COURT: Okay.

MR. BEST: If you just give me a moment please. I'm - what I'm looking for Your Honour, I briefly read this this morning. There is a statement here by Your Honour about - once again about me being an experienced litigant.

THE COURT: Well you may have before - but I've also answered it....

MR. BEST: But - but it's totally incorrect Your Honour. If you would excuse me for one moment - because obviously you were under a misinformation to speak about it.

THE COURT: Well you certainly have a recollection of it; you put into in your affidavit.

MR. BEST: But I wanted to put the quote in Your Honour, the exact quote. I wanted to locate it here Your Honour, because Your Honour has just brought it up again. But let me read something else to start and then I'll get back to this one.

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Now Your Honour, I have no idea why you would say that I am an experienced litigator because....

THE COURT: I already gave you - I gave you - I directed you to my reasons and I'm...

MR. BEST: I understand Your Honour.

THE COURT: We're not arguing the issue - that issue today.

MR. BEST: I understand but I'm saying that - that you've been misinformed and I can show you that. Let me just read on. First of all, I was a police officer. I did what police officers normally do; nothing to do with civil - civil cases. During my time as police officer, I never appeared in court except as a witness. I was never a prosecutor or a Crown Attorney. I've never received any training in conducting civil litigation. In my recollection, I've read no books about conducting civil litigation and with the exception of the Nelson Barbados case, I've never been a plaintiff in a civil case in my life, nor has any company owned by me.

THE COURT: Were you a third party?

MR. BEST: I don't even know what that means Your Honour?

THE COURT: Go ahead.

MR. BEST: I've never been trained as, licensed as or acted as a paralegal or a lawyer. I am unfamiliar with rules and procedures of court litigation. To my recollection I have never personally filed any papers in any court about any civil litigation and neither have I appeared before a judge to deliver arguments during a civil

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Submissions

litigation. This is the first time I have ever stood in a court like this in my life Your Honour.

THE COURT: Well listen, I've read the affidavit material.

MR. BEST: I....

THE COURT: I think I've heard enough on that. So what you today, you've outlined to me.

MR. BEST: Yes Your Honour.

THE COURT: You wanted the CPIC lifted that they - the execution of the warrant with CPIC. I've told you I will not do that. And my reasons are, the very basis of the application made by Mr. Greenspan which is in a transcript, which is attached to your material. And so that warrant remains outstanding and you'd be wise to carry the court order with you and I imposed the reporting condition because the circumstances under which you were brought back had changed; that is Mr. Greenspan was no longer representing you and I was very concerned about having due regard to my two, over two-year involvement with multiple applications and the difficulty in locating you, having you contacted, and your use of UPS addresses. So that's - I'm not going to do anything about that. Now, we're dealing with - you need time for a lawyer and you want to put everything off until February. Now in the hearing, I don't know Mr. Ranking, whether you have that transcript of that prior attendance and I'm not sure what it says. He's got a copy of the transcript so it must be available. But....

MR. RANKING: I was told my Mr. Silver's yesterday that it should be available for pick up today. I

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was going to pick it up today but I don't....

THE COURT: Well, I don't know if I got into this discussion with counsel but I clearly indicated that you know, I was available, I would make time in October for this hearing. I'd hear it in November. I would hear it in December.

Mr. Greenspan got off the record and now we had a date fixed; no objection was taken for January 11th.

MR. RANKING: January 11th for the cross-examination...

THE COURT: Right.

MR. RANKING: ...and January 25th for the return of the application.

THE COURT: Right.

MR. RANKING: And I don't know about the return date because I thought he had not fixed that, that that was left out. But what I said, I believe I said, I don't know, but to counsel is that I will not be here between somewhere around February 22nd, right out to March 25th. I then come back in and I begin, from March 25th to approximately May 6th, pre-trial motions in a criminal homicide. And that I'd begin the homicide with a jury May 6th, running right through to July. And I think that's where a lot of this information is probably now being understood. And then I said, I need to rest a little this summer and then I've got to get ready for another homicide which will start in September and will run through to December. And then I'm going supernumerary on January 1, 2014. So what I'm - if I didn't outline it and maybe Mr. Best has the transcript, he can tell me. That's what we

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Submissions

5 were working against and hence, I was trying to do
my level best to squeeze everything in and get it
done before I leave towards the end of February.
And my schedule - I have to be the one to hear this
because it's my finding of contempt. And again, I
just remind Mr. Best, your application brought by
your then counsel, was to purge the contempt. In
other words, change it, alter it, or expunge it, or
none of the above. And that's - that was what's
10 before the court. Now, in your various letters to
the Law Society that you put in, to Law-Pro, which
we might even discuss whether that's appropriate or
not, but everyone of your letters is a lengthy,
lengthy letter where you go into needing lawyers,
on malpractice, and I don't know if they
15 specifically refer to Mr. Ranking or Mr. Silver.
But from your affidavit materials, clearly, you
know, you've turned your sights on them and I just
want to say to you Mr. Best, that's not what I'm
dealing with. I'm dealing with contempt, already
20 found. I've already found you in contempt of the
court and in contempt of court orders and you're
seeking to change that. It's as simple as that.
It's not about malpractice. You want to go into
forensic voice analysis; you're saying that the
25 somehow the court has been misled by these counsel.
MR. BEST: That's exactly what I'm saying Your
Honour.
THE COURT: You're entitled to say that but I'm
30 telling you right now, if you're saying that you're
going prove that the fundamental basis to set aside
was the contempt, was maleficence on the part of

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10
Mr. Ranking and Mr. Silver, and I'm going to say to you, go back and read again, my reasons which were then supported in court and you chose not to attend court when you had notice of the application. But I'm saying to you, I'm not expanding this to a brand new hearing. I'm not re-litigating. You must understand this Mr. Best; I am not the Court of Appeal. I made - I gave a judgment. I made a finding. I am not the Court of Appeal. The Court of Appeal deals with anything that they feel I did wrong. The Court of Appeal is where you make applications for new evidence, not me.

MR. BEST: Your Honour, I have no wish to offend the court. I don't know what I'm doing here.

15
THE COURT: You're not offending me. I'm trying to...

MR. BEST: And I'm sorry.

THE COURT: ...get you focused. That's what I'm trying to do.

20
MR. BEST: I didn't mean to anger you.

THE COURT: I'm not angry at all. I wanted to say to you, how long did it take you to prepare that material that you have in front of you right now that you've served or sent to me?

25
MR. BEST: I....

THE COURT: Any estimate?

MR. BEST: All weekend, Your Honour.

THE COURT: A weekend?

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MR. BEST: All weekend, yes. I guess it all comes from other things too. But Your Honour, I really do need more but may I - may I file this?

THE COURT: We'll come back to that in a moment.

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Let's deal with the lawyer. So am I correct that -
let's stop and get the submissions of Mr. Ranking
now on your request to adjourn the cross-
examination of January 11th and to really adjourn
any application hearing and you say to put
everything off to February.

MR. BEST: Well....

THE COURT: But I don't know what you mean by that.

10
MR. BEST: Your - Your Honour, maybe I can make it
clearer. There's a January 25th date to set a
hearing date, which was....

THE COURT: That's right.

MR. BEST: That's right.

MR. RANKING: I've just pulled up the typed
endorsement.

15
MR. BEST: May I....

MR. RANKING: I wasn't here Your Honour, but yes,
what it says in the typed endorsement, "This
application....

20
MR. BEST: May I - may I finish?

THE COURT: No, no, he's just trying to help me.
He's right...

MR. RANKING: I'm just trying to help you Mr. Best.

25
THE COURT: ...because - and he's agreeing with
you.

MR. BEST: I don't need any help from someone who -
who lied to me, lied to the court.

THE COURT: Mr. Best, this is my court.

MR. BEST: Sorry Your Honour.

30
THE COURT: You will not speak to Mr. Ranking in
that - in those terms. If you....

MR. BEST: Sorry Your Honour.

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THE COURT: It's not....

MR. BEST: I just don't know what to do. I need a lawyer.

THE COURT: That is not the correct approach.

Mr. Ranking is just trying to get me corrected on the date of January 25th.

MR. RANKING: Thank you Your Honour. The cumulative paragraph of your endorsement provides, "This application will be adjourned to January 25th at 9:30 a.m. PDST, resetting date for hearing."

THE COURT: That's the order that's sitting right in front of me. I got it, yes.

MR. RANKING: Thank you Your Honour.

THE COURT: All right. Now well Mr. Best, let's just have you stop there for a moment. I want to hear from Mr. Ranking about the....

MR. BEST: May I sit down Your Honour?

THE COURT: Yes, about the date - about the adjournment of the date set for the cross-examination and the date set to set a date. So January 11th and January 25th?

MR. RANKING: Your Honour, I speak on behalf of myself and behalf of Mr. Silver and we are instructed to ask this Honourable Court that those dates be maintained and that no adjournment be granted. And if I just can take you back to the history which you reviewed very briefly, this order was granted on the 9th of August. It was granted ex-parte when neither PricewaterhouseCoopers nor Mr. Cox had an opportunity to attend and to make submissions. The decision may well have been different had we had the opportunity to have been

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Submissions

5 served with the materials and the opportunity to
cross-examine. That didn't occur and I simply make
that observation briefly by way of introduction.
As you have pointed out, the motion was then
returnable October the 12th; that date was then
moved to November the 16th and we are now here at
December the 11th. For those reasons and more
importantly the reasons which you have expressed to
both Mr. Best and I with respect to your
10 availability, our position is that the cross-
examination ought to proceed on January the 11th and
it may need - we may need more than one day Your
Honour. And that we should be returning before
you, or certainly working with Ms. Travis to secure
a date for the application as quickly as possible.
15 Those are my submissions. Now I should also
perhaps pause to observe, with respect to the
November 17th issue in your contempt order, the
contempt order was not issued merely by a reason of
a telephone call on November the 17th. There was
20 another attendance on November the 25th which
Mr. Best did not attend and there was also, as you
have alluded to this morning, the attendance on
January the 15th before Your Honour when Mr. Best
did not attend either. And I note that many, in my
25 respectful submission, much of the information in
Mr. Best's affidavit, I consider to be irrelevant
and I do object to having it filed. I am -
regrettably I had by BlackBerry on. I should tell
30 the court as an officer, I did not receive any of
the materials yesterday and I'm reading from an
email from Mr. Silver, who indicated that he

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received six faxes, sent last night, the first of which came at 9:52 p.m. and the last of which came at 10:29 p.m. In the circumstances Your Honour, and of course you've read the materials, but I would ask that the materials not be - not be filed. There is one other issue though.

10
THE COURT: Just on that, so all right. So it's - he wants - he seeks late filing. So I - what do I do? I can put it off and say all right, well then serve - you've received it but he cannot file it before a certain date. I mean, just - do you see what I'm saying to him about that circular argument and then you're going to cross-examinations. I just don't know - I'm trying to look for how to better procedurally expedite matters so we get on with this.

15
MR. RANKING: Right. As long as it's clear in the court record, when I received - I didn't receive the materials until nine thirty five this morning and in the circumstances Your Honour, I'm not going to press the point more than I have. I just wanted it to be clear and for Mr. Best to extend some courtesies to counsel, which I haven't seen extended. If he is going to be acting for himself, we need advanced notice. And there is the other obvious issue; if the cross-examination is going to take place on the 11th of January, you know, we would like confirmation that Mr. Best is going to attend and we would like an order requiring him to attend on January the 11th because we're going to be spending a great deal of time and effort to prepare for that cross-examination. We don't want to be in
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position where we are taking our client's hard
earned money preparing for a cross-examination only
to find that Mr. Best did not attend. I have one
other very brief submission, Your Honour, and it
has to do with what I consider, to be again,
another difficulty for Mr. Best and it is this;
when Your Honour granted the order on January the
15th, 2010, that was the contempt order. You
ordered Mr. Best personally to pay costs and you
will recall the very expensive litigation that this
particular matter entailed. PWC was awarded costs
of \$50,632.90. Mr. Silver's clients were awarded
\$13,230. We've seen from the material that's been
filed that Mr. Best is able to pay for the very
experienced counsel of Mr. Greenspan and based on
Mr. Best's submissions today that he in fact
engaged in other counsel. I respectfully request
both on behalf of Mr. Silver's client and my
client, that a condition of Mr. Best being
permitted to proceed with this application be that
he pay the costs ordered in paragraph 10 of your
order dated January the 15th, 2010. Now I have an
alternative submission with respect to that Your
Honour, and that is this; if Your Honour is
uncomfortable requiring Mr. Best to make that
payment by reason of the application which is
outstanding. At a minimum, I respectfully request
that all of the costs enumerated in paragraph 10 -
because there are costs for Mr. Roman's clients and
those of Ms. Clark as well. At a minimum, I
request that those costs be paid into court so as
to ensure that at the end of this, there are at

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least the costs that were awarded by Your Honour and that our clients will at least recover those costs, if indeed Mr. Best's application is not successful.

5 THE COURT: Although many, many matters remain alive in my memory concerning this case, in the end, counsel came in on behalf of Mr. McKenzie, I presume it was Law-Pro. Didn't Law-Pro pay costs and why - I've got a confusion in my mind, what happened on that...

10 MR. RANKING: Right.

THE COURT: ...occasion?

MR. RANKING: What happened - yes, Mr. Duarte was replaced by....

15 THE COURT: Mr. Duarte coming off the record, I remember.

MR. RANKING: He was replaced by Mr. Rolland.

THE COURT: Right.

MR. RANKING: Ian Roland, of Paliare Roland.

20 THE COURT: Right.

MR. RANKING: There was lengthy discussions Your Honour, which then resulted in minutes of settlement...

THE COURT: Right.

25 MR. RANKING: ...that were executed on June the 7th.

THE COURT: Right.

MR. RANKING: And Mr. Silver and I then attended before you...

THE COURT: Yes.

30 MR. RANKING: ...and you'll recall we wanted to file these minutes of settlement as a matter of public record...

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THE COURT: Right.

MR. RANKING: ...because of litigation that was taking place in Florida.

THE COURT: Right.

MR. RANKING: And we also filed seven discs so as to ensure those documents were filed. These minutes of settlement provide for very extensive payment to the various parties, including you'll recall Mr. Bristow; you'll recall Ms. Clark, Mr. Schabas and others. Paragraph three of this, the long and the short of it, is those cost payments did not deal with the cost payments I am now seeking be paid by Mr. Best. Paragraph three provides, "PWC and the Cox defendants confirm that payment of the above amount satisfies all claims for costs in respect of the action against all respondents listed in paragraph one of the further further amended Notice of Motion dated April 22nd, including of the costs motion, except that PWC and the Cox defendants do not release Mr. Donald Best and shall be at liberty to pursue him for the costs, respectively \$50,632.90 and \$13,230 and contempt reflected in the order made by Justice Shaughnessy dated January 15, 2010, attached as Schedule B." And that was the paragraph to which I just referred you. So your recollection is absolutely accurate Your Honour. We were paid costs but the costs that were paid did not satisfy the cost award that you made on the 15th of January, 2010. Subject to any questions Your Honour, those are my submissions.

THE COURT: All right. Mr. Best, do you want to

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5 respond to that? So in short order, Mr. Ranking is saying no adjournment of the cross-examination, he wants the application date set and he's also seeking an order - well I've already ordered the examination to take place on January 11th, pursuant to the order of the 16th of November, which I'll sign for you; so that's taken care of. So I've already directed him to attend, so I don't think I have to make a further order.

10 MR. RANKING: Yes, thank you Your Honour.

THE COURT: And then there's this issue of some 63, almost \$64,000 in costs that relate to the January 15th order that Mr. Ranking is asking be paid or alternatively, that you pay the money into court, pending your application.

15 MR. BEST: Your Honour?

THE COURT: The hearing of your application. So this is your opportunity to reply to those....

20 MR. BEST: I'm sorry Your Honour, I didn't realize that. Your Honour, as to the costs, I need a lawyer. Mr. Greenspan explained to the court, he didn't even know what they were - what it was all about and I - I can't say that I could do better than Mr. Greenspan. So I - I can't say anything
25 Your Honour; I need a lawyer for that. As to the cross-examination, it just seems so unfair Your Honour. It just seems so unfair. I - this is not my fault, what has happened and I am trying so hard to get a lawyer and I need a lawyer and it's a
30 serious matter. I'm going to jail for three months and if I don't convince the court and argue properly, I don't even know where forms are filed.

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5 It's just so unfair. They want to rush to justice. They want to rush to justice to gain an advantage over me and it's just so unfair Your Honour. This is not - this is not my intention to - to be without a lawyer. Everything I've done has - has - I've tried to do it properly and I've tried to get a lawyer. I'm trying to get a lawyer. Half the problem is, we're at Hanukah and Christmas. People don't even return their emails or their faxes or answer the phones.

10 THE COURT: Hanukah is eight days and Christmas, we haven't even got there.

MR. BEST: Well....

15 THE COURT: I've heard you say that again. I'm working; jurors are hearing a trial for the last three weeks; they're here. I just....

MR. BEST: Your Honour it just seems....

THE COURT: The difficulty...

MR. BEST: Sorry.

20 THE COURT: ...you're having is, when I look at the type of letter that you wrote to the Law Society of Upper Canada Lawyer Referral Service, and in particular, I think the Treasurer of the Law Society I think got it. You then wrote a letter to him and then you wrote Law-Pro. I mean, those types - in that letter, which is very long, you don't - you want a lawyer that specializes in what you call "malpractice". So effectively it's saying "I want to sue" to other lawyers or some other number of lawyers. It doesn't say, and frankly I said this before, in your own material - your own material properly states that contempt is a quasi-

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5 criminal proceeding in a civil context. It is not
complicated. It really is not complicated. What
is complicated is all the facts and history that
went on in relation to the Barbados - Nelson
Barbados versus Cox action. But that's been
decided and I don't think you've got it clearly in
your mind or you - what you - I think you've got it
clear in your mind that you're going to bring all
10 of those issues back because you keep talking about
the very complicated history. You're going to
bring all those issues and re-litigate them. I
think all counsel really had to do - really have to
have to do to understand this entire proceeding,
and it appears to me you have it, is read my
Reasons for Judgment. I make findings of fact on
15 all, a multiplicity of issues. In fact, not all of
the reasons are in here, of the issues I had to
decide, including threats and all of that material.
I gave written reasons on all of it. It wouldn't
take a lawyer very long to sit down, perhaps in a
20 few - no more than two to three hours to get a
history, because I think - I spent a lot of time
crafting my Reasons and detailing the history. But
this narrows down to, you've been found in
contempt. I gave reasons why I found you in
25 contempt. I cited the principles of law that I
applied and I imposed a sentence. Your
application, brought by Mr. Greenspan, but it's
your application, is to purge the contempt; to have
that order modified, changed or expunged, or as I
30 say, none of the above. Depending on - your
application is none of the above, but I may or may

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not grant any of that relief. But that's what it is. That's what this is and it's not as complicated as you would postulate in your - in your affidavit dated December 10th. So I say to you, I have been dealing with this matter since August; it's now December the 11th. On November the 16th we set - we set dates with you know, knowing full well that Mr. Greenspan was no longer going to act for you. We set a date for a cross-examination. I heard no objection to that date and now you - you narrate a history that you can't retain counsel. But read in the context of the material you file, which I'm going to permit the filing of the material today and counsel - and counsel may file responding material if they so wish. But I think that material should be there for the purposes of any cross-examination that's going to take place. But - but Mr. Best, I'm not going to hear a re-litigation of the Nelson Barbados versus Cox case. It's been done; it's over. I've made my findings on jurisdiction; it's finished. If you don't agree with that decision, there's the Court of Appeal. There's also, if you don't agree with any of my decisions, including contempt, there was always the Court of Appeal. But Mr. Greenspan thought, perhaps wisely, that he could come back before me since I'm the judge who imposed the sentence, and ask that - that it be modified, varied, or expunged. Now I think that's my synthesis of what this is all about. So it's not complicated; it's not about malpractice of lawyers. If you feel that way, then your right is

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to commence a separate action. I can't tell you to do it; I can't advise you to do it. I can just tell you what procedures are available. But I also am going to tell you what issue I'm going to hear. And this case has got - has had so many hours devoted to it. I couldn't even comprehend how many hours, days, that I had hearings, issues that related to cross-examinations down in the Barbados itself. And I say to you sir, with all due respect, I'm going to give you your day in court, but you're not entitled to an unlimited time in court and you've had time to get counsel and you still have time to get counsel. It may not be the counsel precisely of your choosing. It may not be the malpractice counsel that you refer to in your material but you - you have time to retain counsel, to instruct counsel, and I've told you what the narrow issue is.

MR. BEST: May I speak Your Honour?

20
THE COURT: Yes.

MR. BEST: Your Honour, I don't - I don't understand a lot of what you said.

THE COURT: What don't you understand?

MR. BEST: And....

25
THE COURT: I'd be happy to explain it.

MR. BEST: Well - about why, I'm not even sure I can repeat what you said Your Honour. I'm just....

THE COURT: Tell me what you don't understand. I'll be happy to explain it.

30
MR. BEST: I don't - I don't understand - I don't understand all your legal explanations, I really don't Your Honour. I'm not just....

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THE COURT: What legal explanations?

MR. BEST: But - but I accept that you've said it; I hear you Your Honour. I just - I know I need a lawyer and I'm trying my best to get one. This issue of malpractice, once again I'd like to say Your Honour, I only, after talking with the person on the help line at the Law Society, I explained that I couldn't get lawyers that wanted to do this. They didn't want to touch it. She said, well maybe a malpractice lawyer and I says, okay, give me the list. It wasn't that I'm setting out to look for one.

THE COURT: Well go...

MR. BEST: It's just that's what they suggested.

THE COURT: ...back and get another list of counsel who are willing to take on matters. The list is long and you know, I don't have to give you advice. You know already and have found a way to get counsel.

MR. BEST: I'm doing my best Your Honour, I really am working diligently on it; I am. I spend hours every day on it and I apologize.

THE COURT: No.

MR. BEST: I did not put myself in this position. It was not my idea to be standing here without a lawyer.

THE COURT: Do you understand though...

MR. BEST: But...

THE COURT: ...that if you don't qualify for Legal Aid...

MR. BEST: ...what I - I'm in your hands Your Honour.

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5 THE COURT: ...and I'm assuming you don't. And if
you can't get a lawyer, that doesn't mean the
proceedings are stopped. The issue really is, have
you had adequate time? And you've certainly known
since I would say, at least early November, that
Mr. Greenspan wasn't going to continue to act and
then the application was brought to the court. So
you've had a month and a half. How you define what
lawyer or what lawyer is acceptable to you, that's
10 entirely sir within your own discretion. But
having said that, the matter has to proceed; it is
your application. It's not like you're responding
to an application; it's your application. You've
asked the court for relief and it was brought back
in August. And you've had lawyers working on it
for months, according to your affidavit material.
And so, all the work that's been done by
Mr. Greenspan and worked up and material filed with
the court, that's already taken place. It's not -
it's not that anyone has done anything to you, that
20 anyone's brought an application as against you to
respond, this is your application. So in the
circumstances, I think I've heard all I can now and
I'm going to make some orders here. Do you have
the record? Is there anything else you want to say
Mr. Best?

25 MR. BEST: I'm in Your Honour's hands sir. I -
Your Honour, I just think it's so unfair after all
this way that I should be without a lawyer at the
last minute. It's not my fault and to have to go
30 through cross-examination without a lawyer, I don't
think it's fair. I don't think it's just. But I -

40.
Submissions

5
and Mr. Silver and Mr. Ranking want to just like,
express train. But I'm in Your Honour's hands. I
can't do anything. I just have to rely on Your
Honour, so thank you Your Honour. Oh one thing
Your Honour, I heard you - I think I understood;
I'm not sure. I think I understood and I'm not
sure if by faxing it to the court and you reading
it, that is filing it. You don't have a copy of
the CD here and this is a bound copy, an original
10 sir. I don't know what I should do with it.

THE COURT: I'm going to deal with that.

MR. BEST: I'm sorry sir?

THE COURT: I'm going to deal with it. Just give
me a second, I'm writing....

MR. BEST: Thank you Your Honour.

15 THE COURT: Are you working - are you presently
employed Mr. Best?

MR. BEST: I would refer to myself as semi-retired
Your Honour.

20 THE COURT: What does that mean?

MR. BEST: I - I am looking for something now that
I am back here. I don't know - I don't know what
that will be. This looking for a lawyer in the
case seems to take up all of my time.

25 THE COURT: What's your circumstances though? What
income do you receive? Do you have a pension?

MR. BEST: I'm not sure what you mean sir.

30 THE COURT: I'm trying to deal with costs and so
one of the issues I've got to consider about costs
is your - your financial - your present financial
circumstances. Are you married?

MR. BEST: Do you mean my income tax - my income?

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Submissions

THE COURT: Yes.

MR. BEST: I'm almost ashamed to say what my income has been for the last three years Your Honour.

THE COURT: Well don't be ashamed; just tell me. Do you have a pension?

MR. BEST: I think it - well the first wife took that Your Honour.

THE COURT: I mean, are you married now?

MR. BEST: Your Honour, I'm very hesitant to - to say anything about...

THE COURT: Your finances?

MR. BEST: ...members of my family. As far as my finances go Your Honour, I'm trying to remember what my income declared on tax last year was. But it was something in the neighborhood of 12 or \$13,000.

THE COURT: That's net, after expenses?

MR. BEST: It's....

THE COURT: Do you do investigative work? Do - do you run a company? That's what I'm trying to find out.

MR. BEST: All right. Your Honour, I'm unemployed. I don't - I have this company. I have people who have been helping me out. And....

THE COURT: Are you married? Are you living with somebody? Do you have a common-law partner?

MR. BEST: Your Honour, I - because of my desire to protect my family members, I would need legal counsel. I just - I mean, Your Honour, we're getting into safety issues now and....

THE COURT: I'm trying to deal with financial issues.

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Submissions

MR. BEST: Well Your Honour....

THE COURT: You're not answering my question.

MR. BEST: I - I - I don't understand.

THE COURT: You're - well let me just....

MR. BEST: If I could only have a lawyer - my - my lawyer would be able to tell you.

THE COURT: Oh this is pretty simple.

MR. BEST: Your Honour, this is so unfair.

THE COURT: Mr. - can I just speak for a minute please?

MR. BEST: Yes Your Honour.

THE COURT: Mr. Ranking has asked that you pay the costs that total, by my math, \$63,862.96, or alternatively, that that sum of money be paid into court as a condition for you proceeding with this application to purge your contempt. Paying it into court means that the money is held there, then the hearing takes place, and then as a result of the hearing, either the money is paid back to you or the money is released. So that's what I'm trying to deal with; it's very simple.

MR. BEST: I don't have that kind of money Your Honour.

THE COURT: Well you haven't told me what kind of money you've got. Like, are you renting the house? You didn't tell me - I'm not asking for the name of a person that you're living with. I'm asking; do you have commitments? Do you have children? Do you have a mortgage? Do you have rent? Do you income from a common-law spouse that meets some of your expenses? I mean, that's what I'm trying to get at, but if you don't want to give me any of

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Submissions

that, then just say so.

MR. BEST: I - Your Honour, I don't really understand. Mr. Greenspan was asked to speak to the costs. He didn't - he didn't have enough knowledge to speak about costs; I don't think I do either Your Honour. I just....

THE COURT: You don't have to speak to costs.

MR. BEST: I just need a few more weeks, to get over Christmas, so I can get a lawyer Your Honour, please. That's all I'm asking for, just a fair shot to get a lawyer. I've been trying. It's - it's always go fast, go fast, go fast when I'm standing here with my lawyer. It's what he wants. There's - it would do no harm to just wait until I got a lawyer. Thank you Your Honour. I don't mean to offend.

MR. RANKING: Your Honour, can I make one submission...

THE COURT: Yes.

MR. RANKING: ...on that point?

THE COURT: Yes.

MR. RANKING: And you may recall that there's a Mr. Peter Allard, that was funding the litigation?

THE COURT: Yes.

MR. RANKING: And I simply bring that to the court's attention as well. I have no idea or knowledge of what his involvement is, if any, with regards to Mr. Best and this application. I just don't know but I did want to bring that back to the court's attention.

THE COURT: Well I certainly recall Mr. Allard's involvement but if - Mr. Best doesn't want to tell

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me anything, so.

MR. BEST: Sorry Your Honour, may I get something out of my brief case, for just one moment?

THE COURT: I've made the following endorsement.

We will get you a photocopy. I hope - I am reading it slowly so that my hand-writing can be interpreted.

"1. Mr. Greenspan is now removed as counsel of record for Mr. Best. However, as agreed by Mr. Greenspan, he will hold Mr. Best's passport until Mr. Best retains new counsel.

2. Mr. Best has now filed a Notice of Intention to Act in Person.

3. I am granting leave to Mr. Best to late file his affidavit and CD, sworn December 10, 2012. If so advised, the respondents may file responding material within 20 days.

4. I have already by order dated November 16, 2012, directed cross-examination of Mr. Best to take place on January 11, 2013. Based on the affidavit of Mr. Best and the various letters attached to this affidavit, he has been in contact with the Law Society of Upper Canada Lawyer Referral Service. His difficulty in retaining a lawyer appears to relate to the degree of experience of the lawyer that he wants to retain as well as the requirement that the lawyer be experienced in "malpractice". I am not satisfied that Mr. Best cannot retain a lawyer as he suggests. The application brought is to purge my contempt finding and set aside the order. This is not a complicated issue. As I explained to Mr. Best, this application is not a re-litigation

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Submissions

of the Nelson Barbados versus Cox proceeding.
Therefore the cross-examination of Mr. Best shall
proceed on January 11, 2013, regardless of whether
he retains counsel.

5
10
15
5. Mr. Ranking seeks an order that Mr. Best pay
the costs ordered January 15, 2010, by me or
alternatively that the total amount of the costs,
\$63,862.96, be paid into court as a condition of
the application proceeding. I believe Mr. Silver
made the same request at a prior attendance. Mr.
Best will not provide any information concerning
his present financial circumstances. I am not
prepared today to deal with the outstanding cost
award. Counsel however, may renew the application
after the cross-examination takes place. All of
the terms of my order of November 16th, 2012
continue. Cost of today are reserved by me to the
date of disposition of this application."

20
MR. RANKING: Your Honour, may I just make - I
think you referred to your earlier order as
November 12th. It was November the 16th.

THE COURT: Did I?

MR. RANKING: That was towards the very end of your
endorsement.

25
THE COURT: Oh it's November 12th, right.

MR. RANKING: No, it's November 16th. It's your
earlier order.

THE COURT: The first part was right.

30
MR. RANKING: It was November - when you indicated
that your earlier order...

THE COURT: Yes.

MR. RANKING: ...would continue.

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THE COURT: Yes.

MR. RANKING: I believe you intended to refer to your November 16th order?

THE COURT: Yes. Did I say otherwise? "All of the terms of my order of November 16th, 2012 continue."

MR. RANKING: I apologize. I thought you said November 12th.

THE COURT: No, I probably read it wrong.

MR. RANKING: And one other point Your Honour.

THE COURT: Yes.

MR. RANKING: Just with respect to the late filing of the materials, the cross-examination may go longer than one day. Could you just indicate - because I think that the earlier - that paragraph seven indicates that - that the cross is set for January 11th and....

THE COURT: Regardless of whether he retains counsel. In light of the further material....

MR. RANKING: Just to the extent we need to go longer than the one day Your Honour.

THE COURT: All right. I've added, "In light of the further material filed by Mr. Best, the cross-examination may extend beyond January 11, 2013."

MR. RANKING: Thank you Your Honour.

COURTROOM REGISTRAR: Mr. Ranking just handed that to me Your Honour.

THE COURT: I've signed - here's the order, I think. So it's signed.

MR. RANKING: Great.

THE COURT: This one is signed.

COURTROOM REGISTRAR: Yes, Your Honour.

THE COURT: And I guess Madam Registrar, these are

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Submissions

filed materials, so I assume this is really my copy.

COURTROOM REGISTRAR: Really it is Your Honour. He has that there to be filed.

5 THE COURT: All right. Do you want to file that now then?

MR. BEST: Yes Your Honour, thank you very much.

THE COURT: Give it to the Registrar. I think what I'll do then, is use this as my copy.

10 COURTROOM REGISTRAR: Right.

THE COURT: The one that was sent upstairs by fax.

MR. BEST: I have a spare one for you Your Honour.

THE COURT: All right.

MR. BEST: And another disc. Just give me one moment.

15 THE COURT: So that's page one here Madam Registrar, page two here, page three here. Okay, if I recall correctly, this is a Barrie action.

COURTROOM REGISTRAR: It is Your Honour.

20 THE COURT: Right. I'll give you that back.

COURTROOM REGISTRAR: I'll put all of this in your box.

THE COURT: Yes, if you don't mind; this as well.

COURTROOM REGISTRAR: Yes, Your Honour.

25 THE COURT: Thank you. Maybe if it's all right with Mr. Ranking, I will just stick this in here so I recall what was going on. All right? This is going to be - I'm just going to keep a copy of that November 16th order in my bench book.

30 MR. RANKING: That's totally fine, of course.

THE COURT: Thank you. See you in the morning.

MR. BEST: Sorry Your Honour, do I get a copy of

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Submissions

whatever you wrote?

THE COURT: Yes, you are going to get a photocopy.
Just stay here; Mr. Mills will take - or the
Registrar will take care of you with my hand-
written endorsement.

MR. BEST: Thank you very much Your Honour.

MR. RANKING: Thank you Your Honour.

* * * * *

A D J . T O J A N U A R Y 2 5 , 2 0 1 3
@ 9 : 3 0 A . M .

CERTIFICATE OF TRANSCRIPT
EVIDENCE ACT, SUBSECTION 5 (2)

I, Charlene Strumos, certify that this document is a true and accurate transcript to the best of my skill and ability, of the recording of Nelson Barbados Group Ltd. v. Cox et al, in the Superior Court of Justice, held at 150 Bond Street in Oshawa, on December 11, 2012, taken from recordings No. 2812-206-400668-20121211-0906, which has been certified in Form 1.

December 17, 2012



Charlene Strumos, Court Reporter

ONTARIO

A Commissioner, etc.

SUPERIOR COURT OF JUSTICE



COURT FILE NO.

141-07

Nelson Barbados Group vs Richard Cox et al.

ENDORSEMENT

Donald Best
~~HER MAJESTY THE QUEEN~~

plaintiff:

COUNSEL: Naomi Lutes (agent for Mr. Greenspan)

~~ACCUSED:~~ Cox et al.
Defendants:
COUNSEL: Gerald Lankin

Date: Dec 11 / 12 Mr. Best now unimpaired ①
Mr. Rouby is agent for Mr. Lutes -

1. Mr. Greenspan is ~~now~~ remained as Counsel of
Record for Mr. Best. However as agreed
by Mr. Greenspan he will hold Mr. Best's
papers until Mr. Best retains new
counsel

2. Mr. Best has now filed a Notice to Intervene
for Act in Person

3. I am granting leave to Mr. Best to & take
file his Affidavit and a CP sworn
~~on~~ December 10 2012. If so advised
the Respondents may file Responses within
within 20 days

4. I have already by Order dated November
16th 2012 struck Cross-examination

File #: 141/07

In re: Dec. #:

~~Re~~ Nelson Barbados vs Cox et al

Date:

Dec 11/12

②

of Mr. Best to telephone on January 11/13. Based on the Affidavit of Mr. Best and the various letters ~~submitted~~ ^{attached} to the affidavit he ~~is~~ has been in contact of with the Law Society of Upper Canada Re-Launch Refund Service. His difficulty in obtaining a lawyer is apparent to relate to the degree of expense of the lawyer that he wants to obtain as well as the argument that the lawyer being he experienced in "malpractice". I am not satisfied that Mr. Best ~~is~~ cannot obtain a lawyer as he suggests. ~~Under~~ ^{As} the Application brought is to purge my contempt finding & set aside the Order. This is not a complicated ~~issue~~ issue.

As I explained to Mr. Best the application is not a re-litigation of the Nelson Barbados vs Cox proceeding.

Therefore the cross-examination of Mr. Best shall proceed on January 11 2013 regardless of whether he retains counsel. ~~in~~ ⁱⁿ light of the further finding filed by Mr. Best the cross-examination may ~~proceed~~ ^{proceed} regardless.

Mr. Rankin seeks an Order that Mr. Best ~~pay~~ ^{pay} the costs ordered January 15 2010 ~~by~~ ^{by} me.

January 11/13

File #:

Inc./Occ. #:

R. vs. _____

(3)

Date:

or alternatively that the total amount of the costs
 \$ 63,862.96 be paid into court as a
 condition of the application proceeding... I
 believe Mr. Selzer made the same ~~applied~~ request
 at the a ~~post~~ prior ~~advice~~ ~~advice~~.

Mr. Selzer will not provide any information
 concerning his present financial circumstances.
 I am not prepared today to deal with the
 outstanding costs award. Counsel
 however may ^{renew} the application after
 the cross-examination takes place.

All other terms of my Order of November 16/12
 continue.

Costs of today are reserved by the court pending the
 the date of disposition of the application.



This is EXHIBIT 30 to the
Affidavit of Donald Best,
sworn April 29, 2016

A black rectangular redaction box covering the signature of the Commissioner.

A Commissioner, etc.

Court File No. 141-07

**SUPERIOR COURT OF JUSTICE
(Central East Region)**

THE HONOURABLE JUSTICE SHAUGHNESSY

FRIDAY, the 16th DAY
OF NOVEMBER, 2012

IN THE MATTER OF a Contempt Order issued against Donald Best
On January 15, 2010, by the Honourable Justice Shaughnessy

NELSON BARBADOS GROUP LTD.

*Applicant
Plaintiff*

-and-

RICHARD IVAN COX, et al.

*Respondents
Defendants*ORDER

THIS Application, made by counsel on behalf of the Applicant, Donald Best, for an Order setting aside the contempt order of January 15, 2010, was spoken to on November 16, 2012 at the Superior Court of Justice, Durham Region Courthouse, 150 Bond Street East, Oshawa, Ontario, by the Honourable Justice Shaughnessy.

UPON HEARING submissions from counsel, for *The Applicant and for the Respondents*
Kingsland Estates Limited, and the National Capital East Caribbean Firm,

1. THIS COURT ORDERS that this Application is adjourned to December 11, 2012, at 9:30 a.m. to permit the Applicant to retain new counsel or alternatively to confirm that he has filed a Notice of Intention to Act in Person^y .
2. AND THIS COURT ORDERS that Mr. Greenspan shall remain counsel of record until at least December 11, 2012, being the return date of this application^y .
3. AND THIS COURT ORDERS that Mr. Greenspan shall provide to Mr. Ranking and Mr. Silver the address of the residence at which Mr. Best is residing on or before noon on Monday, November 19, 2012. Mr. Ranking and Mr. Silver shall keep the address and telephone number confidential and will use the information ^{only} for the ~~sole~~ purpose of conducting this present litigation^y .

- bring any motion to strike the application*
4. AND THIS COURT ORDERS that Mr. Best will promptly notify Messrs. Ranking and Silver of any change in his address or telephone number;
 5. AND THIS COURT ORDERS that Messrs. Ranking and Silver on behalf of their respective clients may file Notices of Appearance without this step being viewed as an attornment to this jurisdiction. They may also on behalf of their clients, ~~file motions in relation to this proceeding~~ without such step being considered a fresh step in the proceeding;
 6. AND THIS COURT ORDERS and directs that the order staying the execution of the warrant shall be amended to further provide that:
 - a. Mr. Best shall surrender his Canadian passport or any other passport to Mr. Brian Greenspan and Mr. Greenspan shall retain the passport until further Order of the Court. The passport is to be surrendered to Mr. Greenspan on or before Monday, November 19, 2012 at 12:00 noon;
 - b. Mr. Best shall present himself at the Durham Regional Police Station, 77 Center Street, Oshawa, every 1st and 3rd Monday of the month to confirm his current address and telephone number.
 7. AND THIS COURT ORDERS that the cross-examination of the Applicant on his affidavit ~~is set for January 11, 2013~~ *on notice re: date, location and time*;
 8. AND THIS COURT ORDERS that this Application ~~will be adjourned to January 25, 2012, at 9:30 a.m. to be spoken to in relation to setting a date for the hearing of the application~~ *is adjourned to that time*;
 9. AND THIS COURT FURTHER ORDERS that costs ~~are reserved to the hearing of the application~~ *of this*.

The Honourable Mr. Justice Shaughnessy

Appeal as to form and content, as amended
The 22nd day of November, 2012
per: Cassels, Brock & Blackwell, LLP per: [Signature]
Lawyers for Kingsland Estates Limited and
as agent for G. Ranking, Lawyer for
Pine Waterhouse Group East Caribbean Firm

File No. CV07-141

A Commissioner, etc.

SUPERIOR COURT OF JUSTICE

NELSON BARBADOS GROUP LTD.

PLAINTIFF

- against -

RICHARD COX, ET AL

DEFENDANTS

* * * * *

PROCEEDINGS

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

* * * * *

APPEARANCES

DONALD BEST

Agent for the Plaintiff

GERALD RANKING

Counsel for the Defendant,
Price Waterhouse Coopers East Caribbean

LORNE SILVER

Counsel for the Defendants, Cox

* * * * *

Barbados v. Cox, et al
January 25, 2013

Friday, January 25, 2013

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

(9:52 a.m.)

5

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

10

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

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

15

...

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

20

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

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

25

30

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

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January 25, 2013

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

THE COURT: Please.

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

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

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

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

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

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

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

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

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

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

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

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

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

Barbados v. Cox, et al
January 25, 2013

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

MR. RANKING: No.

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

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

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

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January 25, 2013

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

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

THE COURT: You answer me first.

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

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

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

THE COURT: Good.

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

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

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answer their questions according to the Court's order of November 2nd.

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

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

MR. BEST: Yes, sir.

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

MR. BEST: They are here, Your Honour.

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

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

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

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

MR. BEST: Okay.

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

MR. BEST: Yes, Your Honour.

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

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

15 THE COURT: Apparently it is.

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

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

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

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

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

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

30 They have to take instructions from their clients.

10
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Lawyers don't come in here and make their own decisions what's in the best interest of ...

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

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

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

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

THE COURT: Thank you.

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

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to individuals at Price Waterhouse Coopers East Caribbean firm.

THE COURT: Mr. Silver?

5 MR. SILVER: I can give the same undertaking but I want to go a little bit farther to confirm on the record that I have never directly or indirectly caused anything to be put on the internet in respect of this file or quite frankly, any other file, I've ever had so it's easy to undertake to 10 the Court and confirm that I will not be involved directly or indirectly in putting any of this on the internet, but as you've indicated of course - and nor do I have any knowledge that my clients have, so these are just allegations.

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

THE COURT: All right.

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

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

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

THE COURT: Just a minute.

MR. BEST: Sorry.

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

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

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

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

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

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

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

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

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

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

THE COURT: Do you have anything, Madam Registrar?

5

THE REGISTRAR: I don't, Your Honour.

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

10

MR. BEST: Your Honour?

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

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

15

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

20

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

THE COURT: All right. Mr. Best?

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

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

25

30

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Twice before, I think.

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

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

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

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

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

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

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

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

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

THE COURT: Thank you. Mr. Best?

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

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

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

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

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

MR. BEST: Well ...

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

one of the most difficult and profound decisions I have to make and there's no - it's not something that's done cavalierly or without basis and foundation. So I want to tell you I share that same view but having said that, I have made the decision. I have made an order. I did issue a bench warrant and I've stayed the bench warrant. So that's the plight you find yourself in right now.

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

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

MR. BEST: Yes.

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

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

THE COURT: Go ahead.

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

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

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

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

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

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

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

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

THE COURT: Mr. Milton - Mr. Greenspan indicated
that he brought Mr. Milton into the picture because
Mr. Greenspan's background is in criminal law.

30 This is a quasi criminal proceeding when you have

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

MR. BEST: Well ...

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

5 MR. BEST: Your Honour, what I'm saying is Mr. Ranking and Mr. Silver made several letters into exhibits including one from Mr. Ranking to Mr. Davis, the contents of which I vehemently disagree with. Mr. Ranking is again putting quasi evidence
10 before the Court that is 100% wrong.

MR. SILVER: It's my letter.

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

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

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

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

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

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

5 There's also information placed onto the internet about Mr. Van Allen's activities that says there are reports from Mr. Van Allen circulating among the defendants in addition to his affidavit. Now, 10 I've not seen Mr. Van Allen's reports and his information could be important to my defence, and I deserve the opportunity to cross-examine him and also his employer, Mr. Ranking, about many aspects of the work including why Mr. Ranking redacted Mr. 15 Van Allen's invoices prior to submitting them to the Court during the costs hearing.

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

25 Now it also came to my attention as first detailed in my December 1, 2009, letters to Your Honour and the lawyers, that Mr. Silver's email address was listed on the internet at this Barbados underground website, as a place for a persons to send 30 information about me and my family members. This same website published threatening words against persons on my side of the case. Well here we are

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: I saw it in the materials.

MR. BEST: All right, sir.

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

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

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

Thank you.

MR. BEST: Thank you very much, sir.

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Payment into Court.

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

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

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

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

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

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

MR. RANKING: There may be ...

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

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

MR. SILVER: I appreciate all that and I agree that and I didn't mention this but - but the - his evidence is that Mr. Greenspan, he was able to somehow pay him \$60,000 for the work that he did
20 and so it's not just the Staples and the experts. There's a lot of big money being spent and so for him to stand up and say I don't have the money is a little bit inconsistent with Mr. Greenspan getting \$60,000 and all these - having said that, there is
25 another way that we can deal with this, the same way as I'm suggesting in respect of if we're successful in getting a cost award on this application, which is to make it a term of lifting the bench warrant.
30

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

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

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

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

MR. SILVER: I understand.

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

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

THE COURT: Even though it includes.

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

THE COURT: All right.

MR. SILVER: Thank you, Your Honour.

MR. BEST: Thank you, Your Honour.

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

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

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

RULING

15 **SHAUGHNESSY, J. (Orally)**

20 Hearing date set for April 30, 2013, at 9:30 a.m.
One day only. A judicial mediation date is to be
set by the trial coordinator on date prior to April
30, 2013. Mr. Best and counsel to contact the
trial coordinator within five days to arrange the
judicial mediation which all parties and Mr. Best
have jointly requested.

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

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

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

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

Costs of today reserved to the hearing date of April 30th, 2013.

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

THE COURT: All right.

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

THE COURT: Yes, I forgot about the refusals.

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

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virtually 80% of the questions were taken under advisement.

MR. SILVER: There were a few undertakings.

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

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

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

THE COURT: Just a minute though. Today is the 25th of January.

MR. BEST: Right.

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

MR. RANKING: Right.

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

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

THE COURT: Fine.

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

THE COURT: On or before?

MR. RANKING: Friday, March 15th.

THE COURT: Friday.

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

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

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

THE COURT: Mr. Best, do you agree?

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

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

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

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

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

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

MR. RANKING: March 29th, Your Honour.

THE COURT: March 29th, 2013.

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

THE COURT: Respondents ...

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

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

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

MR. BEST: Your Honour?

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MR. RANKING: The only other ...

THE COURT: What's the problem?

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

THE COURT: What security issue?

MR. BEST: My security issues.

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

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

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

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

THE COURT: Do you agree?

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

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

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

MR. RANKING: Yes, Your Honour.

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

MR. RANKING: Right.

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

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

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

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

THE COURT: Anything else, Mr. Best?

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

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

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

THE REGISTRAR: Yes, sir.

20 MR. BEST: Yes, sir.

* * * * *

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

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

January 27, 2013

Deborah Tinmouth
Court Reporter

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

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A Commissioner, etc.

SUPERIOR COURT OF JUSTICE



COURT FILE NO.

141-07

ENDORSEMENT

Nelson Barbeles Group vs Cox et al
Plaintiffs: Donald Best
HER MAJESTY THE QUEEN

COUNSEL:

Self Rep ✓

Defendants:
ACCUSED:

Gerald Ranting ✓

COUNSEL:

Lorne Silver ✓

Date: Jan 25/13

Hearing date set for April 30 2013
at 9:30 AM one day only.

A judicial ~~note~~ meeting date
is to be set by the Trial Coordinator
on a date prior to April 30 2013.
Mr. Best and Counsel to contact Trial
Coordinator within 5 days to arrange
the judicial meeting what all parties
and Mr. Best have jointly requested

and then check. Mr. Best wishes to cross-examine Mr. Selman and Mr. Roman
Mr. Ranting. The application is denied. ~~There~~
There Mr. Best has not demonstrated on a
reasonable or principled basis with any
such order should be granted.

Mr. Ranting and Mr. Selman ^{will} now seek an order
that Mr. Best pay into court the costs ordered
by me on January 15 2010. This is a

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variation of prior requests that the costs be paid to the Respondents directly. I find it is necessary not to make an order at this time as Mr. Best will be able to prepare the page of his counter.

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

Costs of today issued to the Hearing date of April 30/13.

Further I order and direct that Mr. Best answers requests, undertakings and questions under adjournment on or before

Friday March 15 2013. - ~~promulgated~~

~~Responding to~~

Applicant's interim to be served and filed on by March 29 2013

Respondents to serve & file their interim by April 16 2013.

Interim to be limited to 30 days

All of the above dates ~~are~~ are peremptory.

[Redacted signature block]

Court File No.: T-604-16

FEDERAL COURT OF CANADA

BETWEEN:

DONALD BEST

Applicant

- and -

THE ATTORNEY GENERAL OF
CANADA

and

THE HONOURABLE MR. JUSTICE
J. BRYAN SHAUGHNESSY

Respondents

**AFFIDAVIT OF THE APPLICANT
VOLUME ONE OF TWO**

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