

COURT OF APPEAL FOR ONTARIO

BETWEEN:

DONALD BEST

Moving Party (Appellant)

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, 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.

Respondents

**MOTION RECORD
(ADJOURNMENT/DIRECTIONS)**

Paul Slansky
Barrister and Solicitor
1062 College Street, Lower Level
Toronto, Ontario
M6H 1A9
Tel: (416) 536-1220; Fax (416) 536-8842

Counsel for the Moving Party (Appellant)

COURT OF APPEAL FOR ONTARIO

BETWEEN:

DONALD BEST

Appellant (Moving Party)

and

RICHARD IVAN COX, ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, KINGSLAND ESTATES LIMITED, FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS EAST CARIBBEAN FIRM,

Respondents

MOTION RECORD

VOLUME I

TAB	<u>Table of Contents</u>	Pages
A.	AMMENDED NOTICE OF MOTION	A1-A58
	NOTICE OF MOTION	1-58
B.	AFFIDAVIT OF CHE CLAIRE SWORN FEBRUARY 11, 2014	59-483
Exhibit 1.	BSSG Ontario Corporation Profile Report, dated January 30, 2014	81-89
Exhibit 2.	BSSG mission statement, Copyright 2013-2014	90-91
Exhibit 3.	BSSG "About Us" webpage, Copyright 2013-2014	92-94
Exhibit 4.	BSSG "Services" webpage, Copyright 2013-2014	95-97
Exhibit 5.	BSSG "Reid J. Meloy profile page", Copyright 2013-2014	98-99
Exhibit 6.	BSSG "Tracey Marshall profile page", Copyright 2013-2014	100-101
Exhibit 7.	"Tracey Marshall Resume", undated	102-110
Exhibit 8.	BSSG "Peter Collins profile page", Copyright 2013-2014	111-112
Exhibit 9.	"Peter Collins CV", dated December 21, 2007	113-123
Exhibit 10.	University of Toronto "Dr. Peter I Collins page", undated	124-127
Exhibit 11.	Wikipedia "Peter Collins page", dated January 1, 2014	128-133
Exhibit 12.	"Tamara Williamson LinkedIn profile", undated	134-136
Exhibit 13.	"BSSG contact us page", Copyright 2013-2014	137-138
Exhibit 14.	"Sharon Smith CV", undated	139-148
Exhibit 15.	"Sharon Smith LinkedIn profile", undated	149-152

Exhibit 16.	"Threat Triage LLC About Us" webpage, undated	153-154
Exhibit 17.	"Forensic Psycholinguistics Products and Services" webpage, undated	155-157
Exhibit 18.	"BSSG Van Allen profile" webpage, Copyright 2013-2014	158-159
Exhibit 19.	Rotary Voice", dated March 20, 2009	160-164
Exhibit 20.	"Jim Van Allen CV", dated December 30, 2013	165-167
Exhibit 21.	Transcript of call between 'Ray Metivier' and Jim Van Allen on December 30, 2013	168-171
Exhibit 22.	MP3 digital recording of call between 'Ray Metivier' and Jim Van Allen on December 30, 2013	172-173
Exhibit 23.	email from Jim Van Allen to 'Raymond Metivier', dated December 31, 2013	174-176
Exhibit 24.	"Toronto Police Service careers webpage", undated	177-181
Exhibit 25.	Discussion Paper prepared for the Police Complaint Commissioner of B.C., dated June 2000	182-210
Exhibit 26.	R.C.M.P. External Review Committee discussion paper 'Conflict of Interest', dated September 30, 1991	211-299

VOLUME II

Exhibit 27.	R.C.M.P. External Review Committee discussion paper 'Off-Duty Conduct' undated	300-367
Exhibit 28.	R.C.M.P. website, "Values and Ethics" subpage, November 20, 2006	368-374
Exhibit 29.	Sarnia Observer newspaper article titled 'Police work at second jobs', dated May 6, 2011	375-378
Exhibit 30.	"OPP 2013 Cost-Recovery Formula Update", dated November 15, 2013	379-391
Exhibit 31.	Orillia Police Services Board Responsibilities webpage, Copyright 2011	392-395
Exhibit 32.	ISN 'investigations' webpage, undated	396-398
Exhibit 33.	ISN "About Us – Our Team" subpage, undated	399-402
Exhibit 34.	Jim Van Allen's LinkedIn profile, undated	403-407
Exhibit 35.	Tamara Williamson's LinkedIn profile with an endorsement by R.W. (Rob) Goodfellow, undated	408-410
Exhibit 36.	"IRG website Executive page", Copyright 2009-2014	411-413
Exhibit 37.	"IRG Directors webpage", Copyright 2009-2014	414-415

Exhibit 38.	Toronto Star articles re charges vs. Sartorelli, dated December 7 & 8, 1989	416-419
Exhibit 39.	T.E.R.M.S. associate profile page, Copyright 2009	420-423
Exhibit 40.	T.E.R.M.S. Van Allen C.V. , undated	424-426
Exhibit 41.	Screen capture of metadata of Exhibit 40 October 11, 2009	427-428
Exhibit 42.	Jim Van Allen webpage of The Alpha Group Center for Crime & Intelligence Analysis Training.	429-431
Exhibit 43.	Alpha Group online brochure, undated	432-436
Exhibit 44.	Fax from Donald Best to RCMP Commissioner Bob Paulson, dated December 10, 2012	437-438
Exhibit 45.	Fax from Donald Best to RCMP Commissioner Bob Paulson, dated January 16, 2013	439-441
Exhibit 46.	Fax from the RCMP and P.M. Dionne of the Canadian Police Information Centre (CPIC) to Donald Best, dated January 17, 2013	442-447
Exhibit 47.	Email from Donald Best to OPP Inspector Marty Kearns and Sgt. Major Jeff Vibert, dated January 17, 2013	448-449
Exhibit 48.	Email from Donald Best to Inspector George Dmytruk of the D.R.P.S. Professional Standards Unit and St. Major Jeff Vibert of the OPP Professional Standards Unit, dated February 6, 2013	450-454
Exhibit 49.	Email from Inspector Dmytruk, dated February 7, 2013	455-456
Exhibit 50.	Email from Donald Best to Inspector Dmytruk, dated February 15, 2013	457-458
Exhibit 51.	Email from Sgt. Laurie Rushbrook to Donald Best and Best's reply February 19, 2013	459-460
Exhibit 52.	Four emails from Best to Sgt. Rushbrook dated March 13, 2013	461-463
Exhibit 53.	Email exchange between Donald Best and Sgt. Rushbrook on March 20, 2013.	464-465
Exhibit 54.	Email from Best to Sgt. Rushbrook and attachments, dated March 27, 2013	466-472
Exhibit 55.	Email to Jim Van Allen, dated February 8, 2014	473-474
Exhibit 56.	Fax from Van Allen to Mr. Slansky, dated February 8, 2014	475-477
Exhibit 57.	Email from Che Claire to Jim Van Allen, dated Feb. 9, 2014	478-480
Exhibit 58.	CD recording of November 17, 2009 conversation	481-482

BETWEEN: COURT OF APPEAL FOR ONTARIO
DONALD BEST

Moving Party
(Appellant)

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, 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.

Respondents

AMMENDED NOTICE OF MOTION

TAKE NOTICE THAT the Moving Party (Appellant) will apply to a judge of this Honourable Court on **Monday February 24, 2014**, at 10 am, or as soon after that time as is possible in the Court of Appeal for Ontario, 130 Queen St. West, Toronto, for the adjournment of the review/appeal of motions to a panel scheduled for February 27, 2014 and other scheduling adjustments or adjournments that may flow from this adjournment and for the addition to the record on the review/appeal and appeal a copy of the recording of a November 17, 2009 conversation that was an Exhibit in proceedings under appeal.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE APPLICATION IS FOR AN ORDER:

1. Adjourning the motion scheduled for February 27, 2014;
2. Re-scheduling of the motion to be heard:
 - a) with the main appeal on June 2, 2014; or
 - b) on June 2, 2014 with the adjournment the appeal hearing date to a date after June 2, 2014.
3. Adding a copy of the recording of a November 17, 2009 conversation to the record on the review/appeal and the main appeal.

THE GROUNDS FOR THIS MOTION ARE:

(A) REASON FOR THE ADJOURNMENT REQUEST

1. The Appellant has recently discovered evidence that one of the most important pieces of evidence relied upon below, an affidavit to obtain substituted service and ratification of service, sworn by a private investigator, Jim Van Allen in October 2009, was the product of criminal and/or quasi-criminal misconduct. It is alleged that Mr. Ranking, and likely Mr. Silver, Respondents' Counsel, were aware of this situation and were thereby parties to these offences. The Appellant has applied for summonses to two (2) witnesses returnable for examination on February 19, 2014 in relation to Mr. Van Allen and Tamara Williamson to obtain further evidence of this misconduct and evidence of Respondents' Counsel knowledge. Further summonses and examinations will be needed. There is insufficient time to conduct these examinations and obtain transcripts for use on a fresh evidence application on the review/appeal to remove counsel for misconduct, conflict of interest and as witnesses, presently scheduled for February 27, 2014.
2. In particular, it is an offence for a serving police officer to act as a private investigator. The affidavit disclosed Ministry of Transportation ("MTO") information and Toronto Police Association information and other personal information, including identity information, about the Appellant. The Appellant, being concerned that his life and the life of his family was being endangered by the public disclosure of this information, in light of his former duties as an undercover police officer and an investigator in the private sector, which endangerment became a reality, made enquiries about how this information came to be in the affidavit of a private investigator, who himself was a former police officer. The Appellant was told by the O.P.P. that Van Allen, was a former O.P.P. police officer who had retired in 2008. What has recently been discovered is that this was a lie. In fact, Van Allen was a

serving police officer, with likely official police involvement in this very case, until 2010.

3. It is alleged that Counsel, Gerald Ranking, who retained Van Allen and Counsel, Lorne Silver, who relied upon the affidavit, knew that Van Allen was a serving police officer at the time. Accordingly, they were parties to the criminal and/or quasi criminal offences.
4. This would be important fresh evidence supporting the motion to remove counsel that is the subject of the review/appeal scheduled for February 27, 2014.
5. A summons has been issued for Van Allen and Tamara Williamson, another corporate director, returnable in Barrie on February 19, 2014. An attempt to serve the summons at the Investigation Company corporate headquarters in Orillia was made on February 7 and 10, 2014.
6. Counsel for the Appellant with carriage of the case is in the middle of pre-trial motions on a Superior Court terrorism trial, *R. v. Hersi* and will be, except for February 19 and 21, until near the end of the month. Jury selection is set for the beginning of March and the trial is expected to go until the end of May, 2014.
7. The main appeal is set for June 2, 2014.

(B) HISTORY/BACKGROUND:

8. By way of summary, the Moving Party ("Appellant") was a director and shareholder of Nelson Barbados Group Limited ("NBGL") at the time of the action and contempt proceedings. NBGL was the plaintiff in an action brought in Ontario. The Honourable Mr. Justice Shaughnessy ("Justice

Shaughnessy" or the "Court") granted a motion of the Respondents brought to stay the action on the basis of an inadequate jurisdictional connection to Ontario. This motion was successful. On November 2, 2009, a proceeding was scheduled to determine costs against NBGL to the Respondents on the motion. The Appellant had indicated by letter to Justice Shaughnessy dated October 30, 2009 that he would not be attending on behalf of the plaintiff on the motion and that he was content to leave the matter of costs against NBGL in the hands of the Court.

9. Unbeknownst to the Appellant and without prior service or even attempted service on Best, the Respondents brought a motion returnable on November 2, 2009 to require that the Appellant provide documents allegedly relevant to the issue of costs on the action (week prior to examination on November 17, 2009 (November 10, 2009) and require that he attend to answer questions allegedly relevant to costs on November 17, 2009. Notwithstanding the fact that there had been no notice to the Appellant, based on the affidavit of Jim Van Allen, falsely alleging that the Appellant was trying to evade service, the Court indicated a willingness to make such an order on November 2, 2009 and signed such an order on November 12 or 13, 2009.
10. The Respondents asserted that they had served a draft order on the Appellant by mailing it on November 6 to a post office box.
11. Evidence later filed makes it clear that the Appellant left the country on November 11, 2009 out of concern for his safety and the safety of his family and that he did not receive the November 2 materials or the order. In a letter to the trial coordinator dated November 16, 2009, he explained that he called her, as he did from time to time, to see what had happened on the costs motion on November 2, 2009. He indicated in that letter that he discovered for the first time during that telephone conversation that he had been ordered to attend for examination the next day. Being out of the country, it was not

feasible to attend in Canada for examination the next day. Instead, he called the office of the special examiner (Victory Verbatim) on November 17, 2009 and advised Counsel for some of the Respondents that:

- he did not receive the November 2, 2009 order or the materials in support of the application;
- he did not know of examination until the day before;
- asked about who had retained a private investigator, who disclosed confidential information about the Appellant which was reported in a website which endangered himself and his family.

The Appellant offered to conduct the examination by telephone and indicated a willingness to answer questions addressed in the November 2, 2009 order. The Respondents refused to conduct the examination by telephone.

12. The Appellant recorded the conversation on November 17, 2009 which confirms the foregoing. This recording has been authenticated and the authenticity has been conceded. An electronic copy on CD was entered as an Exhibit in the proceedings below. However, when attempting to perfect the appeal, the Appellant's agents were told that the recording could not be filed without bringing a motion. This motion is, *inter alia*, for this purpose.
13. Respondents' Counsel made a "Statement for the Record" on November 17, 2009 at Victory Verbatim after the call, in which they purported to summarize aspects of the November 17 conversation. They said that the Appellant:
 - admitted that he had a copy of the order;
 - that he knew of the November order before the call to the trial coordinator on November 16 (this knowledge was the reason for the call); and
 - that he had refused to answer questions on November 17, 2009.

This Statement for the Record was sent to the Appellant along with a letter and a Notice of Examination for November 25, 2009 and was received on November 24, 2009. The Appellant sent two letters (one sent to Mr. Ranking, copied to all counsel and one to the Court) dated December 1, 2009. In the letters, the Appellant pointed out in detail that and how the November 17, 2009 Victory Verbatim "Statement for the Record" contained clear and deliberate falsehoods.

14. On that same day, Van Allen was scheduled to be examined by other parties, including counsel for NBGL's former counsel. Van Allen was not produced for examination. In the recorded call, in the presence of Mr. Ranking, Mr. Silver denied knowing who had retained the private investigator.
15. On December 2, 2009, on an *ex parte* basis, an application was brought by the Respondents to have the Appellant found in contempt of the November 2, 2009 order and the November 25 examination and sought an order for the same relief as the November 2, 2009 order (except that the examination was to be before Justice Shaughnessy). The Respondents, through counsel Ranking and Silver, filed the "Statement for the Record" from Victory Verbatim on November 17, 2009 and indicated that it was correct and the Appellant's version in the December 1 letters was false. They asserted that the Appellant knew about the examination because he was served by mailing it to the post office box and because of his November 16 letter and his call on November 17, 2009. Respondents' Counsel lied about the issue of whether and when the Appellant received a signed order, as opposed to a draft order. The issue was never about a signed order versus a draft order. In the November 17 discussion, that was recorded, the Appellant said that he did not receive the materials purportedly sent on November 6, 2009. The materials sent on November 6, 2009 could not have contained the signed order since it was not signed until later. The Appellant was clearly saying that he never received ANY order, draft or signed. The Court accepted the

Respondents' position and rejected the position of the Appellant that he had not received the November 2 order, communicated in the Dec. 1, 2009 letter, and proceeded on the basis that the Appellant knew of the orders to provide documents and to attend for examination. He did so in large measure based on the affidavit of Van Allen and the Statement for the Record, both of which were the product of criminal and/or quasi-criminal acts by Respondents' counsel. A contempt hearing was set for January 15, 2010.

16. On January 15, 2010, in the absence of the Appellant, the Court found the Appellant in contempt (civil) of court for not providing the documents or attending for examination. The Court failed in its duty to require that a trial of the issue regarding knowledge be held to determine issues of credibility on contested facts. This was done in relation to the November 2, 2009 order on the basis of knowledge inferred from the alleged mailing of the order on November 6, 2009 (based on the Van Allen affidavit), the November 17, 2009 Victory Verbatim Statement for the Record and the letter dated November 16 to the trial coordinator. This was done in relation to the November 25 Notice of Examination and the December 2, 2009 order based on purported compliance with substituted service orders. The former was an unreasonable finding not supported by the record and, in fact, was perverse and capricious. Both findings were invalid in light of the law as set out in by the SCC in *Bhatnager* which requires personal service or knowledge (or wilful blindness), not substituted service. Accordingly, separate and apart from new evidence, the contempt order should never have been made in 2010.
17. The Appellant did not learn of the contempt finding until a few months later, when he was outside of Canada. He retained counsel to apply to have the finding of contempt on January 15, 2010 set aside. There was delay by his counsel in bring the application, which was not filed until August 2012. Clear and uncontradicted evidence was presented which demonstrated that:

- he left the country out of concern for his safety and the safety of his family on November 11, 2009;
- he never received information regarding any order to produce documentation on November 10, 2009 until November 16, 2009;
- he first heard of an order requiring that he attend for examination on November 16, 2009 from the trial coordinator and he was unable to attend in person that day because he was out of the country;
- that he offered to be examined by telephone on November 17, 2009 but the Respondents refused to accept this procedure;
- he did not receive the November materials, any November 2, 2009 order (draft or signed) or the Notice of Examination for November 25, 2009 until November 24, 2009, when he was still outside of the country;
- the Victory Verbatim November 17, 2009 Statement for the Record was false in stating that he had admitted on November 17 that he had a copy of the November 2, 2009 order, knowledge of the November 2, 2009 order before the call to the trial coordinator on November 16, 2009 and that he had refused to answer questions;
- That he did not receive notice of the December 2, 2009 or January 15, 2010 proceedings or materials in support of such proceedings until June 2010.

Based on this evidence, the Court should have set aside the contempt order on April 30, 2013, when the application to set aside the order was heard. Instead, the Court unduly restricted the scope of its review and refused to consider whether Respondents counsel misled the Court, saying that this was a matter for the Court of Appeal. Notwithstanding the fresh evidence detailed above, the Court found there to be no new evidence and no basis to set aside the original order. This is the primary basis for the appeal.

18. The Court was never told that the Van Allen affidavit was the product of a criminal or quasi-criminal act. The Appellant did not know at the time. The

Respondents Counsel never advised the Court in the affidavit itself or otherwise.

19. The proceedings in respect of which the documents and examination of the Appellant were sought, and in relation to which he was found in civil contempt, were solely in respect to seeking costs from the Appellant personally on the main action. In April 2010, the costs of the action were settled and paid. Accordingly, in 2012 and 2013, when the Application to set aside the finding of contempt was brought, the issue of costs of the action was moot. The Respondents opposed the application for a reason that amounted to an abuse of process: to gather information in respect of other litigation or potential litigation abroad. This was admitted by Counsel for the Respondents below and on appeal. Justice Feldman found this to be a meritorious ground of appeal on a motion for security for costs heard together with the removal of counsel motion.
20. The Respondent, a former police officer, served 45 days in jail before being released on bail pending appeal.
21. The Respondents represented by Mr. Roman (Miller, Thompson LLP) and Ms. Lang (Stikeman, Elliot LLP) have indicated by email that their clients will not be participating in the appeal.
22. The Appeal was perfected on September 5, 2013.
23. In light of the history and ongoing misbehaviour of counsel for the Respondents, Messrs. Ranking and Silver, the Appellant did and does not trust them to fairly deal with him fairly as prosecutors of the civil contempt appeal. He asked them to remove themselves from the case. They refused. A motion was brought for this purpose and was heard by the Honourable

Madam Justice Feldman. This process and the review of her decisions is described in the factum of the Appellant filed on the review/appeal.

24. The application for removal was based on misconduct by Counsel for the Respondents, Messrs. Ranking and Silver below and on appeal. The bases were the misconduct itself and the consequent conflicts of interest that flowed from it. Justice Feldman dismissed the motion based on deference to the findings of Justice Shaughnessy below. This was so notwithstanding the clear statement by Justice Shaughnessy that he was not going to consider the allegations of misconduct made against counsel and notwithstanding the clear indication, albeit not recognized by Justice Shaughnessy, that he had in fact been misled by counsel. As set out in the factum on the review/appeal, this was an error. However, no issue was raised regarding the unlawfulness of the Van Allen affidavit, which was relied upon before Justice Feldman, because this was unknown at the time.

C. FRESH EVIDENCE

1. Overview

25. The fresh evidence shows, *inter alia*, that the Respondents' primary witness below, Jim Van Allen, was in fact a serving Ontario Provincial Police officer, unlawfully hired by counsel and illegally working 'on the side' as an unlicensed private investigator. To date, Detective Sergeant Van Allen's true status and primary expertise have been concealed from the Applicant, from the court below, from the Court of Appeal and from the individual Justices who have heard various motions including Justices Goudge, Tulloch, MacFarland, Feldman, and Blair.
26. As a direct result of the past refusals of the respondents to present Detective Sergeant Van Allen for cross-examination, there has never been any cross-

examination of the affiant or testing of his evidence that was used to convict the Appellant, Donald Best.

27. The appellant discovered a 'secret police investigation', an undocumented and unofficial investigation by Durham Regional Police, in anticipation of a finding of contempt, during at least the last quarter of 2009, prior to the contempt hearing in January 2010. This was brought to the lower court's attention by Donald Best in his affidavit sworn April 29, 2013 when he was an unrepresented litigant. As related herein, there is also some evidence raising suspicion that the 'secret police investigation' may have been initiated as early as 2007 and likely involved Van Allen in his duties as a Police officer.
28. Generally, the newly discovered fresh evidence is centred around the purported 'private investigator', Mr. Jim Van Allen, an affiant below who was retained in the employ of Fasken Martineau DuMoulin LLP ("Faskens") and lawyers Gerald Ranking and Sebastien J. Kwidzinski. Mr. Van Allen's October 21, 2009 affidavit and invoices were integral and important evidence used to convict and sentence the Appellant, Donald Best, of contempt of court in 2010 and used to reaffirm that conviction in 2013.
29. Newly discovered evidence shows that, unbeknownst to the appellant, to the court below, and to date unbeknownst to the Appeal Court of Ontario: the private investigator/affiant James Arthur 'Jim' Van Allen was at the time of his October 21, 2009 Nelson Barbados affidavit, and for a year afterwards until October of 2010, a serving police officer, a Detective Sergeant in full time employment with the Ontario Provincial Police (OPP).

30. As described in further detail herein, by working as a private investigator for Faskens, Detective Sergeant Van Allen was in violation of various laws including, *inter alia*, the *Police Services Act* and the *Private Security and Investigative Services Act* and the *Criminal Code*.
31. Further, there is newly discovered evidence showing that Detective Sergeant Van Allen had serious direct and potential conflicts of interest that specifically precluded him from working on the Nelson Barbados case in any capacity outside of his official police duties.
32. Further, as detailed herein, there is newly discovered evidence showing that Detective Sergeant Van Allen was as early as 2008, and remains today, part of a business network of retired and still-serving police officers and other justice system personnel, where some persons are clearly, and others might be, in violation of various conflict of interest rules and other laws by virtue of their cooperative 'on the side' business activities. There is evidence that Detective Sergeant Van Allen illegally accessed and illegally presented as evidence in his October 21, 2009 affidavit, confidential personal and identity information sourced from police and/or other government agencies (MTO, CPIC and Toronto Police Services). It is not known whether he accessed this information himself or through this network.
33. Further, as detailed herein, these circumstances present a strong circumstantial basis to infer knowledge that Faskens counsel, in particular Mr. Ranking, knew that his affiant/private investigator was, at the time, a police officer. Messrs. Ranking and Silver closely cooperated in the motions for examination and the contempt motion. Mr. Silver was aware of and relied upon the affidavit of Van Allen as reflected in the record below. Yet, he lied about not knowing about the private investigator in the recorded November 17, 2009 conversation, on the very date that Van

Allen was scheduled to be examined. This a basis, albeit a weaker basis, to infer knowledge by Mr. Silver.

34. As presented in more detail later, all this newly discovered evidence was not available to the Appellant before now, as much of it is newly created by Van Allen himself, and is newly made available by Van Allen personally and on the internet. Further, some of the evidence was in the past deliberately concealed from the appellant and from the courts as detailed herein.
35. Further, the truth about Detective Sergeant Van Allen was also concealed from the appellant by senior officers of the Professional Standards Unit of the Ontario Provincial Police in March, 2013. It is now known that these Professional Standards Unit OPP officers knowingly communicated false information to the Appellant directly on February 4, 2013 and otherwise between January and April 2013: communicating that Detective Sergeant Van Allen retired from the OPP in 2008 instead of the truth that he retired in October 2010.

2. **Evidence of Jim Van Allen was placed before the Court**

36. Three exhibits were filed by Mr. Gerald Ranking in the Nelson Barbados Group Ltd. vs Cox et al ('Nelson Barbados case') civil case costs hearing. These three exhibits have to do with Mr. Jim Van Allen, the purported private investigator and affiant below employed by Faskens, Gerald Ranking and Sebastien Kwidzinski in 2009 to conduct investigations, to report to Mr. Ranking and Mr. Kwidzinski and to swear an affidavit in the Nelson Barbados case. One of these is the affidavit of Jim Van Allen, sworn October 21, 2009 and filed with the court below in support of applications for substituted service, ratification of service and contempt. The second and third are copies of redacted invoices dated October 24, 2009 and November

7, 2009 from 'Behavioural Science Solutions Group Inc.' to Faskens and Gerald Ranking and hand signed "With Thanks. J Van Allen".

3. Detective Sergeant Jim Van Allen was employed as a private investigator and was directed by Faskens, Ranking and Kwidzinski

37. Detective Sergeant Van Allen's invoices and affidavit indicate that he was hired to investigate as well as offer the 'expert' opinions contained in his affidavit.
38. Paragraph 6 of Jim Van Allen's October 21, 2009 affidavit is headed 'B. Investigation Regarding Donald Best' and indicates that Gerald Ranking of Fasken Martineau DuMoulin LLP personally contacted and hired Van Allen on October 7, 2009 to perform an investigation regarding Donald Best.
39. Van Allen's two known Behavioural Science Solutions Group Inc. invoices for investigation are directed to 'Fasken Martineau DuMoulin LLP, Mr. Gerald Ranking.' The invoices are apparently heavily redacted but still contain enough information to determine that Van Allen was invoicing for performed private investigations.
40. The October 24, 2009 invoice states in part: "Unsuccessful lead investigation..." and "(redacted) information checks, (redacted) checks, (redacted) record check, (redacted) checks, (redacted) telephone interviews of (redacted)". In light of the content of the affidavit, including information from MTO, CPIC and Toronto Police Services, these checks were likely done through the access given in the capacity as a police officer, and was used for private investigation purposes.

41. The November 7, 2009 invoice is also heavily redacted, but shows a trip of 834km to perform "(redacted) area check", make 'Inquiry' and perform other duties that are redacted from the invoice.
42. Mr. Van Allen's Ontario corporation, Behavioural Science Solutions Group Inc. (BSSG), was formed October 20, 2008. James Arthur Van Allen and Tamara Jean Williamson are the only Directors. (BSSG Ontario Corporation Profile Report).
43. Van Allen's affidavit and invoices together indicate that Detective Sergeant Van Allen received directions from both Gerald Ranking and another Fasken Martineau DuMoulin LLP lawyer, Sebastien Kwidzinski, and that both Ranking and Kwidzinski were involved in the preparation of Van Allen's affidavit.
44. In various oral and written submissions to the lower court, Mr. Ranking refers many times to Jim Van Allen as his "private investigator", as do Lorne Silver and Justice Shaughnessy. This is clear in the following portions of the record:
 - November 2, 2009 court transcript, page 36, line 12;
 - December 2, 2009 court transcript, page 18, line 28;
 - the January 15, 2010 court transcript (page 15, line 14; page 18, line 14; page 59, line 6;
 - the January 11, 2013 cross-exam of Best transcript page 164, line 23
 - the authenticated transcript of the recording of the November 17, 2009 phone call between the Appellant Donald Best, and lawyers including Gerald Ranking and Lorne Silver (pages 8, 15, 16)
 - On April 30, 2013, transcript page 17, line 3; page 43, line 18; page 70, lines 7, 14; page 73, line 27, 28; page 80, lines 6, 21; page 107, line 16; page 108, lines 9, 13; page 109, line 6;

- On May 3, 2013, transcript, page 26, line 31;
- In the current proceedings before the Court of Appeal for Ontario, Mr. Ranking, Mr. Silver and Mr. Pendrith refer to Jim Van Allen as a 'private investigator':
 - In their October 2, 2013 Joint Factum of the Moving Respondents, Mr. Ranking and Mr. Silver state 'Jim Van Allen, a private investigator retained by PwC' (Joint Factum, Oct 2/13, paragraphs 18, 45).
 - Colin Pendrith refers to 'Jim Van Allen, a private investigator retained by PWC' in his Sept 26, 2013 affidavit (page 20, para 53).

4. Detective Sergeant Van Allen's affidavit and Invoices were important evidence in the costs and contempt proceedings

45. The court transcripts of November 2, 2009, December 2, 2009 and January 15, 2010, shows that Justice Shaughnessy relied upon Van Allen's evidence, and the oral and written submissions by counsel relating to Van Allen's evidence, to convict Donald Best of Contempt of Court on January 15, 2010, and also in determining costs in the contempt motion brought by the defendants.
46. The Respondents continued to refer to the unfounded and false opinions of Van Allen that the Appellant was trying to hide to evade service. In fact, had it been revealed that Van Allen was in fact a threat assessor for the OPP, it would have been clear that Van Allen knew that the reason for the efforts of the Appellant was not to evade service but to protect himself as a result of his police and private undercover duties.
47. Jim Van Allen's affidavit evidence as 'an experienced private investigator', including his observations and expert opinions about Donald Best, was an integral and important part of the evidence placed before Justice

Shaughnessy on November 2, 2009, December 2, 2009 and January 15, 2010 concerning:

(a): justifying validation of documents supposedly already served upon Donald Best and future substituted service of documents upon Mr. Best, and
(b): Mr. Best's supposed motivations for using mail boxes and otherwise concealing his true whereabouts, and by implication, Mr. Best's supposed motivations in not attending court, and the resultant conviction for contempt of court.

48. Van Allen's redacted invoices were also used as evidence, placed before the court by Mr. Ranking on January 15, 2010, as noted in the court transcript, page 59, line 4.
49. Jim Van Allen's October 21, 2009 affidavit was part of a motion first placed before Justice Shaughnessy on Nov 2, 2009, Dec. 2, 2009 and in January 2010 and was used extensively in making submissions to the Court:
- On Nov. 2, 2009, Mr. Ranking used Van Allen's evidence to justify asking the court for substituted service on Donald Best:
 - Ranking: "Well, the difficulty, Your Honour, is I have had my own firm try to find him, I've had private investigator try to find him." (Nov 2/09 transcript page 36 line 10);
 - Ranking also told Justice Shaughnessy: "...with respect to the whole issue of validating service with respect to serving Mr. Best, until we were here today I have no way of serving Mr. Best, that's why we're seeking an order for substituted service." (Nov 2/09 transcript page 29 line 7);
 - Van Allen's evidence was also relied upon by Mr. Sebastien Kwidzinski in his October 27, 2009 affidavit and was relied upon in the December 2 2009 proceedings:
 - "Mr. Van Allen, an experienced private investigator was also unable to locate Mr. Best, despite extensive efforts" (paragraph 39). This Kwidzinski affidavit was before Justice Shaughnessy on November 2, 2009 and was referred to by Mr. Ranking in his oral submissions on December 2, 2009:

- The December 2, 2009 transcript shows that Mr. Ranking spoke extensively about the Kwidzinski Affidavit and the investigation of Donald Best on pages 18, 21, 22, 24, 28, 32, 33, 34 and 35;
- Van Allen's evidence was extensively referred to by Gerald Ranking again on the Dec 2/2009 court date in justifying substituted service upon Donald Best. (December 2, 2009 court transcript, pages 18, 19, 20)
- The January 15, 2010 transcript shows that
 - Mr. Ranking and Mr. Silver made extensive submissions about the Kwidzinski Affidavit and the investigation of Donald Best by Van Allen on pages 18, 37, 38, 60 and 61;
 - Mr. Ranking again referred to Van Allen's investigations and evidence in his oral submissions. (January 15, 2010 court transcript, page 15 – line 14, page 18 – line 14, page 58 – line 22, page 59 – line 6);
 - Further, on January 15, 2010, Mr. Ranking spoke about the extensive costs that his client incurred, including the hiring of "the private investigator, Mr. Van Allen." In this context, I note that on page 58 of the January 15, 2010 transcript, Mr. Ranking indicates that the investigation also involved social insurance numbers:

"RANKING: 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."

No information about investigations regarding social insurance numbers is revealed in Mr. Van Allen's affidavit, in his redacted invoices or in any of the materials filed before the court. This secret investigation of Social Insurance Numbers by a serving Ontario Provincial Police officer has never been explained.

50. Further, Justice Shaughnessy relied upon the affidavit of Van Allen in accepting substituted service, in validating service, in finding the Appellant in Contempt of Court and in dismissing the application to set it aside:

- In his December 2, 2009 endorsement, (AB Vol 1 pp 162) Justice Shaughnessy in paragraph 12 states in obvious reference to the Van Allen evidence:

"Extensive investigations have not resulted in a location 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."

(Also referenced December 2, 2009 transcript, page 60, line 2);

- In the January 25, 2010 'Reasons on Motion for Contempt' (AB Vol 1 pp 181-194), Justice Shaughnessy in paragraph 12 states in obvious reference to the Van Allen evidence:

"Extensive investigations have not resulted in locating where he (Best) 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."

In paragraph 31 Justice Shaughnessy refers to Van Allen's affidavit evidence of Best's motor vehicle license and MTO address searches and information:

"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, [REDACTED] which is the address for the mailbox of the UPS store located in the Cloverdale Mall in Toronto."

- In May 2013, Justice Shaughnessy extensively quotes from and reaffirms his January 25, 2010 reasons.

5. Fresh Evidence: The 'private investigator' and affiant Jim Van Allen, was working as a private investigator at the time his evidence was placed before the court when he was also a serving police officer with the Ontario Provincial Police, and remained so until October 2010

51. The evidence that Detective Sergeant Jim Van Allen was a sworn police officer actively serving with the Ontario Provincial Police ('OPP') at the time he was hired by Fasken Martineau DuMoulin LLP and Gerald Ranking, performed the private investigation into Donald Best, swore his October 21, 2009 affidavit and delivered his invoices is as follows:

- a) On December 30, 2013, during a pretext telephone conversation with a prospective client using the name 'Ray Metivier', Jim Van Allen stated that he retired from the OPP in October of 2010 after thirty-one and a half years service. This conversation was digitally recorded and the recording and a draft transcript of the conversation is are attached to the affidavit in support of the motion;
- b) On December 31, 2013, Jim Van Allen sent an email to 'Ray Metivier' with a current CV. This C.V. states that he was appointed to the OPP in May of 1979 and retired in October 2010. This is a time period of 31 years and 6 months, which is the same as stated orally by Jim Van Allen during the 'Ray Metivier' recorded telephone conversation ("I was thirty one and a half years with the Ontario Provincial Police...").
- c) It is also noteworthy that Van Allen's current CV also indicates that he was appointed as the 'Manager, Criminal Profiling Unit' in June, 1995.
- d) In Jim Van Allen's current 'LinkedIn' CV is now available online. Mr. Van Allen again states that he was the 'Former Manager - Criminal

Profiling Unit, Ontario Provincial Police, June 1995-October 2010 (15 years 5 months)". This is consistent with Mr. Van Allen's October 2010 retirement date indicated in his current CV and December 30, 2013 recorded oral statements and other recently obtained materials.

- e) In a current flyer distributed by 'The Alpha Group', and available online, Jim Van Allen is advertised as giving an upcoming presentation on March 17-21, 2014 in Fort Myers, Florida on the subject 'Assessing Threats of Targeted Violence'. In the 'About Your Trainer' section, the flyer states that Jim Van Allen "served 31.5 years with The Ontario Provincial Police and for 15 years was the Manager of the Criminal Profiling Unit." (Exhibit 9) This is consistent with Mr. Van Allen's October 2010 retirement date and active service as Manager with OPP Criminal Profiling Unit indicated in his current CV and his December 30, 2013 recorded oral statements and other recently obtained materials.

7. Detective Sergeant Van Allen violated various laws

- 52. When Detective Sergeant Van Allen was employed as a private investigator by Faskens, Ranking and Kwidzinski in 2009, Van Allen was acting in violation of various laws, including the *Police Services Act*, the *Ontario Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34, and the *Criminal Code*, Section 120 (Bribery of Officers) and/or Section 122 (Breach of Trust).

a) *Police Services Act*, RSO 1990

- 53. The conduct of personnel of both municipal police services and the Ontario Provincial Police (OPP) is governed by, inter alia, the *Police Services Act*, RSO 1990, cP.15 ('PSA').

54. The PSA applies not only to sworn police officers, but also to civilian personnel of police services in Ontario (jointly referred to in the PSA as 'members').

55. Detective Sergeant Jim Van Allen was in violation of sections of the PSA having to do with prohibited secondary activities, non-disclosure of such prohibited secondary activities, conflict of interest and the unauthorized disclosure of personal information by police.

(i) Secondary Activities of Members of Police Services

56. Under the Police Services Act of Ontario, 'secondary activities' of Members of Police Services (including secondary employment) are considered to be of sufficient importance that the Police Services Act requires members of police services (both sworn police officers like Van Allen, and civilian employees), chiefs of police and police boards to do certain things in respect of secondary activities of members of police services.

57. There are restrictions upon secondary activities set by the PSA, and also further restrictions set by the individual police services (OPP and municipal) under authority of the PSA.

58. Generally in relation to secondary activities, including secondary employment, the PSA places certain restrictions upon members' activities, and requires that members (like Detective Sergeant Jim Van Allen) disclose the full particulars of any secondary activity that may in the future, or may already have, contravene the restrictions.

59. The PSA restrictions upon secondary activities are described in Section 49:

Restrictions on secondary activities

49. (1) A member of a police force shall not engage in any activity,
 (a) that interferes with or influences adversely the performance of his or her duties as a member of a police force, or is likely to do so;
 (b) that places him or her in a position of conflict of interest, or is likely to do so;
 (c) that would otherwise constitute full-time employment for another person; or
 (d) in which he or she has an advantage derived from being a member of a police force. R.S.O. 1990, c. P.15, s. 49 (1); 2009, c. 30, s. 50 (1).

Exception, officer appointed under the Interprovincial Policing Act, 2009

(1.1) Clause (1) (c) does not apply to a police officer appointed under the Interprovincial Policing Act, 2009. 2009, c. 30, s. 50 (2).

Exception, paid duty

(2) Clause (1) (d) does not prohibit a member of a police force from performing, in a private capacity, services that have been arranged through the police force. R.S.O. 1990, c. P.15, s. 49 (2).

Disclosure to chief of police

(3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police or, in the case of a chief of police, to the board. R.S.O. 1990, c. P.15, s. 49 (3); 1997, c. 8, s. 30 (1).

Decision of chief of police or board

(4) The chief of police or the board, as the case may be, shall decide whether the member is permitted to engage in the activity and the member shall comply with that decision. R.S.O. 1990, c. P.15, s. 49 (4); 1997, c. 8, s. 30 (2).

60. Although secondary employment as a private investigator is not specifically named as prohibited in the PSA, (no specific employment is named as prohibited in the PSA) there is a long-standing policy which characterizes police employment as private investigators or in other similar lines of work (process servers, skip tracers, credit collections), as

such secondary employment as violation of PSA, sections 49 (1) (a), (b) and (d).

61. Separate and apart from police policy and directives, secondary employment as a private investigator or in other similar investigative professions is prohibited because it creates potential and actual conflicts of interest between a police officer's duty to the public, the police service and the courts, and a private investigator's and business person's natural desire to obtain results for clients, to ensure the secondary employment is profitable, and to attract more clients and more investigations.
62. Secondary employment as a private investigator is also prohibited as it creates temptations and conflicts of interest in respect of improper access to, and misuse of, confidential police data, reports, sources, resources, specialized techniques and investigative tools. This appears to have happened in this case.
63. Victims, witnesses and other persons and entities, as well as the Crown and the Courts, rely upon the independence and discretion of the police. Any doubts about an individual police officer's divided loyalties, whether proven or not, undermines not only the public's trust of that police officer, but of the involved police service and even the entire policing profession in Ontario.
64. The public must trust and have confidence in the ability of the police to protect and restrict access to and the use of, confidential information that is provided to the police by the public, institutions or other government agencies. This trust and confidence is undermined when serving police officers act as private investigators.

65. For all of these above reasons, police services in Ontario and across Canada have had a long-standing prohibition against police officers acting as private investigators, and against licensed private investigators serving in any capacity (even as volunteers) with police services. In *Calgary Police Association v. Calgary Police Commission*, 1987 ABCA 239, the Calgary Police 'Rule 87' prohibition against police personnel engaging in various secondary employment including as a private investigator and process server was addressed and the Court of Appeal said: "Clearly Rule 87 is supportable to prevent possible conflicts with the recognized duties and responsibilities of police officers generally." In particular, the O.P.P. Standing Committee on Secondary Employment indicates that the OPP Commissioner has final approval on secondary activities.

(ii) Mandatory Disclosure of Secondary Activities

66. Under PSA 49(3), as an Ontario Provincial Police officer Detective Sergeant Jim Van Allen was required to disclose "full particulars" of secondary activity as a private investigator to the Commissioner of the Ontario Provincial Police.
67. PSA 49(3) states:
- (3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police or, in the case of a chief of police, to the board. R.S.O. 1990, c. P.15, s. 49 (3); 1997, c. 8, s. 30 (1).
68. In light of the obvious conflict and the general policy that is improper to do so, it is a certainty that Detective Sergeant Jim Van Allen did not disclose to the OPP Commissioner in 2009 that he was acting as a private investigator in the employ of Faskens, Ranking and Kwidzinski.

69. It is a certainty that Detective Sergeant Van Allen did not disclose to the OPP Commissioner that he swore to an affidavit detailing his private investigations for use as evidence in an Ontario civil court case, and especially for the Nelson Barbados case, in light of the fact that the O.P.P., and perhaps his unit, had been dealing with a open criminal investigation in relation to the case since 2007.
70. While Van Allen may (or may not) have disclosed to the OPP that he had created an Ontario corporation in 2008 and was engaged in various non-prohibited secondary activities such as teaching, or authoring books, it is a certainty that Van Allen did not disclose "full particulars" of his activities as a private investigator since the full particulars would have disclosed that his activities were prohibited.
71. As an experienced and senior police officer with three decades of police experience, and as the manager of the OPP's elite Criminal Profiling Unit investigating serial murders, abductions and other serious crimes, Detective Sergeant Jim Van Allen knew or should have known that his secondary activities as a private investigator were prohibited by the PSA and the Ontario Provincial Police. He could not, and did not, disclose and obtain permission beforehand as required by PSA 49(3). He also knew or should have known that to report his private investigation activities afterwards would bring his professional reputation into disrepute in the OPP, and would almost certainly result in charges, convictions and even potential dismissal under the PSA.
72. It is also a certainty that Detective Sergeant Van Allen would not disclose the "full particulars" that he was working as a private investigator on one side of a civil case where the Ontario Provincial Police had on file an open criminal occurrence in an area of his expertise: threats. It is a certainty that Detective Sergeant Van Allen did not disclose that he was working for

defendants in a civil case where such defendants were reported to the OPP in 2007 as suspects in criminal activities against witnesses, lawyers and other persons associated with Nelson Barbados Group Ltd.

(iii) Detective Sergeant Van Allen's Actual Conflict of Interest

73. There were other reasons why Van Allen may have specifically concealed his 'on the side' activities in the Nelson Barbados case. Van Allen knew, or should have known, that his private investigation work on the Nelson Barbados case for Faskens and lawyers Ranking and Kwidzinski and purported defendant 'PricewaterhouseCoopers East Caribbean Firm' was a direct conflict of interest with an open Ontario Provincial Police criminal investigation, where his private clients had been reported as suspects in a crime.
74. Detective Sergeant Van Allen knew, or should have known, that since 2007 the OPP had an open crime occurrence into harassment, threats and violence against persons associated with Nelson Barbados Group Ltd. ("NBGL"), the plaintiff in the Nelson Barbados v. Cox civil case.
75. Barrister and Solicitor, and former counsel for NBGL, William McKenzie, and his family members, reported this criminal occurrence to the OPP in Orillia, Ontario in 2007. OPP investigators interviewed the McKenzies several times and received complete information, including the names of the suspects that generally included all defendants in the Nelson Barbados Group Ltd. v. Cox civil case.
76. Mr. McKenzie reported to the OPP that he, and others, including witnesses associated with Nelson Barbados Group Ltd., had been criminally threatened during third-party phone calls by a defendant from Barbados, Peter Simmons.

77. This specific threat from Peter Simmons is of note because Faskens and Mr. Ranking in 2007 hired Dr. Sharon Smith who testified as an expert witness before Justice Shaughnessy to rebut evidence regarding Peter Simmons' threats. Dr. Smith was then, and remains, one of Jim Van Allen's long-time business associates.
78. Further, McKenzie reported to the OPP the long history of threats, harassment, violence and other criminal acts against witnesses, lawyers and their family members in the Nelson Barbados Group Ltd. case. Mr. McKenzie also reported threatening and harassing actions against his family home in Orillia that were timed to coincide with litigation events in the Nelson Barbados case: including anonymous phone calls to his wife to let her know that the caller knew she was home alone and that Mr. McKenzie was traveling to do with the Nelson Barbados case.
79. As evident from Van Allen's CV, Detective Sergeant Jim Van Allen was in 2007, when the criminal complaint was made, and in 2009 when he worked for the Nelson Barbados defendants, the manager of the OPP's Criminal Profiling Unit. According to the OPP website, the Behavioural Sciences and Analysis Services unit where Van Allen worked is also responsible for Threat Assessments. It may even be that Detective Sergeant Jim Van Allen or members of his unit officially worked on the Nelson Barbados criminal threatening occurrence, or was in the chain of command and/or communications distribution network.
80. Whether Detective Sergeant Van Allen personally worked on the OPP criminal complaint by Mr. McKenzie or not, his working for the suspects and against the victims in an open OPP criminal occurrence is a direct conflict of interest.

81. Dr. Sharon Smith, a threats expert witness for the defendants in the Nelson Barbados case, presented by Faskens and Gerald Ranking, worked together with Jim Van Allen on a long term basis as policing professionals, and also as business associates. Their current websites indicate that they are still working together.
82. Given the apparent long standing professional and business relationship between former FBI Agent Dr. Sharon Smith and serving OPP Detective Sergeant Jim Van Allen, and the role of both as expert witnesses for the defence hired by Gerald Ranking in the Nelson Barbados case, there are serious unanswered questions concerning conflicts of interest, and how Mr. Ranking came to hire each. This is especially true considering that Detective Sergeant Jim Van Allen's true status as a serving police officer, threats expert and manager of the OPP criminal profiling unit was concealed from the Appellant and from the Court.
- (iv) Disclosure of personal information by police.
83. While the disclosure of personal information is not newly discovered, the fact that it was a police officer who accessed the information and disclosed it is newly discovered.
84. Under the Police Services Act of Ontario, the disclosure of personal information by police is considered to be of sufficient importance that the PSA regulates which members of police services are allowed to disclose personal information. Section 41 of the PSA also mandates that the disclosure 'shall' be done for one of eight purposes:

Power to disclose personal information

41 (1.1) Despite any other Act, a chief of police, or a person designated by him or her for the purpose of this subsection, may disclose personal information about an individual in accordance with the regulations.

Purpose of disclosure

(1.2) Any disclosure made under subsection (1.1) shall be for one or more of the following purposes:

1. Protection of the public.
2. Protection of victims of crime.
3. Keeping victims of crime informed of the law enforcement, judicial or correctional processes relevant to the crime that affected them.
4. Law enforcement.
5. Correctional purposes.
6. Administration of justice.
7. Enforcement of and compliance with any federal or provincial Act, regulation or government program.
8. Keeping the public informed of the law enforcement, judicial or correctional processes respecting any individual.

85. Detective Sergeant Jim Van Allen disclosed the Appellant's personal information to the public by placing Best's Ontario driver's license number, date of birth and Ontario Ministry of Transport address history into an affidavit that was filed in the Nelson Barbados case without redaction. Detective Sergeant Van Allen's 'private investigation' reports containing Donald Best's personal information were also distributed to the public. The information from Van Allen's reports and affidavit itself were published on the internet, starting on October 30, 2009, three days prior to the November 2, 2009 costs hearing. The actual affidavit was published on the internet in January 2010.
86. Copies of Detective Sergeant Van Allen's affidavit and Donald Best's personal information disclosed by Van Allen, remain posted on the internet in 2014.
87. Detective Sergeant Van Allen's disclosure of Best's personal information directly resulted in acts of violence, threats, harassment and other criminal

acts against Mr. Best and his family members. Mr. Best was ambushed and assaulted on the street. His family members were frightened and worried about violence and identity theft. One of his children was approached, shown a printout from the internet and threatened, and had to deny the Donald Best was their father. Anonymous persons on the internet called for criminals and gang members Mr. Best had prosecuted to hunt down Best and his family. Some persons called for the defendants to illegally hire an off-duty police officer to track down Mr. Best and his family. Unknown persons shot up a Best family vehicle parked near the family home. (Best Affidavit April 2012).

88. It is a certainty that Detective Sergeant Jim Van Allen was not authorized by the OPP Commissioner to release Donald Best's personal information, and therefore Detective Sergeant Van Allen was in violation of PSA 41(1.1).
89. Further, it seems apparent that Van Allen's release of Best's personal information was not in accordance with the authorized purposes under PSA 41 (1.2), and therefore Van Allen was again in violation of the PSA.

(b) Private Security and Investigative Services Act

90. The mandatory separation between the professions of police officer and private investigator is further illustrated by Sections 39 and 40 of the Ontario Private Security and Investigative Services Act, 2005, S.O. 2005, c. 34:

Holding out as police

39. No person who holds a licence under this Act shall hold himself, herself or itself out as providing services or performing duties connected with police. 2005, c. 34, s. 39.

Certain terms prohibited

40. No private investigator, security guard or person who engages in the business of selling the services of private investigators or security guards shall use the following terms or variations of them:

1. Detective or Private Detective.
2. Law enforcement.
3. Police.
4. Officer

91. Section 6 of the Act states:

PART III PROHIBITIONS
Individual licence

6. No person shall act as a private investigator or a security guard or hold himself or herself out as one unless the person holds the appropriate licence under this Act and,

(a) is employed by a licensed business entity, a registered employer under section 5, or an employer that is not required to be registered; or

(b) is the sole proprietor of a licensed business entity or is a partner in a licensed business entity. 2005, c. 34, s. 6.

Licence to engage in the business

7. (1) No person shall sell the services of private investigators or security guards or hold themselves out as available to sell such services, unless,

(a) the person holds the appropriate licence under this Act; or

(b) the person is an employee of a licensee described in clause (a) and is acting on behalf of that licensee in the normal course of his or her duties.

92. Detective Sergeant Van Allen did not, and could not as a serving police officer, hold an appropriate license under the Ontario Private Security and Investigative Services Act when he acted as a private investigator, employed by Faskens/Ranking/Kwidzinski.

(c) **Bribery of Officers: Criminal Code Section 120**

93. The section of the Criminal Code of Canada dealing with Bribery of Officers states:

Bribery of officers

120. Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years who

(a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment with intent

(i) to interfere with the administration of justice,

(ii) to procure or facilitate the commission of an offence, or

(iii) to protect from detection or punishment a person who has committed or who intends to commit an offence; or

(b) directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii).

94. In October 2009 Detective Sergeant Jim Van Allen was a 'Peace Officer', and that with Faskens/Ranking/Kwidzinski he agreed to, and obtained 'money' and 'employment', as evident in his affidavit and invoices filed with the court.
95. Detective Sergeant Jim Van Allen 'interfered' with the administration of justice when he offered evidence of an affidavit and two invoices in the Nelson Barbados civil case, when his participation in the case was prohibited by various laws. The 'interference' resulted from Detective Sergeant Van Allen's unauthorized and illegal participation in the Nelson Barbados civil case. Detective Sergeant Jim Van Allen's evidence contained significant omissions, deceptive and misleading statements and opinions and, regarding one issue, was arguably false.
96. Detective Sergeant Jim Van Allen, as a direct result of being employed by Faskens/Ranking/Kwidzinski and receiving or being promised money, committed offenses against the *Police Services Act*, and against the Ontario *Private Security and Investigative Services Act*.
97. In 2009, Detective Sergeant Jim Van Allen was employed by defendants in the Nelson Barbados case, who were reported to the OPP in 2007 as criminal

suspects in a criminal-threatening occurrence relating to the Nelson Barbados case. Detective Sergeant Van Allen was in 2007 and 2009 a manager in the OPP unit tasked with assessing criminal threatening occurrences.

98. There are serious concerns that Detective Sergeant Van Allen's employment and payment of money by Faskens/Ranking/Kwidzinski could be perceived as an attempt, or means to: "protect from detection or punishment a person who has committed or who intends to commit an offence". There is an obvious benefit to criminal suspects if they are able to secretly hire a police officer who has or could have knowledge of the police investigation into them.

99. Further, there are serious concerns that the persons and entities who offered or provided Detective Sergeant Van Allen employment and money to work for defendants in the Nelson Barbados civil case, could be perceived as "directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii)."

8. Durham Regional Police Secret Investigation and cover-up of Van Allen's illegal activities

100. In the April 29, 2013 affidavit of Donald Best detailing the Durham Regional Police Service's discovery of what Durham Police and Best called "an 'undocumented', secret, private or 'on the side' " investigation of Best by a Durham Regional Police court constable in December of 2009 in anticipation of a guilty verdict against Best to happen in a trial to take place over a month later on January 15, 2010.

101. As related in Mr. Best's affidavit, an investigation of this court constable by the Professional Standards Unit of the Durham Regional Police Service showed that the investigation of Best was "entirely undocumented and that no official or unofficial notes, emails, reports, files or records of this court police investigation exist with the Durham Regional Police or at the Court, including in the administrative records of the court in Barrie and Oshawa, or in the Nelson Barbados Group Ltd. court file and court transcripts."
102. Further, Sergeant Laurie Rushbrook of the Durham Regional Police, Professional Standards Unit advised Best that the investigation was "most likely in assistance to the court."
103. In the April 30, 2013 hearing in relation to the application to set aside the contempt order, the Appellant submitted the April 29, 2013 affidavit to the court and made oral submissions before Justice Shaughnessy. Mr. Best spoke of a cover-up and said (page 10, line 23):

"The facts that were explained to me recently by Sergeant Rushbrook and my own experience as a police sergeant and veteran of internal investigations call for an immediate and thorough examination of this court process and court police investigation. The fact that no electronic or paper records, official or otherwise, of this investigation exist with the Durham Police, such as police notes, files, documents, occurrence numbers - nothing exists in the court file and Your Honour, that speaks further of a cover-up or a conspiracy in order to prevent a full hearing and it adds to already serious concern that this has been a miscarriage of justice and abuse from the beginning."
104. The Appellant also informed the court in the affidavit and orally that the Durham Regional Police Professional Standards Unit advised that they did not know how deep the undocumented or private police investigation went, what came of it, who requested it, who received the product of the investigation, or who provided Donald Best's name, date of birth and other information to the Court Constable. The Durham Police Court Constable retired a matter of a few days after first being spoken to by Sergeant Rushbrook and could no longer be compelled to talk.

105. On page 15 of the April 30, 2013 transcript, Mr. Ranking replied, stating:
- "I have no idea what my friend is talking about and I can tell you that neither Mr. Silver nor I, nor our respective clients, had anything to do with any of the allegations set out in Mr. Best's affidavit concerning Mr. Rushton, Sergeant Rushton, that he has handed across today, number one."
106. In fact, Mr. Ranking knew, or should have known, that by employing Detective Sergeant Van Allen as a 'private investigator', or 'private police officer', Mr. Ranking had in effect commissioned a secret police investigation of Donald Best, and he had done so in the same general time frame as the secret police investigation that Mr. Best was informed about by Durham Regional Police.
107. Further, in answering Mr. Ranking's oral submissions to the court, Donald Best mentioned Mr. Ranking's private investigator, and how Van Allen had unlawful access to police records. On April 30, 2013, Mr. Best did not know that Jim Van Allen had been a serving police officer engaged in a secret police investigation of Mr. Best in 2009. Mr. Best stated (Page 16, starting line 32):
- "MR. BEST: Well, I responded to his (Mr. Ranking's) first point that he said and he's also assuring us that his clients don't know and I would remind you that Mr. Ranking's private investigator, by his own admission in his affidavit, accessed secret police records which he should not have, which the people who hold those records, the police association, say was a criminal offence that he did it. That was..."
- THE COURT: That goes to the main argument that you are making in this case.
- MR. BEST: So, Mr. Ranking saying that his client doesn't know is - you know, it carries very little weight."
108. Mr. Ranking knew or should have known that his private police officer had improperly accessed confidential police files on Mr. Ranking's behalf,

provided him with the information gleaned and placed at least some of that information into an affidavit. Further, Mr. Ranking knew or should have known that Detective Sergeant Jim Van Allen might have contacted the Durham Regional Court Constable and provided him with Donald Best's confidential and personal information as part of Detective Sergeant Van Allen's investigations and tasks for Mr. Ranking.

109. Mr. Best asked the court to perform a full investigation of the secret police investigation, which the court refused, saying that it was a matter for the Durham Regional Police to investigate.

9. Ranking and Silver knew or should have known that Van Allen was a police officer working unlawfully and that he was unlawfully accessing police information

(a) **Ranking**

110. Mr. Ranking retained a private investigator who was a 'former' police officer and relied upon his expertise. It is inconceivable that a competent senior counsel would not ask his affiant when he left the police, whether he was a licensed private investigator and how he got or was getting access to police data. In preparing the affidavit in this case, these questions would certainly have been asked. While it is possible that Detective Sergeant Van Allen lied to Mr. Ranking, it is extremely unlikely in light of the fact that information from police information checks were included in the affidavit and the editing of the invoices included edits regarding such checks. It is not possible that Mr. Ranking did not see the unedited versions of those invoices since, if Van Allen was hiding the information from Mr. Ranking, there would have been no need to include the information and then excise it. The details would merely have been omitted in the first place. Further, the drafting of the affidavit is carefully crafted to avoid revealing the fact that Van Allen was a

serving police officer. The fact that Mr. Ranking had earlier retained Dr. Smith, an associate of Van Allen, increases the likelihood that Mr. Ranking knew of Van Allen's status as a serving police officer. Mr. Ranking mentioning searches using to a Social Insurance Number also increases this likelihood. Finally, the fact that Van Allen was not produced by Mr. Ranking for cross-examination suggests that Mr. Ranking knew that there was a risk of exposure of this fact by cross-examination.

(i) Structure of Van Allen's evidence conceals his true status

111. The structure and content of private investigator/affiant Jim Van Allen's evidence (Van Allen's affidavit and invoices) had the effect of concealing from the Appellant and from the courts, the witnesses' true status as a serving OPP Detective Sergeant, and his primary expertise as a threats and risk assessment professional.
112. The October 24, 2009 invoice indicates that Mr. Ranking and Mr. Kwidzinski were involved in the preparation of the Van Allen affidavit.
113. The October 24, 2009 and November 7, 2009 invoices were placed before the court by Mr. Ranking on January 15, 2010. The invoices have extensive redactions, including redactions of what types of 'checks' and 'record checks' were performed by Mr. Van Allen. As Mr. Van Allen signed the invoices and probably prepared them, it is probable that Van Allen delivered them to Mr. Ranking in an unredacted form, and that Mr. Ranking or his staff upon Mr. Ranking's instructions would have redacted the invoices before filing them with the court. The converse is illogical. If Van Allen had wanted to hide his status as a police officer from Mr. Ranking, he would not have raised red flags by editing in respect of checks, the substance of which reveals that this was information accessible by the police. Rather, he would not have included the detail in the first

place and there would have been no need to edit (i.e., just "checks"; not X "checks, requiring an edit).

114. During his January 11, 2013 cross-examination by Mr. Silver and Mr. Ranking, Donald Best stated that Mr. Ranking redacted Mr. Van Allen's invoices, to which Mr. Silver replied "Maybe he redacted it because it was privileged." The entire exchange is in the record (January 11, 2013 transcript page 168, 169). This is an admission that he edited the invoices. There could not have been any privilege attaching to the edited parts of the invoices.
115. In Detective Sergeant Jim Van Allen's affidavit paragraph 1, Van Allen identifies himself as President of BSSGI, "an Ontario corporation that provides investigative analytical services..." Missing is the fact that neither BSSGI nor Van Allen himself were licensed to provide private investigation services as required under Sections 6 and 7 of the Ontario *Private Security and Investigative Services Act*, and that both Van Allen and his corporation were in violation of the Act.
116. In Jim Van Allen's affidavit paragraphs 2 through 5 under the heading "Background and Experience", Van Allen omits and conceals from the court the following facts that were true when he swore to his affidavit on October 21, 2009:
 - a. Jim Van Allen was (from May 1979 until October 2010) in full-time employment as a serving police officer, a Detective Sergeant with the Ontario Provincial Police.
 - b. Detective Sergeant Van Allen was (until October 2010) the manager of the OPP Criminal Profiling Unit where he had been assigned since 1995.
 - c. Detective Sergeant Van Allen selectively omitted any and all information about his professional expertise and training in threats, stalking, harassment and risk assessment. When compared with Van Allen's normal 2009 CV, normal 2013 CV and other materials

including his LinkedIn Profile and the current Alpha flyer a large amount of information was selectively omitted. The specific exclusion of this type of information is significant given the long history of threats, harassment, violence and other criminal acts against persons associated with the Nelson Barbados plaintiff.

- d. Detective Sergeant Van Allen did not reveal that his employment as a private investigator was illegal, a violation of the *Police Services Act*.
 - e. Detective Sergeant Van Allen did not reveal that his disclosure of Donald Best's personal information (date of birth, address history, drivers license number etc.) was illegal, a violation of the *Police Services Act*.
 - f. Detective Sergeant Van Allen did not reveal that his employment to perform an investigation for a defendant in the Nelson Barbados civil case was a direct conflict of interest for himself and for the Ontario Provincial Police. Van Allen did not reveal that since 2007 the OPP had an open crime occurrence into harassment, threats and violence against persons associated with Nelson Barbados Group Ltd., the plaintiff in the Nelson Barbados v. Cox civil case. Detective Sergeant Van Allen did not reveal that since 1995 he was assigned to the OPP unit in charge of threat assessments and threat occurrences for the entire province, nor did he reveal that some defendants in the Nelson Barbados case were listed as potential suspects in the OPP open crime occurrence.
 - g. Detective Sergeant Van Allen did not reveal his long-term professional police relationship and also his business relationship with another of Mr. Ranking's expert witnesses, Dr. Sharon Smith, who had provided evidence about threats in the Nelson Barbados case in January 2008.
 - h. Further, Detective Sergeant Jim Van Allen's affidavit is written in an unusual 'passive' voice, and are presented by Van Allen without a definitive commitment that the affiant performed the action himself. For instance in paragraph 12, Van Allen states "Inquiries of the Toronto Police Association, of which Mr. Best was a member, only reveal the former address in Hamilton, namely, 123 Mountain Park Road," and in paragraph 9 "Internet searches of various types were also unhelpful in locating any residential addresses for Mr. Best." Paragraph 10: "Other searches have also failed to disclose Donald Best's whereabouts."
117. Mr. Ranking, Mr. Kwidzinski, Mr. Silver and others knew prior to the creation of Detective Sergeant Van Allen's affidavit that the Nelson Barbados case had seen many allegations of threats, violence and other

criminal acts against the appellant's witnesses. The lawyers also knew that there was forensic evidence that some of the anonymous threats originated from defendants and also from the law firm of Miller Thomson. The omission of any mention of Van Allen's extensive background in threat assessment would be surprising in light of this situation, unless this was a conscious effort to conceal the fact that that Van Allen was a serving police officer who was likely aware of the case as a result of his police duties.

118. Further, the incorrectness of Van Allen's conclusions regarding motivation to hide (to evade service per Van Allen; vs. safety as an former undercover police officer) are more clear when one considers the nature of Van Allen's expertise. For instance, throughout Section B 'Investigation Regarding Donald Best', Detective Sergeant Van Allen, one of the foremost threat and risk assessment police officers in Canada, is mystified and seemingly cannot imagine why Donald Best, whom he knew to be a former police officer and deep undercover investigator against organized crime, would use mailboxes to hide his home address, and have no listed telephone.
119. Further, in paragraph 15, Detective Sergeant Jim Van Allen states: "Very few people demonstrate the strenuous efforts (over a number of years) to create and convey a false address history, as reflected by the repeated use of false addresses and/or post office box numbers used by Donald Best. In my investigative experience, he is among very few individuals to go to this length to conceal his address." In light of his expertise and the fact that he was a police officer himself, Detective Sergeant Van Allen knew or should have known that Donald Best's hiding of his home address was normal and commonly practiced by police officers and other at risk persons.

120. Detective Sergeant Van Allen would have known that this concealment of residence is common and acceptable practice not only for police officers, but also for many Crown Prosecutors, judges, parole officers, health care workers, women's shelter workers, private investigators and a host of other at risk professions.
121. Detective Sergeant Van Allen would also have known that the names, addresses and phone numbers of undercover police officers are often concealed within policing organizations themselves as the policing community knows that Organized Crime and others are sometimes able to penetrate police and government databases. Van Allen would know that these breaches of data security happen when unethical police personnel illegally work for private interests: exactly as Detective Sergeant Van Allen was doing himself.
122. In paragraph 9, Detective Sergeant Van Allen notes that Donald Best used the word "suite" to describe a UPS United Parcel Service box address and that "I cannot explain the different terminology but it would certainly suggest an intention to portray a "mailbox" as an actual residential address."
123. Van Allen's purported bewildered state over why Donald Best would use the word 'suite' in this manner appears contrived to be sinister because Van Allen did not inform the court that he himself had a UPS United Parcel Service box in Orillia, to conceal his own home address. Van Allen did not inform the court that he also used the word "Suite" in relation to his own UPS box (per Van Allen's 2009 CV).
124. In paragraph 14 and 15, Detective Sergeant Van Allen uses the word 'false' to describe Donald Best's UPS mail box addresses. Van Allen states that Best exhibits "repeated use of false addresses and/or post office

box numbers". None of the addresses and UPS boxes are false. The appellant used each of them to receive mail. In the case of the East Mall address the appellant has rented the UPS box for almost 20 years. The use of the word 'false' by Detective Sergeant Jim Van Allen is in itself a demonstrably false statement. Van Allen knew that he supplied an affidavit that he must have known was deceitful, deceptive and outright false in paragraphs 14 and 15.

(ii) Gerald Ranking indicated that Investigations into Donald Best included Social Insurance Numbers.

125. I note that on page 58 of the January 15, 2010 transcript, Mr. Ranking indicates to the court that the private investigation also involved Mr. Best's social insurance number, saying:

"RANKING: 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."

126. There is no reference to the use of Social Insurance Numbers in any of the materials filed before the court. It is possible though, that the redacted October 24, 2009 and November 7, 2009 Van Allen invoices or a report or letter contained some information about the Social Insurance Number investigations, prior to redaction.

127. It therefore seems apparent that Mr. Ranking's oral submission to the court is further indication that there are facets of the private investigation that Mr. Ranking is aware of, but withheld from the appellant and from the court.

128. Certain types of investigations and searches involving Social Insurance Numbers (such as credit reports) are prohibited without the written permission of the subject of the search or unless they are done for a

'permissible purpose'. There could be no 'permissible purpose' during investigation by Detective Sergeant Van Allen.

(iii) Lawyers actions had the effect of concealing truth about Van Allen from the Appellant and the Court.

129. At no time during the Nelson Barbados or Donald Best proceedings in lower court, or in the current proceedings in the Court of Appeal, did Mr. Ranking, Mr. Kwidzinski, Mr. Silver or anyone inform the court that the affiant Jim Van Allen was in fact an OPP Detective Sergeant, and one of the foremost threat and risk assessment professionals in Canada.

130. Mr. Ranking, Mr. Kwidzinski and Mr. Silver have always referred to Jim Van Allen as a 'private investigator' or similar term in written and oral submissions to the courts, in conversation with the Appellant during the recorded November 17, 2009 phone call, in inter-lawyer communications and during cross-examinations.

131. On November 17, 2009, both 'private investigator' Jim Van Allen and lawyer Sebastien Kwidzinski were to be cross-examined at Victory Verbatim in Toronto on their affidavits as presented to the court on November 2, 2009 (November 12, 2009 letter that is Exhibit V to Best's January 10, 2013 Affidavit).

132. Gerald Ranking refused to present Van Allen and Kwidzinski for cross-examination. This refusal was the subject of conversation between Mr. Ranking and the other lawyers, as shown in the digital voice recording made by Best at the time, and the associated certified transcript of the recording. All the lawyers in the room, including Ranking, Kwidzinski and Silver knew that Mr. Ranking had refused to present Van Allen and Kwidzinski for cross examination.

133. On November 17, 2009, Mr. Best called Victory Verbatim from overseas to be cross-examined, and spoke with Mr. Ranking and Mr. Silver on speaker phone while Mr. Kwidzinski and the other lawyers in the room listened. The voice recording and transcript show that when Mr. Best accused Mr. Silver of hiring the private investigator, Mr. Silver denied doing so. Mr. Best then asked of Mr. Silver ""Well well. Who was it then? Sir, who hired the private investigator?" Mr. Silver replied to Mr. Best, "I have no idea". Mr. Ranking, Mr. Kwidzinski and all the other lawyers in the room heard Mr. Silver say this to Mr. Best, yet remained silent about this issue as shown in the voice recording and the associated transcript.

134. As an experienced and senior lawyer, Mr. Ranking knew, or should have known, that had he presented Van Allen for cross-examination on Van Allen's affidavit, the first few basic questions would have forced Van Allen to admit that he was a serving OPP Detective Sergeant or to commit perjury or mislead.

(b) Silver

135. While Mr. Silver did not retain Van Allen, the positions advanced by Messrs. Ranking and Silver were done in cooperation. Mr. Silver repeatedly relied upon the Van Allen affidavit. It is highly unlikely that Mr. Silver was unaware of Van Allen's status as a police officer at the time. The fact that he denied knowledge of who hired the private investigator on the very day he was scheduled for cross-examination supports this position.

(c) Criminal or Quasi Criminal Liability

136. Under the *Criminal Code* and the *Provincial Offences Act* ("P.O.A.") a person may be a party to the criminal or quasi-criminal act of another if he aided and abetted that person. As stated above, the preparation and filing of an affidavit of a private investigator, who was a serving police officer, who accessed police data and who released that data to the public is violation of Provincial Statutes and an offence under the P.O.A. and the *Criminal Code*. The hiring of Van Allen by Mr. Ranking to do so was abetting. The drafting of the affidavit by Mr. Ranking was aiding. The knowing failure to divulge these circumstances and the reliance on the affidavit was also aiding and abetting by Messrs. Ranking and Silver and a criminal obstruction of justice by misleading the court.
137. In addition there are specific provisions for liability that flow from the legislation. In respect of the *Police Services Act*, section 81 of the *Police Services Act* states:
- Inducing misconduct and withholding services
- Inducing misconduct
81. (1) No person shall,
- (a) induce or attempt to induce a member of a police force to withhold his or her services; or
- (b) induce or attempt to induce a police officer to commit misconduct.
- Withholding services
- (2) No member of a police force shall withhold his or her services.
- Offence
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.
- Consent of Solicitor General
- (4) No prosecution shall be instituted under this section without the consent of the Solicitor General.
138. Detective Sergeant Van Allen's activities as a private investigator while under the employ of Faskens/Ranking/Kwidzinski, amounted to misconduct

under the Police Services Act. Detective Sergeant Van Allen's affidavit states that it was Gerald Ranking who contacted Van Allen with the offer of employment, and not the other way around. If Mr. Ranking was aware that Van Allen was a police officer, he was in violation of 81 (1) (b) 'induce or attempt to induce a police officer to commit misconduct'.

139. Section 120 of the Criminal Code also makes a person liable based on direct or indirect conduct.
140. The knowledge that Van Allen was a serving police officer when he purported to investigate as a private investigator may have been an obstruction of justice in respect of an investigation. However, clearly when the affidavit was filed with the court and relied upon in civil and contempt proceedings, as officers of the Court, both Messrs. Ranking and Silver were obliged to reveal that this purported private investigator was violating at the least the *Police Act* and the *Private Security and Investigative Services Act* and that he was not a licensed private investigator. The failure to do so misled the Court and therefore constituted criminal obstruction of justice under s.139(2) of the *Criminal Code*. The misleading of a Court by a lawyer is an obstruction of justice (*R. v. Doz*, (1984) 12 C.C.C.(3d) 200 (Ata. C.A.), at para 28; *R. v. Wijesinha*, [1995] 3 S.C.R. 422; *R. v. Murray*, [2000] O.J. No. 2182 (S.C.J.)). Any misleading of a Court the misleading of "judicial proceeding" as defined in section 118 and is an obstruction of the "course of justice" (*Wijesinha, supra*). This is so even in respect of a provincial offence (*R. v. Kalick v. The King* (1920), 61 S.C.R. 175, *R. v. Spezzano* (1977), 15 O.R.(2d) 489 (C.A.)) or civil proceedings (*Wijesinha, supra*). It would certainly include misleading the Court in respect of a civil contempt proceeding which is criminal or quasi criminal.

10. Evidence was not discoverable through due diligence until recently

141. The fresh evidence was obtained on December 30 and 31, 2013, that proves purported 'private investigator' Jim Van Allen was, at the time of his 2009 investigations and sworn affidavit for Ranking, Faskens and PWCECF in the Nelson Barbados civil case, a sworn police officer with the rank of Detective Sergeant, who was actively serving in full time employment with the Ontario Provincial Police.
142. Until recently, the Appellant had been effectively misled by the lies of the OPP who covered for their former colleague by saying that Van Allen had retired from the OPP in 2008.
143. The lie was uncovered as a result of suspicions that led to a person contacting Van Allen as a potential client on December 30, 2013 and a December 31, 2013 email. This information was not available earlier. The c.v. was created on December 30, 2013 and could not be found on the internet. The materials available online lack crucial details about Van Allen, such as his retirement date, or even the fact that he was a police officer at the time.
144. The Appellant exercised due diligence in seeking to determine how Van Allen got his personal information from November 2012 through April 2013. Senior police officers from the Professional Standards Units of the Ontario Provincial Police and the Durham Regional Police Service officially informed Donald Best that Detective Sergeant Van Allen had retired from the OPP in 2008. This information was false.
145. On November 9, 2012 Donald Best spoke with Inspector John MacDonald of the RCMP Professional Standards Unit.

146. On December 10, 2012 the Appellant sent a fax to RCMP Commissioner Bob Paulson, requesting an investigation into illegal /unauthorized access to CPIC, Ontario Ministry of Transport and other internal police data. Mr. Best states that the (unnamed) suspects are a retired OPP Sergeant "and presumably still-serving OPP personnel who supplied him with the data."
147. On January 17, 2013, a fax was sent from the RCMP and P.M. Dionne of the Canadian Police Information Centre (CPIC), and also attaching 3 faxes from Donald Best to the RCMP Commissioner, including a January 16, 2013 fax informing Commissioner Paulson that Donald Best had received a voice mail from OPP Professional Standards Inspector Kearns.
148. On January 17, 2013, the Appellant called and spoke with OPP Professional Standards Officers Inspector Marty Kearns. A January 17, 2013 email from the Appellant to OPP Professional Standards Officers Inspector Marty Kearns and Sgt. Major Jeff Vibert, attaching the Van Allen October 21, 2009 affidavit, the two invoices from Behavioural Science Solutions Group Inc. to Faskens and Gerald Ranking, and the October 12, 2012 Order of Justice Shaughnessy staying the execution of the arrest warrant for Donald Best.
149. On Monday February 4, 2013, Donald Best spoke on the phone to Sgt. Major Vibert during several calls, wherein Vibert advised Best that:
 - a. The OPP Professional Standards Unit had completed their investigation of Jim Van Allen and found that there were no information checks made on Donald Best by any OPP officer.
 - b. A Durham Regional Police officer had made two CPIC checks of Donald Best on December 17, 2009.
 - c. Peel Regional Police had performed a CPIC check on Donald Best on January 29, 2010.

- d. Detective Sergeant Jim Van Allen had retired from the OPP in 2008 when he formed his corporation Behavioural Science Solutions Group Inc., and was retired when he was employed by Gerald Ranking in October of 2009.
 - e. Best and Sgt. Major Vibert discussed that it was possible that 'retired' Jim Van Allen might have known a Durham Regional Police officer and had that officer perform the CPIC checks upon Donald Best in December 2009.
 - f. Sgt. Major Vibert advised Donald Best to contact Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit, whom Sgt. Major Vibert had already spoken with.
150. Sgt. Major Vibert falsely told Donald Best that Detective Sergeant Jim Van Allen had retired in 2008 when he founded his Ontario corporation, creates a reason to doubt the quality of the OPP internal investigation and the veracity of Sgt. Major Vibert's information, including that Vibert "found that there were no information checks made on Donald Best by Jim Van Allen or any other OPP officer."
151. On Monday February 4, 2013, as advised earlier by Sgt. Major Vibert, Donald Best called Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit and discussed the case. A February 6, 2013 email from Donald Best to Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit, and to St. Major Jeff Vibert of the OPP Professional Standards Unit. The email described how "the defendants and their lawyers had in October 2009 hired a former OPP Detective Sergeant to track me down. This person, Jim Van Allen, improperly accessed confidential Toronto Police information and Ministry of Transport information about me." The email also confirms that Sgt. Major Vibert falsely informed Best that Jim Van Allen had retired prior to being hired by the lawyers in October 2009.

152. Further, the Appellant also wrote on February 6, 2013 that he suspected Van Allen might have caused the Durham Regional Police Special Constable to perform CPIC checks on Best. A February 7, 2013 email from Inspector Dmytruk acknowledging Best's email of the day before. A February 15, 2013 email from Donald Best to Inspector Dmytruk, informing that Best had not yet heard from the Durham Police investigator assigned to the case. A February 19, 2013 email from Sgt. Laurie Rushbrook to Donald Best and Best's reply.
153. On March 1, 2013, Donald Best spoke on the phone with Sgt. Rushbrook. An email dated March 13, 2013 from the appellant to Sgt. Rushbrook attaching three court transcripts for November 2, 2009, December 2, 2009 and January 15, 2010 was sent. On March 13, 2013, Donald Best spoke on the phone with Sgt. Rushbrook. A March 20, 2013 email exchange between Donald Best and Sgt. Rushbrook. A March 27, 2013 email from the Appellant to Sgt. Rushbrook and attachments. On March 27, 2013, Donald Best spoke on the phone with Sgt. Rushbrook.
154. On April 11, 2013, Donald Best spoke on the phone with Sgt. Rushbrook, who informed Best that, inter alia, she had found no connection between the Durham Police court constable and 'retired' OPP officer Van Allen.
155. On April 24, 2013, Donald Best spoke on the phone with Sgt. Rushbrook, who informed Best that, inter alia, her investigation did not examine if any Durham officers checked internal records for Donald Best.
156. On April 29, 2013, Donald Best swore an affidavit which was placed before the court on April 30, 2013, that described Sgt. Rushbrook's findings regarding the secret police investigation.

D. EXAMINATIONS NEEDED

157. The fact that Van Allen committed at least Provincial offences is clear.
158. The evidence that Mr. Ranking knew and participated in presenting an affidavit that was the product of such an offence and the degree to which he acted to cover up that offence requires further examination. While there is a strong circumstantial case to indicate his knowledge and criminal or quasi-criminal complicity, such an allegation requires further evidence or at least an opportunity for Mr. Ranking to deny or explain. While there is a circumstantial case against Mr. Silver, it is weaker. However, the reliance by Mr. Silver on the evidence of Van Allen, the joint nature of the efforts of Silver and Ranking and the comments on November 17, 2009 do create a circumstantial case of knowledge or wilful blindness. Further evidence is required, or at least an opportunity for Mr. Silver to deny or explain.
159. Van Allen knows who he told and what he told about his status as a serving police officer in or before October 2009. Documents, including unredacted invoices exist that will shed light on the issue of what activity was done by Van Allen and the use of police powers in the case.
160. Tamara Williamson is a director of Van Allen's corporation. She should have access to documentation regarding his retirement from the police force and whether and when he became a licensed private investigator, in addition to the unredacted invoices.
161. Other witnesses and documents from the OPP (Vibert); Durham Regional Police Force (Dmytruk; Rushbrook) and Toronto Police Association would also help determine the issues (When Van Allen retired; disclosure or non-disclosure of private investigations by Van Allen to OPP; involvement of Van Allen in 2007 criminal threat allegation in respect of McKenzie/NBGL;

access to MTO, Toronto Police Association information access; access to CPIC; DRPS investigation). However, the degree to which these witnesses and documents will be necessary will depend on whether Van Allen cooperates and the extent and honesty of that cooperation.

162. Finally, if a credible basis remains to believe that Messrs. Ranking and/or Silver knew and participated in the criminal or quasi-criminal acts of Van Allen, their examination would be also be sought make clear their wilful complicity in the offences of Van Allen and their obstruction of justice.

E. TIME TO CONDUCT EXAMINATIONS

163. The Appellant had great difficulty finding counsel able and willing to take on this case. The need to present evidence of misconduct of fellow counsel, let alone criminal or quasi-criminal misconduct is distasteful for most counsel.
164. Counsel for the Appellant, Paul Slansky, is in the middle of a terrorism trial in the Superior Court before the Honourable Madam Justice Baltman. The pre-trial motions will be continuing on February 10-24 (excepting Feb. 19 and 21) and possibly the afternoon of Feb. 25. The jury selection is scheduled for the week of March 3. The Trial before the jury is scheduled for 6-9 weeks starting March 17. Justice Baltman has asked that counsel be available except for Feb. 19 and 21 (because she is unavailable on those dates) until the end of May. Justice Blair scheduled the review/appeal notwithstanding the trial schedule. However, this fresh evidence and examination issue was not known to Justice Blair. Although the facts began to surface at the end of 2013, they only came together in late January and February, 2014. This motion is being made returnable on February 21, without consulting with the Respondents, because of the limited availability of Mr. Slansky.

ASS

165. Summonses have been issued for Van Allen and Williamson returnable on February 19. Efforts were made to serve them on February 6, 7 and 10, 2014. Further efforts will be made on February 11, 2014. Van Allen has located in B.C. and an email was sent to him. He has presently indicated a willingness to testify if video-link can be arranged. However, so far service through his Ontario corporate offices has not been achieved. So far, there is some indication that Williamson is on some kind of leave.
166. Such further grounds as counsel may advise and this Honourable Court permit.

THE RELIEF REQUESTED IS:

1. Adjourning the motion scheduled for February 27, 2014;
2. Re-scheduling of the motion to be heard:
 - a) with the main appeal on June 2, 2014; or
 - b) on June 2, 2014 with the adjournment the appeal hearing date to a date after June 2, 2014.
3. Adding a copy of the recording of a November 17, 2009 conversation to the record on the review/appeal and the main appeal.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this Application:

1. The affidavit of Che Claire;
2. The Motion Record and Factum for the review/appeal motions to a panel scheduled for February 27, 2014;
3. The Appeal Book and Factum on the main appeal scheduled for June 2, 2014;


4. Such further material as counsel may advise and this Honourable Court may permit.

THE MOVING PARTY (APPELLANT) MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS MOTION:

By service through:

Paul Slansky
Barrister and Solicitor
1062 College Street, Lower Level
Toronto, Ontario
M6H 1A9
Tel: (416) 536-1220; Fax (416) 536-8842
Counsel for the Moving Party (Appellant)

DATED AT TORONTO, this 11th day of February, 2014.


Paul Slansky
Barrister and Solicitor
1062 College Street, Lower Level
Toronto, Ontario
M6H 1A9
Tel: (416) 536-1220; Fax (416) 536-8842
LSUC # 25998I

Counsel for the Moving Party (Appellant)

TO: The Registrar
Court of Appeal for Ontario
Toronto, Ontario

AND TO: Lorne Silver
Barrister and Solicitor
Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King St. West
Toronto, ON
M5H 3C2

Tel: (416) 869-5490
Fax: (416) 640-3018

Counsel for the Respondent (Kingsland Estates Limited)

AND TO:

Gerald L.R. Ranking
Barrister and Solicitor
Fasken Martineau DuMoulin LLP
333 Bay St.
Suite 2400
Toronto, ON
M5H 2T6

Tel: (416) 865-4419
Fax: (416) 364-7813

Counsel for the Respondent 'PricewaterhouseCoopers East
Caribbean Firm'

A58 Donald Best (Appellant) v. Richard Ivan Cox, et al. (Kingsland
Estates Ltd, PricewaterhuseCoopers East Caribbean Firm)
(Respondents)

Court File No: C57123

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED IN BARRIE

**AMENDED NOTICE OF MOTION
(ADJOURNMENT)**

Paul Slansky
Barrister and Solicitor
1062 College Street, Lower Level
Toronto, Ontario
M6H 1A9

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

Counsel for the Applicant/Appellant