Court File No.: T-604-16

IN THE FEDERAL COURT OF CANADA

B E T W E E N:

DONALD BEST

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

and

THE HONOURABLE MR. JUSTICE J. BRYAN SHAUGHNESSY

Respondents

MOTION RECORD

Volume One of Two

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NOTICE OF MOTION
By JULIAN FANTINO

TAKE NOTICE THAT Julian Fantino will make a motion before Prothonotary Aylen in Ottawa at the Courthouse 90 Sparks Street Ottawa Ontario K1A 0H9 on Wednesday October 11, 2017 at 9:30 a.m. or so soon thereafter as the motion can be heard.

THE MOTION IS FOR an Order granting leave to Julian Fantino to intervene in this Application and for directions.

THE GROUNDS FOR THE MOTION ARE

1. This application is a judicial review of the decisions of the Canadian Judicial Counsel.
2. The Canadian Judicial Counsel is the tribunal appointed by Parliament to watch over Judges. In this matter no one speaks for mainstream Canadians who believe in and rely on fairness, transparency, and impartiality not only within the Judicial System but also the CJC.

3. The prospective intervener, the Honourable Julian Fantino, is an honoured and well known citizen of Canada who has made a career of serving the public as a leader in the law and police professions including as Cabinet Minister in the Federal Government.
4. Mr.Fantino can assist this Honourable Court in a number of ways. He has specialized and general knowledge and expertise with respect to issues that are being examined by the Court.
5. Rule 109

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

Affidavit of Julian Fantino. .

[redacted]

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FEDERAL COURT OF CANADA

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B

Court File No.: T-604-16

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- and -

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THE HONOURABLE MR. JUSTICE J. BRYAN SHAUGHNESSY

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AFFIDAVIT OF JULIAN FANTINO

I Julian (Giuliano) Fantino make oath and say as follows:

I am applying to intervene in this court application which seeks to review a complaint disposition by the Canadian Judicial Council (CJC).

1. I am a current member of the Queen's Privy Council for Canada. I was Member of the Parliament of Canada for the riding of Vaughan from 2010-2015. During that period I held the following posts at various times: Minister of State for Seniors; Associate Minister of National Defence; Minister for International Cooperation – Canadian International Development Agency, and Minister of Veterans Affairs.
2. Prior to that I had been Commissioner of the Ontario Provincial Police (2006-2010), Chief of Police of the Municipality of Metropolitan Toronto (2000-2005), Ontario's Commissioner of Emergency Management (2005- 2006), Chief of Police of London, Ontario Police Force (1991-1998), and of York Regional Police Force (1998- 2000). Before that I had been a Toronto police officer since 1969.
3. I notice that in this matter no one represents the people of Canada. Mr. Slansky represents Donald Best. The Attorney General of Canada represents the CJC and Mr. Wardle represents the Judge. No one speaks for me and other Canadians who believe in and rely

upon fairness, courtesy and honourable treatment within the justice system which includes the CJC.

4. I believe that my background, experience and life in service to the public make me suitable to assist the Court in assessing this matter. I am also aware of the rules of Expert Evidence and that my duty is to the Court.
5. Judicial independence is an important principle in the Canadian Justice System. That is all the more reason why Canadians must feel secure that the Canadian Judicial Council properly performs its function in dealing with complaints. The CJC was created by Parliament to serve the people of Canada and to maintain the integrity and high standards that people expect in their Justice System. It follows that full professional investigations and transparency should be the norm. Publicly defined standards for the CJC that are easy to access and easy to understand are of paramount importance to the mandate it received from Parliament, and for which it is accountable.
6. This would include ease of access by all Canadians and, where necessary, assistance by CJC staff trained to accommodate the different cultural, linguistic, and educational factors that are the hallmarks of our multi-faceted Canadian society. Not all Canadians have the skill set, educational background, or writing ability to properly compose a complete account of their concerns and complaints about their experiences in Court and how they are treated by Judges. Accordingly, I wish to contribute to this Court proceeding in evaluating and resolving the matters raised in regard to Mr. Best's Application.
7. I have reviewed the complaints by Mr. Best and the responses by the CJC as well as the factums that have been filed by Donald Best, Justice Shaughnessy, and the Attorney General of Canada in this Court.
8. I have reviewed transcripts of court hearings that are the subject matter of this Judicial Review hearing. I have also reviewed evidence which was filed before the Judge in the underlying legal action. Where I comment about some documents I have attached them as exhibits identified in the footnotes.
9. My belief is that there are records and other evidence which have not been identified or reviewed by the CJC. This case is a rare opportunity. It presents a matrix of thorough,

incontrovertible professional evidence of activities that took place out of the view of Canadians and that, in my opinion, needs to be investigated by the CJC.

10. Therefore this court and the CJC have a unique comprehensive window to address activities and facts that are not normally in view. Based upon my experience, I can comment as to where I believe the records are or should be located and how to obtain them.
11. There are a number of important issues which were overlooked when the CJC reviewed and dismissed the complaints. I wish to intervene to assist this Court and suggest that the matter should be further reviewed by the CJC in a manner that fairly addresses the issues that have been raised and especially those that the CJC overlooked or ignored.
12. In this affidavit I refer to Phase I and Phase II to define two time periods.
13. Phase I includes the period when Mr. Best was convicted of contempt of court and sentenced to prison in absentia (while he was not in Canada) upon the presentation by lawyers of provably false evidence during a private prosecution in a civil trial costs hearing. The court also convicted Mr. Best based upon affidavit evidence that was the product of illegal actions by a serving officer of the Ontario Provincial Police at the time that I was OPP Commissioner.
14. Further, my study of the court records and transcripts reveals serious questions about the validity of the procedures that resulted in Mr. Best's conviction. For instance, it is apparent that the court order dated November 2, 2009 that Mr. Best was found in contempt of, was actually made and signed by the Judge on November 12, 2009[1] [2] [3]; but was backdated ten full days.[4] [5] [6] [7] This immediately put Mr. Best into contempt of the

[1] Nov 12/09 Email from court files: (DB 000335) Ranking to Jackie Traviss, requesting Judge sign attached Order dated November 2, 2009, with hand-written note 'Nov 12/09 Order signed'

[2] Nov 16/2009 faxed letter: Best to Trial Coordinator Jackie Travis (DB 000119-b14) documenting phone call wherein Travis said Nov 2/09 court order was signed on Friday, Nov 13/09 and sent to Ranking on that day and Best did not receive the order.

[3] Nov 2/09 Transcript of Judge indicating he will make order in the future when lawyers settle upon the contents. Pg. 44 line 18 (DB 000112-g1-47) Judge "My order would reflect that ...",) page 46 line 27 (DB 000112-g1-49 Judge "So, I'd like you to pen that in to the draft order as well." Pages 68 to 69 start -71 line 31 (DB 000112-g1-71, -72) Ranking undertakes to 'redo the order. I'll have it circulated to Mr. Dewart, we'll have it approved as to form and content, and then send it out, presumably, to – to the court for signature."

[4] Nov 4/09 letter Ranking to Dewart (DB 005282) explaining that the draft order is again changed by Ranking and needs discussion etc. (ie: no order exists yet),

court order for failing to deliver business records to the prosecuting lawyers even before the Court Order existed. Further, the affidavit of service for this court order shows that the lawyers didn't send it to Best until November 18, 2009.[8] [9]

15. The Order signed November 12th stated that past service of all documents on Mr. Best is validated- or in other words the Fresh Amended Motion Record first circulated among the lawyers the day before the Motion and not sent to Mr. Best was automatically and retroactively declared to be served on Mr. Best personally[10] even though there was no possibility that he could have received it since it was late and not sent to him. Mr. Best was advised there was a 'huge pile' of documents but he had not received them.
16. Also during this period the Judge allowed the court process to be used on an extra-jurisdictional basis that does not appear to be authorized by the Judges Act. That is to say the Judge improperly delegated his judicial power to the prosecuting lawyers[11] [12] [13] [14] in order to interfere with and impact legal proceedings in other countries. The lawyers announced to the Judge on the court record that they were pursuing contempt of court

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[5] Nov 16/09 Faxed Letter: (DB 005258) Ranking to all lawyers enclosing 'copy of the Order dated November 2, 2009 duly signed by His Honour Justice Shaughnessy.' Timeline supports Jackie Travis statement and email that order dated Nov 2/09 was only recently signed on Nov 12/09 and sent by court to Ranking on Friday Nov 13/09.

[6] Faxed copy of signed order dated Nov 2/09 (DB 000119-b8) showing Fax Date of Monday November 16, 2009 at 5:52pm. Further confirmation of Jackie Travis and other information that the order dated 'Nov 2/09' was actually received and then signed by the Judge on November 12 or 13, 2009 and then sent to Ranking on Friday November 13, 2009. Order requires Best to produce documents to Ranking one week prior to Nov 17/09 examination (ie: produce documents on Tuesday Nov 10/09 – two or three days before the Judge received and signed the order.)

[7] Nov 2/09 Transcript pages 10, 18 & 19 (DB 000112-g1-13, 21, 22).

[8] Sworn affidavit of Jeannine Ouellette dated November 24, 2009 (DB 00119-b18) stating that on November 18, 2009 she sent to Best in Kingston, Ontario via courier, a package that included a November 18, 2009 letter from Ranking to Best that included for the first time sent to Best, a copy of the signed court order dated Nov 2/09.

[9] November 18, 2009 Letter from Ranking to Best (DB 005191) that included (for the first time) the signed court order dated November 2, 2009 (that was actually signed on November 12th or 13th, 2009).

[10] Order signed November 12th, 2009 (DB 000192-3)

[11] The lawyers who brought the cost motion and contempt motion included all of the lawyers who were acting for the Defendants. (DB 000115-i2C2-1 thru 8).

[12] June 8, 2009 transcript (line 18) (DB 001100-1s-8): wherein Ranking advises Judge the defendants are filing the Zagar Affidavit and CDs for use in Florida: *"And the documents that - that - so the Minutes of Settlement that we're filing, we want filed and endorsed as filed by Your Honour, so that they are a matter of public record should we need to have reference to them in the Miami proceedings..."*

[13] June 8, 2009 transcript page 32 & 33 (DB 001100-1s-35, -36): Justice Shaughnessy allows filing of Zagar Affidavit and CDs for use in Florida, and also allows lawyers to continue to file documents in the court record on their own (for use in other jurisdictions) even though the case is settled and over.

[14] June 8, 2010 Endorsement by Justice Shaughnessy (DB 000313-2) authorizing filing of the Zagar Affidavit and CDs even though the case is settled and "... further material are to be permitted to be filed."

charges against Best in Toronto to gain evidence for a trial in Miami, Florida [15]. They advised that even if they received costs payments, they would not relent (or abandon the contempt proceedings) unless other people in Florida and elsewhere settled their own cases in their own jurisdictions.[16]

17. Further, this prosecution and eventual imprisonment of Mr. Best was being carried out in the name of a purported client that did not exist.[17] [18] [19] The CJC should investigate how this offshore non-person received substantial funds in court costs which raises questions about possible money laundering and currency control violations. .

18. Phase II was when Mr. Best returned to Canada to prove that the Court had been misinformed and mistaken when it found him in contempt. As a self-represented litigant, he asked that the original Order should be set aside along with the sanctions, which included a prison sentence and a fine. The Judge had earlier acknowledged that Mr. Best

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[15] June 8, 2009 transcript page 8 (line 16) (DB 001100-1s-11): Ranking states that the Defendants will not release Best from contempt of court in the settlement, and will pursue him later to facilitate collection of evidence for the Miami action: *"because Mr. Best was so intimately involved with Mr. McKenzie in - in - in sitting in as the nominal plaintiff for Nelson Barbados, would he in fact have very germane evidence if compellable, to deal with the action in Miami?"*

[16] December 2, 2009 Transcript pages 46 to 49: (DB 000109-15b2-49 thru -52) December Ranking says he speaks for all and won't settle unless other jurisdictions are included. *"...I can tell you that there have been rumblings about actions being commenced in Florida. So, I am more than happy to settle this case today if my client were paid the caveat that I would insist upon, is that anybody related to- whether it's John Knox or Marjorie Knox, or whoever is behind all of this, provides a full and final general release that my client, and I'm sure I speak for all the defendant's, will not be sued anywhere else, because that is a legitimate concern."*

[17] Mr. Best continuously raised the issue that Mr. Ranking's client 'PricewaterhouseCoopers East Caribbean Firm' did not exist, despite Mr. Ranking's on the record assurance that it was a Barbados registered entity. The Judge did not deal with this and ended up approving a million-dollar payment to a non-existent company out of the jurisdiction. See Affidavit of Barbados lawyer Alair Shepherd (DB 000106-14c).

[18] [DB 000118-i3bg32] Barbados Business Registration and name change. When cross-examining Best on January 23, 2013, lawyer Gerald Ranking filed as an exhibit a Barbados Business Registration and name change for 'PRICEWATERHOUSECOOPERS EAST CARIBBEAN' as purported evidence that his client 'PricewaterhouseCoopers East Caribbean FIRM' existed as a registered Barbados entity. As he read out the document into the record, Ranking falsely added the word 'FIRM' on the end of the actual name shown on the document. Mr. Best laughed, pointed out that the document did not say what Ranking had stated orally on the record, and accused him of fraud. The document actually records that a Barbados business partnership named 'PricewaterhouseCoopers' existed from 1998, and changed its name to 'PRICEWATERHOUSECOOPERS EAST CARIBBEAN' on June 23, 2011. This name change (which did not use the word 'Firm' and so still didn't carry the name of Ranking's purported client) happened a year after the Nelson Barbados case ended, 18 months after convicting Best of contempt, and after 3 years of litigation in front of Justice Shaughnessy. Ranking's tendering of this document and the after-the-fact 2011 attempted name change indicates that his purported client 'PricewaterhouseCoopers East Caribbean Firm' did not exist at any time and that he used this phony non-entity to imprison Best and collect almost a million dollars in court costs.

[19] Transcript January 23, 2013 cross-exam of Best pages 406 – 411 (DB 005407-146 thru -151) showing the exchange when Ranking filed the Barbados business registration and name change.

would be entitled to purge his contempt[20]. In response to a motion by Mr. Best seeking to set aside the conviction and sentence, the Judge had issued a stay on the original order to allow Mr. Best to return to Canada.

19. The record shows that after Best requested a review of his conviction and sentence, the Judge refused to consider his fresh exculpatory evidence (including but not limited to secretly made and forensically certified voice recordings of a telephone call with the lawyers that showed they placed false evidence before the Judge [21] [22], refused to allow Best to cross-examine[23] [24] the lawyer-witnesses, their clients and 'private investigator' James Van Allen, who together provided the false evidence that the court used to convict and sentence Best. I cannot recall any other case where a Canadian was convicted and sentenced *in absentia* (when the accused was not present) upon provably false and/or illegally sourced evidence, and was then refused the basic right to cross-examine the witnesses and accusers that the court relied upon to convict and sentence.
20. The judge then in court and on the record reaffirmed the original Conviction Order containing a sentence of 3 months and lifted the stay on the original Committal Warrant. Court ended and the Judge left the courtroom. The courtroom staff ended their duties and Mr. Best was taken away to prison.
21. Then, in Mr. Best's absence, in a backroom and off the court record with no transcript and no endorsement on the record, the Judge secretly created a new Warrant of Committal and increased Best's time to be served in prison by 50%.[25] The materials

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[20] Transcript January 15, 2010 p. 38 Line 12 (DB 000109-15b3-41)

[21] Transcript December 11, 2012, pages 24 & 25 (DB 000107-14a-27, -28) Justice Shaughnessy mistakenly says that the motion before him is only to purge Best's contempt, and refuses to consider new evidence; especially any showing maleficence by lawyers Ranking and Silver. *"And again, I just remind Mr. Best, your application brought by your then counsel, was to purge the contempt. In other words, change it, alter it, or expunge it, or none of the above. And that's- that was what's before the court."* and *"But I'm saying to you, I'm not expanding this to a brand new hearing. I'm not re-litigating. You must understand this Mr. Best; I am not the Court of Appeal. I made - I gave a judgment. I made a finding. I am not the Court of Appeal. The Court of Appeal deals with anything that they feel I did wrong. The Court of Appeal is where you make applications for new evidence, not me."* Application Record p. 270-271

[22] Transcript May 3, 2013 page 56, line 26 (DB 000110b11-56) *COURT: "Noted previously, Rule 60.11(8) confers on the court a wide discretion to give orders for directions and to make such other orders as is just. This has therefore proceeded on no new or fresh evidence from Mr. Best."*

[23] Endorsement of Justice Shaughnessy January 25, 2013. (DB 000122-b34-2)

[24] May 3, 2013 transcript Page 17, line 13. (DB 000110-b11-17)

[25] See Appendix A

before the Court indicate that this new secret Warrant of Committal was given only to the prison authorities and was not placed into the court records.

22. The CJC did not address these actions by the Judge, but rather summarily dismissed the issue by ruling that it was not 'conduct'. [26]
23. I note that the Judge's factum before this Judicial Review (which is not proper sworn and cross-examinable evidence) presents various opinions as to meaning of the wording of the Judge's secret new Warrant of Committal. I can assist the court in resolving this issue of a 'secret backroom hearing' which I discuss below. What is apparent is that it increased Mr. Best's prison time by 50%. There is no justification for this which appears to be a vindictive and punitive act and it needs to be closely scrutinized.
24. Further as I detail in following sections of my affidavit, there is disturbing evidence, some strong and apparently irrefutable, and some circumstantial, that in four groups of incidents in the civil case and even during the present Judicial Review, police resources and personnel were (or appear to have been) improperly retained, used and coopted to assist one side of a private civil dispute in the Ontario courts.
25. The prosecuting lawyers hired and submitted an affidavit from Mr. Van Allen. They claimed that he was a private investigator and failed to disclose that he was a serving police officer with access to police resources. This police officer obtained confidential information not available to the public which was then used by the Judge to convict, sentence and imprison Mr. Best for contempt.
26. There is also evidence of involvement by other police forces before the finding of contempt by the court and later who have been involved in this civil court matter. Some of it with the apparent intent of using the investigation results to influence, impact or derail this Judicial Review.[27]
27. If left to stand, these abuses in total would result in the undermining of public confidence in the police, the judicial process, the CJC and the Rule of Law. My background and experience is such that I can assist the Court in determining the truth about what appears to be significant abuses of police resources to improperly influence the justice system in the civil case and perhaps even in this Judicial Review.

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[26] CJC letter of Jan. 28, 2016 (DB 015866-24, -25)

[27] Details and supporting exhibits appear in following sections of my affidavit.

28. I can also assist the Court in assessing the Review Procedures that apparently caused CJC Executive Director Norman Sabourin to arbitrarily reject complaints without providing reasons. To my mind Canadians are entitled to understand and access the CJC complaint process with confidence and ease. Transparency and detailed reasons with respect to each point that the complaint raises are important throughout this process where Canadians engage and rely on the CJC to be sure that they are being treated fairly and that there is public accountability of the judiciary.
29. The CJC considered Mr. Best's letters as a continuum. The original complaint sets out a number of issues.[28] The CJC's response [29] is cryptic. In the final result after considering the total complaint the CJC's response was "*your allegations are either outside of the jurisdiction of the Council to review or they do not warrant further consideration by the Council pursuant to its mandate under the CJC*" and also that the Judge's actions were not '*conduct*'.[30]
30. This Judicial Review will hopefully discern the meaning and boundaries of these statements. I can assist the Court because I have been closely involved with tribunals that have been designed and implemented to protect the Canadian public and provide public accountability to important government and societal processes.
31. The CJC's responses to Mr. Best ignore many facts which were submitted to the CJC and which seem beyond dispute. In any event the CJC should have diligently looked into all the facts, but it is apparent from the CJC's responses to Mr. Best that this was not done. At the very least Canadians are entitled to be informed what facts were assessed, what evidence was reviewed and how they factor into the CJC's ultimate decision. Canadians have a right to be able to know the standards by which the CJC and therefore the judges, operate. It is simply a fundamental matter of public trust.
32. I note that the CJC did not assist Mr. Best, an unsophisticated and unrepresented person, who could not possibly have had a full comprehension of the Judicial System or the standards of the CJC. The CJC did not enlighten, guide, or assist Mr. Best even though he was self-represented.

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[28] The letter is attached. (DB 015924-1 thru 90). To conserve paper, the supporting documents are available on a memory stick.
[29] CJC letter May 1, 2012 (DB 015936)
[30] Application Record p.534-535 (DB 015867-239 & 240)

33. The CJC did not even ask him to clarify certain points he had made in his complaints. It did not ask whether there might be additional supporting evidence or witnesses. It did not make any inquiries of its own. There is no list of documents which were considered by the CJC or were sent to Chief Justice Scott. All of which resulted in the denial of natural justice to Mr. Best.
34. I have no reason to believe that Mr. Best's complaints to the CJC were handled any differently than those of other Canadians. I have no reason to believe that the CJC's apparent arbitrary standards, lack of investigation, lack of transparency and absence of support to an unrepresented person in Mr. Best's case is unusual for the CJC. I believe that the CJC's handling of Mr. Best's case is representative of the standard CJC treatment of unrepresented persons – with one important difference which in Mr. Best's situation merely supported the imprisonment of an apparently innocent man and that is simply unacceptable and wrong.
35. Unlike most Canadians, Mr. Best as a former police officer had some professional background in collecting evidence, which can bring higher levels of confidence when courts or tribunals are searching for an accurate account of events. For instance, on November 17, 2009 immediately after a phone call with Donald Best, some of the involved lawyers created an official 'Statement for the Record' that they as Officers of the Court formally filed with the court as evidence. In this official document the lawyers gave evidence that Donald Best had told them during the telephone conversation that he had received a copy of certain court order the day before, November 16, 2009.
36. When in court and on the record, the lawyers submitted their Statement for the Record and assured the Judge orally that their record was accurate, and that Mr. Best's version of events in a letter written to the court was defamatory and not true. The Judge accepted the lawyers' Statement for the Record and verbal assurances on the record as true and used this evidence to convict Mr. Best *in absentia* of contempt of court and sentence him to 3 months in prison. Mr. Best was out of the country and not present in court.
37. What neither the lawyers nor the Judge knew at that time was that Mr. Best had made two audio recordings of the telephone call with the lawyers which he had forensically certified and transcribed. The certified recordings and transcript clearly showed that Best did not state to the lawyers that he had received the court order. In fact, he stated many

times exactly the opposite: that he had not received the order and asked the lawyers to send it to him. The recordings and transcript showed that the lawyers had even cross-examined Best closely on this point, and he again denied receiving the court order.

38. Nonetheless, immediately after the telephone conversation with Best ended, these senior lawyers had created their false 'Statement for the Record', and when challenged on the statement's veracity in court, swore verbally to the judge that their version was the truth.
39. As indicated earlier in the footnotes, when Best returned to Canada and asked the Judge to set aside the conviction, the Judge refused to consider Best's voice recordings or any fresh exculpatory evidence. Mr. Best's appeal was not allowed to go forward because he could not pay a security deposit of several hundred thousand dollars cash, and so had to abandon his appeal and serve his prison sentence. I am advised and believe that to this day no court has listened to the recordings, nor has the CJC according to their communications to Mr. Best.
40. The factum of Justice Shaughnessy argues that there is no evidence to support Best's allegations in the complaint of "*abuse of office, bad faith or analogous conduct*".[31] In fact, Mr. Best disagreed and sent a number of documents and court exhibits to the CJC which argue otherwise.[32] [33] There is no record that the CJC acknowledged or assessed this evidence and court documents and no understanding of why they were or were not part of the process whereby the complaints were dismissed.
41. Further there is no indication as to whether the CJC might have wished to have more evidence of issues that it was assessing. There is no record of follow up or consideration of the totality and context of the Judge's actions and omissions. If the CJC had properly investigated Mr. Best's complaints, the outcome might have been different. My background is such that I can assist the Court in this regard.
42. The CJC reports show that it did not investigate or comment about a number of factors that might very well have altered the outcome of the complaint procedure. If I am permitted to intervene I will expand further.

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[31] Responding Record of the Respondent Mr. Justice Bryan Shaughnessy, page 20 para 89. (DB 015886-35)
[32] Best Complaint to CJC dated Jan 5, 2016. (DB 015866-42)
[33] See footnote 28 Best Complaint to CJC 2011: Mr. Best's initial complaint was 90 pages plus 529 pages of exhibits and addresses abuses of various types by the Judge. Provided in digital form subject to direction from the court.

43. The CJC did not identify the documents that were provided to Chief Justice Scott. However the May 1, 2012 letter would suggest that they were only records of court appearances and orders. These do not tell the whole story. The final CJC reply[34] to Mr. Best repeats this flawed and aborted procedure.

Involvement of Police personnel and resources to support one side of a private civil dispute

44. There are four general incidents in the civil case, CJC record and in the current Judicial Review where police resources and personnel were improperly and even illegally and secretly used and coopted. In chronological order, these incidents involved:
45. Ontario Provincial Police Detective Sergeant James Arthur Van Allen – October 2009 to January 2010 ('Van Allen involvement')
46. Unknown Durham Regional Police court officer – December 2009 ('Durham Court Officer incident')
47. Peel Regional Police – January 2010 ('Peel Police incident')
48. Durham Regional Police 2016 ('Durham Police Judicial Review Investigation')

Van Allen Involvement

49. The October 21, 2009 affidavit[35] of a purported 'private investigator' and expert witness Jim Van Allen was submitted to the court by lawyers in support of their belated November 2, 2009 motions to, among other things; attempt to obtain an order on that day validating service of all motion materials upon Donald Best, ordering substitutional service against Donald Best, compelling Donald Best to appear for examination and to produce business records in advance of that examination.
50. The Judge also relied heavily upon the affidavit of 'private investigator' Jim Van Allen in his January 15, 2010 finding of contempt of court against Donald Best.[36] Two suspiciously redacted Van Allen invoices to the law firm were also exhibits before the Judge on January 15, 2010.
51. Although the lawyers regularly referred to Van Allen as a 'private investigator' in their legal documents and on the court record in verbal submissions and discussions with the

[34] January 28, 2016 letter CJC Director Norman Sabourin to Best. (DB 015868-246 & -247)
[35] October 21, 2009 affidavit of Jim Van Allen. (DB 015924-308 thru -313) – the Lawyers agreed that Mr. Best had not received this by November 2nd.
[36] January 25, 2010 Reasons on Motion for Contempt (DB 015866-159 thru -172). Judge recounts investigations and affidavit evidence of investigations.

Judge, Jim Van Allen was not a licensed private investigator. James 'Jim' Arthur Van Allen, was in fact a serving Ontario Provincial Police Detective Sergeant and manager of the OPP's Criminal Profiling Unit who was working secretly and illegally as an unlicensed private investigator.

52. Jim Van Allen worked under my command during the time I was OPP Commissioner from 2006 to 2010. I know that Van Allen was a serving police officer at the relevant times in 2009 and 2010. Mr. Van Allen's own CV which was notably absent from his affidavit shows he was an OPP police officer from May 1979 to October 2010. [37]
53. From my examination of the evidence that is already filed in court and was easily available to the courts and the CJC had they examined it, it is reasonable to conclude that OPP Detective Sergeant Jim Van Allen's inappropriate employment as a private investigator, his access to confidential information and the distribution of the same, and the very creation of his affidavit in order to benefit private parties in a civil lawsuit, represents a flagrant violation of various Provincial and Federal laws including the Police Services Act, the Private Security and Investigative Services Act, the Criminal Code and the Freedom of Information Act.
54. In no small way, Detective Sergeant Jim Van Allen violated his oath of office.
55. Detective Sergeant Van Allen's conduct and behavior in relation to this case occurred while I was OPP Commissioner. Had I known about it at the time, I would have immediately ordered an investigation to gather all evidence to determine the details, extent and duration of his activities with a view to possible provincial and/or criminal charges against Van Allen and, potentially, charges against other involved persons.
56. It is inconceivable that all the involved lawyers and Judge were unaware that 'private investigator' and expert witness Jim Van Allen was an OPP police officer. Considering many factors, including Detective Sergeant Van Allen's high public profile, the rules and normal vetting practices by lawyers and judges concerning Expert Witnesses, and the fact that Van Allen's affidavit and redacted invoices were clearly suspect on their face to any ordinary person let alone lawyers and judges, it is unbelievable that nobody in that courtroom knew the truth about Van Allen or otherwise cared to find out.

[37] Van Allen CV emailed by Van Allen on December 31, 2013 (DB 015918-228, 229) to 'Ray Metivier'. Source is Exhibit 23 in February 11, 2014 affidavit of lawyer Che Claire.

Van Allen's Public Profile

57. Given Van Allen's high professional and public profile, the hundreds of major cases in which he had been involved and testified in over a 30 year OPP career, and the international professional and media attention that Detective Sergeant Van Allen and his Criminal Profiling Unit received and still receive[38] it is inconceivable that none of the lawyers nor the Judge knew of Detective Sergeant Van Allen's true status.
58. Further, this was only a year after the 2008 Goudge Inquiry where Van Allen's name and expertise had come under widely publicized scrutiny and criticism in two subject cases; Lianne Gagnon and Louise Reynolds.[39] [40] [41]
59. The prosecuting lawyers highlighted his experience to the Judge[42] and both they and Mr.Van Allen admit that they were responsible for contacting Van Allen.[43][44].
60. I notice that Van Allen's two redacted invoices[45] are numbers 11 and 12 for the year 2009, which to me raises serious questions about how many other illegal investigations he had performed and which lawyer clients might have retained him previously. Had I known of his transgressions, I would have acted immediately as OPP Commissioner to deal with his rogue conduct.

Expert Witness Rules and Normal Procedures

61. It is clear from the court transcripts of November, December 2009, and from the materials filed at that time, including Van Allen's affidavit, that the lawyers presented

[38] SooToday article. Even years later, news media articles write such as "Van Allen was the Manager of the OPP Criminal Profiling Unit for fifteen years and is a graduate of the FBI National Academy. He is recognized internationally for his expertise, and is regularly called upon by major news and media outlets to comment on, and offer insights into high profile crimes and criminal incidents." (DB 016043)

[39] Three articles by lawyer and former Toronto Star journalist Harold Levy, detailing how the Goudge Inquiry examined Van Allen's role in the Sudbury Police murder investigation of Lianne Gagnon in the death of her son Nicholas. (DB 016037, DB 016038, DB 016039)

[40] Closing Argument of Dr. Charles Smith at the Inquiry into Pediatric Forensic Pathology in Ontario, page 214. Dr. Charles Smith submits that Detective Van Allen agreed with the Crown (and Dr. Smith) that Louise Reynolds had murdered her daughter (who was actually killed in a dog attack). (DB 016040-214)

[41] Transcript of Pediatric Forensic Pathology in Ontario. January 24, 2008. Pages 216 thru 219. Lawyer Peter Wardle questions Inspector Brian Begbie about Detective Van Allen's role in the Louise Reynolds murder charge. (DB 016041-106 thru 108)

[42] Nov. 2nd, 2009 transcript page 18, line 28 to page 19, line 16 (DB000109-15b2-21 thru -22)

[43] November 2nd, 2009 transcript, page 19 line 9. (DB000109-15b2-22)

[44] Paragraph 6 of Van Allen's affidavit states "On October 7th, 2009 I was contacted by Mr. Gerald (Gerry) L.R. Ranking of Fasken Martineau DuMoulin LLP to locate Mr. Donald Robert Best." (DB 015667-2h-4)

[45] Two Van Allen Invoices dated Oct 24 and Nov 7, 2009. (DB 000130-b38)

Van Allen as an expert, and that the Judge accepted this and relied upon Van Allen's 'expert' evidence.

62. The Rules of Civil Procedure in Ontario require lawyers and Judges to be wary about accepting expert evidence.[46] This became even more compelling after the Goudge Report became public and I believe it is impossible that the Judges and lawyers did not know this. The CJC should have investigated this carefully but chose not to.

63. I believe it is highly unlikely that a number of large Toronto law firms, who would carefully vet any expert who was going to give evidence to a Court, and also the Judge, did not realize that the expert witness, Jim Van Allen, was in fact a serving police officer acting illegally as an unlicensed private investigator and that his affidavit was suspect and the product of illegal acts.

64. The CJC did not investigate why the Judge did not insist on or ask why the lawyers had not researched and satisfied themselves re Van Allen. It also did not ask why the Judge ignored even the most fundamental inquiries into this affidavit which was clearly suspect on its face mainly because it said that the Police Association had provided some of the information. Mr. Rick Perry, when speaking about the evidence in Mr. Allen's affidavit that says he accessed Mr. Best's information from the Toronto Police Association said he

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[46] Rule 4.1.01 (1) It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these rules,a) to provide opinion evidence that is fair, objective and non-partisan; b)to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and c) to provide such additional assistance as the court may reasonably require to determine a matter in issue. O. Reg. 438/08, s. 8.
(2) The duty in subrule (1) prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged. O. Reg. 438/08, s. 8.
Experts' Reports...
(2.1) A report provided for the purposes of subrule (1) or (2) shall contain the following information:

1. The expert's name, address and area of expertise.
2. The expert's qualifications and employment and educational experiences in his or her area of expertise.
3. The instructions provided to the expert in relation to the proceeding.
4. The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
5. The expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range.
6. The expert's reasons for his or her opinion, including,
    i. a description of the factual assumptions on which the opinion is based,
    ii. a description of any research conducted by the expert that led him or her to form the opinion, and
    iii. a list of every document, if any, relied on by the expert in forming the opinion.
7. An acknowledgement of expert's duty (Form 53) signed by the expert. O. Reg. 438/08, s. 48.

"was horrified that the records had been accessed by somebody on behalf of Mr. Ranking's private investigator and he thought it was a criminal offence."

65. Some of my own private information resides with the Toronto Police Association, and I would be greatly distressed if my information was shared and distributed to the public as is the case with Mr. Best.
66. At one point Mr. Van Allen provided the lawyers with Mr. Best's driver's licence number which is a breach-of the Police Act and privacy legislation including related to MTO regulations.[47]
67. I note that in a later telephone conversation Mr. Van Allen was quick to point out that he had been *"thirty one and a half years with the Ontario Provincial Police... doing criminal profiling and... threat assessment."*[48] In late 2013, Mr. Van Allen also confirmed in a recorded phone call that he had retired from the OPP in "*October, 2010*" and as indicated in his CV which is attached.[49]
68. The CJC did not consider why the lawyers and later the Judge refused to allow Mr. Van Allen to be cross-examined [50] which would have quickly exposed his OPP employment and the illegal nature of his affidavit and expert opinion.
69. Further Mr. Best showed and I concur that it was irregular for Mr. Van Allen to have redacted his invoice to exclude evidence that he had illegally accessed information only available to police officers and then only for documented police investigations. [51] The lawyers tried to assert that perhaps the redactions were to hide so called solicitor client information but that cannot be right if the entire function of the Court is to assess what an expert did and did not do. The CJC did not look into this or why Mr. Best was refused copies of the unredacted invoices.
70. Then I note the following statements are contained in the Van Allen affidavit which border on the absurd, given Mr. Van Allen's position as a police officer. " *...few people demonstrate the strenuous efforts... to create and convey false address history...* " In fact Mr. Van Allen would know, and so would the Judge who would have similar concerns,

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[47] Transcript Dec. 02, 2009 p. 19 line 20 ff- note that according to MTO rules they are not entitled to publicized Driver's Licence information but only to use it for service. (DB 000109-15b2-22)
[48] Excerpt from Transcript (page 2) of telephone conversation dated Dec. 30, 2013. (DB 015918-232)
[49] See footnote 37.
[50] Transcript of Reasons May 3, 2013, page 17 lines 13 – 17. (DB 015868-179)
[51] v transcript best cross-exam p. 168 line 10-p. 169 line 11. (DB 000121-b32-168 thru 169)

that all current and former police officers safeguard their privacy and that of their families very carefully since they are day to day targets for the criminal element who wish them harm.

71. At one point the prosecuting lawyers stated that failure to make Mr. Best's personal information public is a "badge of fraud."[52]. For senior counsel to accuse a police officer or former police officer of this is disrespectful and scandalous.
72. The lawyers at one point changed their story when they were asked *"who hired the private investigator*? " and answered "*I have no idea*". [53]The CJC did not look into why the Judge did not at this point disregard the evidence of Van Allen when even the prosecutors tried to disavow responsibility.
73. The CJC did not inquire as to why the Judge did not insist on seeing the unredacted version of the invoice from Mr.Van Allen [54] and specifically the information that was hidden. Does the CJC intend to condone the actions of a Judge who, when sentencing a person to prison in absentia, allows partial information to be produced when the unredacted version might have alerted the Judge to the illegality of the evidence he was relying on?

Procedural Observations

74. Regarding the December 2nd contempt motion it had been sent to Mr. Best on November 27, 2009 which was a Friday and according to the earlier order that said service was effective four days after mailing that meant that the motion was served on Wednesday December 3, 2009 [55]. i.e. 1 day after the motion date. The CJC did not take note of this as one of the continuing aberrancies in the Judge's Orders.
75. I note that the November 12th, 2017 Order for Substitutional Service four days after mailing relied on the affidavit of Mr.Van Allen and the prosecuting lawyers' statement that the lawyers had tried to find Mr. Best. [56]
76. The acceptance by the Judge of the false statements of the prosecuting lawyers in their 'Statement for the Record' which they reaffirmed as fact, on December 2, 2009,[57] was

[52] Excerpt from Transcript December 2, 2009 (page 14, line 30) (DB 000109-15b2-17)
[53] Excerpt from Nov 17th transcript of telephone call p. 16 (DB015667-2j-19)
[54] Van Allen Redacted Invoices (DB 015957-2)
[55] Affidavit of service of contempt motion. (DB 000007)
[56] Excerpt from Transcript Nov. 2, 2009 p.36 line 10. (DB 000112-g1-39)
[57] Excerpts from Transcript December 2, 2009 pages 4,5,39,41 & 43. (DB 000109-15b2)

part of the Judge's reasons for the contempt finding. The November 2nd statements by prosecuting lawyers that a former police officer would perpetrate a fraud would seem to have also been accepted as fact by the Judge. Even when it was later proved beyond any doubt that the lawyers had misled the Court [58] the Judge refused to listen. [59]. The CJC did not check that when the Judge decided on December 2nd, 2009 that "*I find that Donald Best is deliberately avoiding personal service...* " [60] he was relying on the expert opinion of James Van Allen.

77. He was also relying on the so called 'Statement for the Record' filed by the prosecutors which was not sworn evidence but rather a transcript that the lawyers created after their conversation with Mr. Best on November 17th, 2009 which contains the false statements that Mr. Best said he had received the Court Order during a telephone call with them. Later when Mr. Best advised the Judge in a letter that the Statement for the Record was false the prosecuting lawyers insisted once again that he had admitted receiving it and further Mr. best's statement to the contrary was defaming them.

78. Later when the certified digital recording [61]was produced by Mr. Best that was incontrovertible evidence that the lawyers had lied to the Judge he refused to listen to it. The CJC also decided not to listen or investigate any further.

79. In summary the two underpinnings of the Judge's Orders were either illegal, false, or both. And yet the CJC did not make any inquiries. It also did not question why the Judge did not allow cross-examination on this evidence. Continuing attempts to cross-examine Mr. Van Allen have been denied.[62]

Durham Court Officer Incident

80. The CJC did not look into the evidence of Durham Police Court Officer involvement in this civil matter during December, 2009. There is no justification for Police to become involved in civil matters and this 'behind the scenes' activity which took place before the contempt hearing has been ignored by the CJC. [63] The evidence shows that Sergeant

[58] Transcript of Certified recording. (DB000107-14j-24 thru 43)
[59] Excerpts from Transcript April 30, 2013 pages 43 & 44. (DB 000113g10-45 thru 46)
[60] Excerpts from Transcript December 2, 2009 page60. (DB 000109-15b2-63)
[61] Affidavit of Edward Primeau, paragraphs 4 & 5. (DB015667-2j-2) sworn Jan 7, 2013 so there was no question the recordings were authentic and accurate yet the Court would not listen to them. The CJC did not consider them.
[62] Excerpts from Transcript April 30, 2013, page 78. (DB 000113g10-79)
[63] This was confirmed by Officer Laurie Rushbrook. See footnote 64.

Laurie Rushbrook of the Durham Regional Police told Mr. Best that in *"December of 2009, over a month prior to my January 15th, 2010 trial in absentia, a Durham Police court constable performed an undocumented investigation into me, Donald Best, most likely in assistance to the Court."*[64].

81. Police departments are required to document and keep careful notes of their investigations and this information alone is disturbing and the CJC should have studied it intensely since it indicates that a Durham Police Court Officer, who frequents the Court house where the Judge that sentenced Mr. Best presides, was investigating Mr. Best, a party involved in a civil lawsuit costs hearing, and obtaining information about him but not preparing official reports or keeping notes. This happened at the same time as Detective Sergeant Van Allen's involvement in the same case. Officer Rushbrook went further to advise Mr. Best that the Durham Regional Police Force do this type of investigations with respect to civil court matters all the time. [65]
82. I note that Mr. Best is blunt and to the point about this disturbing set of events: he says when referring to the January 15th, 2010 contempt hearing and the preceding police investigation which he notes was not documented according to normal police procedures *"the entire hearing was polluted to the point where there has been a miscarriage of justice and probably means that this court had to disqualify itself then and has to now"*[66]
83. The Judge rebuffed Mr. Best severely and would not consider this evidence. The CJC should have investigated this very seriously since the implications undermine the fabric of the Canadian legal system where all evidence must be presented in open Court. This is especially important when it relates to a very serious charge, contempt of court, where the 'accused' is facing a possible prison term, a fine, and other sanctions. The CJC chose to ignore it.
84. The Judge's reaction to this evidence : *It's insulting to me. What this is insinuating is that I ...in presiding over the case..."..." I don't care what the police officially advised you."* [67] is disturbing. It is unfair for a Judge to put an unrepresented person who is about to be sentenced by that Judge in that position. In effect some people might be of the

[64] Best affidavit sworn April 29, 2013, page 1. (DB 001101-1)
[65] Best affidavit sworn April 29, 2013, pages 2 & 3. (DB 001101-2 & 3)
[66] Excerpt from Transcript April 30, 2013 page 9. (DB 000113g10-10)
[67] Excerpt from Transcript April 30, 2013 pages 10 & 11. (DB 000113g10-10 & 11)

opinion, as am I, that these comments by the Judge would be intimidating to an unrepresented litigant since the obvious implication is that the Judge might have been involved. The Judge and the CJC should have taken the reasonable and fair approach and made sure there was an investigation of this unlawful and irregular investigation.

85. All of this creates even more of a concern about what went on behind the scenes that may have influenced the Judge even more than the Van Allen affidavit and the false evidence placed before the court by the lawyers. The CJC ignored what is recorded in the Court transcript where Mr. Best pleaded for an investigation because he had been told by the RCMP that the "*undocumented court police investigation of me was secret, private, on-the-side*" and "*It was only revealed when the Commissioner of the RCMP commenced an internal audit concerning access to the Canadian Police Information Centre computer database known as CPIC.*"[68] I believe that the aggression by the Judge toward Mr. Best was inappropriate. [69]
86. In the CJC pamphlet – 'Conduct of Judges' the CJC says it will '*if necessary an independent counsel'* and I believe this area of behaviour by a Judge warrants the appointment of an independent investigator.
87. The exchange between Mr. Best and the Judge went on to point out that Mr.Van Allen had been implicated via the Goudge committee and report in that he helped "put innocent mothers into prison for the murder of their babies" [70]
88. This exchange cries out for an investigation by the CJC because of its implications however the CJC ignored it.
89. The CJC did not investigate why the Judge did not react appropriately.
90. There is no indication in the transcripts that the Judge appreciated that the evidence presented by Mr. Best was worrisome and an indication that the entire proceeding that resulted in a prison sentence was potentially poisoned by the evidence .
91. So there was powerful evidence that the process that led to Mr. Best's conviction for contempt and prison sentence included back room investigations by Court police officers that may or may not have influenced the Judge and the CJC decided that it was not

[68] Excerpt from April 30, 2013 Transcript. p. 9 lines 13-20 (DB 000113g10-10)
[69] Excerpt from April 30, 2013 Transcript pages 9 - 12. (DB000113g10 thru 13)

[70] Excerpt from Transcript April 13, 2013 page 13, line 22. (DB 000113g-10-14)

necessary to look into this. The fact that the Judge rejected it summarily and refused to listen to it or take it into consideration is something that the CJC and the entire administration of Justice needs to assess now. This impacts not only on the entire contempt proceedings in Phase I and Phase II but the much larger issue of whether this type of activity goes on in that Courthouse and indeed anywhere in Canada. The suggestion by the Judge that the Durham Police Force should investigate itself is unacceptable and counter-intuitive. The CJC did not even bother to address this issue that is important to all Canadians.

92. I am concerned that the CJC did not look into alternatives that were available to the Judge on January 15th, 2010 when Mr. Best did not appear. Given that the Supreme Court of Canada has mandated that a person must be served personally with a motion for contempt[71] and the Judge could not be sure he had personal knowledge it is presumed that the contempt motion could have waited until Mr. Best was able to attend Court.

Peel Police Incident

93. Mr. Best pointed out that the Peel Regional Police were also involved in the matter. I believe that should also be investigated since it is not acceptable for police to be involved in civil court matters unless they are subpoenaed so that their work can be vetted in public.
94. . The Peel Regional Police was the agency that placed the Judge's January 15, 2010 Committal Warrant for Best onto CPIC, the Canadian Police Information Centre; a confidential police database. Further, it was discovered that the Peel Regional Police has no information file or warrant package about Best in their records as they normally would and should have when placing an arrest warrant on CPIC.
95. In my experience, the involvement of the Peel Regional Police in handling Best's arrest warrant that was issued in a civil case costs hearing in Durham Region is unprecedented and highly unusual. The missing official records makes this occurrence highly suspicious. I cannot think of a single legitimate circumstance under which this might have happened.
96. In context of what we now know about Detective Sergeant Van Allen's unauthorized involvement in this civil case, the involvement of a Durham Court Police Officer, and the

[71] Ref. SCC case

unauthorized release of Best's confidential personal information by the Toronto Police Association all occurring just prior to the involvement of the Peel Regional Police – the involvement of Peel Police cries out for serious investigation. The CJC should have recognized this fact and addressed it.

The extrajudicial file

97. On June 8th, 2009 the prosecuting lawyers appeared before the Judge and no one else appeared. At that point the Judge allowed those lawyers to create what I will call an extrajudicial file. This was a court file that is not related to any legal dispute between parties or any administrative act which the Judge might sometimes fulfil. This file was created and to be maintained in the Ontario Judicial System for the sole purpose of allowing the prosecuting lawyers to be able to file any documents they wished to file without any judicial supervision or control. These documents were known by the Judge to be used in future litigation in other countries. The judge specifically delegated whatever judicial supervisory powers that he might have been given under the Judges act to the prosecuting lawyers. The Judge let them have access to and control over this file as if it was related to the case which had already been fully resolved and adjudicated. However the Judge did then and always had supervisory obligations over this process to prevent abuse and the CJC needs to look into why the Judge did not exercise Judicial control.
98. Later and even after the prosecuting lawyers had advised the Judge that Mr. Best had complied with all the Orders[72] the Judge participated in their attempt to maintain Mr. Best in fear of incarceration if he did not supply evidence for actions in other countries by offering to leave the jail term in abeyance as long as Mr. Best answered questions for further use in other cases. [73]
99. The CJC needs to look into this curious behavior by the Judge. The Judge had earlier been told that the lawyers were only seeking evidence and documents not for the matter at hand but rather for cases in other country. I believe there is nothing in the Judges Act which gives the Judge the power or discretion to do this especially because it interferes with Courts in other countries. The CJC did not address this and should do so.

[72] Transcript Apr 30, 2013, page 89 (DB 000113g10-90)
[73] Transcript Apr 30, 2013, page 121 (DB 000113g10-122)

100. I also note that the nature of the documents which were put into the extrajudicial file were not reviewed by the Judge and are mostly related to matters which have nothing to do with the subject matter of the Nelson Barbados action. It also contains documents which relate to people engaged in other matters in other countries and their own private affairs. The laws of those other countries may prohibit this. I am greatly concerned that the Judge took no care to vet the documents and then abdicated all responsibility for doing so over to the prosecuting lawyers.

Backroom hearing

101. On January 15th, 2010 the Judge convicted Mr. Best of contempt based on the aforementioned alleged evidence which has now been shown to have been unlawful, in breach of privacy laws, and false. He stated " For the reasons provided, I impose on Donald Best a sentence of 3 months incarceration to be served in a provincial correctional institution.

102. In Phase II when Mr. Best was appearing on his motion to set aside the contempt order and jai sentence the Judges reasons on January 25, 2010 at par 7 state: " *A transcript of the examination...*" but there was no transcript of an examination. This was repeated again on May 3rd, 2013. What the Judge was referring to was the 'Statement for the Record'. As discussed above this document was created in Mr. Best's absence when the lawyers dictated a statement to the special examiner where, among other things, they said that Mr. Best had acknowledged receipt of the Order which the Court stated had been issued from this Court November 2nd, 2009. Not only was that not accurate but the Judge went further and stated that with respect to the Statement for the Record "*I accept as an accurate account*".[74]

103. The Statement for the Record quotes lawyer Heidi Rubin as disagreeing with the lawyer's assertion that Mr. Best had acknowledged receiving the November 12th Order. She was overridden by the prosecuting lawyers who said" ....*that he, indeed, indicated that he had obtained the court order.* ", in which was another falsity. [75] The CJC did not look at this and the further error by the Judge when he said "*which is not disputed by counsel'* when Heidi Rubin had disputed it on the record. The Judge had refused Mr.

[74] Transcript of reasons May 3rd, 2013 page 42, lines 17-21. (DB 000110 –b11-42)
[75] Statement for the Record, page 12, par. 5 (DB 001109-13)

Best's request to cross-examine the lawyers who had created this 'Statement for the Record' [76]which the Judge had relied on as being accurate and had been one of the main reasons why Mr. Best was found in contempt.

104. Paragraph 8 ofthose same reasons by the Judge asserts that "Defense counsel serve on him by mail another appointment for the examination on November 25, 2009" [77] However the CJC did not look at the affidavit of service which said it had been sent out along with the Statement for the Record November 18th,2009. (Notably a copy of the courier bill of lading is not attached to the affidavit of service.) [78] which meant that according to the Judge's earlier order service was not effected until November 24th, 2009 at the earliest received this the day before the November 25th, appointment.

105. Mr. Best showed the Judge a publication on the internet that exposed his personal information including his addresses, his birth date, and the *"expert opinion of the private investigator"* which the author said was contained in a report that he had received which obviously was that of Mr.Van Allen. [79]. This was published just prior to the November 2nd, 2009 court date i.e. on October 30, 2009 and urged the readers to track down Mr. Donald Best.

106. The CJC did not consider this evidence and what effect it might have had on Mr. Best and that the Judge did not consider it as a reason why Mr. Best was being wary of being located and not attending in Court but rather leaving the country to ensure his personal safety. However there is no question that Mr. Best made it clear to the Judge that he had concern for his personal safety [80] He stated in an affidavit that he had been threatened by violent gang members when he was previously a police officer and detailed valid reasons why he was scared. He also detailed the serious and worrisome threats that had surrounded him regarding the legal action and witnesses for his case. He stated that he had been assaulted, his car was shot up and one of the witnesses, John Knox, had been beaten violently with a two by four. The CJC did not consider why the

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[76] Excerpt from Transcript May 3, 2013 page 171ines 13-17 (DBOOOllO-bll-17)
[77] Excerpt from Transcript of reasons May 3, 2013, page 43. (DB 000110-bll-43)
[78] Affidavit of Service sworn November 24th, 2009 (DB 000119-b18-2)
[79] Excerpt from Article dated October 30, 2009 (DB016042-4)
[80] Excerpt from Best affidavit sworn April 18, 2012, page 3 (DB 001096-3)

Judge ignored this evidence and did not accommodate Mr. Best's concerns when he made his decisions. [81]

107. The CJC did not consider why the Judge did not realize or at least be aware that Mr. Best's leaving Canada on November 11th, 2009 was justified and was a factor in why he had not attended in Court or personally for examination.

108. On May 3, 2012 the Judge stated that he would not consider any of the new evidence[82] and lifted the stay on the January 15th, 2010 finding of contempt and 3 month prison sentence. The CJC did not evaluate whether the Judge was entitled to refuse to consider evidence that explained the reasons for the absence of Mr. Best because of threats that had been made. [83]

109. The CJC did not look into the fact that the Judge made it very plain on the record in Court that he was lifting the stay of the January 15th, 2010 finding and three month prison sentence. Then the Judge convened a hearing off the record and after leaving the Courtroom and stating he would never return to this matter he did the contrary and increased Mr. Best's sentence by 50% by stating that Mr. Best would not be entitled to remission[84]. The CJC did not consider that this behaviour by the Judge might have been motivated because the Judge, based on the illegal and false evidence discussed above may have been acting improperly and outside his mandate under the Judges Act in order to create or bolster evidence for use in another lawsuit in another jurisdiction.

110. The Judge argues in his factum that Justice Molloy later stated that the secret order was ambiguous. [85] but that was not a ruling about the Judge's behavior but rather part of a decision, supported by the Crown and AGO, that the Judge was wrong to do what he did because it was unconstitutional i.e. it breached Mr. Best's Charter rights. [86] This may be one of the factors the CJC would look at but instead it ignored the entire issue.

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[81] Excerpt from Best affidavit sworn April 18, 2012, pages 3-6 (DB 001096-3 thru 6)
[82] Excerpt from Transcript May 3, 2012, page 56 (DB 000110b11-56)
[83] May 3, 2013 Judgement (DB000112-b1)
[84] May 3, 2013 Warrant of committal (DB 000112-b2-1)
[85] Excerpt from Respondent Shaughnessy, J. Factum (page 3) (DB 015886-18)
[86] Curiously the AGO did not invoke Judges Act s. 63(1) and demand that the CJC look into this but rather decided to act for the Judge during this Judicial Review.

111. The Judge argues in his factum that the words '*no remission is ordered*' is ambiguous.[87] The CJC did not choose to investigate that these words were inserted on purpose by the Judge and were a drastic departure from the January 15th, 2010 warrant of committal that he had reinstated just hours earlier in Court. If the Judge is arguing that he intended to create this ambiguity then that is all the more reason why the CJC should investigate. This type of conduct cannot possibly be consistent with the Judge's duties as set out in the Judges Act. However, this ambiguity as he claims it to be, resulted in a certainty of an added period of incarceration.

Durham Police Judicial Review Investigation

112. I am advised by Mr. Best and verily believe that the Durham Police became involved again on May 31, 2016, which is just after this Application for Judicial Review was delivered by Mr. Best. I have attached the confirmation of this investigation and note that it involved three different police officers using computers which is a very major investigation.[88] Mr. Best's lawyer notified the Durham Chief of Police and thereafter the investigation continued albeit suddenly by an internet proxy called HideMyAss which I expect was to try, unsuccessfully as it turned out, to hide the identity of the Durham Regional Police. [89]

113. On April 17, 2016, Mr. Best's lawyer Paul Slansky filed the current Application for a Judicial Review of the CJC's decision respecting Best's complaint about the Judge. In May, Durham Regional Police initiated an extensive investigation lasting over a period of many weeks that at the very least involved the methodical collection of online evidence and legal documents having to do with Mr. Best's then new Application for the current Judicial Review.

114. The Durham Police investigation was exposed when Mr. Best noticed and monitored the activities of the police investigators as they attended at Mr. Best's public website. The involved Durham Police personnel were apparently unaware that their Internet connection IP (Internet Protocol Number) 66.163.5.113 was registered to the Durham Police, and that their activity was automatically logged when they visit websites – including details of the individual computers, smartphones and tablets used.

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[87] See footnote 85.

[88] Detailed record of the comprehensive and lengthy Internet searches by the Durham Police. (DB 015879-4 thru 7)

[89] Record of the Internet searches by the Durham Police. (DB 015923)

115. On June 15, 2016, Best's lawyer Paul Slansky wrote to Durham Regional Chief of Police Paul Martin and included website and Internet records showing the monitored Durham Police investigation activities from May 31 to June 6, 2016.

116. Mr. Slansky's letter informed Chief Martin of the case background and confirmed that Mr. Best had filed an Application for a Judicial Review of the CJC decision to challenge the dismissal of the complaint against the Judge.

117. The letter informed the Chief "My client is concerned about why this is taking place. He has committed no crime. Why is the DRPS investigating him or his website? He feels intimidated by these actions. In light of the past 'off the record' investigation by the DRPS, that he was advised of by Detective Rushbrook, my client is concerned that this may not be an official DRPS investigation."

118. Slansky asked for the nature and purpose of the police investigation and offered that his client Mr. Best would be willing to speak with the Durham Police investigators about whatever they were looking into.

119. Mr. Slansky also stated that if the Durham Police investigation was not sanctioned, "*...my client is requesting that a DRPS investigation be commenced as to the unauthorized use of DRPS resources (equipment; computer access and manpower) to investigate him. If the investigation of my client was not authorized, this would seem to be a violation of the Police Act and/or the Criminal Code.*"

120. In response to his letter of concern, the Executive Officer to Chief Martin refused to answer any questions and replied, "*Your client's public website is easily accessible by any individual who wishes to view it. No further response to your letter will be provided.*"

121. I am informed by Mr. Best that after Mr. Slansky's letter, the Durham Police investigation continued but that the investigators now attempted to conceal their police affiliation and origin through various means, including the use of the 'Hide-My-Ass' paid proxy service. Mr. Best advises that the 'Hide-My-Ass' proxy was not, however, properly configured and revealed the investigators' same Durham Regional Police IP number of 66.163.5.113. For the sake of efficiency and if it will assist the Court or the CJC I would work with counsel and the Court to retain an independent expert to investigate.

122. The Durham Regional Police investigation appears to be a significant deployment of police investigative resources over a number of weeks, and that is only what we see through Mr. Best's website records. It may be that the police investigation included other inquiries and efforts off the Internet that I am unaware of.

123. We do not know if the investigation was 'official' with a documented occurrence number, and retention of reports, notes and other records, or if this major deployment of investigative resources was conducted by police personnel who maintained no records. Considering other incidents of improper police involvement for the benefit of private parties in this civil case, I am concerned.

124. The timing of the investigation is of interest and concern because it occurred shortly after the filing of the Application for this Judicial Review. The website records can be reviewed to discover how or why the documents that were accessed and downloaded by the police at around the time of the start of this Judicial Review. That will allow a determination of which articles and documents on other subjects available on Best's website appear to be of interest to police for the CJC.

125. I pose the following unanswered questions:

126. Who caused or commissioned this police investigation?

127. Was the intent of the investigation to collect evidence to impact or influence the current Judicial Review?

128. Did the police or anyone else intend that this investigation would intimidate Mr. Best or his lawyer who had just filed an Application for a Judicial Review of a CJC decision?

129. What police and/or government databases were used by the investigators? What information was exchanged with other police or government agencies? What information was transferred to or from private parties?

130. Who received briefings or reports? What were the results of the investigation? Were Crown prosecutors under the Attorney General of Ontario or Canada involved?

131. The Durham Regional Police know the answers to at least some of these questions, but refuse to say.

132. If the investigation was requested or caused by any of the parties served with the Notice of Application on May 15, 2016, namely the Attorney General of Ontario, the

Attorney General of Canada, the Canadian Judicial Council or the Judge, I would have grave concerns.

Other concerns

133. Mr. Best left the country on November 11th, 2009. So the Judge must have known there would be delays when Mr. Best could not have received the motion materials: The Further as Amended Motion Record returnable November 2, 2009 and many letters were not sent to Mr. Best or were sent so late as to be sure that he had not been properly served. Mr. Best had written to the Judge earlier[90] to say that he was aware that the November 2nd, motion for costs was peremptory and that he was confident that the Judge would be fair in fixing costs and that they would be paid. There is no record that the Judge or the prosecuting lawyers contradicted that understanding.

134. Later Mr. Best advised the Court that he had left the country because the Defendants distributed his personal information and there had been an attack on him and his fear was increased because of incidents such as Mr.Van Allen saying that the Police Association had provided his confidential information. "*I didn't go to the police because Mr. Ranking's private investigator was into the confidential records illegally. And he was into confidential records and that was published.*"[91]

135. When there was evidence that the prosecuting lawyers had published personal and private information of Mr. Best with an invitation for rogue police officers and bikers to track down Mr. Best's family[92] which was presented to the Court the Judge refused to consider it.[93] When this discussion was underway and Mr. Best demanded to know who had been responsible for placing this on the web one of the prosecutor lawyers said to the other '*kill this.* [94] The lawyers then went on to respond to Mr. Best's fears about safety and that of his family by saying "*I can't help find that out nor would I if I could.*" And

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[90] November 2nd, 2009 transcript page 36 line 17. (DB 000112-g1-39)
[91] Excerpt from cross-exam of Mr. Best dated January 15, 2010 p. 164. (DB000121-b32-165)
[92] Excerpt from Nov 17th transcript of telephone call p. 167. (DB 015667-2j-11)
[93] May 3rd 2013 p.37 transcript 000110-b11-37- the judge had not dealt with threats earlier other than when one of the Defendants told lawyer McKenzie to 'watch his back' so it appears the Judge did not review the earlier records when he made this statement.
[94] Excerpt from Nov 17th transcript of telephone call, p. 15. (DB015667-2j-18)

when asked who had done this the lawyers responded "*I have no idea nor do I care.*"[95] The CJC would need to investigate why the lawyers were not sanctioned for their lack of courtesy to an unprepresented litigant.

136. Throughout Mr. Best could not have known that the Further Amended Motion Record had been delivered to the Court just prior to November 2nd and it was not served on him. In fact the Order which the Judge signed on November 12th, 2009- (the trial coordinator said it had been sent to Mr. Ranking on Friday November 13th)[96] -had already immediately and retroactively placed Mr. Best in contempt for failing to provide documents two days before the Order was signed. It also is illogical because it imposed a 4 day service period for further documents which meant that the Order was served after the November 17th, 2009 examination which Mr. Best was ordered to attend so he was also in contempt of that Order with no possibility that he could receive it within the time frame mandated by the Judge's Order. Mr. Best repeatedly requested a copy of the Order during the phone call on November 17th, 2009[97]

137. The CJC did not fully take into consideration that its function is to serve the people of Canada. Not all Canadians are able to fully understand let alone report about the nuances of what happens in Court and the CJC has decided it will give them no guidance. Whereas other tribunals[98] engage investigators and information gatherers who are well versed in the areas under consideration that will interview, review, and generally help a complainant make a full and focused complaint the CJC does nothing of the sort. Apparently, Mr. Sabourin and the Judge are of the view that the CJC can reject a complaint arbitrarily [99]

138. The CJC's did not recognize that its interpretation of 'conduct', as vague as it is, needed to be considered on the basis of the full context of the Judge's actions and omissions. The Judge heard all of the motions regarding costs and there was a continuum of evidence and questions which were not examined.

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[95] Ex. DB015667-2j-19 Nov 17th transcript of telephone call p. 16
[96] trial coordinator letter November 16th (DB001096-1e-2)
[97] See footnote 95.
[98] OLB. OHSA, LSUC,
[99] The Judge's factum page 1 argues that the word 'may' in Section 63(2) means that any complaint can be rejected summarily. (DB-0015886-16)

139. The point is being made by all parties that the CJC's definition of 'conduct' is vague and ambiguous. It is not reliable or clear. Its examination of context, circumstances, and underlying legal issues that defined some of the actions of the Judge is not comprehensive. I can assist the Court in its judicial review function. (I note that counsel seem to agree that case law presents a variety of definitions.)

140. The CJC's methods and its letters seem calculated to 'cherry pick' evidence to suit the result it wished to obtain. This must be changed so that its review is more thorough, professional, and deals with evidence and expertise that is readily available. The challenge in a matter such as this is the need to consider underlying factors that motivate and explain certain conduct in the context of what appears on the record and what is not evident or even hidden from the record.It does not seem that was done in this case.

Self-Represented Canadians and the CJC

141. The lack of assistance and guidance for the complainant adds a layer of mystery and lack of transparency to an already oblique arrangement where it appears that one person, Mr.Sabourin, whose credentials are not known, is the filter for all information that is assessed. This appears incongruous with the very specialized and unique knowledge that are required to review the jurisdiction and actions of judges.

142. Other tribunals which are in place to serve the public in specialized benefit from the assistance of fully trained assessors who can assist the aggrieved person and be certain that the full import of the complaint is fairly presented. This type of assistance is all the more important when it comes to Courts and Judges which may be the most important factor or bulwark in the preservation of democracy. My experience and body of knowledge will assist the Court in identifying and expanding upon events that have yet to be explored and are not presently available to the Court. (Note that this type of investigation needs a well trained investigator with insight and skill to deal with the public who mainly cannot be expected to understand the detailed mandate under which Judges operate.[100]

[100] https://www.labour.gov.on.ca/english/hs/pubs/ohs_inspections.php; see also https://www.canada.ca/en/treasury-board-secretariat/services/healthy-workplace/prevention-resolution-harassment/investigation-guide-policy-harassment-prevention-resolution-directive-

143. While the CJC publicizes guidelines as to how Canadians can expect to be treated in Court when they are unrepresented litigants the CJC does not extend those same considerations to Canadians who complain about their treatment in Courts by Judges.[101] The CJC's response to the complaint emphasizes that this type of assistance and proactive treatment is not extended to complainants to the CJC.

144. The report of Mr. Sabourin indicates that he alone was the intake person, chose the facts and evidence that he sent for analysis to Justice Scott, and chose not to look into much less obtain the evidence necessary to fully assess this matter. There is no indication in his decision of how much time he spent looking into this matter, whether he did conduct any type of inquiry, whether he was relying on precedent from other CJC decisions to be able to understand and apply the standards that ought to have been applied. What this means is that somehow he has been the sole 'gatekeeper' of the facts, standards, and thinking process the CJC went through to make his decision while not sharing or enunciating any of it with the complainant when he rejected the complaint and apparently in a summary fashion. Because this matter evolved over a period of time I have reviewed various documents to find areas that Mr. Best did not report to the CJC but raise concerns that the Judge may have not been acting judicially and further investigation is required. They include:

145. -Backdating an Order that immediately placed Mr. Best in contempt of Court. The CJC does not appear to have reviewed or addressed the anomaly in respect to the November 2nd, 2009. The Rules of Practice in Ontario may have misled the CJC into believing that Order took effect on November 2, 2009 simply because it arose out of a motion which was initially argued on November 2nd. However the Order shows that the Judge overlooked the fact that the Order should not have been dated November 2nd, 2009 because it was not clear what it would say until it was submitted to him for signing on November 12th, 2009. The judge made no endorsement and gave no reasons why he would backdate an Order that, on its face, immediately placed the Mr. Best in contempt. Further the Judge made no endorsement and gave no reasons why he would order that

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harassment-complaint-process.html, which speaks of investigation processes that the Treasury Board uses for their workplace violence and prevention policy. See also CJC booklet re complaints.

[101] Application Record p.607-618–Statement of Principles on Self Represented Litigants for Judges dealing (DB 015867-312-323

service was to be effective four days after mailing the Order and then Order the Mr. Best to attend in Toronto on the 17th which is 1 day later [see Calendar]. In other words the Judge signed an Order which, which, even if it had been sent out the same day- which it wasn't- would not be deemed by his own order to have been served until November 18th which was the day after the Ordered attendance.

146. In 2009 when the prosecuting lawyers advised the Court that the real reason for the motions was to gather evidence to be used in courts in other jurisdictions the Judge did not react except in an accepting manner. Later the Judge assisted this scheme when the prosecuting lawyers appeared on June 8th, after the costs were settled, and the Judge proceeded to allow them to file thousands of documents in the Court file many of which have nothing whatsoever to do with the action. What was worse there is private and personal information in those records about people that were never involved in the subject matter of the action. Then the Judge went further and anointed the prosecuting lawyers with powers that the Judge was not entitled to delegate: he empowered the lawyers to file further materials without Judicial supervision:"*further material are permitted to be filed.*"[102] and thereby transcended and delegated the powers given to him by [103] the Judges Act to prosecuting lawyers. No checks and balances were created by the Judge that would limit the lawyers and that means they could do anything they wanted and the Judge would not have to do his job of filtering the information. The matter is all the bigger concern because the people whose privacy and intimate personal information is being filed in court and thereby accessible to anyone don't even know the Judge did this to them.

147. On the last day of hearings on May 3, 2013 the Judge acknowledged and urged Mr. Best to agree to an Order that raises the question whether the contempt proceedings were being used to force Mr. Best to agree to provide evidence regarding a matter in another jurisdiction in exchange for not being jailed. While the subject matter of the mediation before Justice Edwards is meant to remain confidential it seems that was the start of a process designed to intimidate Mr. Best and scare him into

[102] Endorsement June 8, 2010 (DB000417-1)

[103] Examples are not filed with this affidavit because of privacy concerns but are available to the Court pending an application for a sealing order to protect these people from being further exposed by having their confidential and private information filed in this Court.

capitulating. [104]There is no way that Mr. Best could have understood that this was wrong and his naivety in this matter seems to have been what eventually got him into trouble. Needless to say the Judge should have known and never advised Mr. Best or made any statement on the Record that would have alerted Mr. Best to this reality. The CJC was not alerted that this was a concern because an unrepresented litigant and probably any reasonable person could not possibly know that Court was likely not authorized to allow this behaviour and that the CJC needed to look into it.

148. A more thorough investigation by the CJC now that all the facts are known may show that the Judge was wilfully blind and whether in these circumstances that does not amount to judicial conduct. It may very well be that the record belies the mischief that was being achieved simply because the Judge had total control over the process.

Sworn Before Me)
At VANCOUVER)
Ontario)
This 20 day of)
September, 2017)

A Commissioner etc.
LSUC 19491A

[redacted]
Julian Fantino

[104] April 30 transcript p. 118-123 (DB---113g10-119-122)– judgement proposed by the lawyers –(DB000425)

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Traviss, Jackie (JUD)

From: Ouellette_Jeannine [jouellette@fasken.com]
Sent: Thursday, November 12, 2009 2 54 PM
To: Traviss, Jackie (JUD)
Subject: Nelson Barbados
Importance: High

Jackie

Further to your discussion with Jeannine enclosed please find a copy of the order of Justice Shaughnessy dated November 2, 2009 which has been duly approved by all counsel I would be grateful if you would have His Honour sign the order and then PDF a signed copy back to me so that I can arrange for it to be served upon the UPS stores I will also, of course, make the necessary arrangements to have the order issued and entered in Barrie

As always, I am grateful for your assistance.

This is EXHIBIT /
To the Affidavit of
J. FANTINO
Sworn SEP. 28, 2017
[redacted]
A Commissioner, etc.

<<DM_TOR-#3345589-v4-Order_re_production DOC>>

Gerry

Sent on behalf of Gerald L.R. Ranking
Per:
Jeannine Ouellette
Assistant to Gerald L R. Ranking
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents
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Nov 12/09
Order signed

Vancouver Calgary Toronto Ottawa Montréal Québec London Paris Johannesburg

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DB 000119-b14-2

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Nelson Barbados Group Ltd.
427 Princess Street, Suite # 200
Kingston, ON K7L 5S9

This is EXHIBIT 2
To the Affidavit of
J. FANTINO
Sworn SEP. 28, 2017
[redacted]
A Commissioner, etc.

November 16, 2009

Attn: Trial Coordinator Jackie Travis
Superior Court of Justice
Court House
Whitby, Ontario
VIA FAX: 905-430-5804

Dear Ms. Travis,

On behalf of Nelson Barbados Group Ltd., thank you for taking the time to speak with me this morning. As I explained, it was thought that costs would have been issued by Justice Shaughnessy at the peremptory costs hearing held on November 2, 3 and 4, 2009 and it is a surprise that this did not happen.

Nelson Barbados Group Ltd. has always paid the costs as determined by the Honourable Court. As I told you I have been traveling and Nelson Barbados wrote a letter to the Judge in November asking him to go ahead with the peremptory hearing and set the costs and that the company trusted him to be fair.

You informed me that the matter was not heard and was put over to February 22, 23 and 24, 2010. You told me that there was an order requested by Mr. Ranking that eventually came out of the November 2, 2009 court date and that the order was "approved by all lawyers." I informed you that I had not seen any order nor did Nelson Barbados approve it.

You asked if Nelson Barbados had a lawyer acting for it in the costs motion and when I indicated that the company did not, you advised that the company might want to get one because the pile is huge and you cannot go through it to look for documents for Nelson Barbados every time the company calls you.

I asked if all those court documents were not supposed to be sent to the company and you explained that they were sent to Mr. McKenzie and was he not still getting the documents. I explained that Mr. McKenzie had been taken off the case by the court months ago and won't act in any way for Nelson Barbados and that the company had attempted to find a suitable lawyer but was unable to.

2.

You then selected some parts of Mr. Ranking's court order and read them to me starting with a part that said something to the effect that "the court declares that past service on Donald Best of all court documents about the cost motion is valid and that service is four days after the documents were served on Nelson Barbados" when mailed to Kingston.

You then read a part that said to the effect that in future all service to Donald Best was valid only four days after the documents are mailed to Kingston.

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

When I expressed surprise you said that you were sure that Mr. McKenzie's lawyer has been talking to me about this and I answered "NO M'AM". I don't know who informed you that I have been talking with Mr. McKenzie's lawyer but that is not true.

You selected a further part of the order and read that the Judge said I had to answer "all questions". I replied that I have nothing to hide or fear and I always obey an order by a judge to the best of my ability and I would continue to do so and if the judge says I am to be questioned by the lawyers tomorrow (17th), I will make myself available.

You suggested that I might want to contact either Mr. McKenzie's office or Mr. Ranking's office as he was the one that took the order out.

I asked about Mr. Ranking's order and you told me that it was just signed by Justice Shaughnessy and sent out to Mr. Ranking last Friday the 13th of November. Mr. Ranking got the approval from all the lawyers and he sent the order in to be signed by Justice Shaughnessy, and when it was signed you sent it out to Mr. Ranking by courier on Friday the 13th, but the signed order was not sent out to anybody else or Nelson Barbados by you.

I said that explains why I had not received the order and you agreed and said I should phone Mr. Ranking.

I said that based on the little that Nelson Barbados had received in Kingston and based upon what you told me about the "huge pile" of documents that you have in the cost motion, I feel that the defendants, by accident I suppose, have incorrectly told the judge that Nelson Barbados and I have been served with certain documents and that is not the case.

DB 000119-b14-4

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3.

You said that you had no idea what documents the defendants said that they had served on Nelson Barbados and me. I asked and you clarified for me that when lawyers "serve" documents they have to declare that officially with the court and provide an "affidavit of service" and that all those documents and service affidavits would be with the court.

Again on behalf of Nelson Barbados Group Ltd., thank you for taking the time to explain the process and status of the cost motion. The company will consider your suggestion to get a lawyer or to phone Mr. Ranking or Mr. McKenzie's office.

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

Yours truly,

Nelson Barbados Group Ltd.
per

[redacted]

President

This is EXHIBIT 3
To the Affidavit of
J. FANTINO
Sworn SEP 08, 2017
[redacted]
A Commissioner, etc.

privilege.

MR. DEWART: Oh, that makes perfect sense to me, Your Honour. So, as long as - certainly if it comes with your imprimatur that can only assist, as long as he knows you'll hear from him.

You'll will hear from him, yes. As long as the order provides on its face that you will hear from him. I just don't want - let's say he doesn't show up with the minute book and the dog ate it, I don't think it would be fair - excuse me, in my submission it would be unfair if he was all of a sudden staring down the barrel of a contempt motion. So, as long as Your Honour will hear him...

THE COURT: Oh, I....

MR. DEWART: ...how could he object?

THE COURT: No, it's....

MR. DEWART: And indeed....

THE COURT: My order would reflect that the - for his assistance and direction the following materials, documents, letters, statements, should be produced and follow somewhat what is under Tab B excluding, of course, the retainer agreement, which I'm not sure you could ever get into that, and all professional accounts for services rendered by Mr. McKenzie with respect to this action. I don't know if he'll ever get into that, but that's just an initial observation and very good counsel could persuade me otherwise and I can change my mind, but I think - it behooves me to give him some direction because of the content of the letter I

any motions that week. Now Ms. Duncan, you're on your feet.

MS. DUNCAN: Yup, just very briefly, Your Honour. Could I ask for a copy of this letter? We've....

THE COURT: Oh, you didn't get it?

MS. DUNCAN: We haven't received most of the material.

THE COURT: Sure you can.

MR. RANKING: It's actually in the materials that we served. We actually attached it Mr. Butler's affidavit it's the last - as the last exhibit.

MS. DUNCAN: I don't have.

THE COURT: All right. We'll get it for you.

MS. DUNCAN: Thank you, Your Honour.

MR. RANKING: We'll get it.

MR. SILVER: Your Honour, through modern technology I've been able to confirm for Mr. Schabas that - somebody will be available the 22nd, 23rd and 24th of February. So, we can go firm on that.

THE COURT: If you don't mind penning that in to the order, because again, it's informational but it does say when the substantive motion is going to be heard and it must be heard at that time. So, I'd like you to pen that in to the draft order as well. It will be of assistance to Mr. Best. We all know what we're doing, but I want to put him on notice of just exactly what's coming down the pipe.

MR. SILVER: Thank you.

didn't hear Mr. Dewart say was that in the event that they're going make production, that production will also be made along with the position the Friday before.

MR. DEWART: Yes. Sorry. I had intended - I had intended that, Your Honour.

THE COURT: That what - willing to produce - you will produce the Friday....

MR. SILVER: And then we'll deal with the rest - I think it's....

THE COURT: I not going to say anything more. I'm learning it's better just to keep my mouth shut at this point, if there's a problem we'll deal with it each inch of the way, fair?

MR. RANKING: Thank you, Your Honour.

THE COURT: All right. So, why don't I break and give you a chance now to draft that provision, because I think it should be down in writing, and so, there's no mistakes although there's a record here if you can get the reporter to give you a transcript, I suppose, what's your preference?

MR. RANKING: I think we can handle it in terms of - if we can break briefly then we'll have it settled and we'll provide it to Your Honour.

THE COURT: Let's do that.

R E C E S S

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

THE COURT: Mr. Ranking?

MR. RANKING: Your Honour, I'm pleased to say

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that we were able resolve...

THE COURT: Terrific.

MR. RANKING: ...everything, and I will undertake to re-do the order. I'll have it circulated to Mr. Dewart, we'll have it approved as to form and content, and then send it out, presumably, to - to the court for signature.

THE COURT: Make sure it goes to Jackie Traviss, because then I'm sure to get it. All right. So, that takes care of everything for today and hopefully I don't have to see you too often before February, if not at all. I just want to ask you a question; I think counsel may have given an answer on your behalf when I was on the conference call and - were you on the conference call on Friday?

MS. DUNCAN: No Your Honour, I was not advised of the conference call.

THE COURT: All right.

MS. DUNCAN: I'm not sure if my letter of Friday afternoon reached Your Honour?

THE COURT: It did, but much too late. I wasn't going to get on another conference call, and I regret that you weren't on the original, because I want all counsel on, but to now - I won't have private conference calls, I want them with everybody if I'm going to have more, or we don't have them at all. But I raise this issue; there's a cost issue that relates to Ms. Lang.

MS. DUNCAN: But....

THE COURT: You're - does it relate to Ms. Lang? I'm sorry.

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This is EXHIBIT 4
To the Affidavit of
J FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

Gerald L.R. Ranking
Direct 416 865 4419
granking@fasken.com

November 4, 2009
File No: 211200.00002

BY FACSIMILE

Mr. Sean Dewart
Sack Goldblatt Mitchell LLP
20 Dundas Street West
Suite 1100
Toronto, Ontario
M5G 2G8

RECEIVED
NOV 4 '09
SACK GOLDBLATT MITCHELL LLP

Dear Mr. Dewart:

Re: Nelson Barbados Group Ltd. v. Cox et al

Further to our two hour attendance before Justice Shaughnessy on Monday, November 2, 2009, enclosed please find a re-typed order incorporating our collective handwritten changes. When preparing the re-typed order, I realized that the following further amendments were required. I identify, and explain, each amendment (by paragraph below):

(a) in paragraph 1, I have re-inserted the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP because service of motion materials served upon that address need to be validated in respect of all motion materials etc. that were served prior to Justice Eberhard's order dated September 15, 2009 removing Mr. McKenzie's firm as counsel of record for Nelson Barbados;

(b) in paragraph 2, and given Justice Shaughnessy's request that we serve the Knox affidavit upon Mr. Best, I have added the words "or couriering" in the third line of the paragraph so that substituted service may be made by mail or courier; and

(c) in paragraph 7, I have provided for Mr. McKenzie to produce the documents enumerated in that paragraph to

me, which parallels the production obligations upon Mr. Best that we agreed upon in paragraph 4 of the order.

I do not believe any of the foregoing changes are contentious. But if I am mistaken in that regard, please call me to discuss. Otherwise, if you could please either endorse your approval as to form and content upon the order and return the original to me by courier or authorize me to endorse you approval as form and content on the order, I would be obliged.

Yours very truly,

[redacted]

Gerald L. R. Ranking

GLRR/jo
Encl.
c.c.: Lorne Silver/Jessica Zagar
Paul Schabas /Ryder Gilliland
Adrian Lang
Lawrence Hansen/Larry Kcown
David I. Bristow
Andrew Roman
David D. Conklin

DB 005258-1

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Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

86 Wellington Street West
Suite 4200, Toronto Dominion Bank Tower
Box 20, Toronto-Dominion Centre
Toronto, Ontario, Canada M5K 1N6

416 366 8381 Telephone
416 364 7813 Facsimile

www.fasken.com

This is EXHIBIT 5
To the Affidavit of
J. FANTINO
Sworn SEP. 28 / 2017
[redacted]
A Commissioner, etc.

FASKEN MARTINEAU

Gerald L.R. Ranking
Direct 416 865 4419
granking@fasken.com

November 16, 2009
File No: 211200.00002

BY FACSIMILE

Sean Dewart
Sack Goldblat Mitchell LLP

Lorne Silver
Cassels Brock

Paul Schabas/Ryder Gilliland
Blake, Cassels & Graydon LLP

Lawrence Hansen/Larry Keown
Devry, Smith & Frank LLP

Jessica A. Duncan
Crawford, McKenzie, McLean, Anderson & Duncan LLP

David D. Conklin
Goodmans LLP

Adrian Lang
Stikeman Elliott LLP

David I. Bristow
Team Resolution

Andrew Roman
Miller Thomson LLP

RECEIVED
Nov 17/09
SACK GOLDBLATT MITCHELL LLP

Dear Counsel:

Re: Nelson Barbados Group Ltd.

Enclosed, for your records is a copy of the Order dated November 2, 2009 duly signed by His Honour Justice Shaughnessy. I am taking steps to have the Order issued and entered in Barrie, Ontario.

Also enclosed is a copy of the material received from the two UPS stores. The information includes:

(a) A fax to Richard Butler from Daren at the UPS store in Kingston, Ontario dated November 12, 2009 to which is annexed the Mailbox Service Agreement as well as a Mail Forwarding Worksheet and a photocopy of two credit card receipts; and

(b) The Mailbox Service Agreement for suite no. 225 at 250 The East Mall in Toronto, Ontario and The Authorization to Accept Registered Mail.

FASKEN MARTINEAU

I will provide you with a copy of the Order as issued and entered in due course.

Yours very truly,

[redacted]

Gerald L.R. Ranking

GLRR/ns
Encl.

DB 000119-b8-2

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This is EXHIBIT 6
To the Affidavit of
J. FANTINO

Sworn SEP 08/2017
[redacted]
A Commissioner, etc.

Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	MONDAY, THE 2ND DAY
	)	
MR. JUSTICE SHAUGHNESSY	)	OF NOVEMBER, 2009

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

Nov-16-09 05:51pm From-Faskan Martineau DuMoulin LLP 416 364 7813 T-675 P 004/017 F-165

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ORDER

THIS MOTION made by the Defendant, Pricewaterhouse East Caribbean Firm, and the other defendants, for, among other things, an order compelling K. William McKenzie ("Mr. McKenzie") to attend to be cross-examined upon his affidavit, sworn October 2, 2009, (the "McKenzie Affidavit") and to answer all questions that are related to matters raised on the motion for which it was sworn was heard this day in Whitby, Ontario.

ON READING the Motion Record, affidavits and facta of the Defendants, and upon hearing the submissions of counsel for the Defendants and Mr. McKenzie,

1. **THIS COURT ORDERS** that the service of all motion materials (relating to the costs motion) upon Donald Best is hereby validated, and the service of all such materials was effective four (4) days after such materials were served upon Nelson Barbados Group Ltd. ("Nelson Barbados") by virtue of having been mailed to 427 Princess Street, Suite 200, Kingston, Ontario.

2. **THIS COURT FURTHER ORDERS** that service of any and all further materials (including motions, court orders and notices of examination) upon Donald Best will be effective four (4) days after mailing or couriering same to Donald Best c/o the address at 427 Princess Street, Suite 200, Kingston, Ontario, and this order shall supersede paragraph 2 of the order of Eberhard J., dated September 15, 2009.

3. **THIS COURT FURTHER ORDERS** that Donald Best shall appear at an examination on Tuesday, November 17, 2009 at 10:00 a.m. at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario M5K 1H6 at his own expense, to answer:

NOV-16-09 05:51pm From-Fasken Martineau DuMoulin LLP 416 364 7813 T-675 P.005/017 F-165

(a) all questions refused or taken under advisement at the cross-examination of John Knox held on November 4, 2008 and all questions reasonably arising therefrom;

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

(c) all questions which Justice Shaughnessy directed be answered on April 8, 2009 and all questions reasonably arising therefrom;

(d) all questions relating to his appointment, and subsequent duties/responsibilities as an officer of Nelson Barbados; his relationship, if any, to the matters pleaded in the within action, and his non-privileged association and/or relationship with K. William McKenzie and/or the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP;

(e) all questions concerning the shares of Kingsland Estates Limited ("Kingsland"), including without limiting the generality of the foregoing, the security over and ownership rights held by Nelson Barbados in the common shares of Kingsland and all questions reasonably arising therefrom;

4. **THIS COURT FURTHER ORDERS** with respect to the examination of Donald Best, referred to above, that Donald Best shall deliver to Gerald L.R. Ranking, at least one (1) week prior to the examination, all documents touching upon the issues identified in paragraph 3 above, including by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland, all trust documents (referred to in the cross-examination of John Knox), the minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements), and all books of account, ledgers and financial statements from the date of incorporation of Nelson Barbados through to the present.

5. **THIS COURT FURTHER ORDERS** that the foregoing two paragraphs (paragraphs 3 and 4) shall not prevent Donald Best from refusing to answer questions on any basis, including privilege and confidentiality, and the Court is making no determination in this regard at this time. In the event that questions are refused and this Court's further determinations

are required, the motion in this regard shall be heard by Justice Shaughnessy at 9:30 a.m. on Wednesday, December 2nd, 2009 in Whitby.

6. **THIS COURT FURTHER ORDERS** that Mr. McKenzie shall appear to be cross-examined upon the McKenzie Affidavit on Friday, November 20th, 2009 at 10:00 a.m. in Barrie, Ontario, at his own expense, to answer all questions that are related to matters in the McKenzie Affidavit.

7. **THIS COURT FURTHER ORDERS** that, subject to the further provisions of this paragraph, Mr. McKenzie shall produce to Gerald L.R. Ranking by, or before Friday November 13, 2009, all books, contracts, letters, statements, records and copies of same of Nelson Barbados in the custody, possession or power of Mr. McKenzie or his firm, including:

(a) the incorporation documents for Nelson Barbados, minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements);

(a) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;

(b) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland; and

(c) all trust documents (referred to in the cross-examination of John Knox);

provided that if, Mr. McKenzie refuses to produce such documents, then he shall so notify the defence by Friday, November 13, 2009 and explain the grounds for such refusal.

8. **THIS COURT FURTHER ORDERS** that The UPS Store Canada located at 427 Princess Street, Kingston, ON, deliver to the defendants copies of the original contract for rental/use, and any billing records that exist from the date the mail box was opened until present, for the following mail box:

(a) Box 200, at 427 Princess Street, Kingston, Ontario;

9. **THIS COURT FURTHER ORDERS** that The UPS Store Canada located at 250 The East Mall, Toronto Ontario deliver to the defendants copies of the original contract for rental/use, and any billing records that exist from the date the mail boxes were opened until present, for the following mail boxes:

(a) Box 1225, at 250 The East Mall, Toronto Ontario (Cloverdale Mall); and

(b) Box 1715, at 250 The East Mall, Toronto, Ontario (Cloverdale Mall).

10. **THIS COURT FURTHER ORDERS** that production by The UPS Store Canada located at 427 Princess Street, Kingston, ON, and The UPS Store Canada located at 250 The East Mall, Toronto Ontario, will not come into effect until four (4) days after the date this order is mailed to Mr. Best and Nelson Barbados, thereby providing sufficient time for Mr. Best and Nelson Barbados, or a duly authorized representative, to bring a motion before the Superior Court objecting to the production of the above noted non-party documents.

11. **THIS COURT FURTHER ORDERS** costs of this motion be reserved to a later date.

12. **THIS COURT FURTHER ORDERS** that Justice Shaughnessy shall remain seized of this action and permit counsel to bring such further motions to, or seek such further directions from, His Honour, as may be necessary.

[redacted]

Justice Shaughnessy

Nov-16-08 05:52pm From-Faskan Martineau DuMoulin LLP 416 364 7813 T-675 P 008/017 F-165

This is EXHIBIT 7
To the Affidavit of
J. FANTINO
Sworn SEP 28 2017
[redacted]
A Commissioner, etc.

week there were two records which were served which my friend just referred to. One is dated October 27th, and I believe I received it that same day.

THE COURT: Yeah, what is it you're referring to?

MR. DEWART: That's the thicker of the two records.

THE COURT: Yes.

MR. DEWART: And the other is dated October 29th, if memory serves, which is Thursday and I received that Friday morning, and I presume - I've not seen the affidavits of service, but I presume - it'll be a pleasant surprise for all concerned if they'd been served personally on Mr. Best, I assume that didn't happen and that instead what happened was that it went to the - this post office box in Kingston. And Your Honour will recall from the submissions that were made before you last week that there is an existing order removing my client from the record, and - this is the order of Justice Eberhard, which provides for service of documents on the corporation and presumably Mr. Best, it's a presumption I certainly have no difficulty with.

THE COURT: You know what I have difficulty with, is that I was assigned to this matter, I don't remember now, more than two years ago?

MR. DEWART: Oh yes.

THE COURT: And under the rules by the Regional Senior Judge, so I want to ask you a question

lawyer doesn't because of the importance of the issue. So, where we find ourselves, and I will resist the temptation to say anything more than this about the timing, to the extent that this issue comes on us quickly, Your Honour, it is entirely of the moving parties making. Entirely. I have been writing and there is correspondence in the file before you, I have been writing to my friend since my first involvement in this setting out that I can't - my client cannot give up information about the plaintiff or Mr. Best. I filed an affidavit a month ago today in which I said, which Mr. McKenzie deposed, that privilege has not been waived and I fully understand that counsel are busy, and that things sometimes happen at the last minute, but where we find ourselves is on Monday, November 2nd, before Your Honour, my friend's want to proceed with a motion that will affect the interests of my client's former client. I cannot represent my client's former client. There is no one else here to do it, and that material is served, on me at least, on Wednesday and Friday of last week, and Your Honour has no basis upon which you can be satisfied that the plaintiff corporation, or Mr. Best, have any idea that you might be entertaining a motion today which will affect their interests, including interest of the most important nature and I can tell Your Honour that my - my strong advice to my client has been not to contact McKenzie. So, there's - there can be

no presumption - excuse me, Best, that my client can act as a conduit. The last thing I want is another claim against my client this time by Best or Nelson Barbados. So, we're going to hear, I'm sure, about the urgency of the matter. The urgency is - or the timing problems are self-inflicted. In my submission given the interests involved Your Honour should exercise your discretion to put this matter over to a date when you can be satisfied that if Nelson Barbados and Best are here, it's because they've made a deliberate decision to that affect, and in that - on a minor housekeeping point in that respect, as I also mentioned on the phone the other day, Your Honour, I have been imploring my friends to bring a motion to validate service. They've finally done so. So, insofar as we're talking about material - not material served last week, but insofar as we're talking about material before that. It's obvious that Nelson Barbados has notice and I've already told my friend's that I take no position on validating service up to, but not including last week, and going forward Your Honour can be satisfied that material should be reaching Mr. Best if it goes to the post office box that he was responsible for putting before the court. And I have no difficulty in facilitating service on the corporation, Mr. Best, going forward but the problem, the fatal problem, I see - submission, is proceeding on extraordinarily short notice today. I mean, it would be - in respect - for

DB 000119-b18-2

This is EXHIBIT 8
To the Affidavit of
J. PANTINO
Sworn Sep 28, 2017
[redacted]
A Commissioner, etc.

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Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

This is Exhibit "P" referred to in the affidavit of Richard D. Butler sworn before me, this 27 day of November 2009
A COMMISSIONER FOR TAKING AFFIDAVITS
E. Marsh

BETWEEN:

NELSON BARBADOS GROUP LTD.

[redacted] Plaintiff

- and -

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

Defendants

AFFIDAVIT OF JEANNINE OUELLETTE
Sworn November 24, 2009

I, JEANNINE OUELLETTE, Legal Secretary, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I served Donald Best with copies of the following documents:

   a) the letter from Gerald Ranking to Donald Best dated November 18, 2009;

   b) the Notice of Examination dated November 18, 2009; and

c) a bound brief containing the Statement for the Record taken at the offices Victory Verbatim on November 17, 2009 and the Exhibits.

by sending true copies of such documents by regular lettermail and by Purolator, a courier, to Donald Best c/o 427 Princess Street, Suite 200, Kingston, Ontario, K7L 5S9.

2. The copy was given to the courier on November 18, 2009.

3. I served Donald Best with the letter from Gerald Ranking to Donald Best dated November 18, 2009 by sending a true copy by regular lettermail on November 18, 2009 to Donald Best c/o Cloverdale Mall, 250 The East Mall, Suite 1225, Toronto, Ontario, M9B 6L3.

SWORN BEFORE ME)
at the City of Toronto, in the)
Province of Ontario,)
on November 24, 2009) Jeannine Ouellette
) JEANNINE OUELLETTE
)

A COMMISSIONER FOR TAKING AFFIDAVITS

DAWN K. ROBERTSON
Barrister and Solicitor

Court File No. 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

GL/lms

B E T W E E N:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

- - - - - - - - - - -

This is a Sta[redacted] Record in the above-noted matter, taken at the [redacted] of VICTORY VERBATIM REPORTING SERVICES, Suite 900, [redacted] Young Tower, 222 Bay Street, Toronto, Ontario, on the 17th day of November, 2009.

- - - - - - - - - -

APPEARANCES:

GERALD L.R. RANKING SEBASTIEN KWIDZINSKI (Student-at-Law)	}	-- for the Defendant, PricewaterhouseCoopers East Caribbean firm
SARAH CLARKE		-- for the Defendant, First Caribbean International Bank
LORNE S. SILVER		-- for the Defendants, Richard Ivan Cox, Gerard Cox, Alan Cox, Gittens Clyde Turney, R.G. Mandeville & Co., Keble Worrell Ltd., Lionel Nurse, Owen Seymour Arthur, Mark Cummins, Kingsland Estates Limited, Classic Investments Limited, The Barbados Agricultural Credit Trust (more properly, Barbados Agricultural Credit Trust Limited), the Attorney General of Barbados, the Country of Barbados, Elneth Kentish, Malcolm Deane, Eric Ashby, Bentham Deane, Errie Deane, Owen Basil Keith Deane, Keith Deane, Leonard Nurse, Estate of Vivian Gordon Lee Deane, David Thompson, Owen Gordon Finlay Deane, Life of Barbados Holdings and Life of Barbados Limited
HEIDI RUBIN		-- for the Responding Parties, K. William McKenzie and Crawford McKenzie McLean & Wilford LLP
MARC LEMIEUX		

INDEX OF PROCEEDINGS

STATEMENT FOR THE RECORD:

1. **MR. RANKING:** The time is now 10:30. It is Gerald Ranking, and I am making these statements at Victory Verbatim in a boardroom in the presence of Lorne Silver, Marc Lemieux, Heidi Rubin, Sarah Clarke, and my student, Sebastien Kwidzinski. I want to briefly go over the events of this morning before I mark a number of documents as exhibits.

When I arrived at the reception of Victory Verbatim at approximately 9:50 a.m., Mr. Best was on the phone. He was calling in and speaking to the receptionist. I offered to speak with him, and the substance of the discussion was that he was not going to attend, but that he wanted the examination to take place over the telephone.

I indicated to him that that was not in accordance with the order of Justice Shaughnessy, and I asked him if he could tell me where he was so that we could determine if he could, in fact, attend to be examined in person.

Mr. Best refused to answer that question. And after some further discussion, he then asked if he could speak with Lorne Silver. At that point, at approximately 9:55 a.m., we then retired to a small telephone room off the reception at Victory Verbatim, and Mr. Silver then put Mr. Best on the conference call in my presence and the presence of my student, Sebastien Kwidzinski.

The call proceeded, and Mr. Best indicated that certain information had been posted on the Barbados underground website and some other blog, which I believe was something to do with a motorcycle website, and he indicated that he was concerned for his safety.

He asked in particular whether or not we had been surveilling him, or whether there would be surveillance at the examination. And Mr. Silver made clear that there would be no such surveillance, and also indicated that neither he, nor any member of his firm or his firm itself, had any role in posting whatever it was that

Mr. Best was referring to.

And I add that neither Mr. Silver nor myself or, to the best of my knowledge, anyone else in this room today have any knowledge of what Mr. Best was referring to, although it may well be on the website but we haven't accessed it.

The discussion with Mr. Best proceeded until 10:12 a.m., and I summarize the salient points as follows: Firstly, Mr. Silver and myself made clear that if Mr. Best did not attend, that he would be in contempt of Mr. Justice Shaughnessy's order, dated November 2nd.

In that regard, Mr. Silver offered to put the matter down to 2:00 in the afternoon, to which Mr. Best indicated that he could not attend. I renewed my request for Mr. Best to disclose his whereabouts, and went so far as to say that I did not need to know a specific address, but I needed to know generally whether he was in the jurisdiction, and if so, his general whereabouts. And the example I used was, was he in Barrie or elsewhere? So that we,

as counsel, could organize our schedules to try to accommodate him.

Mr. Silver also offered other days, being Wednesday or Thursday, and Mr. Best's response, as best I recall, was that no time was particularly convenient, and he did not commit to any of the offers made by either myself or Mr. Silver to attend to be examined at another time.

I should also add that Sarah Clarke joined the call at 10:05, and I believe that was the approximate time that Heidi Rubin joined the call as well. I am just checking my notes to see if there is anything further. Yes, the other point that I should make clear is that Mr. Best really was quite insistent that the examination take place by way of conference call.

Mr. Silver asked the first question as to whether or not he..."he" being Mr. Best...had the records of Nelson Barbados. Mr. Best refused to answer, and then asked Mr. Silver to put the second question to him, and Mr. Silver made clear that this

was not to be an examination conducted over the phone, but just simply a general question to determine where the corporate records might be, given the fact that Mr. Best had not complied with Justice Shaughnessy's order to deliver the documents to me a week in advance.

Finally, one last point, which I think is salient for the purposes of today, is the fact that Mr. Best indicated that he had not received any of the materials but had spoken to Jackie Travis, although he had not used that name, but he said the trial coordinator, which I assume to be Jackie Travis, and that there was a package of materials that were to have been sent to him.

He claimed that he had not received the materials, and I then indicated to him that I had sent the materials to him by letter dated November 6th, in strict compliance with Justice Shaughnessy's order.

I followed up and I asked him if he had, in fact, gone to his post office box

to collect the materials, and despite the fact that I asked this question on at least three occasions, Mr. Best refused to answer and to let us know whether or not he had picked up the materials.

Subject to the comments of others that I will invite momentarily, I would like to mark as exhibits the signed order of Justice Shaughnessy, dated November 2nd. That will be Exhibit 1.

--- EXHIBIT NO. 1: Signed order of Justice Shaughnessy, dated November 2, 2009

2. MR. RANKING: And I would also like to mark the affidavit of Jeannine Ouellette, sworn November 17th, to which is attached the notice of examination, dated November 6th, 2009. And for the purposes of brevity, if I could put it that way, I have not attached to Ms. Ouellette's affidavit the rest of the material that was, in fact, served that day because our volumes, being the transcript from the cross-examination of John Knox, dated November 4th, the

affidavit of John Knox sworn November 12th, the affidavit of John Knox sworn January 11th, and the transcript of the proceedings before Mr. Justice Shaughnessy on April 7 and April 8, 2009.

Those items are identified in Ms. Ouellette's affidavit of having been couriered to Mr. Best on November 6th, 2009. So if I could mark the affidavit of Jeannine Ouellette as Exhibit 2.

--- EXHIBIT NO. 2: Affidavit of Jeannine Ouellette, sworn November 17, 2009

3. MR. RANKING: And I will also mark as Exhibit 3 my letter to Mr. Best, dated November 6th.

--- EXHIBIT NO. 3: Letter to Donald Best from Gerald Ranking, dated November 6, 2009

4. MR. RANKING: Let me just check my notes, and then I will invite comments from others. Subject to comments from others, those are my comments today.

MR. SILVER: It is Lorne Silver. The only other two things that I would add is that, in the conversation that Mr. Ranking describes, I made it clear to Mr. Best that we were just following the protocol set out in court orders, and because the difficulty that we had experienced previously in serving him, we were proceeding by way of court order, and that the court order that we were here on today was one that required him to be cross-examined today.

And that if he had any problems with the court orders, he would have to deal with that with the court and not with us. The other thing that I think I might have missed but was also indicated was I, in trying to reschedule this cross-examination to tomorrow or this afternoon or tomorrow or Thursday, I also specifically asked Mr. Best when he would be available for the cross-examination, and he would not answer that question. Anybody else want to add anything to the record?

MS. RUBIN: Just to be fair to Mr. Best, my notes say that he indicated that he

hadn't received a copy of Justice Shaughnessy's November 2nd order, and that he had asked for a copy to be sent to him.

MR. SILVER: I don't think that is right, actually. I think he said that he got it for the first time last night.

MS. RUBIN: My notes say that he indicated that he hadn't seen it, but maybe I misheard. That is what I heard him say.

MR. LEMIEUX: Marc Lemieux, just to...

MR. SILVER: But in response to that, he obviously knew...sorry, Marc.

MR. LEMIEUX: No problem.

MR. SILVER: He obviously knew about the examination because he knew to call in this morning at 10:00.

MR. RANKING: Well, I don't want to really get into...my recollection is similar to Mr. Silver's, that he, indeed, indicated that he had obtained the court order, and that he, in fact, called the trial coordinator to find out about the material.

MS. RUBIN: Well, that might have happened before I got on the call.

MR. SILVER: And Mr. Ranking asked repeatedly for him to confirm that he had received and seen the materials that were sent to the post office box in accordance with Exhibit 3 that he just marked, and he refused to answer that question.

MR. LEMIEUX: Marc Lemieux. I just wish to be clear for the record that I was not here today for the examination of Donald Best. Our firm is no longer on the record, and I have no specific knowledge of any of these things that were being discussed with respect to the particular court order of... what packages were sent to him, or what was in those packages, or anything else.

I was not present for the entire phone call, so I don't have any specific knowledge of the entirety of the phone call, or the context of the entire phone call, nor did I take any notes of that which I was present for. So, from my position...and I take no position with respect to any of the things that have transpired or what has taken place this morning. Thank you.

Statement for the Record - 14

INDEX OF EXHIBITS

REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the **17th DAY OF NOVEMBER, 2009** and taken to the best of my skill, ability and understanding.

Certified Correct:

[redacted]

Gina Loraine
Verbatim Reporter

[redacted]

DB 005191-1

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FASKEN MARTINEAU

This is EXHIBIT 9
To the Affidavit of
J. FANTINO
Sworn SEP. 28/2017
[redacted]
A Commissioner, etc.

Gerald L.R. Ranking
Direct 416 865 4419
granking@fasken.com

November 18, 2009
File No: 211200.00002

BY ORDINARY MAIL AND COURIER

Mr. Donald Best
c/o 427 Princess Street
Suite 200
Kingston, Ontario
K7L 5S9

Mr. Donald Best
c/o Cloverdale Mall
250 The East Mall
Suite 1225
Toronto, Ontario
M9B 6L3

(by mail only, without enclosures)

Dear Mr. Best:

Re: McKenzie et al ats Nelson Barbados Group Ltd.

A. Your Examination

I am writing further to your telephone discussion with me, Lorne Silver, Heidi Rubin, Sarah Clarke and Marc Lemieux (all of whom were at Victory Verbatim) yesterday. Please note that I am sending this letter to both of your post office box numbers.

First, and by reason of the fact that you failed to attend to be examined, I enclose the Certificate of Non-Attendance issued by Victory Verbatim.

Second, I confirm that you called Victory Verbatim at 9:50 a.m. yesterday morning. You did so because you knew that you were to be examined at 10:00 a.m. I have also now seen your letter dated November 16, 2009 (received after I returned to the office yesterday). It is apparent from your own letter that you were aware that Justice Shaughnessy had ordered you to appear on Tuesday, January 17th to be examined.

Third, and by reason of your failure to attend, I confirm the following salient points from our telephone discussion:

(a) when you indicated that you did not intend to appear to be examined (asking instead to have counsel put questions to you over

the phone) both Mr. Silver and I told you (on repeated occasions) that you would be in contempt of Justice Shaughnessy's order dated November 2, 2009 if you failed to appear;

(b) you refused to respond to my repeated request to identify your location, even generally. You also refused Mr. Silver's offer to have the examination stood down to 2:00 p.m. and his subsequent offer to conduct the examination today (Wednesday) or tomorrow (Thursday). Despite repeated requests, you refused to tell me where your were or to commit to be examined on any of those days. You also did not provide alternate dates;

(c) when you claimed that you were concerned for your safety and that certain information had been posted to a "blog" (allegedly posted you said by Mr. Silver or his firm), Mr. Silver categorically rejected that he or his firm had posted anything on any blog. Likewise, when you asked if there would be surveillance, both Mr. Silver and I confirmed there was no surveillance. I also offered, as a further gesture to you, to have the examination conducted at my office. You refused my offer;

(d) you also claimed that you had not received the Notice of Examination, or other materials, which I sent to you on November 6, 2009. However, you refused to answer my repeated questions as to whether or not you had picked up materials from your post office box. I also note that, while you claim you did not receive my letter dated November 6th, you knew to call Ms. Traviss on the morning of Monday, November 16th (the day prior to your scheduled examination); and

(e) with respect to the service of documents, you did not provide a residential address or alternate address for us to provide duplicate copies. Likewise, you did not provide us with any email address or telephone numbers.

Having not appeared, ***you are now in contempt of Justice Shaughnessy's order dated November 2, 2009***. Your very own letter dated November 16th confirms your knowledge of that order, which you flagrantly disregarded.

If possible, we would like to resolve this matter without further involving Justice Shaughnessy. Accordingly, rather than moving for a contempt order now, we are prepared to give you one, and only one, opportunity to purge your contempt. Mr. Silver

and I have re-arranged our schedules and we enclose herewith a further Notice of Examination which requires you to appear on Wednesday, November 25th (one week from today's date) at 10:00 a.m. at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900 to answer the questions set forth in Justice Shaughnessy's order dated November 2, 2009. If you fail to appear on that date, we will move for contempt and our motion will be returnable in Whitby before the Honourable Justice Shaughnessy on Wednesday, December 2, 2009 at 9:30 a.m.

This is a very serious matter. We urge you to retain counsel and to seek advice with respect to the matters in issue and the seriousness of your having failed to attend to be examined pursuant to court order. Mr. Silver and I are also prepared to speak with you, or your counsel, if you have questions. And we will also do whatever we can to accommodate your reasonable requests. By way of example, the examination can be conducted at my office (or Mr. Silver's) if you prefer. ***But let there be no misunderstanding, we expect you to appear to be examined on Wednesday, November 25th and we will move forthwith for a contempt order if you do not appear.***

I also enclose a bound brief containing the transcribed statement I made for the record (at Victory Verbatim yesterday) following our telephone call. The statement also attaches the signed order of Justice Shaughnessy (Exhibit "1"), the affidavit of Jeannine Ouellette (Exhibit "2") and my letter to you dated November 6th (Exhibit "3").

Would you also please send Mr. Silver and I a fax identifying whether or not you have in your possession, power or control the documents identified in paragraph 4 of Justice Shaughnessy's order dated November 2, 2009. All such documents should be delivered to me in advance of your examination, or at a minimum, brought with you to your examination on November 25th.

B. Mr. McKenzie's Cross-Examination

By reason of your refusal to attend to be examined on November 17th, I also wish to advise that Mr. McKenzie's cross-examination has been re-scheduled from Friday, November 20th to Monday, November 30th, 2009. Unless we advise otherwise, the examination will take place in Barrie, Ontario at Simcoe Court Reporting, 134 Collier Street, Barrie, ON, Phone No. (705) 734 2070, commencing at 10:00 a.m.

You are invited, and welcome, to attend that cross-examination if you wish.

I also wish to put you on notice that any questions refused on either your examination or the cross-examination of Mr. McKenzie will be the subject matter of a motion to be heard by Justice Shaughnessy at 9:30 a.m. on Wednesday, December 2, 2009 in Whitby. The outcome of that motion may directly affect the interests of Nelson Barbados Group Ltd.,

or you personally, and I therefore bring the motion date to your attention. We invite you to attend the courthouse in Whitby on December 2, 2009, and you should set that date aside now, because questions which Mr. McKenzie may refuse to answer (on November 30th) may affect your interests, or the interests of Nelson Barbados Group Ltd., and you may wish to make submissions to Justice Shaughnessy on whether or not His Honour should order the questions to be answered.

Yours very truly,

[redacted]

Gerald L. R. Ranking

GLRR/jo
Encls.
c.c.: Lorne Silver/Jessica Zagar
Paul Schabas /Ryder Gilliland
Adrian Lang
Lawrence Hansen/Larry Keown
David I. Bristow
Andrew Roman
David D. Conklin
Sean Dewart
Jessica Duncan
(Enclsoures to c.c's will be delivered)

This is EXHIBIT 10
To the Affidavit of
J. FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

ORDER

THIS MOTION made by the Defendant, Pricewaterhouse East Caribbean Firm, and the other defendants, for, among other things, an order compelling K. William McKenzie ("Mr. McKenzie") to attend to be cross-examined upon his affidavit, sworn October 2, 2009, (the "McKenzie Affidavit") and to answer all questions that are related to matters raised on the motion for which it was sworn was heard this day in Whitby, Ontario.

ON READING the Motion Record, affidavits and facta of the Defendants, and upon hearing the submissions of counsel for the Defendants and Mr. McKenzie,

1. **THIS COURT ORDERS** that the service of all motion materials (relating to the costs motion) upon Donald Best is hereby validated, and the service of all such materials was effective four (4) days after such materials were served upon Nelson Barbados Group Ltd. ("Nelson Barbados") by virtue of having been mailed to 427 Princess Street, Suite 200, Kingston, Ontario.

2. **THIS COURT FURTHER ORDERS** that service of any and all further materials (including motions, court orders and notices of examination) upon Donald Best will be effective four (4) days after mailing or couriering same to Donald Best c/o the address at 427 Princess Street, Suite 200, Kingston, Ontario, and this order shall supersede paragraph 2 of the order of Eberhard J., dated September 15, 2009.

3. **THIS COURT FURTHER ORDERS** that Donald Best shall appear at an examination on Tuesday, November 17, 2009 at 10:00 a.m. at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario M5K 1H6 at his own expense, to answer:

NOV-16-09 05:51pm From-Fasken Martineau DuMoulin LLP 416 364 7013 T-675 P.005/017 F-185

(2) 1937

Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

FURTHER AMENDED NOTICE OF MOTION RECORD OF THE DEFENDANTS
(Motion Returnable Monday, November 2, 2009 or as otherwise determined by the Honourable Justice Shaughnessy)

This is EXHIBIT 11
To the Affidavit of
J. FANTINO
Sworn SEP. 28 2017
[redacted]
A Commissioner, etc.

October 29 2009

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Prepared for, and on behalf of, all Defendants

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Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

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Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

FURTHER AMENDED NOTICE OF MOTION
(Motion returnable Monday, November 2, 2009 or as otherwise determined by the Honourable Justice Shaughnessy)

The defendant, PricewaterhouseCoopers East Caribbean Firm, and all other similarly situated defendants who were served with a Notice of Discontinuance on March 23, 2009, as listed in Schedule "A" hereto, and all other defendants (collectively the "Defendants") will make a motion to the Honourable Mr. Justice Shaughnessy on Monday, November 2, 2009, at 10:00 a.m., or as soon after that time as the motion can be heard, at the Courthouse in Whitby, Ontario.

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

THE MOTION IS FOR an order:

1. awarding costs of this action to the Defendants on a full indemnity scale, or in the alternative, on a substantial indemnity scale (as set forth in the Bills of Costs to be delivered) fixed, and payable forthwith by the plaintiff, the plaintiff's officer Donald Best, K. William McKenzie ("Mr. McKenzie") and Mr. McKenzie's law firm, Crawford, McKenzie, McLean, Anderson & Duncan LLP, on a joint and several basis;

2. in furtherance of the relief sought in paragraph 1 above, an order setting aside the two cost orders listed below, and supplementing those orders by awarding costs to the Defendants on full indemnity scale. The orders to be set aside, and supplemented, are:

   (a) the order of Justice Shaughnessy dated April 16, 2008 dealing with the costs of the various motions (principally the issue of security) on January 14, 15, 17 and 18, 2008 which awarded costs to the defendants on a partial indemnity scale;

   (b) the order of Justice Howden dated August 8, 2008 dealing with the costs of the plaintiff's appeal of Justice Shaughnessy's rulings on the motions heard on

This is EXHIBIT 12
To the Affidavit of
J. FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

court for their time, but we felt it very important to file public Minutes of Settlement as well as to file these documents. Because one of the - one of the memos that we saw that passed between Mr. McKenzie and Mr. Allard, was a memo talking about forum shopping. And they talked about, are we going to pick Alaska, are we going to pick Cyprus, are we going to pick Ontario or are we going to pick Miami? And I can take you to the reference in the supplementary factum. But the very day after Mr. Dewart stepped down as counsel on the 23rd of February, the very next day, a proceeding was started in Miami.

THE COURT: I saw that. I just - I saw that. I couldn't believe it.

MR. RANKING: So we're here going, thankfully Ontario is out, but we have no comfort, none, that in fact this proceeding may not continue in Miami. And the documents that - that - so the Minutes of Settlement that we're filing, we want filed and endorsed as filed by Your Honour, so that they are a matter of public record should we need to have reference to them in the Miami proceedings and all of the documents which in fact underscore the abusive nature of this lawsuit to re-litigate issues from Barbados, similarly available to us, should either of our respective clients need to deal with that in - in Florida. So that's the - that's the backdrop. With that by way of backdrop, let me now take you though the paragraphs and I will not apologize, but I actually am quite pleased by the amounts that we were able to recover, which

This is EXHIBIT 13
To the Affidavit of
J. FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

THE COURT: The settlement - yes?
MR. RANKING: ...and are embodied in the Minutes of Settlement executed June 7, 2010, filed.
THE COURT: What was that date again?
MR. RANKING: June 7, 2010, Your Honour. Yesterday's date.
THE COURT: Yes.
MR. RANKING: I would also ask Your Honour, if you could also say, in accordance with the Minutes of Settlement, the affidavit of Jessica Zagar, Z-A-G-A-R, and attached CD's, has also been filed with the court.
MR. SILVER: Yes, I think there's one other - I think there's one other point Your Honour. And it's also in accordance with the Minutes of Settlement, paragraph seven, that it's contemplated that there may be subsequent filings and we're going to check the record. There's one affidavit of Mr. McKenzie in response to Jessica Duncan's. I'm not sure if it's filed or not, but if it isn't, we're going to file it. But - but maybe it could also say, also in accordance with the Minutes of Settlement, further filings are contemplated and should be allowed. I mean, I don't know. That might help that it's in the endorsement, if we run into a problem filing anything, Jackie will certainly understand that. That would be it I think.
MR. RANKING: Yes. The only other point Your Honour, I don't know that this is clearly in your discretion, is to whether you wish to make any comment with respect to Mr. Best's contempt. I - I

will write that letter but I'm not sure that you need to have it in your endorsement.

THE COURT: No.

MR. RANKING: But...

THE COURT: I...

MR. RANKING: ...that's the only other....

THE COURT: ...I don't think it is because it's - you didn't try to take away my powers. You didn't try to deal with the - my own order of contempt. So, it's - it's alive.

MR. RANKING: Right.

THE COURT: And I don't think anything has to be said in that regard.

MR. RANKING: Great.

THE COURT: Is there anything else gentlemen?

MR. RANKING: That's all Your Honour.

THE COURT: All right. Let me just read it over before I sign it. "Cost motion has settled for all parties. The settlement for Mr. Ranking's and Mr. Silver's clients are not confidential and are embodied in the Minutes of Settlement executed June 7, 2010, filed. In accordance with the Minutes of Settlement, the affidavit of Jessica Zagar, sworn June 7, 2010 and attached CD's, are also filed with the court. Also, in accordance with the Minutes of Settlement, further material are to permitted to be filed."

M A T T E R C O N C L U D E D

* * * * * * * * * * *

June 8 2010

Cross motion has resulted for all parties. The settlement for Mr. Rankin's and Mrs. Selmes's clients are not confidential and are embodied in the Minutes of Settlement signed June 7 2010 filed.

In accordance with the Minutes of Settlement the Affidavit of Jessica Zagar sworn June 7 2010 and attached CD's are also filed with the Court.

Also in accordance with the Minutes of Settlement further material are to be permitted to be filed.

[redacted]

This is EXHIBIT 14
To the Affidavit of
J. FANTINO
Sworn SEP 28 2017
[redacted]
A Commissioner, etc.

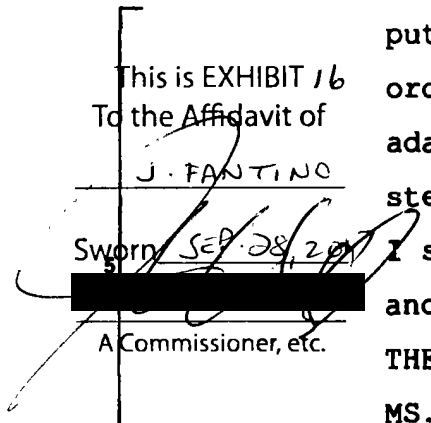
This is EXHIBIT 15
To the Affidavit of
J. PANTINO
Sworn SEP. 28, 2017
[redacted]
A Commissioner, etc.

clearly much closer than - than we initially thought. But the reason frankly that we have not released Mr. Best, has to do with the fact that he was intimately involved through a company called N.I.S. and the blogging, and rendered invoicing in the blogging. And his wife Wam Pampagna, was also intimately involved and in fact, rendered accounts that were paid in the amount of some $175,000. So when we settled this, one of the concerns that I discussed with my friend was, what is going to happen with the Keltruth Blog and underground Barbados and when is that going to raise it's ugly head again? God forbid, hopefully never. But there was that issue plus there was - because Mr. Best was so intimately involved with Mr. McKenzie in - in - in sitting in as the nominal plaintiff for Nelson Barbados, would he in fact have very germane evidence if compellable, to deal with the action in Miami? So there is a backdrop, it's not one of - of vindication or - or - we're not trying to be vindictive. But there's knowledge that Mr. Best has given - his association with the McKenzie firm, and with Mr. McKenzie, and with the entire forum shopping plan.

THE COURT: Yes and besides, I was thinking about this morning with Mr. Best. His contempt is contempt to the court. So no one, but no one, can forgive that unless I do.

MR. RANKING: Right.

THE COURT: And it wouldn't - it would not be something that I would agree to in any event, until he properly appeared and I had his explanation and



put up and I think that - I submit that the order that Mr. Ranking has submitted as we've adapted it, pursuant to your comment, gets us a step closer to getting to the bottom of it. So, I support the submissions that Mr. Ranking made and don't have anything to add.

THE COURT: Ms....

MS. CLARKE: Ms. Clarke, Your Honour.

THE COURT: Ms. Clarke, yes.

MS. CLARKE: We, as well, from First Caribbean support Mr. Ranking's submissions and we too would like to get to the bottom of this. Thank you.

THE COURT: Just - I'll come to you one second. One matter that arises, although I sent a letter dealing with my annoyance, I don't like counsel communicating with me during the course of hearing a motion, or about to hear a motion, I think that my reasons are obviously, but Mr. Bristol, I think in this court, last attendance as well as correspondence that I received, raised an issue has troubles me, and because it troubles me I'd sort of like an answer, and that is if the costs were, in fact, going to be paid at whatever level they're assessed and the fact that costs were paid on a previous assessment by me, is that a question that should be answered before we continue down this tortured path? I think that's the thrust of this question, and I say it troubles me and I'm not looking for a way out, believe me, I'm pretty well saddled with the idea that this is going right to the bitter

end and I'll be writing and writing some more on this matter. What are your thoughts on that? On Mr. Bristol's approach? If you get paid the costs, then what's the issue?

MR. SILVER: You want me to answer?

MR. RANKING: I can - sure, you go ahead.

MR. SILVER: I think that's a - I think it is a good question, but with the greatest of respect I think you're asking the wrong side the question, and if - if the respondents, whether it be Nelson Barbados - any, or all of them, came to the court and said, "We can make these issues moot by posting the money in court."

THE COURT: That's exactly the method I was thinking about.

MR. SILVER: Subject....

THE COURT: To the assessment.

MR. SILVER: Subject to the assessment, but these defendants would know that they're going to get their costs. If they get a cost award you may then conclude that it's not relevant to know. We may still have argument about that, but I would think that that would be something that has to be initiated on the other side and real security, like, security that we know that if there's a cost award and the appeal period runs, our clients get paid. That's how I see it.

THE COURT: Sorry.

MR. RANKING: Sorry. Subject to one other matter, which is a very real issue. The whole issue of this case being started in Ontario

through a sham corporation is as much alive today as it will be tomorrow when a different jurisdiction is chosen, another action is commenced, and I can tell you that there have been rumblings about actions being commenced in Florida. So, I am more than happy to settle this case today if my client were paid the caveat that I would insist upon, is that anybody related to - whether it's John Knox or Marjorie Knox, or whoever is behind all of this, provides a full and final general release that my client, and I'm sure I speak for all the defendant's, will not be sued anywhere else, because that is a legitimate concern.

THE COURT: Haven't they - I'm sorry, but I'm trying to go back - I'm trying to recall what I wrote, and didn't I review the Barbadian actions that are already underway?

MR. RANKING: Yes.

THE COURT: And they are companion actions already in existence down there.

MR. RANKING: I can tell Your Honour and - that my client has received letter from a Florida firm demanding production of financial statements and we said, "We're not going to produce them to you, you're acting for Marjorie Knox." But then - and there have been certainly suggestions of taking steps further. So, I take no issue with respect to what's happening in Barbados, but there are other law firms that have been engaged that are writing letters that give us concern, so I'm not in any way trying to

dodge your question, I'm happy to get this matter resolved by posting a bond and dealing with it, but I have to be very candid that one of the conditions I would insist upon is that my client, and I'm sure, as I say, I speak for everyone knows this is it, and that we're - the litigation is over everywhere.

MS. RUBIN: Your Honour....

THE COURT: You can understand why I left you for last.

MS. RUBIN: Yes. Let me start with that question, because it puts - of course we're in a very difficult position here. I don't act for Nelson Barbados.

THE COURT: Well, I understand.

MS. RUBIN: I don't act for Don Best, and that's - we've made that clear from the outset. We act only for Bill McKenzie and his firm and in respect of Your Honour's question about the possibility of the company, the plaintiff, posting amounts for costs and Mr. Ranking's submission that he would only accept that option if there were released. I'll say two things; firstly, it would serve my client very well if the company, the plaintiff, would post security for costs or would pay the costs now if there was an amount set. Of course that would take a lot of the risk away from my client and I believe there would be nothing that would please him more. However, I don't - I can't - I don't come from a place where I'm able to make any sort of submissions or take any position with

Court file No. 141-07

SUPERIOR COURT OF JUSTICE
(Central East Region)

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

Nelson Barbados Group Ltd.

and

Richard Ivan Cox, et al

This is EXHIBIT 17
To the Affidavit of
J. FANTINO
Sworn SEP 28, 20[redacted]
A Commissioner, etc.

Affidavit of Alair Paul Shepherd, Q.C.

I, Alair Paul Shepherd of Barbados, MAKE OATH AND SAY AS FOLLOWS:

1. I have been an attorney at law in Bridgetown, Barbados since 1974.

2. I am highly familiar with the laws, procedures and government records in Barbados concerning the creation and registration of business entities. Over the years I personally have dealt with and researched these issues countless times, as have my staff members under my direction and supervision.

3. I have read the affidavit of Donald Best, sworn December 10, 2012.

4. Since 2007 and most recently on December 14, 2012, I have personally made, and caused to be made, diligent enquiries and official searches with the Government of Barbados concerning the purported Barbados-registered business entity 'PricewaterhouseCoopers East Caribbean Firm'.

5. Neither I, nor my staff, nor staff of the Barbados Government found any Government or other records indicating that 'PricewaterhouseCoopers East Caribbean Firm' exists, or has ever existed, as a legally registered entity in Barbados.

6. As a result, I verily believe that 'PricewaterhouseCoopers East Caribbean Firm' does not now exist as a genuine legally registered entity in Barbados, nor has it existed at any time in the past.

7. Since 2007 and most recently on December 14, 2012, I have personally made, and caused to be made, diligent enquiries and official searches with the Government of Barbados concerning the purported Barbados-registered business entity 'PricewaterhouseCoopers (Barbados)'.

8. Neither I, nor my staff, nor staff of the Barbados Government found any Government or other records indicating that 'PricewaterhouseCoopers (Barbados)' exists, or has ever existed, as a legally registered entity in Barbados.

9. As a result, I verily believe that 'PricewaterhouseCoopers (Barbados)' does not now exist as a genuine legally registered entity in Barbados, nor has it existed at any time in the past.

10. I make this affidavit to place evidence before the Honourable Court and for no improper purpose.

Sworn before me at [redacted]

Alair Paul Shepherd

This 4th day of January 2013

NOTARY PUBLIC

I, JOY-ANN C. CLARKE Notary Public in and for Barbados do hereby DECLARE that on the day of the date hereof personally appeared before me a male person who identified himself/herself to be the within named Alair Shepherd the deponent herein and did in my presence swear to and sign this Affidavit as and for his free and voluntary act and deed.

IN TESTIMONY whereof I have hereunto subscribed my name and affixed my seal of office this 4th day of January 2013.

[redacted]

NOTARY PUBLIC

DEPUTY REGISTRAR AND AS SUCH A NOTARY PUBLIC IN AND FOR BARBADOS

BARBADOS $10

DB 000118-i3bg32-1

This is EXHIBIT 18
To the Affidavit of
J. FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

A64: 023

Business Names Rules, 1940

FORM 6

CERTIFICATE OF REGISTRATION

I hereby certify that the firm of

PRICEWATERHOUSECOOPERS EAST CARIBBEAN

of THE FINANCIAL SERVICES CENTRE
BISHOP'S COURT HILL
ST. MICHAEL, BARBADOS

has been registered in the Register of Business Names

under No.18309 as of the date 30th June of 1998.

Given under my hand this 24th day of June 2011.

[redacted]
Asst Registrar A;

DB 000118-i3bg32-2

4129 100

18309

43532
$50.00
2011/6/23

BUSINESS NAMES RULES, 1940

FORM 3

STATEMENT GIVING NOTICE OF CHANGES

To the Registrar,

We hereby give you notice of the following Changes in the firm of

PricewaterhouseCoopers

which require to be registered under Section 8 of The Registration of Business Names Act., Cap. 317.

Signed (name) [redacted]

PARTICULARS

Change of Name of Firm: PricewaterhouseCoopers East Caribbean

Change of persons with names in full of new individuals: N/A

Change of place of Business: N/A

Change of Registered Office: N/A

Date of Change: June 23, 2011

Change of Nature of Business: N/A

Any other Change: N/A

See attached Schedule 1

CERTIFIED TRUE COPY

JUN 24 2011

[redacted]

ASSISTANT REGISTRAR
CORPORATE AFFAIRS AND
INTELLECTUAL PROPERTY

4130

DB 000118-i3bg32-3

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REGISTRATION OF BUSINESS NAMES ACT CHAPTER 317

FORM 3

STATEMENT GIVING NOTICE OF PARTNERS
SCHEDULE 1

Name of Partnership	Partnership No.:
PricewaterhouseCoopers	18309

Name of Partner	Signature
Philip St. Eval Atkinson	[redacted]
Richard Michael Bynoe	
Ronaele Theresa Dathorne-Bayrd	
Gloria Rose-Mary Eduardo	
Marcus Andrew Hatch	
Stephen Andrew Jardine	
Russell Allan Edgar Jones	
Bruce Ian Osbert McClean	
Lindell Elon Nurse	
Brian Douglas Robinson	
Christopher Stephen Sambrano	
Ann Margaret Wallace-Elcock	
Craig Lawrence Errol Waterman	
Michelle Jennifer White-Ying	

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1830 Q. I would ask you to put this document to Mr. Shepherd and ask him if he acknowledges that this, in fact, is a certified copy of a certificate of registration which comes from the business names registry in Barbados. Do I have that undertaking, sir?

A. I'll take that under advisement.

UNDER ADVISEMENT NO. 107: Whether or not to put Exhibit 31 to Mr. Shepherd and ask him if he acknowledges that it is a certified copy of a certificate of registration which comes from the business names registry in Barbados.

A. Where does this come from?

1831 Q. It comes from the Government of Barbados.

A. I see. Okay.

1832 Q. And, sir, I'm now handing across to you

A. Sorry, what number was that?

1833 Q. Number 31.

A. 31.

1834 Q. I'm now handing across to you a business names registration

A. Yes.

1835 Q. titled certificate of registration

A. Yes.

1836 Q. for the name Price Waterhouse Coopers East Caribbean firm.

This is EXHIBIT 19
To the Affidavit of
J. FANTINO
Sworn SEP. 28/2017
[redacted]
A Commissioner, etc.

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A. No, it doesn't say that, sir.

1837 Q. Excuse me.

A. It doesn't. It doesn't say that. It says

1838 Q. Excuse me. I'm not asking you to interpret the document.

A. Ha, ha, ha, ha, ha, ha, ha.

1839 Q. You're laughing and that's very I don't know what you find to be humorous but this is my crossexamination, I'll ask the questions. I'm going to mark the certificate of registration which states and I'd ask you to read for the purposes of the record the capitalized letters under the introduction which certifies the firm of and I take it that I'm correct Price Waterhouse Coopers East Caribbean; is that not correct, sir?

A. Okay. It says

1840 Q. Excuse me, sir. I didn't ask you to read the document, I asked you to confirm that what I read is accurate.

A. It says Price Waterhouse Coopers East Caribbean.

1841 Q. Don't answer the question. Don't answer the question because you're not being responsive. I'm going to now ask can I have that copy back? Actually mark that 32. We're going to mark the certificate of registration with respect to Price Waterhouse East Caribbean firm as Exhibit No. 32.

EXHIBIT NO. 32: Certificate of registration with respect to Price Waterhouse Coopers East Caribbean firm.

1842 Q. Could I ask you, sir, to please put Exhibit 32 to Mr. Shepherd and ask

A. Well, this was filed in June this was filed

1843 Q. Excuse me, sir.

A. June 23rd, 2011.

1844 Q. Excuse me, sir.

A. Oh, yes, whatever.

1845 Q. Excuse me.

A. Yes?

1846 Q. I don't need you to start putting evidence on the record. I'm asking you do I have your undertaking to put this to Mr. Shepherd and ask him if he acknowledges that this is a true and proper certificate of registration from Barbados in respect of Price Waterhouse Coopers East Caribbean firm.

A. Okay

1847 Q. Do I have that undertaking?

A. This is

1848 Q. Do I have the undertaking?

A. You have that I'm sorry. In all your shouting I've forgotten the word, the...

MR. SILVER: Under advisement?

THE WITNESS: Under advisement.

UNDER ADVISEMENT NO. 108: Whether or not to put Exhibit 32 to Mr. Shepherd and ask him if he acknowledges that this is a true and proper certificate of registration from Barbados in respect of Price Waterhouse Coopers East Caribbean firm.

MR. SILVER: You should know that already. It's the way you get out of answering questions.

BY MR. RANKING:

1849 Q. Sir, is it really your position that Price Waterhouse Coopers doesn't carry on business in Barbados?

A. Okay, sir. Exhibit

1850 Q. Excuse me. I don't need you to start making arguments based on the document. It speaks for itself. And I'm not here to be examined.

A. This is an exhibit. What is the exhibit number of this?

1851 Q. It's Exhibit No. 32.

A. 32.

1852 Q. Right. And so it's clear, I've asked you both with respect to Exhibit 31 and Exhibit 32

A. Okay.

1853 Q. to make inquiries of Mr. Shepherd to see if he understands and can confirm that these are two legitimate certificates of registration that were duly filed by Price

Waterhouse Coopers and subsequently by Price Waterhouse Coopers East Caribbean firm

MR. SILVER: East Caribbean.

BY MR. RANKING:

1854 Q. East Caribbean with the Barbados government.

A. June of 2011.

1855 Q. I can read the document, sir. Thank you.

A. Okay.

1856 Q. All right. And, sir, would you also ask him when he conducted his searches whether or not he actually searched the business name register in Barbados? You ask him that, sir?

A. Under advisement.

UNDER ADVISEMENT NO. 109: Whether or not to ask Mr. Shepherd when he conducted his searches whether or not he actually searched the business name register in Barbados.

1857 Q. And, sir, will you also ask, if it's not covered by the earlier undertaking, if his searches were restricted to corporate searches? Will you ask him that?

A. This is

1858 Q. Would you ask him that, sir?

A. Under advisement. There's a whole section in my affidavit about this.

UNDER ADVISEMENT NO. 110: Whether or not to ask Mr.

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Shepherd if his searches were restricted to corporate searches.

1859 Q. Oh, I know, sir. I've read your affidavit. Thank you. If I could ask you now to turn to paragraphs 279 and

A. This is like created four years after the lawsuit started and the affidavits were sworn.

1860 Q. It's a change of name. It doesn't affect the legal entity, Mr. Best. But you'll probably

MR. SILVER: And Alair Shepherd searched in December of 2012 and still didn't find it. So nothing helps you guys.

BY MR. RANKING:

1861 Q. If I could ask you to turn to paragraphs 279 to 283, sir.

A. I think you're totally you're just twisting and spinning here. It means they created something years after they swore affidavits that it existed.

1862 Q. Sir, excuse me. I find it offensive that despite

A. Evidence

1863 Q. Excuse me, sir. I find it offensive that you continue to argue your position on the record and that's completely inappropriate. I will sanction you yet again.

A. I find it offensive you're furthering a fraud.

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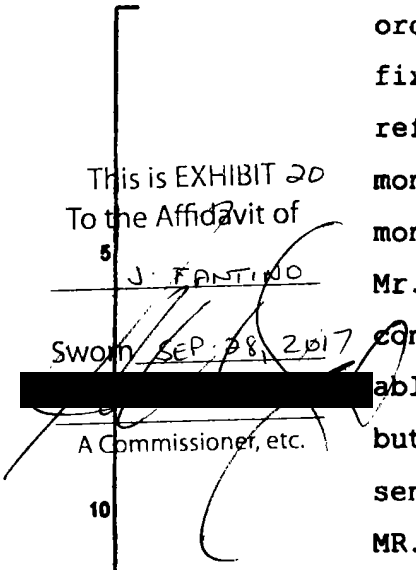

ordering people to jail. I - it's got to be a fixed term. I don't think I want to make any reference to a shorter time. It will be three months, if I grant the request, it will be three months with the proviso that the accused - that Mr. Best will be able to attend me to purge his contempt and at that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

MR. SILVER: But - and....

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

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

THE COURT: At that time.

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

THE COURT: All right.

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

THE COURT: Thank you. Mr. Roman?

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

This is EXHIBIT 21
To the Affidavit of
J. FANTINO
Sworn SEP 08, 2017
[redacted]
A Commissioner, etc.

were working against and hence, I was trying to do my level best to squeeze everything in and get it done before I leave towards the end of February. And my schedule - I have to be the one to hear this because it's my finding of contempt. And again, I just remind Mr. Best, your application brought by your then counsel, was to purge the contempt. In other words, change it, alter it, or expunge it, or none of the above. And that's - that was what's before the court. Now, in your various letters to the Law Society that you put in, to Law-Pro, which we might even discuss whether that's appropriate or not, but everyone of your letters is a lengthy, lengthy letter where you go into needing lawyers, on malpractice, and I don't know if they specifically refer to Mr. Ranking or Mr. Silver. But from your affidavit materials, clearly, you know, you've turned your sights on them and I just want to say to you Mr. Best, that's not what I'm dealing with. I'm dealing with contempt, already found. I've already found you in contempt of the court and in contempt of court orders and you're seeking to change that. It's as simple as that. It's not about malpractice. You want to go into forensic voice analysis; you're saying that the somehow the court has been misled by these counsel.

MR. BEST: That's exactly what I'm saying Your Honour.

THE COURT: You're entitled to say that but I'm telling you right now, if you're saying that you're going prove that the fundamental basis to set aside was the contempt, was maleficence on the part of

Mr. Ranking and Mr. Silver, and I'm going to say to you, go back and read again, my reasons which were then supported in court and you chose not to attend court when you had notice of the application. But I'm saying to you, I'm not expanding this to a brand new hearing. I'm not re-litigating. You must understand this Mr. Best; I am not the Court of Appeal. I made - I gave a judgment. I made a finding. I am not the Court of Appeal. The Court of Appeal deals with anything that they feel I did wrong. The Court of Appeal is where you make applications for new evidence, not me.

MR. BEST: Your Honour, I have no wish to offend the court. I don't know what I'm doing here.

THE COURT: You're not offending me. I'm trying to...

MR. BEST: And I'm sorry.

THE COURT: ...get you focused. That's what I'm trying to do.

MR. BEST: I didn't mean to anger you.

THE COURT: I'm not angry at all. I wanted to say to you, how long did it take you to prepare that material that you have in front of you right now that you've served or sent to me?

MR. BEST: I....

THE COURT: Any estimate?

MR. BEST: All weekend, Your Honour.

THE COURT: A weekend?

MR. BEST: All weekend, yes. I guess it all comes from other things too. But Your Honour, I really do need more but may I - may I file this?

THE COURT: We'll come back to that in a moment.

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This is EXHIBIT 22
To the Affidavit of
J. FANTINO
Sworn SEP 28 2017
[redacted]
A Commissioner, etc.

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

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

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

DB 000122-b34-2

This is EXHIBIT 23
To the Affidavit of
J. FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

Court File No. 141-07

SUPERIOR COURT OF JUSTICE
(Central East Region)

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

NELSON BARBADOS GROUP LIMITED

Plaintiff

- and -

RICHARD IVAN COX, et al.

Defendants

ENDORSEMENT OF JUSTICE SHAUGHNESSY
JANUARY 25, 2013

Counsel:

Lorne Silver (counsel for Kingsland Estate Limited)
Gerald Ranking (counsel for Pricewaterhouse East Caribbean Firm)
Donald Best in person

Hearing date set for **April 30, 2013** at 9:30 am - one day only.

A judicial mediation date is to be set by the Trial Coordinator on a date prior to April 30, 2013. Mr. Best and Counsel to contact the Trial Coordinator within 5 days to arrange this judicial mediation, which all parties and Mr. Best have jointly requested.

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

Mr. Ranking and Mr. Silver now seek an order that Mr. Best pay into court the costs ordered by me on January 15, 2010. This is a variation of prior requests that the costs be paid to the Respondents directly. I find it is necessary not to make an order at this time so that Mr. Best will be able to argue the purge of his contempt.

Jan-25-13 04:24pm From-Fasken Martineau DuMoulin LLP 416 954 7813 T-390 P 004/005 F-751

This is EXHIBIT 24
To the Affidavit of
J. FANTINO
Sworn SEP-28, 2017
[redacted]
A Commissioner, etc.

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

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

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

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

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

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

May 3, 2013

See Appendix A

At Tab C

DB 015866-24

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2(a)

CJC CCM
Canadian Judicial Council
Conseil canadien de la magistrature

This is EXHIBIT 4 to the Affidavit of Donald Best, sworn April 27, 2016

A Commissioner, etc.

Ottawa, Ontario K1A 0W8

Personal and Confidential

CJC File: 15-0514 (11-0032)

28 January 2016

This is EXHIBIT 26
To the Affidavit of
J. FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

Mr Donald Best
132 Commerce Park Drive, Unit K
Suite 115
Barrie, ON L4N 07

By email: info@donaldbest.ca

Dear Mr Best:

I am in receipt of your correspondence dated 5 January 2016, 7 January 2016, and 21 January 2016, in which you complain about the Honourable Bryan Shaughnessy of the Superior Court of Justice of Ontario.

The mandate of the Canadian Judicial Council (Council) was previously explained to you in a letter sent by the Council and which related to a complaint you had filed against the same judge and the same court matter.

In your correspondence to the Council, you allege that Justice Shaughnessy secretly created and substituted a new and changed Warrant of Committal that illegally denied you statutory remission and secretly increased your jail time by a month, that Justice Shaughnessy ordered your exclusion from the normal court process and, that Justice Shaughnessy ordered that your case was never to be brought before him again.

As also previously explained to you in previous correspondence, the Council is not a court. Given the principle of independence of the judiciary, the Council's complaints process is not concerned with judicial decision-making or the exercise of judicial discretion. Your allegations concern the judicial decision-making process and not conduct.
In your correspondence, you make various demands related to how you want the complaint process to unfold. The early process of screening of complaints is governed by the

.../2

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2(b)

Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges (the "Review Procedures"). Under the *Review Procedures*, my duties as Executive Director include the initial review of complaints. Once I complete this review, I must decide whether or not the matter warrants further consideration by Council. This complaint process does not and will not vary on demand.

I have carefully considered your complaint and conclude that it does not involve misconduct. Accordingly, I will be taking no further action.

Yours sincerely,

[redacted]

Norman Sabourin
Executive Director and Senior General Counsel

Details and supporting exhibits appear in following sections of my affidavit.

Donald Best

Contact Information: See attached confidential appendix "Donald Best Contact Information"

This is EXHIBIT 28
To the Affidavit of
J. FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

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

Attention: Complaints Investigations

Complaint about the conduct of Justice J. Bryan Shaughnessy

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

Case Name: Nelson Barbados Group Ltd. v. Richard Ivan Cox and others

Dates in question: (February 9, 2007 through June 8, 2010 and continuing.)

WARNING: This complaint and the attachments contain "Identity Information" as defined in the Criminal Code of Canada Section 402.1. Possession, transmittal or distribution of this Identity Information under certain conditions is a criminal offense under CC 402.2. Persons are strongly cautioned that, prior to reading, possessing or distributing this complaint, they should be fully knowledgeable about their legal duties in respect of the handling and security of Identity Information as defined in the Criminal Code 402.1.

NOTICE: I presume that the Canadian Judicial Council (CJC) is well aware of the laws respecting the protection of privacy and the security of Identity Information. I presume and trust that the CJC has in place all that is necessary to safeguard its electronic data and paper files and to maintain the confidentiality and integrity of your process, and to protect me, my family and all other persons involved in the Nelson Barbados case.

If the CJC at any time is unable to, or does not, comply with the laws, regulations, and protocols respecting privacy and Identity Information, I expect and demand that the CJC will notify me immediately.

Dear Sir or Madam:

My name is Donald Best. I am the sole officer and shareholder of the plaintiff corporation Nelson Barbados Group Ltd. in the above litigation. This is my formal complaint concerning the conduct of Justice J. Bryan Shaughnessy during the litigation and I am demanding that the Canadian Judicial Council initiate a full and major investigation into Justice Shaughnessy's conduct.

For your information about my background, I have been a law-abiding Canadian all my life. For 15 years I was a police officer with the Toronto Police, rising to the rank of Sergeant (Detective). Much of my police career was spent investigating organized

crime in an undercover capacity and performing serious internal investigations. I received many awards for my work and was well respected in the police, legal and judicial communities. During my last year with the police I was part of a joint committee with members of the Judiciary, the Law Society of Upper Canada, Corrections, Attorney General's office and other stakeholders that established the first video conferencing court remand program in Canada.

When I left the police in 1990 due to family reasons, the Deputy Chief held an evening get-together to recognize my service. After leaving the police I owned various businesses in the retail, construction and private investigations industries and at one time had a staff of almost 30 persons. In 2005 I formed Nelson Barbados Group Ltd. ("Nelson Barbados") as an investment vehicle for my projects in Barbados.

My word is my bond. I pay my bills on time. I am devoted to my family. In my 57 years on this earth my offenses against the law amount to, I believe, two traffic tickets for speeding about 15 or 20 years ago.

Conviction and sentencing without notice, trial or evidence

It therefore came as a surprise to discover that Justice Shaughnessy found me guilty of contempt of court in a civil suit costs hearing: without a trial, without evidence, without notice to me, and sentenced me to 90 days in jail with no right to an appeal. Justice Shaughnessy issued a warrant for my arrest and incarceration that is currently outstanding.

The horrifying part of this to me is that there was no evidence before the judge. Justice Shaughnessy did all this based upon a fabricated and false memo that he knew, or should have known was false, and that in any event was not "evidence" properly put before the court according to the law and normal court protocols in Canada.

Justice Shaughnessy saw no evidence that I had been properly served with any documents. He relied upon his own ruling to the effect that anything the defense mailed to my postal box would be considered properly served after four days whether I had actually received the documents or not. A stamp and an envelope, without proof of service, is apparently sufficient cause to place a Canadian citizen in jail for 90 days.

I expand upon this in a later section of my complaint and I am confident that as you investigate, you will rapidly come to the conclusion that Justice Shaughnessy's lack of adherence to law, due process and accepted court protocols in the Nelson Barbados case was long term, deliberate and intended to be malicious and punitive against my company, my witnesses, my lawyer, our families and me. Throughout the case, Justice Shaughnessy intended to, and did, produce results that favoured the defendants. He was biased. He admitted as much in a June 8, 2010 hearing transcript.

(See **Attachment #1** June 8, 2010 Transcript of Proceedings on Motion before Justice Shaughnessy)

I also believe that you will conclude as I have, that the conviction, jail sentence and arrest warrant were engineered to destroy my credibility in a civil lawsuit where at the very least, several hundred million dollars are at stake. I am appalled at Justice Shaughnessy's misconduct and his outright violations of the Criminal Code and other laws and court protocols as I describe in my complaint.

I do not make these accusations lightly. I make them as a professional investigator with 30 years experience in the police and private sectors, who has carefully examined the evidence to a standard of "beyond a reasonable doubt".

Writing from outside Canada due to threats, harassment and violence against my family and me.

I am writing to the Canadian Judicial Council from outside Canada because my family and I were forced to flee our Canadian home during the Fall of 2009 due to threats, intimidation and criminal acts (including physical violence against myself) emanating from the defendants' side of the court case that is referenced in my complaint.

Not only did Justice Shaughnessy ignore the long term escalating threats, harassment and intimidation against my witnesses, my lawyer and me, he empowered and gave the perpetrators license to continue and to increase their attacks, which continue to this day. That was not all that Justice Shaughnessy did. Through his actions as detailed herein, including violations of the Criminal Code and other laws and accepted protocols, he directly participated in the harassment and intimidation.

I realize that my allegations that a senior Canadian judge engaged in such gross misconduct, including violations of the Criminal Code in relation to a case he was hearing, will initially be viewed with some skepticism to say the least. I cannot blame the Canadian Judicial Council or anyone for being initially skeptical as it took me some time to allow myself to acknowledge the truth of the matter.

I have no doubt that after reviewing the evidence, the Canadian Judicial Council will be as devastated as I was with the realization that Justice Shaughnessy deliberately committed violations of the Criminal Code and other laws and protocols.

Validity of the Nelson Barbados legal case

I have been an entrepreneur and involved in varied types of business ventures all my life. Some of my businesses were successful in reaching my goals and others less so. I understand risk and return, and also that I profit more when I choose ventures that benefit from whatever mix of skills and experience I possess.

When the opportunity presented itself to become involved in a business venture concerning the Kingsland estate dispute in Barbados, I investigated the circumstances to determine if I was willing to invest my time, effort and resources. I discovered that the dispute centers upon an estate trust that was at one point valued by some at about one billion US dollars.

I found that there is solid evidence that a number of persons and entities in Canada (who eventually became defendants in the Nelson Barbados lawsuit) had interacted with persons and entities in Barbados to further a long-standing conspiracy that deprived certain shareholders (including myself) of value. Some of the persons in Barbados who were involved in this conspiracy later held high profile positions on that small island nation, including that of Chief Justice, Attorney General and Prime Minister. These high profile persons and others eventually became defendants in my company's lawsuit in Canada not because of their current positions, but because of their actions in the conspiracy prior to their elevation to high office.

The fact that persons in Canada and Barbados acted together to further a conspiracy was not surprising considering that Barbados is the third largest outside destination for investment by Canadians, after the United States and the United Kingdom.

Although the central issues of the Kingsland case have never been heard before any court anywhere even to this day, at the time of my first involvement there were some peripheral motions before the court in Barbados.

After looking into the facts, I believed and still believe that that my efforts and contribution could make a profit upon my investment for my company. On that basis I decided to invest into the venture.

In hindsight, when I made that decision I lacked a full appreciation of the true circumstances of reaching a resolution or trying a case in Barbados, which is a small Caribbean island nation of about 280,000 people. I didn't know that the Chief Justice of Barbados, Sir David Simmons, who is a former Attorney General and former Acting Prime Minister, had been deeply involved in attempting to acquire portions of the assets of Kingsland estate. The apparent conflict of interest was bad enough, but I didn't know that the Chief Justice had previously attempted to sit upon the Kingsland Estate case himself even though he had been an involved party with an interest. In hindsight I am neither shocked nor surprised that the Chief Justice of Barbados attempted to sit upon a case in which he had an interest.

I didn't know that the country of Barbados has a deeply rooted tradition and practice that members of the government of the day frequently seek to involve themselves in business and investments under circumstances that would produce jail terms for politicians or government employees in Canada. Each Barbados government for the last 45 years promised to bring into force integrity laws, but this never happened.

The Kingsland Estate venture was not the only business investment I looked into in Barbados. During my visits to the country, I examined various land and business deals totally separate from the Kingsland venture. I met with representatives of Barbados government agencies, the financial community, the British High Commission trade delegation and the European Union.

With varying degrees of discretion, I was universally informed that in order to invest or do any significant business venture in Barbados I had to be prepared to accept members of the government as silent partners. I was informed that for a certain amount of cash I could personally meet with then Prime Minister Owen Arthur who had the ultimate authority to approve land usage changes.

When I made inquiries at the Barbados Town and Country Planning Department, I was informed that I would receive better service from that government agency if I hired an independent assistant, whose name was suggested to me. When I met with Barbados Government representatives from Invest Barbados, I was informed that I would receive better results if I hired an independent assistant, whose name was suggested to me. When I met with the British High Commission in Barbados, it was suggested to me that payments to British High Commission personnel for their advice and assistance would "smooth the way" in matters with the Barbados Government. The European Union representative was very forthright and similarly confirmed that I would have to "grease the wheels" of the Barbados government to make anything happen in a timely and positive manner.

As the Kingsland matter progressed and my knowledge grew, I was finally forced to acknowledge that trying to resolve the case in the Barbados courts was the equivalent of ramming my head into a concrete wall over and over again.

I remember at one point my lawyer Mr. McKenzie went to Barbados to engage in an off the record meeting with Chief Justice Sir David Simmons. Mr. McKenzie would not betray the confidentiality of the meeting, but when he returned I could tell he was extremely concerned. Mr. McKenzie told me that the man, David Simmons, is not a gentleman, and that I would not get justice in Barbados while David Simmons was Chief Justice. You should ask Mr. McKenzie what happened at that meeting because I believe whatever happened was very important and shocked Mr. McKenzie.

I sought advice from several people including my lawyer Mr. McKenzie and decided to bring an action in Ontario. This was my decision, and as a Canadian citizen with a Canadian company I am entitled to bring an action before the Ontario courts. I have dealt with and assessed evidence all my adult life and I believed then and still firmly maintain that I could win this case on its merits anyplace but Barbados.

I had expected to be treated fairly in Barbados, but it became apparent that threats, bribery and corruption are rampant in Barbados, and I thought that Canada would be able to provide justice.

Justice Shaughnessy covered up Threats, Intimidation and Criminal acts

Justice Shaughnessy's conduct shook my faith in our judicial system, as his conduct would shake the faith of any Canadian who knew and understood what happened.

Does the average Canadian believe it is acceptable for a judge to ignore and cover up years of threats, intimidation, violence and arson against persons seeking justice or testifying in the Ontario courts? That is what Justice Shaughnessy did and there is extensive evidence of this misconduct in the court records.

If the Canadian Judicial Council did nothing else but look at the court records and the affidavits of persons on my side of the case and then compared that evidence with what Justice Shaughnessy said, did not say, did and did not do in response to the evidence of threats, violence and criminal offenses against witnesses, the CJC would be appalled at Justice Shaughnessy's misconduct. In relation to this issue of threats, intimidation and criminal offenses alone, any Canadian would be appalled at the evidence that was presented to the court and appalled at what Justice Shaughnessy did and did not do in response.

As you will read in more detail later in my complaint, I was forced to flee Canada with my family because of an ongoing vendetta of threats, intimidation and criminal offenses against me, my lawyer, my witnesses and other involved persons and their families on my side of the case.

Justice Shaughnessy knew of this campaign and he didn't care. He covered up for the perpetrators in a pattern of neglect and support that continued throughout the case. Justice Shaughnessy empowered the defendants' campaign of terror against my witnesses. I go into more detail later in my complaint, but here are a few examples:

- Justice Shaughnessy knew that fires were deliberately set at the Barbados homes and business of two of my witnesses. He knew that in the case of one witness, this happened after written threats on the internet to burn his home and business. Justice Shaughnessy knew that there were written threats on the internet to murder another of my witnesses, an elderly lady named Marjorie

Knox, by bashing in her head with a rock, and further written threats on the internet to rape the wife of another witness.

- Justice Shaughnessy didn't care about these threats and fires and he covered up for the perpetrators, even going so far as to seal uncontroverted sworn evidence on his own volition and without producing reasons for doing so. That sealed sworn evidence of my witness Nitin Amersey contained evidence of an arson attack on Mr. Amersey's Barbados home one night while he and his family were inside. Further, Mr. Amersey's sworn evidence is that one of the high-profile defendants, David Simmons, directly threatened him in Canada. The sworn testimony contains evidence of other threats, intimidation and criminal acts committed against my witness. Some of these criminal acts involved Barbados police officers traveling to Canada to threaten my witness. Justice Shaughnessy covered up this evidence to protect a high profile defendant, and generally to favour the defendants' side of the case. Justice Shaughnessy was biased.
- When a defendant who is also the brother of one of the high profile defendants was tape-recorded delivering a message through a third party that my lawyer "must watch his back" and confirming that another one of my witnesses (John Knox) would lose his job if he continued to testify on my behalf, Justice Shaughnessy performed such contortions of law and logic to excuse this delivery of threats that his bias became frightening to me and everyone on my side of the case.
- When my witness, John Knox, reported being threatened that if he testified in the Nelson Barbados case he would lose his job as an instructor at the University of the West Indies in Barbados, and then was fired after testifying, Justice Shaughnessy again ignored the evidence and covered up for the defendants.
- When my lawyer properly submitted forensic evidence proving that some of the written threats and harassment delivered on the internet originated from one of the defendants' Ontario law firms, Miller Thomson LLP, Justice Shaughnessy suddenly decided that what happened on the internet didn't matter. This was another cover-up. Justice Shaughnessy's actions show his bias.
- Justice Shaughnessy ignored a transcript of a phone call where a serving Member of Parliament for Barbados admitted to one of my witnesses that some of the threats against my witnesses originated from a computer at the Members' Lounge in the Barbados Parliament Building. Justice Shaughnessy again covered up real evidence of threats, intimidation and harassment originating from the other side of the case.
- One of my witnesses, Marjorie Knox, was forced to move in fear from her Barbados home of over 87 years to the United States because of written threats to murder her. Justice Shaughnessy covered this up and assisted the defense to block a technical investigation into the source of the threats.

My Identity Information, Drivers' License Number etc. published on the Internet

Calls for criminals to hunt my family and me down

On October 30, 2009, the defendants and the defendants' lawyers illegally published my Identity Information (as defined by the Criminal Code Section 402.1) on the internet: including my name, Ontario Drivers License number, date of birth, address history since I was 17 years old and Identity Information illegally obtained from my employment records at the Toronto Police. As you will see, Justice Shaughnessy knew for certain that the source of this information was one of the defendants' Toronto law firms: Fasken Martineau DuMoulin LLP.

Along with my Identity Information, the defendants and their lawyers published calls for criminals I had professionally dealt with in the past to hunt my family and me down. (See **Attachment #2** "Barbados Underground article October 30, 2009 The Shady, Secretive World Of Peter Andrew Allard And The Graeme Hall Nature Sanctuary: Does Barbados Need Any Of It?")

When I complained in writing to Justice Shaughnessy about these criminal acts against my family and me, and provided him with proof printed right from the internet, (that he could confirm for himself on the internet to this day) he did nothing except to again cover-up for the perpetrators. (See **Attachment #3** "Letter to Justice Shaughnessy, December 1, 2009")

Further, I complained in writing to Justice Shaughnessy that during a November 17, 2009 group telephone conference with Mr. Ranking and Mr. Silver and other lawyers, I said that out of fear my family and I left our home and hadn't slept in weeks and that I had spent days on the phone dealing with identity theft issues as a direct result of my confidential Ministry of Transport information being put in public and on the internet.

I informed Justice Shaughnessy in writing that Mr. Silver and Mr. Ranking laughed at me and said that my Identity Information published on the internet and my fears of identity theft were a "non-issue" and they didn't care. I told the lawyers and Justice Shaughnessy that I was intimidated, and that whoever let my Ministry of Transport information go public knew exactly what they were doing to intimidate me and to create identity theft.

I told Justice Shaughnessy that and more in writing and further that when I asked Mr. Silver to tell me who posted onto the internet my confidential MTO information and the calls for criminals to hunt down my family and me, Mr. Ranking whispered to Mr. Silver, "Kill this".

Mr. Silver answered my question about who posted on the internet my confidential information and the calls to hunt down my family and me, "I have no idea and I can't help find that out nor would I if I could." I asked how my confidential MTO information came to be in public and Mr. Silver further said, "I have no idea nor do I care." I asked who hired the private investigator and Mr. Silver said "I have no idea." I informed Justice Shaughnessy in writing of all of this.

I know now (and it would be evident to you by looking at the court record) that Justice Shaughnessy knew that both Mr. Silver and Mr. Ranking lied to me and deceived me during the teleconference, because although I did not have the affidavit of the Private Investigator at that time, Justice Shaughnessy, Mr. Silver and Mr.

Ranking did and the affidavit states that Mr. Ranking hired the Private Investigator on October 7, 2009.

The Private Investigator's affidavit contains my Ontario Drivers License number and Justice Shaughnessy knew all of that. Justice Shaughnessy knew everything about the threats and criminal acts against my family and me and the placing of my Identity Information including my drivers license onto the internet. I complained in writing to Justice Shaughnessy that the defendants and their lawyers were committing criminal acts and other offenses against my family and me.

Once again Justice Shaughnessy covered up offenses committed by the defendants and their lawyers. The court records and transcripts will prove this.

I was begging Justice Shaughnessy for help and to stop the defendants and their lawyers from committing criminal acts against my family and me. It is my understanding that like the lawyers, Justice Shaughnessy was amused by the terror felt by my family and me and that his amusement would be shown in the court transcripts. Seven months later on June 8, 2010, the lawyers and Justice Shaughnessy were still finding humour at the criminal acts committed against my family and me. You can confirm that by reading the official court transcript.

Justice Shaughnessy knew that my family and I were being threatened, harassed and intimidated and that criminal offenses had been committed against us by the defendants and their lawyers. He knew that I wanted to testify via teleconference for reasons of my security. The defendants' lawyers and Justice Shaughnessy refused this accommodation.

I wanted to have my day in court, but I was unreasonably denied this by a court system that refused to protect my witnesses and their families, my lawyer and his family and my family and me. Why would the court not accommodate my justifiable fears about my personal security and allow me to testify by teleconference in this civil action costs hearing? The unbelievable but true answer is that Justice Shaughnessy was a participant in the campaign to intimidate me as evidenced by his long history of bias, misconduct, actions and non-actions in the Nelson Barbados case.

Further, if not already glaringly evident, Justice Shaughnessy's intent throughout the Nelson Barbados case was laid bare on June 8, 2010 when he recklessly placed 100,000 unredacted solicitor-client privileged documents into the public domain, without restrictions. He did this as part of his contribution to the campaign of harassment, terror and criminal acts against persons associated with my side of the Nelson Barbados case.

Justice Shaughnessy recklessly placed 100,000 unredacted solicitor-client privileged documents into the public domain, without restrictions.

Some six months after I begged Justice Shaughnessy for help, after I told him in writing that the deliberate release of my Identity Information was intended to terrorize my family and me and to create identity theft, Justice Shaughnessy deliberately, maliciously and recklessly released into the public domain and onto the internet approximately 100,000 unredacted solicitor-client privileged documents containing Identity Information and private legal information, not only for me and members of my family, but also for dozens of other persons and companies, the vast majority of whom are not even remotely connected with the Nelson Barbados case.

To my knowledge, Justice Shaughnessy's reckless action on June 8, 2010 is the largest public release of unredacted, non-relevant solicitor-client privileged documents by any court in the history of the Canadian Judiciary.

As I show later in this complaint, Justice Shaughnessy knew that the solicitor-client privileged and other documents he released to the public contained unredacted Identity Information as defined in 402.1 of the Criminal Code.

Justice Shaughnessy's outrageous actions and violations of Criminal Code Section 402.2(2) on June 8, 2010 are the "smoking gun" that shows his long term misconduct in the Nelson Barbados case was deliberate, malicious and punitive.

Section 402.2(2) of the Criminal Code states:

"Everyone commits an offence who transmits, makes available, distributes, sells or offers for sale another person's identity information, or has it in their possession for any of those purposes, knowing that or being reckless as to whether the information will be used to commit an indictable offence that includes fraud, deceit or falsehood as an element of the offence."

There is no doubt that Justice Shaughnessy's actions meet all the tests for this Criminal offense. I have obtained several legal opinions that confirm this, and none against.

I am unaware of any statutory or other legal authority that would allow Justice Shaughnessy or any judge to violate or authorize a violation of Section 402.2(2), but even if such authority existed, the outrageous circumstances of Justice Shaughnessy's actions are such that there can be no reasonable justification before Canadians for what he did.

Canadian Judicial Council must perform a full investigation

Despite what happened to me, I still love and believe in our system of Justice in Canada. I am terribly uncomfortable with having to write this complaint to you. As unfortunate as it is for all concerned, including you at the Canadian Judicial Council, after you finish reading my complaint I believe you will agree that Justice Shaughnessy's actions require a full criminal investigation. This criminal investigation may be in addition to, or within your mandate. I don't know how you handle such situations. Perhaps you have a multi-agency, multi-disciplinary team established for these rare situations and I leave that to your discretion at this time.

Critical and Urgent ongoing privacy and liability issue

There is a critical and urgent ongoing privacy and liability issue regarding the dozens of innocent persons who had their Identity Information and other private information placed into the public domain and on the internet by Justice Shaughnessy. After visiting the website of the Privacy Commissioner of Canada, I believe that there is a duty upon the Judicial Council of Canada to mitigate the potential damages and risk to these innocent victims as they are now at great risk from identity theft, fraud, mortgage fraud etc. Most of these innocent persons probably have no idea that your judge, Justice Shaughnessy, recklessly placed their Identity Information into the public domain and on the internet.

Consider including the Privacy Commissioner in your investigative team

It is my understanding that entire copies of the 100,000 solicitor-client privileged documents are circulating on the internet and that the information has made its way

onto various websites including underground criminal hacker websites. Given the wide public distribution of these solicitor-client privileged documents by Justice Shaughnessy, I don't know how you can put the toothpaste back in the tube.

I've also learned from the Privacy Commissioner's website that notifying the potential victims is not a simple matter of contacting them as the mere act of contacting them could potentially compromise their privacy or even expose them to potential violence. (Consider the case of a wife who has a bank account or phone number that is unknown to her husband. If the CJC sends a letter of notification to the house, or phones and asks to speak to the wife, there could be trouble.)

I've included some suggestions and information about this issue in a later section of my complaint, but perhaps the Canadian Judicial Council should consider bringing the Privacy Commissioner of Canada into the investigation, as the CJC will undoubtedly need assistance and advice in this area.

Consultation needed with the Attorney General of Canada

For now I rely upon your experience, but I believe you will probably have to consult with the Attorney General of Canada about the entire situation including the potential Criminal charges and the vast and illegal privacy breach by Justice Shaughnessy. Justice Shaughnessy's actions are devastating to the rule of law and to our Canadian system of justice. I believe this entire case deserves consideration at the highest levels.

Misconduct of Justice Shaughnessy

I believe that after reading my complaint and performing a thorough investigation *(including examining all documents, files, court documents, court records, electronic records, judge's notes, correspondence, transcripts, paper exhibits and video recordings, and all other evidence and records associated with this case, and after interviewing various court staff, trial coordinators, witnesses, lawyers and Justice Shaunghnessy himself),* the Canadian Judicial Council will conclude that Justice Shaughnessy acted inappropriately and unprofessionally, and that his actions amount to Judicial Misconduct, including but not limited to the following:

1. Justice Shaughnessy failed in his duty to administer the case in a diligent, professional and unbiased manner.
2. Justice Shaughnessy failed in his duty to ensure that the trial coordinator and court support staff diligently administered the case in a proper and professional manner.
3. Justice Shaughnessy admitted that he received and felt outside pressure during the case. Despite his acknowledgement of receiving and feeling the outside pressure, Justice Shaughnessy took no steps to discourage the outside pressure or those who brought the outside pressure to his attention on more than one occasion in an obvious attempt to influence the court and the outcome of the case.

   Justice Shaughnessy improperly received, improperly acknowledged and was influenced by improper communications and external pressures.

   Justice Shaughnessy's actions, non-actions and verbal statements in this issue alone create great doubt in the entire Nelson Barbados case, great doubt in all

Justice Shaughnessy's actions and decisions in the Nelson Barbados case, and brought the administration of justice into disrepute.

4. Justice Shaughnessy allowed, facilitated, covered-up and participated in multiple breaches of the Criminal Code, Section 402.2 (2), pertaining to the reckless distribution of Identity Information.
5. Justice Shaughnessy allowed, facilitated, covered-up and participated in multiple breaches of the Criminal Code, (Section 423.1) pertaining to the intimidation of, and threats against, persons involved in court proceedings.
6. Justice Shaughnessy allowed, facilitated, covered-up and therefore participated in breaches of the Criminal Code, Section 139.2 pertaining to the Obstruction of Justice and Criminal Code, Section 137 pertaining to the Fabrication of Evidence.
7. Justice Shaughnessy allowed, facilitated, covered-up and participated in breaches of other Federal laws, including laws respecting the protection of privacy and the security, and the access to, release of and possession of personal information and Identity Information held by various agencies of the Canadian Federal Government.
8. Justice Shaughnessy allowed, facilitated, covered-up and participated in breaches of various Ontario Provincial laws, including laws respecting the protection of privacy and the security, and the access to, release of and possession of personal information and Identity Information held by various agencies of the Province of Ontario.
9. Justice Shaughnessy allowed, facilitated, covered-up and participated in breaches of the laws, protocols and contractual agreements respecting information, personal information and Identity Information held by the Ontario Ministry of Transport (MTO).
10. Justice Shaughnessy allowed, facilitated, covered-up and participated in breaches of the laws, protocols and contractual agreements respecting my Personal Medical Records and Information held by the Ontario Ministry of Transport (MTO).
11. Justice Shaughnessy allowed, facilitated, covered-up and participated in breaches of Ontario Municipal laws, including laws respecting the protection of privacy and the security, and the access to, release of and possession of personal information and Identity Information held by various Municipalities in Ontario.
12. Justice Shaughnessy allowed, facilitated, covered-up and participated in breaches by lawyers, court staff and himself, of various court protocols and rules respecting the protection of privacy and the security, and the access to, release of and possession of personal information and Identity Information.
13. Justice Shaughnessy included Identity Information in at least one, and perhaps more, of his written decisions in the Nelson Barbados case, contrary to various laws, rules and protocols.
14. Justice Shaughnessy was not diligent in ensuring that exhibits and affidavits were properly filed with the court according to the lawful procedures and rules. Justice Shaughnessy knew that the official court files were a mess and

that the administration of the case was out of control for almost two years, yet he did nothing to rectify the situation or to prevent continued abuse by the defendants' lawyers.

15. Justice Shaughnessy accepted documents waved around in court and verbal statements and innuendos by lawyers, when this information was never properly filed with the court as exhibits or affidavits or properly served upon my lawyer or me, and was therefore not evidence. Nonetheless, Justice Shaughnessy accepted and treated this information as "evidence" when it clearly was not proper evidence before the court. Justice Shaughnessy lost control, and/or neglected the laws and court protocols of evidence. He threw me in jail based upon innuendo and a fabricated, pre-rehearsed memo from lawyers who ran roughshod over Justice Shaughnessy and the court system because Justice Shaughnessy himself permitted it to happen.

16. Justice Shaughnessy kept a "private" file of documents and evidence in this case wherein portions of the materials were never filed properly with the court or delivered to my lawyer or me. I believe that your investigations will confirm that portions of this file were kept in his office and at his home. Although I know about this now, Justice Shaughnessy's non-public secret stash of evidence, documents and communications was never revealed to my lawyer or me during the case. As amazing as it is, Justice Shaughnessy referred to some of these "private" documents in his court statements and decisions, even though they were never filed with the court or distributed to involved persons on both sides of the case.

17. Justice Shaughnessy allowed at least one of the defendants' lawyers, and perhaps others, to have unsupervised and private access to the official court files, ostensibly for the purpose of "pulling" documents to ready them for the court. The real purpose was for the lawyer to improperly insert documents into the official court file and to otherwise try to correct and cover-up the "mess". Your interviews with court staff, and investigation of the official court records, and the corresponding filing and payment records (both computerized and hand-written) will prove this happened.

18. Justice Shaughnessy improperly accepted private written communications from the defendants' lawyers, when such letters contained information that was not only incorrect, but should not ever have been put before a judge except in the properly approved format for presenting evidence, of which the lawyers and Justice Shaughnessy were well aware.

    Justice Shaughnessy was content to have this happen for many months or years without reminding the defendants' lawyers that it was improper to write the judge. Only when I wrote a letter to the court did Justice Shaughnessy decide that he would not receive any further letters. He decided this because he was biased against me.

    Justice Shaughnessy made a habit throughout the case of accepting information from the defendants' lawyers that was not properly presented as evidence, yet Justice Shaughnessy acted upon this information as if it was proper evidence.

19. When the defense counsel failed to request to examine me in the Nelson Barbados case through their neglect or oversight, and then this was realized,

Justice Shaughnessy was content to participate in a backdoor scheme to engineer my examination through the creation of a dubious "defamation" lawsuit that falsely claimed my lawyer had posted an article about Miler Thomson lawyer Manit Zemel on the website "Keltruth".

20. Justice Shaughnessy improperly back-dated a court order almost two weeks for the convenience of the defendants and their lawyers, knowing that the order put me immediately into Contempt, and further knowing that it was too late to properly serve the order upon me.

21. Justice Shaughnessy was not diligent in ensuring that statements and claims made by the opposing lawyers regarding the service of documents on my corporation and me were true.

22. Justice Shaughnessy had a duty to protect my corporation and me as unrepresented litigants and he did not do so with diligence and professionalism.

23. Justice Shaughnessy consistently exhibited bias against my corporation and me. By any reasonable standard his words and actions show he was not impartial.

24. Justice Shaughnessy consistently exhibited bias against my lawyer. By any reasonable standard his words and actions show he was not impartial.

25. Justice Shaughnessy engaged in serious personal attacks and defamatory attacks against my lawyer, persons associated with my side of the case and me. Justice Shaughnessy said of a lawyer associated with my side of the case: *"it frankly disheartens me to see a lawyer who sells his soul to the devil, who for the sake of the almighty dollar, sacrificed a career."* This is only one example of Justice Shaughnessy's personal and defamatory attacks.

    Justice Shaughnessy made similar uncalled for and unfair personal attacks upon me.

    I note that the Canadian Judicial Council has in the past found fault with judges who engage in the kind of personal attacks and defamatory attacks that Justice Shaughnessy made himself and allowed the defense lawyers to make throughout this case. Justice Shaughnessy's own personal and defamatory attacks encouraged and gave license to the defendants' lawyers to make similar personal and defamatory attacks.

26. Justice Shaughnessy ceded control, and/or lost control, of the court to the other side's lawyers and allowed them to run the court, and to operate outside of normal rules and court procedures for the entire time he sat on the case.

27. Justice Shaughnessy allowed himself to become worn down and emotionally involved with the Nelson Barbados case. This quote from the June 8, 2010 transcript is one example of many to be found throughout the transcripts of the case:

    > *"I had heard - he had called me on the Friday to tell me that - how things had progressed wonderfully and I was so delighted and those boxes had been in the boardroom, which I didn't mind at the other courthouse. But they, you know there was eight of them in my new offices. I deplored looking at them. I have no other boardroom that I can slip them into. So*

out of, I - I really overreacted and I got Tom Mills, my CSO, I said, "Tom, for God's sake, get a cart and get those boxes and ship them to Barrie. I don't want to see them again." Not that I mind you, the counsel involved, but it just seemed like I was never going to see the end of those banker boxes. And so I - we threw them prematurely - then it occurred to me, I knew you were coming in. And then it occurred to me later, oh my gosh, I didn't keep anything. So we - we grabbed the bill of costs of David Simmons, Philip Greaves, et cetera, the index - the actual bill of costs. I thought, I have to have something to write on. So it's my fault. Out of happiness to get rid of it, I - I overreacted and sent it off too quickly and I should have retrieved those two - that motion record, but..."

28. At the end of the case on June 8, 2010, Justice Shaughnessy effectively transferred his Judicial authority and powers to the defendants' lawyers in the matter of authorizing them to continue to file evidence and documents and solicitor-client privileged documents into the court record and to recklessly release the documents into the public domain after the case was closed, and to do so directly without Judicial supervision.

29. Further on June 8, 2010, Justice Shaughnessy recklessly agreed to endorse a settlement where the defendants' lawyers can declare documents that weren't filed with the court in the Nelson Barbados case as filed with the court in the Nelson Barbados case without actually filing them. The defendants' lawyers can then place those unredacted solicitor-client privileged documents into the public domain without judicial supervision.

    Considering the history of the defendants and their lawyers in illegally and recklessly distributing Identity Information in the public domain, and my previous written complaints to Justice Shaughnessy about this illegal conduct, Justice Shaughnessy's behaviour on June 8, 2010 was reckless in and of itself. Further, his conduct must be seen as deliberate and malicious. There can be no reasonable excuse for what he did.

30. In the above misconduct #28 and #29, Justice Shaughnessy authorized the defendants' lawyers to create, keep and administer official court records, exhibits and evidence in the Nelson Barbados case, outside of the Court in an extrajudicial process as the lawyers saw fit and without further judicial supervision or oversight. Therefore, without any authority in law, and with many prohibitions in law, Justice Shaughnessy illegally created and illegally authorized an extrajudicial process.

31. As a direct result of Justice Shaughnessy unlawfully and recklessly transferring his authority to the defendants' lawyers and unlawfully creating and authorizing an extrajudicial process on June 8, 2010, there were additional incidents of threats, intimidation and abuse against persons on my side of the case that occurred after June 8, 2010. Justice Shaughnessy must be held responsible for these incidents and the continuing unlawful actions of the defendants and their lawyers after June 8, 2010.

32. Because Justice Shaughnessy allowed the defendants and their lawyers to continue to file documents after the case was over, it is obvious that his intent was to facilitate documents being used for purposes other than the case before him, and this is proven in the transcript of June 8, 2010. Justice Shaughnessy's

deliberate intent was to de-privilege tens of thousands of documents forever and recklessly enter them into the public domain: to be used by anyone for any purpose in any jurisdiction. These documents were, and will continue to be, put into court records after the case ended because Justice Shaughnessy ordered this to happen.

33. Justice Shaughnessy approved a settlement agreement that contained outrageous violations of law, accepted legal practices and protocols, and further this was done where unrepresented litigants and dozens of innocent persons who had nothing to do with the case were heavily impacted in a negative manner.

34. Justice Shaughnessy was not diligent or professional in ensuring the safety and well being of persons involved in this matter on my side, including their families. Therefore, Justice Shaughnessy did not diligently or professionally protect the integrity of the court proceedings.

35. Justice Shaughnessy actively covered-up and deliberately ignored repeated complaints about, and real evidence of, multiple threats of violence and multiple incidents of illegal harassment and intimidation and other crimes conducted over many years by the other side against me, my lawyer, my witnesses and our families.

36. Justice Shaughnessy actively covered-up and deliberately ignored the racist motivations and racist qualities of many of the threats made against persons on my side of the Nelson Barbados case. This was one more factor that should have caused Justice Shaughnessy to regain control of, and to protect, the court process. Justice Shaughnessy failed in this duty.

37. Justice Shaughnessy's actions and misconduct protected and empowered persons on the other side of this case who made the threats and harassed and intimidated persons on my side of the case. Justice Shaughnessy's misconduct led to steadily escalating threats, harassment, intimidation and criminal activity against persons on my side of the case.

    In Canada that escalating conduct included physical assault upon me, and multiple breaches of the Criminal Code of Canada and other Canadian laws directed against me, my family, my lawyer, his family and other persons associated with my side of the case.

    In other jurisdictions, including Barbados and Florida, USA, that escalating conduct included threats of loss of employment against a witness if he testified, actual loss of employment as the threat was carried out, threats of arson, the commission of arson as the threats were carried out, threats to murder and threats to rape directed at involved persons, witnesses and their family members associated with my side of the case. The escalating conduct included multiple breaches of the laws of those other jurisdictions, and even included unlawful threats delivered by one of the defendants' lawyers to and against one of my witnesses in Florida. (See **Attachment #4 and Attachment #5**)

38. Justice Shaughnessy sanctioned and participated in the reckless distribution of my Identity Information and the Identity Information of other persons, many of whom have nothing to do with this case. His actions were deliberate,

punitive and malicious and in contravention of the Criminal Code and other laws, rules and protocols, including protocols established or recommended by the Canadian Judicial Council, The Supreme Court of Canada, The Law Society of Upper Canada and other bodies.

39. Justice Shaughnessy's deliberate and reckless distribution of Identity Information was intended to intimidate me, my family members, my acquaintances, my former lawyer and his family, lawyers involved in Florida and everyone on my side of the case. Justice Shaughnessy achieved his goal.

40. Solicitor-Client Privilege Violations by Justice Shaughnessy

Justice Shaughnessy is an experienced and senior judge. His misconduct in the area of Solicitor-Client Privilege violated so many established laws, legal precedents, and accepted protocols in Ontario and other jurisdictions that his actions could only have been deliberate, malicious and punitive.

Not only did Justice Shaughnessy unreasonably and outrageously violate my solicitor-client privilege on a wholesale basis, he also violated the solicitor-client privilege and privacy of dozens of other persons, many of whom have nothing to do with this case or Barbados. I don't even know most of these persons.

The only commonality shared by these many innocent victims who have nothing to do with this case and whose solicitor-client privilege and privacy was violated by Justice Shaughnessy is that they are clients of lawyers and law firms associated with my side of the case.

I provide more details in a later section of my complaint, but here are a few examples of the dozens of persons and businesses who have nothing to do with this case or Barbados. Justice Shaughnessy victimized them because they were clients of lawyers and law firms associated with my side of the case.

Justice Shaughnessy recklessly ordered and allowed their solicitor-client privileged and/or private information and/or Identity Information as defined in the Criminal Code, to be entered as evidence in the court, placed into the public domain and recklessly distributed all over the world via the internet with no restrictions on access or use by anyone:

a. [redacted]

b.

c.

d.

e.

f.

g. [redacted]

h.

i.

j.

k.

l.

m.

n.

o.

p.

Considering the history and the totality of Justice Shaughnessy's actions and misconduct in the Nelson Barbados case, and his exhibited bias against and even emotional hatred of my lawyer, K. William McKenzie, I believe that Justice Shaughnessy's intent was to damage Mr. McKenzie's career, business and reputation as much as possible. What better way to do that than to release and place into the public domain, solicitor-client privileged and private information from Mr. McKenzie's legal files concerning dozens of clients and cases that have no connection to me, Barbados or the Nelson Barbados case?

What better way to send a warning to lawyers in Florida and everywhere that they should not work against Barbados and the defendants in the Nelson Barbados case than to release solicitor-client privileged, Identity Information and private information from their Florida legal files concerning clients and cases that have no connection to me, Barbados or the Nelson Barbados case?

Justice Shaughnessy knew that the approximately 100,000 unredacted solicitor-client privileged documents that he recklessly distributed into the public domain would end up on the internet, and they did, in exactly the way he wanted and planned for.

41. Acting in his official capacity as a Federally appointed Judge in Canada, Justice Shaughnessy interfered in the lawful political process of another sovereign nation, namely Barbados, apparently in an attempt to impose his own personal concepts and standards of "democracy" upon that country. Justice Shaughnessy's action also favoured one Barbados political party over another.

    Doctor Denis Lowe is an elected Barbados politician who has nothing to do with the Nelson Barbados and Kingsland matters. Justice Shaughnessy recklessly ordered and allowed the solicitor-client privileged "Denis Lowe political donation documents" to be placed into the public domain, recklessly distributed and posted on the internet.

    Justice Shaughnessy's actions were directly responsible for public threats of violence against Dr. Lowe, an elected Member of Parliament and Minister of the Government of Barbados. Justice Shaughnessy damaged Dr. Lowe's political career, perhaps severely.

    More details of this action by Justice Shaughnessy are contained in a later section of my complaint.

42. In total, Justice Shaughnessy brought the administration of justice into disrepute.

I am certain that your investigations will uncover appalling evidence of the above misconduct, but also other misconduct by Justice Shaughnessy in the Nelson Barbados case that I am currently unaware of.

Introduction – Writing from outside Canada

As I stated previously, I am writing to the Canadian Judicial Council from outside Canada because my family and I were forced to flee our Canadian home during the Fall of 2009 due to threats, intimidation and criminal acts (including physical violence against myself) emanating from the defendants' side of the court case that is referenced in my complaint.

Not only did Justice Shaughnessy ignore the long term escalating threats, harassment and intimidation against my witnesses, my lawyer and me, he empowered and gave the perpetrators license to continue and to increase their attacks, which continue to this day. That was not all that Justice Shaughnessy did. Through his actions as detailed herein, including violations of the Criminal Code and other laws and accepted protocols, he directly participated in the harassment and intimidation.

As a former Sergeant with the Toronto Police and then an investigator in the private sector, I am well aware that participants in the legal system are occasionally targeted for harassment, intimidation or worse by people who want to undermine the system or influence the outcome of specific cases.

When I was a police officer I investigated dozens of cases of threats, harassment and violence against persons involved in the legal process, including witnesses, victims,

litigants, complainants, lawyers, law enforcement officers, correctional officers, Crown Attorneys and Judges.

I know that even the smallest offhand comment, oblique utterance or questionable action is taken very seriously by the courts if it is at all perceived by a participant in the legal process as threatening or intimidating. Virtually all law enforcement officers, lawyers, Crown Attorneys and Judges understand that minor incidents soon escalate in frequency and seriousness if there is an inadequate response to the initial incident or incidents.

You might be familiar with a recent incident where a person was arrested and charged Criminally with attempting to intimidate a member of the judicial system for the mere act of writing down the license plate number of a vehicle driven by a Crown Attorney. The Crown Attorney was understandably intimidated by this act of a person writing down his license plate number. I agree that criminal charges and arrest was a proper response by the Justice system and law enforcement. (A Tuesday, October 26, 2010 Toronto Star news article about this incident is included as **Attachment #6**)

The reasons for this serious response and serious concern about the safety and well-being of participants in any sector of the legal process are obvious and universally acknowledged in Canada.

Due to my work against organized crime when I was a police officer and later as a private sector investigator, I have experienced previous threats, harassment and intimidation directed against me and, very rarely, against my family. I have previously been physically assaulted and hospitalized by members of criminal organizations as a result of my work in law enforcement. For over 35 years, my family and I have been well aware of the dangers faced by those who uphold the law or seek justice through the courts.

In each past incident I have investigated or been personally involved in, all parts of the system responded with serious concern and appropriate actions to protect the participants in the legal process and their family members.

My previous experiences are why I find the actions of Justice Shaughnessy to be so appalling. I am at a loss to explain the motives behind his conduct that promotes and rewards intimidation and harassment of persons involved in the legal system, or his motives respecting his other actions listed in my complaint.

Perhaps Justice Shaughnessy can explain to you why he did what he did each time that my case was before his court and each time that persons on my side of the case reported being the target of threats, intimidation or criminal offenses.

I expect that you will initially be skeptical towards my complaints about Justice Shaughnessy's actions. I also expect that your skepticism will fade and be replaced by concern as you proceed with your investigation and realize that solid evidence exists in the court records and elsewhere that fully substantiates my complaints.

Willing to cooperate

This is a complex case that happened over many years. As a former police officer and professional investigator, I know that if the CJC intends to investigate my complaint in a professional manner, you will need my assistance in answering questions, analyzing and assessing evidence and directing you to additional evidence. I am willing to cooperate fully with your investigation, internal disciplinary process and process in the courts.

If necessary, I will give testimony in the courts as I believe that any Canadian judge other than Justice Shaughnessy would be concerned about the safety and well being of my witnesses, my lawyer, our family members and me and make proper provisions to protect the integrity of the judicial process. I believe that the vast majority of Canadian judges are seriously concerned about the safety and well being of participants in our justice system.

Communicating with me

I am aware that you will want me to make myself available and this is acceptable to me as long as you understand what Justice Shaughnessy chose to ignore. I will participate as long as I am not endangered and there is no question as to the safety of my family.

I have included a separate page with how I can be reached and suggestions for our communications, but I do not want my contact information going to anyone else or any other agency without my specific written consent. This applies especially to Justice Shaughnessy and the opposing lawyers who have recklessly distributed my, and other persons', Identity Information in a manner contrary to the Criminal Code.

I presume that the CJC is well aware of the laws respecting the protection of privacy and the security of Identity Information, and that the CJC has in place all that is necessary to safeguard its electronic data and paper files and to maintain the confidentiality and integrity of your process and to protect me, my family and all the other persons involved in the Nelson Barbados case.

If the CJC at any time is unable to, or does not, comply with the laws, regulations, and protocols respecting privacy and Identity Information, I expect and demand that the CJC will notify me immediately.

Use of the word "Demand"

Where I use the word "demand" in this complaint, I am not being impolite, aggressive or showing disrespect. I am using the word "demand" in its legal sense where I believe that the Canadian Judicial Council (CJC) has a legal or moral duty to do something and I "demand" that the CJC fulfill that duty. (ie: The word "demand" is differentiated from the words "request" or "suggest")

For example, in this complaint I show that Justice Shaughnessy recklessly distributed approximately 100,000 pages of unredacted solicitor-client privileged documents to the public. I show that these pages contain "Identity Information" as defined in the Criminal Code, and that many persons were, and continue to be, placed at risk because of this action by your judge. I therefore "demand" that the CJC corrects the actions of Justice Shaughnessy, stops the continuing offences, and mitigates the damage. I contribute some "suggestions" and ideas that the Canadian Judicial Council might want to consider, but my suggestions in no way remove the duty of the CJC to determine the correct course of action and to act appropriately.

I expect that your highly professional organization will have knowledge, authority and resources that I do not, and that the CJC will respond diligently and appropriately to its moral and legal duties.

The timeline must be investigated fully.

It is extremely important that the Canadian Judicial Council details the chronology of the case to document what actions and misconduct the judge exhibited at each date as the case progressed in court. A timeline will also reveal patterns of actions and misconduct.

You will see that many of my allegations can be substantiated through your detailed investigation and analysis of the timeline of events in the case. For instance, by placing all events and incidents on a timeline, you will be able to see the long history and escalation of threats and intimidation against persons on my side of the case, and observe how the actions and non-actions taken by Justice Shaughnessy and the lawyers on the other side of the case relate to the escalating threats and intimidation.

As another example of the usefulness of creating a timeline, the defendants' lawyers falsely informed Justice Shaughnessy that certain documents were properly registered with the court and properly served upon me and other persons when they were not.

As related in a later section of my complaint, I spoke with the trial coordinator and she informed me that the file on my case was "huge and messy" and that I had not been served with all documents that the court had been told I was served with.

A timeline will show when documents were created, when they were served, by what means, when they were registered with the court according to the official court records, that the required payments were made, what versions of the document(s) were served and what versions of the documents were filed with the court. A timeline would also show what was said about the documents in court by the lawyers and Justice Shaughnessy and when. This timeline will indicate that many documents that Justice Shaughnessy acted upon had not been served upon me, and in many cases had not been properly filed with the court and never were.

A timeline will show when I alerted Justice Shaughnessy to the abuse of process by the defendants' lawyers and to the problems with the official court file and records. It will show what Justice Shaughnessy did and did not do, and when, in relation to being alerted to the abuse of the court process and the problems with the court file and records. It is my belief that Justice Shaughnessy was not diligent in this area and a timeline will prove his willful neglect.

A timeline will show how Justice Shaughnessy possessed and referred to documents and other information that were not real evidence properly filed with the court or possessed by all litigants, yet he acted upon this information as if it was real evidence properly placed before the court. The extent and importance of Justice Shaughnessy's "private file of information" in the Nelson Barbados case will be evident in the timeline.

A timeline will also show how Justice Shaughnessy back-dated a written court order for the convenience of the defendants' lawyers, and how Justice Shaughnessy engineered the order in such a manner that I was placed in apparent contempt of the order by having to deliver documents three days before the order was created. I know this sounds strange and outrageous to you at this moment, but as you read my detailed account in a later section of this complaint and review the court files you will be astonished to see that my statement is accurate.

I don't have access to many of the official court records or to any of Justice Shaughnessy's personal files and communications records, but I believe the Judicial Council has the authority to examine everything, including but not limited to all

documents filed with the court, transcripts, Justice Shaughnessy's notes and any off-the-court-record communications, letters, emails, faxes, phone text messages, phone call records, memos and other communications by any method sent to him by the opposing lawyers, internal staff, superiors, subordinates or anyone else and his replies if any and all communications initiated by Justice Shaughnessy about the Nelson Barbados case.

I demand that the CJC creates a comprehensive timeline of all events that occurred associated with the Nelson Barbados case and my complaint so that a proper investigation can and will be performed by the CJC.

Concern about Conflict of Interest

I have been struggling with trying to understand what motivations or influences could have possibly cause a senior and experienced judge in our Canadian justice system to act with such overwhelming bias as Justice Shaughnessy did in the Nelson Barbados case on so many individual dates, issues and decisions and over such a lengthy period of time.

Justice Shaughnessy's misconduct is so gross that I believe it would be helpful to make some very basic conflict of interest inquiries of Justice Shaughnessy if for no other reason than to eliminate this issue in an attempt to try to understand his motivations. There is no harm in asking Justice Shaughnessy some basic questions about potential conflicts of interest, which he should easily be able to answer.

I demand that you ask Justice Shaughnessy the following questions, and follow up with further questions and investigations to corroborate his answers:

- Has Justice Shaughnessy or any of his family members ever visited Barbados or taken a cruise ship to Barbados before, during or after the Nelson Barbados case?
- If so, did Justice Shaughnessy or any of his family members ever meet with any of the defendants, their family members, legal team or representatives in Barbados?
- Has Justice Shaughnessy ever met with any members of the Barbados Judiciary or Bar, for instance at a law conference or in any other setting anywhere?
- Has Justice Shaughnessy or any of his family members ever met with any of the defendants or their family members or representatives anywhere?
- Has Justice Shaughnessy, his spouse or close family members booked a vacation or trip to Barbados in the future?
- Have any of the defendants or their lawyers or anyone ever suggested to Justice Shaughnessy that he should travel to Barbados, or issued a written or verbal invitation to him at any time?
- Have any of the defendants or their family members directly or indirectly asked Justice Shaughnessy for a recommendation or for advice for any purpose, for instance regarding studying in Canada, or for any other purpose?

Concern about Political Interference and Influence

I have concerns and questions about potential interference or influence in the Nelson Barbados case based upon Canada's close financial and diplomatic relationship with

Barbados. My concerns were intensified because of statements made in court by Justice Shaughnessy and by some of the defense lawyers and by some of the defendants in their writings on the internet.

It is a well-known fact that the Governments of Barbados and Canada do not want or appreciate public scrutiny, attention or criticism of the various tax treaties and other agreements between the two countries. Both governments are very sensitive over the issue of the actual amount of tax revenue lost by Canada due to these treaties. According to the Government of Canada, the small island nation of Barbados is the third-largest destination for Canadian investment (after the US and the UK).

It is my understanding that Barbados has an annual Gross Domestic Product of approximately $3.5 billion and that this is less than a tenth of what Canadians currently have invested on the island, which is about $40 billion according to the Canadian Government website.

On June 4, 2008 during the Fifth Barbados Charity Ball held in Toronto, Canada, then Prime Minister of Barbados David Thompson announced in a published speech that Canadians represent some 75% of the international financial community in Barbados.

Further, during the speech he told this story that illustrates how vital the tax treaties with Canada are to Barbados:

> *"When in 1993 as Minister of Finance I came to Ottawa to meet Mr. Paul Martin the Minister of Finance of Canada, my tenuous connection with Canada through "Drummer" meant a lot to that relationship since his late father was the owner of that line. (Canada Steamship Lines)*
>
> *I got to Paul Martin's Office in Ottawa one cold morning to deliver a message to him about Barbados.*
>
> *There was panic in our offshore sector over a potential report by the Canadian Auditor General in relation to tax benefits for Canadian companies. When I got inside, I sat down and after introductions I started, "Well Sir, Barbados is a small island in the Caribbean which..."*
>
> *He brushed me off and said, "Barbados? I know it like the back of my hand. Let's talk about something else... Don't worry, everything will be okay."*
>
> (**Attachment #31**, June 4, 2008 speech of Prime Minister Thompson.)

With the statements made by Justice Shaughnessy and defense counsel as recounted in the following paragraphs, and considering the statements made in 2008 by then Prime Minister Thompson, it is only reasonable to ask: Were any political assurances given in the Nelson Barbados case of "*Don't worry, everything will be okay.*" ?

Were any communications about the Nelson Barbados case received or issued by Foreign Affairs Canada, Federal or Provincial Attorneys General, Judiciary, Department of Finance or any other branch of the Federal or Provincial governments?

I remember that my lawyer Mr. McKenzie told me of something that happened at one of the court dates in the Nelson Barbados case. Mr. McKenzie saw what happened and he didn't know what to make of it because as I recall he said he had never seen anything like this before in court. Mr. Silver stood up at a certain point in the case and said to Justice Shaughnessy words to the effect that *"The important people I represent in Barbados want to know when this is going to be done. I'm getting pressure from the important defendants who are getting frustrated about the delay."* (That is a paraphrase from my recollection and although the words are probably not accurate, the intent of Mr. Silver's message is correctly communicated in this passage.)

Mr. McKenzie told me that he expected Justice Shaughnessy would take Mr. Silver to task for basically challenging and pressuring the court, but Justice Shaughnessy accepted the impertinence and let it stand without responding as Mr. McKenzie expected would happen in any other Ontario court upon hearing Mr. Silver's words.

The recollections of Mr. McKenzie can be confirmed by your study of the transcripts of the Nelson Barbados hearings before Justice Shaughnessy.

It is also my understanding that the defense lawyers continually referred to some of the high profile defendants by their current titles alone, and not by their names, for instance saying "the Chief Justice" or "the Prime Minister". I also understand that Justice Shaughnessy adopted this mode of address himself early on as is evident in the few transcripts I have.

My company sued the defendants not because of their titles or positions, but because of what they did. For instance, the late David Thompson was sued for his actions committed long before he became Prime Minister. Similarly David Simmons was sued for his actions committed long before he was the Chief Justice or knighted.

I believe that the defense lawyers' inappropriate use and emphasis on the high profile defendants' titles and positions was designed to impress and gain the favour of Justice Shaughnessy, and to confer a credibility upon the defendants that would help to shield them from the evidence. This "how dare you sue the Chief Justice" indignation was mirrored by Justice Shaughnessy and is evident in many of his comments that I'm sure you will see in the transcripts.

My lawyer Mr. McKenzie reminded Justice Shaughnessy that Nelson Barbados had not sued the defendants because of their current titles, but because of what they had done in the past. Nonetheless Justice Shaughnessy adopted this mode of addressing the high profile defendants by their titles and sometimes by their titles alone. By doing this and in the manner that he often did this with fawning comments, Justice Shaughnessy gave inappropriate deference to the defendants and showed his bias.

Justice Shaughnessy never countered the defense lawyers' use of titles. Justice Shaughnessy did not say to the defense lawyers or to my lawyer that the titles and status of the defendants didn't matter, and that the jurisdiction case would be judged upon its merits, without fear or favour. On the contrary, it is evident by Justice Shaughnessy's comments and actions that the titles, positions and status of some of the high profile defendants were foremost in his consideration. He was biased.

I believe that Justice Shaughnessy's deference to title and position went well beyond courtesy and reflected his mindset, bias and personal indignation that my company would dare to sue persons who now had the titles of Chief Justice and Prime Minister of Barbados, notwithstanding that these defendants were being sued for their actions before they held their current titles.

I also believe that Justice Shaughnessy felt himself under some pressure to find for the defendants. This is evident in Justice Shaughnessy's own words in the June 8, 2010 transcript and I believe there is a strong likelihood that some external pressure was brought to bear upon Justice Shaughnessy in the Nelson Barbados case, and his words and actions prove this.

Did Justice Shaughnessy ever speak with anyone on or off the record about the international implications of the Nelson Barbados Kingsland Estates issues?

I find it extremely strange and disturbing that during the June 8, 2010 court appearance, Justice Shaughnessy confirmed that he felt "a lot of eyes from far away watching".

> *"MR. SILVER: It's not just the details of this file that I'm so proud to have been involved in but I act for clients that include the current Prime Minster, the Attorney General. I think I've said this to you before, not to put more pressure on you, but there were a lot of eyes from far away...*
>
> *THE COURT: Oh I felt that.*
>
> *MR. SILVER: ...watching this and I'm proud to have been involved in - in a result and –"*

What did Mr. Silver say to Justice Shaughnessy "before" about "a lot of eyes from far away watching this", when was it said, under what circumstances and in what context? Where were these "eyes": in Barbados, in Ottawa, in the United Kingdom or some other places? Were these the "eyes" of political persons, from the international banking community, the judiciary, the Canadian government, the Barbados government or from elsewhere?

Mr. Silver states that on the prior occasion when he told Justice Shaughnessy about "a lot of eyes from far away watching this", he did not intend to put pressure on Justice Shaughnessy. Why then did Mr. Silver inform Justice Shaughnessy about "a lot of eyes from far away watching this"?

Justice Shaughnessy's comment that he "felt that" indicates that Justice Shaughnessy was placed under pressure by Mr. Silver's comments and by "the eyes from far away" and perhaps from other occurrences of which we have no knowledge. By his words "Oh I felt that." Justice Shaughnessy admitted that throughout the entire case he was biased, as he "felt" these "eyes" upon him.

How much was Justice Shaughnessy worried about "the eyes"? How much impact did "the eyes" have upon everything Justice Shaughnessy did in this case?

Isn't it the obligation of a Canadian judge to quit a case if he "feels eyes upon him from far away" and/or pressure? This case has been characterized by many inappropriate and even illegal actions by the defendants and defense counsel aimed at applying external pressure to the persons involved in the case. There is extensive and clear evidence showing these inappropriate and illegal actions by the defendants and their lawyers in the Nelson Barbados case. I have seen and personally experienced the Government of Barbados exerting pressure on people. If Justice Shaughnessy felt himself to be under pressure, this might help to explain some of his inappropriate actions, bias and decisions.

Did Justice Shaughnessy caution or remind Mr. Silver that his comments were inappropriate?

Did Justice Shaughnessy caution or remind Mr. Silver that the level of international interest in the case would not cause the Court to conduct the case differently? Did Justice Shaughnessy create a record in the official court file to document his response to someone who inappropriately informed him on more than one occasion that there were "a lot of eyes from far away watching this"? Why did Mr. Silver say this to Justice Shaughnessy? What did Justice Shaughnessy believe was the purpose for Mr. Silver's comments?

Was the first "eyes from far away" conversation on or off the official court record?

I demand that the Canadian Judicial Council examine the transcripts for all appearances of Mr. Silver before Justice Shaughnessy in the Nelson Barbados matter and isolate the prior discussion or discussions between Mr. Silver and Justice Shaughnessy about these *"eyes from far away"* to determine what was said, when it was said and how much of a potential influence it had upon Justice Shaughnessy.

If no such discussion is evident in the full transcripts of the Nelson Barbados case, it would be evidence that the referred to discussions between Justice Shaughnessy and Mr. Silver about the *"eyes from far away"* and the international and political implications of the Nelson Barbados case took place off the record, which would be of very serious concern.

Further, Mr. Silver's comments and Justice Shaughnessy's acknowledgement and confirmation cause me to question whether any Canadian government official spoke to Justice Shaughnessy or any of his superiors or anyone in the Justice System about the Nelson Barbados case. Did any Barbados government or Barbados justice system official or any person from Barbados communicate with anyone in the Canadian justice system about the Nelson Barbados case? If so, did any of these communications find their way to Justice Shaughnessy or his superiors or peers? Was he told about any of these communications?

In consideration of Mr. Silver's comments and Justice Shaughnessy's confirmation that Mr. Silver spoke to him about the *"eyes from far away"*, I demand that the Canadian Judicial Council diligently investigate this issue.

Professional infatuation with defense counsel and high profile defendants.

Right from the start and throughout the Nelson Barbados case, Justice Shaughnessy exhibited what I term "professional infatuation" with selected defense counsel and selected high profile defendants. This professional infatuation is evident throughout the few transcripts that I possess and is glaringly evident in some of Justice Shaughnessy's decisions where he obviously misused his authority and ignored the law and standard court protocols to protect high profile defendants such as Barbados Chief Justice Sir David Simmons, his brother former Ambassador Peter Simmons and others.

For instance, Justice Shaughnessy "sealed" the sworn evidence of my witness Nitin Amersey (**Attachment #7**) without issuing reasons. Mr. Amersey's sworn evidence showed that when David Simmons was the Attorney General and acting Prime Minister of Barbados, David Simmons threatened Mr. Amersey while David Simmons was in Canada.

Further, Mr. Amersey's sworn testimony is that one night his Barbados home was deliberately set on fire with his family in it and that this occurred during his litigation with the Barbados Government and was part of a pattern of harassment and attacks in and from Barbados against Mr. Amersey, his family and other witnesses.

Mr. Amersey's sworn testimony is that officers of the Royal Barbados Police Force harassed and threatened him while he and his family lived in Barbados and that the police were under instructions from higher up to be rough with him.

Further, Mr. Amersey's sworn testimony is that on another occasion the Government of Barbados illegally sent Barbados police officers to Montreal to threaten and intimidate Mr. Amersey. The sworn evidence also shows that while in Canada the Barbados police officers attempted to illegally gain access to Mr. Amersey's Canadian banking records and Identity Information and that External Affairs Canada took action in response to the Barbados police officers' illegal acts in Canada.

It is very noteworthy and highly relevant that when my witness Nitin Amersey and his family were threatened, harassed and run out of Barbados with the attempted burning of their home and other violence and intimidation, this was during the same time period as the Kingsland matter. Mr. Amersey and his family experienced the same modus operandi as I saw applied against my other witnesses and me and our families in the Nelson Barbados case. Many of the same defendants, including David Simmons and the Government of Barbados, are central to both concurrent situations. Justice Shaughnessy knew this and knew how powerful Nitin Amersey's evidence is against David Simmons and the Government of Barbados, so Justice Shaughnessy did everything he could to discount, ignore and conceal this relevant and admissible evidence.

Further, Mr. Amersey's sworn testimony is that when Attorney General David Simmons threatened and intimidated him it was in a meeting in Ottawa, Canada, and

that several of Mr. Amersey's lawyers from the firm of Blakes Law Firm were present and witnessed and agreed that David Simmons deliberately threatened and intimidated Mr. Amersey.

I find it outrageous that after representing Nitin Amersey and knowing that David Simmons threatened Mr. Amersey, and knowing that Mr. Amersey's home was fire bombed in Barbados with his family in the home, lawyers from Blakes Law Firm then turned around and represented David Simmons in the Nelson Barbados case. I find it outrageous that Mr. Schabas from Blakes Law Firm argued in court that Chief Justice Sir David Simmons and his brother Peter would not and did not threaten anyone, and that Barbados is a safe place to conduct litigation.

Mr. Schabas knew that David Simmons had threatened Mr. Amersey in Canada with Blakes lawyers present and that Blakes represented Mr. Amersey and compiled evidence of the ongoing threats and attacks against Mr. Amersey and his family members.

Mr. Schabas and Blakes Law Firm knew that Mr. Amersey's Barbados home had been firebombed with his family in it because of litigation in Barbados in which the Barbados Government was an opposite party. Mr. Schabas and Blakes law firm had and still have evidence of this in their possession, but Mr. Schabas and Blakes law firm sold out to a higher profile defendant and stood up in court and argued directly opposite to the evidence they knew was true and that they had previously argued for and still had in their possession.

I understand that long after Mr. Schabas should have properly dealt with this real conflict of interest and inappropriate and unethical behaviour on the part of Blakes and himself, Mr. Schabas was forced to confess in court that his firm had previously represented Nitin Amersey.

I find it outrageous that Justice Shaughnessy knew that Blakes Law Firm previously produced evidence showing that David Simmons threatened one of my witnesses in Canada, and that Blakes Law Firm previously produced evidence that my witnesses' Barbados home was firebombed with his family in it, yet Justice Shaughnessy covered this up and allowed Blakes Law Firm and Mr. Schabas to argue both sides of a position.

On his own volition, Justice Shaughnessy sealed Nitin Amersey's very damaging sworn evidence without issuing reasons and in contravention of Canadian law and accepted court protocols. Justice Shaughnessy did this because he favoured the defendants' and their lawyers and wanted my company's motion for jurisdiction to fail. Mr. Amersey's sworn testimony is powerful and credible evidence in the Nelson Barbados jurisdiction case and Justice Shaughnessy wanted it gone and defused because he is biased in favour of the defendants.

Justice Shaughnessy also knew that Nitin Amersey's evidence is highly embarrassing to David Simmons, Barbados, the Barbados police and to Mr. Schabas and the Blakes Law Firm.

Justice Shaughnessy was determined to dispose of Mr. Amersey's evidence and he did.

When my lawyer, Mr. McKenzie, sought to appeal this improper sealing of evidence, Justice Shaughnessy then said that Nitin Amersey's testimony was invalid because the defendants' lawyers did not cross-examine Mr. Amersey.

To my knowledge there is no Canadian law, court protocol or legal precedent that excludes sworn evidence filed with the court if the other side of a civil suit refuses to cross-examine the witness who swore the evidence. The defendants had an opportunity to cross-examine Mr. Amersey on his sworn testimony, but they refused. Therefore Mr. Amersey's testimony was uncontraverted and should have been admitted and considered as such. Justice Shaughnessy wanted to protect Chief Justice Simmons and the defendants' case from the Nitin Amersey's sworn evidence and he didn't care about the law or normal court protocols so long as he achieved his goal.

Justice Shaughnessy also wanted to protect Mr. Schabas and the Blakes Law Firm and he did so by sealing and excluding Mr. Nitin's sworn testimony.

In his many decisions throughout the Nelson Barbados case, Justice Shaughnessy ignored the law and court protocols or made them up himself as he went along on the basis of what would most assist and benefit the defendants. The record shows that Justice Shaughnessy was biased in favour of the defendants and their lawyers.

Sealing of Videotape Evidence to protect defendants from embarrassment

Justice Shaughnessy also ignored the law and court protocols to protect Chief Justice Sir David Simmons, other defense witnesses and some of the defense lawyers from embarrassment in the matter of the videotaping of examinations. It is my understanding that the defendants themselves requested that their examinations in Barbados be videotaped and my company Nelson Barbados agreed to this through our lawyer at the time, Mr. McKenzie.

At the last moment on the day before Mr. McKenzie left for Barbados, the defense lawyers convened a so-called emergency meeting with Justice Shaughnessy and asked for an order sealing the videotapes of the examinations that were about to happen in Barbados.

At this meeting, which my counsel participated in via telephone, Justice Shaughnessy issued an "interim" order sealing the videotapes before they were made. I do not know of any precedent for sealing videotaped sworn testimony that does not involve sexual assault victims, young or otherwise vulnerable witnesses.

Justice Shaughnessy did not provide reasons for his sealing of the videotapes and to my knowledge never has.

It is my information that many critical pieces of evidence and sworn testimony were videotaped in Barbados and that this includes some embarrassing incidents where several defense witnesses including Chief Justice Sir David Simmons were caught giving erroneous testimony.

I understand that another embarrassing incident was recorded on videotape when Chief Justice Sir David Simmons had to admit that he deliberately destroyed relevant business records evidence after the commencement of the court actions in the Kingsland Estates case. Knowing that the business records were relevant evidence, Chief Justice Sir David Simmons burned them. It seems reasonable to conclude that Chief Justice Simmons would not have burned the records if they were helpful to his side of the litigation.

My lawyer, Mr. McKenzie, caught David Simmons giving erroneous testimony. There was also a serious breach of ethics involving an audit and Mr. Marcus Hatch.

It is my understanding that Peter Simmons was caught having created a false business document concerning his brother David Simmons, by backdating it about 15 years. This testimony was videotaped and would be embarrassing to Chief Justice Sir David Simmons and other defendants in the Nelson Barbados case, but Justice Shaughnessy sealed the videotapes for no other reason than to favour the defendants and their lawyers.

This is further evidence of Justice Shaughnessy's professional infatuation with the defendants and his bias.

It is my understanding that one of the defense lawyers, Mr. Gerald Ranking, was videotaped losing his temper in a major incident that reflected badly upon his professionalism.

This videotaped incident with Mr. Ranking showed the type of unprofessional abuse towards my lawyer by defense counsel that Justice Shaughnessy allowed and contributed to throughout the case and even when it happened in front of the Court. In other incidents, counsel called Mr. McKenzie dishonest in open court and at one point during a cross-examination Mr. Ranking told Mr. McKenzie to "Fuck Off". Justice Shaughnessy allowed and contributed to these types of incidents, and in doing so he brought the administration of justice into disrepute.

Subsequent to the videotaped examinations, my lawyer attempted to gain access to the videotapes to prepare my case. Justice Shaughnessy issued a very restrictive order that was time constrained and unreasonably allowed my lawyer only partial access to the videotaped evidence.

Justice Shaughnessy never unsealed the videotapes of the defendants' testimony that the defendants themselves had requested be made. Justice Shaughnessy never provided reasons for sealing the evidence or for keeping the evidence sealed in contravention of the law and court protocols.

It is my understanding that comments were made in court that show that Justice Shaughnessy's reason for keeping the videotapes sealed was to avoid embarrassment to Chief Justice Sir David Simmons, his brother former Ambassador Peter Simmons, other high profile defendants and the defense lawyer Gerald Ranking.

I understand that Justice Shaughnessy indicated he knew that court transcripts, exhibits and other evidence filed with the court and in the public domain were being placed upon the internet and he did not want the videotapes to be placed on the internet.

This is one more example of Justice Shaughnessy ignoring the law and established court protocols to impose a double standard between the defendants, their lawyers and what Justice Shaughnessy inflicted on persons on my side of the case. When he could, Justice Shaughnessy quashed or covered up embarrassing evidence or evidence that did not favour the defendants. He was biased.

I understand that Justice Shaughnessy is quoted by Madam Justice Ferguson as not wanting the video tapes to be "exploited by third parties" on the internet. This concern of Justice Shaughnessy for not wanting third parties to "exploit" evidence on the internet is laughable considering his own actions and the actions of the defendants and their counsel in using the internet as a weapon to intimidate, threaten, harass and commit criminal offenses against persons on my side of the case.

Justice Shaughnessy actively protected David Simmons and other high profile witnesses from having their information, testimony, and images from appearing on the internet. For my side of the case, a different standard was applied. Justice Shaughnessy illegally used the internet, and allowed it to be used, as a weapon to punish my family, me, my lawyer and his family and anyone associated with my side of the case. Justice Shaughnessy's bias and double standard in this area alone brought the administration of justice into disrepute.

Justice Shaughnessy's order against hearing evidence in the substantive case

The Nelson Barbados case before Justice Shaughnessy in Ontario was a jurisdiction motion. Early on the defendants asked Justice Shaughnessy to make an order reinforcing that at this stage in the Nelson Barbados case, this was a jurisdiction motion and that questions relating to the substantive issues in the case were not permitted of witnesses.

Justice Shaughnessy made an order that effectively prevented the court from hearing evidence concerning the substantive issues.

Notwithstanding this order, throughout the Nelson Barbados jurisdiction hearing the defense made statements indicating that my company's case was without merit even if it had been allowed to go to trial in Ontario. Incredibly, after making an order prohibiting the court from hearing evidence about the substantive case, Justice Shaughnessy made similar statements that the Nelson Barbados case was without merit. He didn't even try to conceal his bias and role as an advocate for the defense.

There are three major issues with these statements by Justice Shaughnessy about the validity of the substantive issues in the Nelson Barbados case, the first being that the Nelson Barbados case in front of the court was to do with venue and the defendants demanded, and Justice Shaughnessy issued an order, that examination questions about the substantive issues in the case were not allowed.

The second issue is that because of the focus on the venue, and the order that he himself had issued, Justice Shaughnessy only heard a tiny portion of evidence concerning the substantive case, so Justice Shaughnessy had no business making statements about the merits of the substantive case.

The third issue is that where he saw evidence that favoured the Nelson Barbados substantive case, Justice Shaughnessy went out of his way to quash, conceal or ignore the evidence as he maintained a bias in favour of the defendants and their lawyers. This is also further evidence of Justice Shaughnessy's professional infatuation with the defendants and their lawyers.

My company has an excellent legal case backed by strong and reliable evidence. I remain confident that in a trial in any jurisdiction outside of Barbados, my company would likely win the case. My company is prepared to go to trial immediately in any venue aside from a court controlled by the defendants.

Justice Shaughnessy's statements indicating and/or agreeing with defense that the Nelson Barbados substantive case was without merit raises another issue concerning evidence. As indicated elsewhere in my complaint, I have strong reason to believe that Justice Shaughnessy maintained "private" files in the Nelson Barbados case and that he improperly received and considered information and communications that were not proper evidence.

I demand that you ask Justice Shaughnessy to account for his position and statements that the Nelson Barbados substantive case is without merit. What evidence did he see and consider that caused him to decide that the Nelson Barbados substantive case is without merit? How did he come to his conclusion after he himself issued an order that the court would not hear or allow substantive evidence in the Nelson Barbados jurisdiction hearing?

Did Justice Shaughnessy hear or read and consider information outside of court that caused him to come to this conclusion, or, did he state that conclusion without considering the substantive evidence because he is biased against my side of the case?

Justice Shaughnessy called the defendants' lawyers "Heroes"

Justice Shaughnessy's professional infatuation with the defendants' lawyers is evident in his willingness to accept their obvious abuse of court process. Justice Shaughnessy gave the defense lawyers a license to continually abuse the court process.

When I informed Justice Shaughnessy in writing of abuse of process and of criminal behaviour by the defendants and their lawyers, Justice Shaughnessy did not make even the most basic inquiries and investigations. He protected and covered up for the defendants and their lawyers.

In another section of my complaint, I provide more analysis of the transcript of June 8, 2010 (**Attachment #1**), but for the purpose of illustrating Justice Shaughnessy's professional infatuation with the defendants and their lawyers, I direct the Canadian Judicial Council to the following quotes from the June 8, 2010 transcript:

"MR. RANKING: You'll see - this will be become evident. It effectively, give or take our math, it's effectively 90 percent of our full indemnity fees.

THE COURT: I'm pleased."

Justice Shaughnessy said "I'm pleased" because he favoured the defendants. This comment is one of multitude that Justice Shaughnessy made throughout the case and reveals his bias and mindset. Standing alone, Justice Shaughnessy's continual and sometimes outrageous actions in the Nelson Barbados case are sufficient evidence of bias, but his words illustrate how deeply this bias was ingrained in his mindset, thought process and judgment.

Early on in the Nelson Barbados case, Justice Shaughnessy became an advocate for the defense.

"THE COURT:Just let me make some brief comments as well on the record and madam reporter, I think I want to order this transcript. I don't normally, but this is an exceptional case with exceptional counsel."

"And I have to tell you, I gave a speech a few years ago here at the Durham bar and I said it and I meant it, right from the bottom of my heart. Lawyers are my heroes and frankly, having Schabas, Ranking, Silver and the other counsel, but most noticeably the three that I mentioned, in front of me, that is why lawyers are my heroes. You were so well organized, so committed, so reasonable, so well prepared and presented the case so clearly that you'd helped me immeasurably. And I frankly stood, quietly stood in awe of just how you conducted this. I was so pleased and frankly, I'm honoured by your - by both of your presence, Mr. Ranking, Mr. Silver. Today, but throughout the case, because frankly you were the leaders. You took the ball and you led this through and you coordinated the other counsel in a way that I will use as a precedent in any other cases that I have to handle, hopefully none as complicated as this."

"Heroes" is what Justice Shaughnessy called the lawyers who illegally accessed and recklessly distributed my Identity Information contrary to the Criminal Code and contrary to other laws and court protocols. "Heroes" is what Justice Shaughnessy called the lawyers who laughed at me and said that my Identity Information illegally published on the internet and my fears of identity theft were a "non-issue" and they didn't care.

These "Heroes" answered my question about who posted on the internet my confidential information and the calls to hunt down my family and me, "I have no idea and I can't help find that out nor would I if I could." Justice Shaughnessy called Mr. Ranking and Mr. Silver "leaders" in the case, and indeed they were because Justice Shaughnessy followed their lead.

These "heroes" ran roughshod over the Court and normal court protocols and violated many laws including the Criminal Code because Justice Shaughnessy allowed and covered up their behaviour and empowered them to continue.

"Hero" is what Justice Shaughnessey called Mr. Schabas, all the while knowing that Mr. Schabas and his law firm had first hand evidence that my witness Nitin Amersey's home was set on fire with his family in it and that Mr. Schabas's client, David Simmons, directly threatened Mr. Amersey in Canada. Justice Shaughnessy knew that his "hero" Mr. Schabas and Blakes Law Firm unethically argued that David Simmons did not threaten anyone even though they had evidence that David Simmons had threatened Mr. Amersey and that Blakes lawyers actually witnessed the event.

Justice Shaughnessy's "heroes" include the Miller Thomson law firm that has been engaged in harassing and threatening persons on my side of the case since 2004 up to 2010. This is documented and supported by forensic evidence. Lawyer Andrew Roman was formally cautioned in writing by a Florida law firm that he and his firm had broken laws and threatened one of my witnesses. (See **Attachment #4**)

Justice Shaughnessy didn't care about that law breaking by Miller Thomson or Andrew Roman. These are his "heroes".

Justice Shaughnessy says to these "heroes" that he "quietly stood in awe of just how you conducted this" and that he is "honoured" by their very presence in his court.

By the end of the day on June 8, 2010, Justice Shaughnessy and these "heroes" were co-conspirators in what is the largest violation to date of Section 402.2(2) of the Criminal Code respecting the reckless distribution of Identity Information.

Justice Shaughnessy's infatuation and bias towards the defendants and their lawyers is evident in the following transcript quote:

> *"I thought that the moment had come where the parties deserved the justice. And you know, it's the parties too that gave me great concern. I - did any, I'm sure you have, but as a judge I kept putting myself into the shoes, not just because I'm in the judiciary, not just the Chief Justice, but all of those other parties. Sitting there, day after day, the costs mounting to astronomical level. I mean, it would shock me. I personally would have to declare bankruptcy. I couldn't afford to litigate this type of case or - and be a defendant in it. And I grew increasingly concerned about them throughout and - and so I hope you forgive me but at the end, finally near - in the latter few weeks, I just decided that you know, enough is enough. These parties have endured uncertainty, they've endured having to instruct lawyers on - over three years and - and were frankly, I think, put in a very, very inappropriate position throughout. And I - so my heart went out to them. I thought frankly, they - this is not healthy for anyone psychologically, emotionally, or any other way. And financially, it's a heartbreak. And so, I'm very pleased it's over."*
>
> *"But it's over because of very, very fine counsel who are involved. You are, and I've said this to my fellow judges, I - I had the great fortune of having the leaders of the bar present a case before me and they've presented it in a magnificent fashion. So I don't deserve thanks. The thanks goes to you and your colleagues."*

This above section of the transcript of June 8, 2010 is revealing for a number of reasons, not the least of which is that Justice Shaughnessy again shows his one-sided bias and professional infatuation for the defendants, especially with "Chief Justice" Sir David Simmons.

Throughout the case my lawyer Mr. McKenzie made it clear that Mr. David Simmons' involvement in the majority of events at issue in the substantive litigation was prior to David Simmons' appointment as Chief Justice of Barbados. Other than a real and well-founded belief on my side of the case that justice could never be obtained in Barbados when one of the litigants is the highest judge in the country, a former Attorney General and former acting Prime Minister, Mr. Simmons' titles and position were not an issue with my side of the case.

The same could not be said for the defense lawyers who right from the start of the case held out David Simmons' and other high profile defendants' titles and positions as a shield against real evidence of unlawful conduct. Justice Shaughnessy's professional infatuation with these high profile defendants blinded him to his duty to be impartial.

When Justice Shaughnessy says *"but as a judge I kept putting myself into the shoes, not just because I'm in the judiciary, not just the Chief Justice,"* he once again reveals his mindset, bias and motivations for protecting Mr. David Simmons throughout the Nelson Barbados case, even if it meant ignoring the law or accepted court protocols. At every opportunity, Justice Shaughnessy shielded David Simmons and other high profile defendants from relevant and admissible evidence. The history of the case shows this, and Justice Shaughnessy's words confirm his bias.

According to the official court transcript, in the entire appearance on June 8, 2010 Justice Shaughnessy refers to only one defendant as an individual. Justice Shaughnessy refers to that one defendant who is on his mind, not by name, but by his title and position: "the Chief Justice".

The June 8, 2010 transcript also reveals that Justice Shaughnessy came to his conclusions long before the case ended: *"and so I hope you forgive me but at the end, finally near - in the latter few weeks, I just decided that you know, enough is enough."* This too shows his bias.

When Justice Shaughnessy says *"I thought that the moment had come where the parties deserved the justice"* it is evident that he is not thinking of my witness, Marjorie Knox, who was forced to flee from her home of 87 years because the defendants threatened to murder her by bashing in her head with a rock. Justice Shaughnessy knew this but covered it up.

Justice Shaughnessy was not concerned with the evidence that Chief Justice Sir David Simmons and the other defendants coveted the Kingsland lands, assets and wealth and used their control of the Barbados judicial system to steal these assets in which Nelson Barbados has an interest. Justice Shaughnessy ignored the fact that David Simmons burned business records that Simmons knew and acknowledged were relevant to the Kingsland Estates and Nelson Barbados cases.

When Justice Shaughnessy says "*And I - so my heart went out to them. I thought frankly, they - this is not healthy for anyone psychologically, emotionally, or any other way*" he was not thinking of the psychological and emotional health of my witness John Knox who was threatened with the loss of his job as an instructor at the University of the West Indies if he testified for me, and then did lose his job after he testified, exactly as he was threatened. Justice Shaughnessy was not thinking of my witness Kathy Davis who received and forensically documented illegal emailed threats, harassment and intimidation from the Toronto law firm Miller Thomson since at least 2004.

Justice Shaughnessy was unconcerned about the psychological and emotional health of my witness Marjorie Knox, an old lady, and her family members who the defendants threatened and harassed for years.

Justice Shaughnessy disregarded the psychological and emotional health my witness Nitin Amersey whose Barbados home was torched while he and his family were inside and who fled Barbados in terror with his family. The psychological and emotional health of Adrian Loveridge and his wife Margaret was of no concern to Justice Shaughnessy even though he knew that their business had been set on fire after threats to burn their business were posted on the internet. Justice Shaughnessy knew that threats were posted on the internet to rape Mrs. Loveridge, but he wasn't concerned at all with her psychological and emotional health. Instead, Justice Shaughnessy stood in the way of a proper technical investigation into the origin of the threats because he wanted to protect the defendants.

Justice Shaughnessy wasn't concerned about the psychological and emotional health of my witness Kathy Davis, a payroll clerk in Florida who was so traumatized by the threats from the defendants that she purchased a shotgun to keep in her home for protection. Justice Shaughnessy knew that but he wasn't concerned.

When defendant Peter Simmons delivered a message through a third party that my lawyer Mr. McKenzie should "Watch his back" if he ever came to Barbados, Justice Shaughnessy didn't care about Mr. McKenzie's or his family's psychological and emotional health. When Peter Simmons originally denied the entire incident, but then a tape recording of the conversation surfaced, Justice Shaughnessy covered up for Peter Simmons and castigated Mr. McKenzie for the tape recording. How does Justice Shaughnessy think that affected the psychological and emotional health of Mr. McKenzie to see a judge in Canada fail to protect a Canadian lawyer from threats to "watch his back"?

Justice Shaughnessy didn't care about the psychological and emotional health of Mr. McKenzie's wife when strangers, some with Caribbean accents, called the family home to intimidate and harass. Justice Shaughnessy wasn't concerned that a man with a Caribbean accent approached one of my children and asked about their father.

Justice Shaughnessy wasn't concerned about the psychological and emotional health of my family and me when the defendants and their laughing lawyers posted our Identity Information onto the internet contrary to the Criminal Code and called for criminals to hunt us down.

Justice Shaughnessy wasn't concerned about Mr. Ranking's private investigator breaking laws to obtain and publicize my confidential employment information and Identity Information from the Toronto Police records.

Justice Shaughnessy sanctioned this illegal activity because he knew that it would be devastating to my family members' personal security and well being and negatively impact our psychological and emotional health. I understand that one of the lawyers used the phrase "Looks good on him" in court to refer to me and my family and that Justice Shaughnessy smiled when he heard it.

Justice Shaughnessy knew that this call for criminals I dealt with throughout my public and private law enforcement career to hunt my family down was deliberate harassment and intimidation. Justice Shaughnessy knew that the defendants and their lawyers had posted on the internet, "I would think Best is watching his back in a state of paranoia right now. Poor fellow. And it is not Barbados and its co-defendants that he is afraid of either."

Justice Shaughnessy sanctioned breaches of law by the defendants and their lawyers and he is directly responsible for the escalation of threats, harassment and criminal acts against persons on my side of the case that continues to the present day.

Considering all that Justice Shaughnessy knew about the years of ongoing threats, harassment and criminal offences against persons on my side of the case, his covering up for and professional infatuation with defense counsel and high profile defendants brought the administration of justice into disrepute.

Necessity to freeze the court file and to seize evidence

As a professional investigator with 30 years experience in the police and private sectors, I know it is imperative that the CJC investigation team moves quickly to locate and secure the court files and other associated records and evidence, especially before my complaint becomes generally known, or known by Justice Shaughnessy, his staff and the court staff.

There is already evidence that persons tried to "correct" the court records to cover up ineptitude by the court staff and wrongdoing by the defendants' lawyers and Justice Shaughnessy.

I demand that the Canadian Judicial Council take immediate action to secure and freeze all the records and all possible evidence so that CJC investigators can consider the evidence without providing an opportunity for the records to be further modified or deleted.

I allege violations of the Criminal Code and other laws by Justice Shaughnessy, the defendants and their lawyers, and I'm sure that with the reading of my complaint the CJC investigators will realize that there is a strong prima-facie criminal case against Justice Shaughnessy and others. It is therefore even more imperative that the CJC approach this investigation properly, using Search Warrants and other legal means and authority to locate, secure and freeze all evidence that is vulnerable to change or destruction or addition.

I have good reason to believe that there were documents not filed, not paid for, perhaps not seen by the judge until later if at all. I have good reason to believe that the Judge had or has a "private" collection of documents related to this case but not seen by my side of the case and not part of the "official" court file, or that were not placed in the "official" court file until after the case was over. I have good reason to believe that evidence of this is to be found in the court records.

The judge took lawyers' words for things that didn't happen, and when they were caught lying, he covered up for them and this will be evident in the court records. Justice Shaughnessy lost control of the situation to my detriment.

The CJC should immediately secure, in a manner that ensures the evidence will be admissible in any proceeding against Justice Shaughnessy or any other person, all the Nelson Barbados evidence and other evidence, including, but not limited to:

- All documents, exhibits and records filed with the court,
- Court records, paper and electronic, concerning the filing of documents and exhibits and fees paid,
- Transcripts,
- Voice recordings, whether tape or electronic files, of the court appearances that the transcripts were made from. This is necessary because there already are indications of internal attempts to cover up the misconduct of Justice Shaughnessy, the lawyers and the court staff. Should any of these recordings be missing or corrupted, this will be an immediate red flag to the CJC.
- Justice Shaughnessy's notes, personal files, daytimers, schedules and everything in the Nelson Barbados case, both at his office and at his home.
- All on and off-the-court-record communications, letters, emails, faxes, phone text messages, phone call records, memos and other communications by any method sent to him by the opposing lawyers, internal staff, superiors, subordinates or anyone else and his replies if any and all communications initiated by Justice Shaughnessy about the Nelson Barbados case.
- Records of Justice Shaughnessy's personal email, internet usage, cell phone records, phone records at home and at work. This is necessary not only to document his misconduct in handling the administration of the Nelson Barbados case, but also because of the evidence in the transcripts and other evidence that Justice Shaughnessy was improperly pressured in the Nelson Barbados case, and that he felt the pressure. It is vital to document any additional or "unofficial" communications received or sent by Justice Shaughnessy through any means to determine where the pressure came from, how Justice Shaughnessy responded, and what he did in the case that might relate to that pressure and "eyes from far away".
- Forensic examinations of Justice Shaughnessy's home and business computers to determine if and when Justice Shaughnessy browsed the Internet about the Nelson Barbados case, what he saw and when he saw it, and relevant records of his business and home internet suppliers.

- All records and evidence at the Ontario Ministry of Transport and elsewhere relating to the access history and illegal release of my Identity Information, name, driver's license, address history and medical records at the MTO.
- All records and evidence at the Canadian Police Information Centre (CPIC) relating to the access history of my file and records. I have strong reason to believe that Jim Van Allen, the former police officer hired by Mr. Ranking, illegally accessed my personal file at the Canadian Police Information Centre (CPIC) or caused the file to be accessed. Justice Shaughnessy received written evidence from Mr. Ranking and elsewhere that provides strong reason to believe that Mr. Ranking, his law firm and his investigator engaged in illegal investigations about me, and about other persons.

  I caution the CJC that Mr. Van Allen was a member of the Ontario Provincial Police. Therefore the CJC should not approach the Ontario Provincial Police due to a potential conflict of interest. The CJC should either approach the Canadian Police Information Centre (CPIC) internal investigators, or the RCMP for assistance with this part of their investigation.

Electronic evidence and metadata

I do not know if the investigators at the Canadian Judicial Council have professional experience with the proper gathering and analysis of electronic evidence. I mean no offense, but I am unfamiliar with how frequently CJC investigators encounter and have to gather electronic data and evidence in their normal investigations. I don't know if the CJC normally has a forensic computer evidence expert on staff or under contract.

I therefore caution the Canadian Judicial Council that where evidence is available in electronic form (emails, internet information, electronic documents, cell phones, text messages, court databases and accounting records, etc.) it is vital that the evidence is legally obtained and also properly technically obtained and secured in its electronic form with all metadata intact and properly protected from change.

In this day of computers, smart phones, home servers and cloud computing, an investigation that relies only on paper printouts of available electronic evidence is a poor third class excuse and not a serious and professional effort.

Electronic data and records are a large and vital part of the evidence showing Justice Shaughnessy's misconduct and criminal misconduct. I demand that the CJC perform a professional investigation into my allegations and that includes obtaining electronic records complete with metadata from all available repositories, including but not limited to, the Court, Justice Shaughnessy, Court administrators, defense lawyers, the Internet, mobile and landline telephones, fax machines and the home and business computers of Justice Shaughnessy and others.

Justice Shaughnessy's Internet Activities

Throughout this case Justice Shaughnessy received evidence and other information about exhibits, evidence and writing published on the internet that related in some way to the Nelson Barbados case. From my lawyer and me, Justice Shaughnessy received evidence, information and exhibits of threats against persons on my side of the case as published on the internet. From my side of the case Justice Shaughnessy also received motions, affidavits, forensic and other reports and other evidence

concerning the origins of the threats, and exhibits and other admissible evidence properly collected from the internet.

For their own reasons, the defendants also directed Justice Shaughnessy's attention to the internet.

I informed Justice Shaughnessy in writing about the threats against my family and me that were posted on the internet. I informed Justice Shaughnessy in writing that my Identity Information had been illegally obtained and posted on the internet. I sent him a copy of the Barbados Underground website's October 30, 2009 internet article that contained some of the threats and my Identity Information, and mentioned that the website operators had been sent a copy of a Private Investigator's report commissioned by the defendants and their lawyers. (Note that the Barbados Underground website article says "report" not "affidavit". This is an important distinction.)

Did Justice Shaughnessy go to the internet himself or commission some other person to confirm what I told him about the threats, criminal offenses and Identity Information? If not, why not? A forensic examination of Justice Shaughnessy's computers will assist to confirm what Justice Shaughnessy did or did not do in relation to my December 1, 2009 written complaint to him.

If Justice Shaughnessy did go to the internet himself regarding the Nelson Barbados case or commissioned some other person to confirm what I told him about the threats and Identity Information, that is highly relevant and raises further questions about what other information about the case that Justice Shaughnessy sought out or viewed on the Internet, what he saw, and when he saw it.

I demand that the CJC fully investigate, including by all technical means, all Justice Shaughnessy's internet activities at work, at home or anywhere as they relate to the Nelson Barbados case.

Judge lost control and/or ceded control of the court procedure to the defendants' lawyers.

Earlier in my complaint, I stated that I have reason to believe that there were documents not filed, not paid for, perhaps not seen by the judge until later if at all. The judge took lawyer's words for things that didn't happen, and when they were caught lying, he covered up for them. He lost control of the situation, and/or surrendered control to the defendants' lawyers to my detriment.

Your investigation will confirm that is true, and that this loss of control and/or ceded control happened early on in the case. The following sections provide some illustrations of a pattern of misconduct in this area that the CJC's investigation will further document.

The importance of June 8, 2010 as an indicator of Justice Shaughnessy's misconduct and intent throughout the Nelson Barbados case.

As a point of reference that illustrates Justice Shaughnessy's attitude and misconduct in the entire court proceedings in the Nelson Barbados case, and the fact that he lost control and/or ceded control of the court procedure to the defendants' lawyers on many occasions, I encourage you to examine Justice Shaughnessy's actions and words on the last day of the case on June 8, 2010. Please refer to the Transcript of

June 8, 2010 (**Attachment #1**) and the June 7, 2010 Minutes of Settlement (**Attachment #8**)

The June 8, 2010 Transcript starts fittingly with a statement by Mr. Ranking that the official court Joint Motion Record cannot be found and he wonders if Justice Shaughnessy has it in his chambers. Mr. Ranking's question and Justice Shaughnessy's reply again confirms that other than authorized persons had casual and unauthorized access to the official court files and that the official court files were kept all over the place. This included official court files kept unattended in boardrooms used by everyone at two courthouses that I presume are the old and new Whitby courthouses.

Cover up of missing and/or misfiled Nelson Barbados court files

I accuse Justice Shaughnessy of using the move between courthouses as an excuse for court file being in a mess and as justification for allowing defense lawyers and others to have unsupervised and unrestricted access to the official court files. Who looked after the Nelson Barbados court file boxes during the court move? What was the security? Where is the documentation of continuity, of transfer and receipt at the new court? How many boxes were shipped and how many arrived? How many boxes of Nelson Barbados court files disappeared during the move or couldn't be found prior to the move?

Due to the differences in the transcripts and considering other information I have about how many boxes of Nelson Barbados court files exist, I have strong reason to believe that official court files disappeared during the move or before or after the move, and that a cover-up is happening.

This is a cover up. What Justice Shaughnessy and Mr. Ranking say was done with official court files doesn't make sense. Justice Shaughnessy knew how badly the court files were botched and should have known even before my December 1, 2009 letter to him complained of this.

You will note in the June 8, 2009 transcript that Mr. Ranking and Justice Shaughnessy go out of their way to praise Trial Coordinator Jackie Travis. In a later section in my complaint I cover this more fully, but I believe that the praise for Ms. Travis is part of the cover-up over the administration of the case being out of control, and a cover up for the defense lawyers' abuse of the court system. The CJC will discover in their first ten minutes with the official court records that if praise is supposed to be about performance and results achieved in properly administering the case, the praise was undeserved and there was some other reason for the praise.

I demand that the Canadian Judicial Council thoroughly investigate the official court records to detect improper changes and other inconsistencies in the official court records, some of which might have been made by court staff, defendants' lawyers, other unauthorized persons or Justice Shaughnessy himself. I demand that the computerized court records, including the metadata, be compared in detail with the paper court files, including the accounting records.

If every court document in the file now properly bears a stamp, that fact will be no less than proof of a cover up that the CJC investigators will be able to document. I

know that Justice Shaughnessy allowed the defense to root around and mess with the official court files without supervision, and to add documents that were said to have already been in the court files. What else did the defense lawyers do when they were alone with the official court files or otherwise allowed to root about in the boxes?

Defense lawyers already falsely and deliberately told the court that I admitted to them on November 17, 2009 that I received Justice Shaughnessy's order when I said exactly the opposite. Forensic evidence shows that at least two of the defendants' law firms actually engaged in threats and intimidation of my witnesses over the internet, in one case starting in 2003. The CJC will discover that the defense lawyers and Justice Shaughnessy recklessly distributed Identity Information contrary to the Criminal Code, and committed other offenses including the Obstruction of Justice and Intimidation of Witnesses.

In light of the defendants' and their lawyers', and Justice Shaughnessy's provable criminal and other unlawful conduct in the Nelson Barbados case, I demand that the Canadian Judicial Council do everything it can to learn and document what the defense lawyers did when they were alone with, or rooting about in, the official court files. What documents were removed or inserted, when and why? What official or unofficial records or other documentation were created to keep track of access to the official court files and removal and replacement of official court files in the Nelson Barbados case?

I strongly believe that in order to cover up the mess, attempts were made to retroactively "officialize" and legitimize each document that now appears in the official court file and to retroactively insert documents that should have been in the file but were not there either because they never were filed properly or because persons removed them, perhaps to change versions or to remove evidence from the case. I believe that sometime after I complained to Justice Shaughnessy on December 1, 2009, someone went through the official court file and improperly stamped documents that had not previously been stamped or properly entered into the court records.

I know that your timeline for documents will show that in many cases the Judge was told that documents were properly filed with the court and served, but they were not. Your investigation will reveal many "phantom" documents that mysteriously appear in the official court file for the first time many months after some draft or version or versions were mentioned in court or sent to some of the litigants. I believe that in some cases the document now appearing in the official court files is not the original version of the document that was mentioned in court or originally filed with the court if it was properly filed at all.

You will also find that many of the paper and handwritten records appearing in the file are at odds with the computerized records, and the metadata for the computerized records. You may find that the metadata for the computerized records shows backdating and information changes. This metadata examination is critical to a thorough professional investigation.

I demand that for each document in the court file, or document mentioned in the transcript or elsewhere even if it does not currently appear in the court files, that the

Canadian Judicial Council fully investigate and detail in a report each document's provenance and timeline, including but not limited to:

- Date the document was created.
- Date it was stamped.
- Date it was entered into the court computer system, and by whom.
- Cross-reference the metadata for the court computer system to confirm the actual date the document was entered and to detect if changes were made in the court computer system, or if the computerized records were backdated when they were created. I believe your examination of the computerized records, metadata and paper records will show that many documents and computer entries were backdated. This would have required the cooperation of court staff.
- Date when the document or fax or exhibit or any communication was received at the court and when it was given to Justice Shaughnessy.
- Examine the payment records for all documents and exhibits filed to determine if each document was paid for, and when and how.
- Compare the versions in the court files with the version that was served and/or sent to other litigants or their counsel.
- Examine the court files for proof of service for each document claimed served, verify and corroborate the service as Justice Shaughnessy should have when the case was before him.
- Compare the versions of Judges Orders in the court files with the original versions and document the version history and development chain.
- Examine all court transcripts for verbal references to various documents and include the references in the timeline.
- Include a file history for each document detailing its insertion, removal, reinsertion etc, including who had access to the official court file and when and where and for what reason.

I strongly believe that in many cases, Justice Shaughnessy was falsely told that documents were properly created, properly served and properly filed with the court when the documents were not. Justice Shaughnessy acted upon these documents and false verbal information as if the documents and information were proper evidence before the court. He should have always been vigilant and diligent in this regard and especially so after my December 1, 2009 letter to him, but he was not vigilant or diligent regarding the proper administration of evidence at any time.

I also strongly believe that there are incidents in this case where Justice Shaughnessy talked about documents and evidence before the court, and made reference to these documents in his decisions and actions, when the documents were never before the court as evidence. In fact, I strongly believe that in some instances Justice Shaughnessy talked about and referred to this "non-evidence" even though he did not, or could not have, read the documents that he relies upon to support his decisions.

This passage from the June 8, 2010 transcript is one of the many instances throughout the Nelson Barbados case where defense lawyers "re-filed" documents that were supposedly already properly before the court, and that they should have been able to immediately confirm were properly before the court. This is another "smoking gun" that the administration of the case and the placing of "non-evidence" before Justice Shaughnessy was out of control.

Further, during this and a later passage, Mr. Silver again asks for and receives a carte blanche from Justice Shaughnessy to continue to make filings with the court even though the case is closed and millions of dollars in costs have been paid. This is part of the ongoing effort to "correct" or "repair" the official court records.

The trial coordinator "Jackie" (Travis) is specifically mentioned:

> *MR. SILVER: Yes, I think there's one other - I think there's one other point Your Honour. And it's also in accordance with the Minutes of Settlement, paragraph seven, that it's contemplated that there may be subsequent filings and we're going to check the record. There's one affidavit of Mr. McKenzie in response to Jessica Duncan's.*
>
> *I'm not sure if it's filed or not, but if it isn't, we're going to file it. But - but maybe it could also say, also in accordance with the Minutes of Settlement, further filings are contemplated and should be allowed. I mean, I don't know. That might help that it's in the endorsement, if we run into a problem filing anything, Jackie will certainly understand that. That would be it I think.*

Transfer of Judicial Authority to defense lawyers

Illegal creation and authorization of an extrajudicial process and authority

On June 8, 2010 Justice Shaughnessy effectively transferred his Judicial authority and powers to the defendants' lawyers in the matter of authorizing them to continue to file evidence and documents and solicitor-client privileged documents into the court record after the case ended, and to recklessly release those unredacted solicitor-client privileged documents into the public domain after the case ended, and to do so directly without Judicial supervision.

This power and authority transferred to the defendants' lawyers even included the outrageous authority for the lawyers to declare any documentation found after June 8, 2010 as official court exhibits in the closed Nelson Barbados case without filing the documents with the court, simply by treating the documents as filed, and to use that documentation in Florida or any other jurisdiction and to place the unredacted documentation, including unredacted solicitor-client privileged documents, into the public domain anywhere.

The June 8, 2010 Transcript and the Minutes of Settlement show this.

Justice Shaughnessy's action in this particular outrageous transfer of Judicial authority makes me wonder if Justice Shaughnessy thinks that Canadians shouldn't bother to have Judges and should instead rely upon senior lawyers like his "heroes" Mr. Ranking, Mr. Silver and Mr. Schabas to create, keep and administer the official court files outside of the court without even notifying the court of what they are doing. Justice Shaughnessy illegally authorized these lawyers to declare, create, possess, keep and administer official court records, exhibits and evidence in the Nelson Barbados case outside of the Court in an extrajudicial process as the lawyers saw fit and without further judicial supervision, oversight or notification to the court.

I am unable to find any statutory or other legal authority or precedent anywhere in Canada that allows lawyers (whether declared "heroes" or not) to create official exhibits, evidence and court records in a closed case, by declaring that documents are "treated as filed" in the closed case when they were never filed with the court, and to keep these "official court records" they create on their premises when they are not filed or logged in the official court records at the court. To my knowledge, Justice Shaughessy, without any authority in law and in the face of many prohibitions in law, illegally created and illegally authorized an extrajudicial process.

This is unbelievably dangerous ground for the Justice System of Canada and I still struggle to believe this happened in Canada, but the irrefutable evidence is there.

In effect Justice Shaughnessy handed over his authority to lawyers to put more solicitor-client privileged documents into the public domain, without accountability or judicial oversight, and to further terrorize, threaten and harass innocent bystanders and parties: and that is exactly what has happened. As I document in other sections of my complaint, Justice Shaughnessy's empowerment of the defendants and their lawyers resulted in further threats to innocent persons after the case ended on June 8, 2010.

In the vernacular of the day, the defense lawyers "own" the judge because he gave them authority, however illegal, to break the law and court protocols. It is as if on June 8, 2010, Justice Shaughnessy handed the lawyers the Court's pen to sign anything with his signature and judicial authority.

Justice Shaughnessy is "owned" by the defense lawyers because after giving them his power and authority, he can hardly criticize anything they do with his authority or questions would be asked as to why Justice Shaughnessy gave them the authority he did. This is a cushy relationship for the defendants' lawyers because it is a form of insurance for the lawyers against being criticized for their abuses of the system. They are empowered by and with Justice Shaughnessy's authority.

With this kind of insurance, the defendants and their lawyers have no fears about abusing the system, and abuse the system they did when they recklessly distributed into the public domain over 100,000 unredacted solicitor-client privileged documents containing Identity Information as defined by the Criminal Code. This release caused new threats to be made against persons whose names and other information appear in the 100,000 documents.

Why would Justice Shaughnessy transfer his duty, authority, oversight and decision making authority to the defendants' lawyers who had already shown they would break the law as evidenced in my December 1, 2009 letter to the court? The answer is that Justice Shaughnessy was and is professionally infatuated with the defendants and their lawyers, and biased towards them.

Justice Shaughnessy also did not want to diligently administer the case to the end so he shoved off his duty and his authority onto the defendants' "hero" lawyers. In Justice Shaughnessy's own words on June 8, 2010, he "*deplored looking at (the*

Nelson Barbados boxes)". He was *"joyful"* to be rid of the case, so much so that he *"overreacted"*.

If Justice Shaughnessy was *"joyful"* to be rid of the case and *"deplored"* looking at the case files, I seriously doubt that he read all the evidence and files. Did he make notes as he read the files? I demand that the CJC investigators examine Justice Shaughnessy's notes and the court transcripts to confirm that he read all the materials that were filed with the court with the same diligence as he apparently read and accepted materials that were not properly filed with the court.

To my knowledge, one of the duties of a judge is to ensure that the laws, protocols and court processes regarding evidence are properly adhered to and never abused. In Canada we have laws and rules about evidence, about what is admissible, how evidence is to be presented and, in many cases, vetted, limited, redacted and protected to ensure that innocent persons are not harmed by the court process or by the unnecessary, reckless or vindictive release of private, privileged or personal information or Identity Information into the public domain through court records.

The Supreme Court of Canada, Law Society of Upper Canada, Judicial Council of Canada, and many other Canadian courts and legal authorities establish laws and protocols governing how evidence in general, and certain evidence in particular (including Identity Information, personal information and solicitor-client privileged evidence) is required to be handled.

It is every judge's duty to ensure that the rules, laws and protocols of evidence are followed, whether or not breaches are brought to the judge's attention by counsel or litigants. Throughout the entire case, Justice Shaughnessy was not diligent in his duties in respect of the rules of evidence, or in maintaining oversight of the official court files that held the evidence. On June 8, 2010, Justice Shaughnessy washed his hands of his duty entirely and recklessly pawned it off onto his "hero" lawyers.

On December 1, 2009, I brought many breaches of laws and evidence protocols directly to Justice Shaughnessy's attention in writing and he continued to be negligent in his duties. This makes his misconduct all the more serious and shows that his misconduct was deliberate. (See **Attachment #3** December 1, 2009 letter)

Justice Shaughessy abdicated his duty. How can any Canadians or I trust him again? How can any of the innocent victims in the 100,000 documents trust Justice Shaughnessy again? Will these innocent victims ever trust a Canadian court and judge again? So gross was his misconduct in this area alone that Justice Shaughnessy brought the administration of justice into disrepute.

Paragraph 7 of the June 7, 2010 Minutes of Settlement (**Attachment #8**) states:

> *"7. The documentation produced in consequence of the cross examinations and answers to undertakings in the Costs Motion, and any further documentation to be obtained, if any, in consequence of subparagraph 7(b) . below, will be filed by Cassels or treated as filed by Cassels with the court. Cassels will ensure that the Responding Group is provided with a copy of all such documents. In addition:*

a. The original legal files maintained by McKenzie or at his direction, as inspected by Faskens and Cassels on and following May 13, 2010, will be preserved and maintained by Crawford in their current state and access will not be given to any Party without prior notice to the other Parties;

b. Subject to paragraph 7(a), above, the Parties will be entitled to access for the purpose of comparing the discs attached to Jessica Zagar's affidavit (and thus to be filed with the court) and to request additional copies as and if required;

c. In the event that formal proof of the authenticity of the records is required (for example, in respect of proceedings in Florida), a member of Crawford will co-operate in providing same; and

d. Any reasonable costs (time and disbursements) incurred by Crawford with regard to its obligations under this paragraph 7 will be borne by the Party so requesting Crawford's co-operation."

On pages 19 and 20 of the June 8, 2010 transcript, Mr. Silver explains to Justice Shaughnessy that the intent is to make available in Florida all the McKenzie solicitor-client privileged documents, and to have any further documents the defendants come up with "treated as filed" (with the court) whether they are or not. Justice Shaughnessy cannot say that he did not realize the intent of the Minutes of Settlement as Mr. Silver explained it to the judge:

"And then paragraph seven deals with the preservation and maintenance of those files, and who gets access to them and on what terms. Because obviously we - we need to protect those files. And to the extent that we want to go in and look and find more documentation, we're entitled to do that and get extra copies and have that treated as filed as well. That's what paragraph seven deals with and we've also got them to agree - the law firm to agree in cooperating and proving up the documents, if required, in Florida. So that's what paragraph seven is about."

Justice Shaughnessy's comments on June 8, 2010 also show he was mentally finished with the "huge messy" Nelson Barbados file (as the trial coordinator called it) and that he was emotionally involved and drained. Justice Shaughnessy wanted to wash his hands of the Nelson Barbados case. He didn't care if he authorized outrageous violations of the law and court protocols or ignored innocent victims of Identity Theft in order to divest himself of all the work and effort the case required if he were to administer and judge the end of the case properly with diligence.

Was Justice Shaughnessy lazy or burned out? Why did he do what he did? Why was he not diligent in continuing to administer and provide oversight of the Nelson Barbados case?

Justice Shaughnessy lost his professionalism and ignored his duties long before June 8, 2010, but on this last day of the case he was especially not diligent. He wanted to be rid of the case and the boxes. Justice Shaughnessy did not want to administer the

case to the end with diligence so he shoved off his duties onto the defendants' lawyers.

This quote from the June 8, 2010 transcript is one example of many to be found throughout the transcripts of the case that show Justice Shaughnessy's emotional involvement and his loss of control over the conduct and administration of the case and his casual attitude to the security and accuracy of the official court records:

> *"THE COURT: Oh, well here's what happened. I was joyful yesterday. Justice McEwen called me first thing in the morning, he didn't want to call me at night because the hockey game was on but he said the last one, Mr. Bristow, settled. I had heard - he had called me on the Friday to tell me that - how things had progressed wonderfully and I was so delighted and those boxes had been in the boardroom, which I didn't mind at the other courthouse. But they, you know there was eight of them in my new offices. I deplored looking at them. I have no other boardroom that I can slip them into. So out of, I - I really overreacted and I got Tom Mills, my CSO, I said, "Tom, for God's sake, get a cart and get those boxes and ship them to Barrie. I don't want to see them again." Not that I mind you, the counsel involved, but it just seemed like I was never going to see the end of those banker boxes. And so I - we threw them prematurely - then it occurred to me, I knew you were coming in. And then it occurred to me later, oh my gosh, I didn't keep anything. So we - we grabbed the bill of costs of David Simmons, Philip Greaves, et cetera, the index - the actual bill of costs. I thought, I have to have something to write on. So it's my fault. Out of happiness to get rid of it, I - I overreacted and sent it off too quickly and I should have retrieved those two - that motion record, but...*
>
> *MR. RANKING: Not to worry.*
>
> *THE COURT: ...I'm sorry.*
>
> *MR. RANKING: What I think Mr. Silver and I - because we were trying - one of the things we were doing this morning, we were trying to find this so you could endorse the - the back of the record. We are quite comfortable if you just want to endorse the Minutes of Settlement.*
>
> *THE COURT: Great.*
>
> *MR. RANKING: I think that's probably just as....*
>
> *THE COURT: Okay. We'll do it that way."*

Trial Coordinator Jackie Travis

It is noteworthy that during the June 8, 2010 final appearance before Justice Shaughnessy, Mr. Ranking goes out of his way to praise Trial Coordinator Jackie Travis with this statement that appears on page 26:

> *"Finally I would be remiss if I didn't recognize Jackie Traviss. She has made*

filing and getting reams and reams of material that we would have rather not filed, filed through circumstances where - with her health failing and she's come back and is terrific."

Justice Shaughnessy echoed Mr. Ranking's praise, but this was not done in a vacuum. I believe that praise for the Trial Coordinator was done in response to my conversations with Jackie Travis, which I documented in writing to her on November 16, 2009, and notified Justice Shaughnessy of in writing on December 1, 2009. It was also done in response to my complaint in writing to Justice Shaughnessy that the defendants' lawyers misled the court and that Justice Shaughnessy had been told that certain documents had been served upon me and properly filed with the court when the documents had not been filed with the court or served upon me, and that Jackie Travis confirmed this to me.

These statements of praise by Mr. Ranking and Justice Shaughnessy were part of a cover-up of documented abuse of the court procedures by the defendants' lawyers and of my communications with Jackie Travis and Justice Shaughessy about this abuse.

Please refer to **Attachment #3** (December 1, 2009 letter from Donald Best to Justice Shaughnessy) and **Attachment #9** (November 16, 2009 letter from Donald Best to Trial Coordinator Jackie Travis)

It is my understanding that sometime after I spoke with her, Trial-Coordinator Jackie Travis left her duties for a lengthy time for reasons of stress. Knowing what I know now about how the defendants' lawyers abused the court process and how Justice Shaughnessy covered up for the defendants' lawyers, I can only imagine what stress this must have created for Ms. Travis. I have sympathy for Ms. Travis as she was sandwiched between her personal loyalty to Justice Shaughnessy and her knowledge that the Nelson Barbados case file was out of control, and as she informed me, "huge messy".

Nonetheless it is important for the CJC investigators to interview Ms. Travis and the other court staff and to secure all files and communications records. In Justice Shaughnessy's "Reasons on Motion for Contempt" (**Attachment #10**) dated January 25, 2010, Justice Shaughnessy directly quotes from my November 16, 2009 letter to the Trial Coordinator, so he had possession of the letter for at least long enough to quote from it and I suppose he spoke with Ms. Travis about it.

How did Justice Shaughnessy receive a copy of my letter to Jackie Travis? Did Justice Shaughnessy properly place the letter into the court file and when did he do this? Did Justice Shaughnessy distribute this letter to all involved parties? Or, did Justice Shaughnessy place this letter in his "private files" about the Nelson Barbados case?

Did Justice Shaughnessy make any inquiries with Ms. Travis or the defendants' lawyers concerning my report that the defendants' lawyers falsely indicated that I had been served with documents when I had not been served? What notes did Justice Shaughnessy make and place into the record about his actions when he was alerted in writing to improprieties by defense counsel?

Upon reading my November 16, 2010 letter to Jackie Travis, and my December 1, 2010 letter to the court, Justice Shaughnessy should have made extensive inquiries

and investigations. He did not because he was biased, and such inquires and investigations would have spoiled the plan to direct the Nelson Barbados case to a certain result and decision by the court.

Did Justice Shaughnessy pause to consider that Ms. Travis informed me that the "November 2, 2009" court order had only just been received from Mr. Ranking and signed by Justice Shaughnessy on November 13, 2009 and therefore could not possibly have been received by me in time for the November 17, 2009 examination at Victory Verbatim, considering the four clear days order of the court? Mrs. Travis informed me that the signed order had not even been sent out to Mr. Ranking until November 13, 2009, which was a Friday. Your investigation will confirm this from the court records.

Why did Justice Shaughnessy backdate the order he signed on November 13, 2009 to "November 2, 2009" when the order was not even created and received by him until November 13, 2009 according to Jackie Travis? I believe Justice Shaughnessy backdated the order for the convenience of the defense lawyers because by the time the lawyers created the order and sent it to Justice Shaughnessy to be signed, it was past the date they could serve me and they already had Victory Verbatim all set up for November 17th. Justice Shaughnessy decided he would "help them out" because he was biased. He didn't care about the rules of evidence or putting me in contempt on a trumped up scheme to engineer my "contempt", and such scheme included threats, harassment and criminal offences against my family and me, as well as the manipulation of the court files and system to achieve the end.

In his "Reasons on Motion for Contempt" dated January 25, 2010, Justice Shaughnessy "cherry picks" only selected information from both my November 16, 2009 letter to Jackie Travis, my December 1, 2009 letter to him which included my letter to Mr. Ranking and attachments. Justice Shaughnessy totally ignores (among many other facts contained in the letters that I detail later) my references to the abuse of the court system by the defendants' lawyers and a request that Justice Shaughnessy audit the abuse of the court system. Justice Shaughnessy also ignores Jackie Travis's statements to me that the "November 2nd" court order wasn't created on that date, but was in fact created on November 13th when Mr. Ranking sent it to Justice Shaughnessy for signing after all the lawyers passed it back and forth and each contributed to and created the order that was eventually signed.

Jackie Travis informed me of other facts that I did not put in my letters to her and to Justice Shaughnessy, in part because I did not wish her to be criticized for speaking to me in such a forthright manner. Ms. Travis told me that the Nelson Barbados court files were "huge messy". She also made other comments that convinced me that Ms. Travis was personally under incredible pressure in part due to the Nelson Barbados case and that her work and the administration of the court and the Nelson Barbados official court files were suffering as a result. How much of this mess had to do with her inabilities or medical crisis or the defendants' lawyers taking advantage of her unsettled state?

I believe that Justice Shaughnessy knew of Ms. Travis's deteriorating mental health situation and how Ms. Travis's inability to perform was impacting the administration of justice in the Nelson Barbados case and that he covered up for Jackie Travis.

Justice Shaughnessy allowed her to continue in her position long after he should have made the administration of justice his first priority. As a result Justice Shaughnessy brought the administration of justice into disrepute and I, and I am certain other litigants, suffered.

I also spoke with other court staff and from my conversations with Ms. Travis and others I know that the Nelson Barbados case was called an "administrative nightmare" and that the staff had or have an animosity towards the defense lawyers for "not doing things correctly" and asking for "favours" in relation to the Nelson Barbados official court files. I am very concerned as to what "favours" were requested by the defense lawyers and by Justice Shaughnessy in relation to the official court files. I want to know who requested the favours, when, who provided the favours, what the favours were and how the favours impacted the Nelson Barbados case and the official court records and the warrant that was eventually issued for my arrest.

Further, I was made aware that files often went missing and then when the court staff attempted to locate these files, the files "were everywhere" including at Justice Shaughnessy's home on at least two occasions when they were needed in court. I was also made aware that Justice Shaughnessy took Nelson Barbados official court files home on many occasions without logging the files as being in his possession.

I was also made aware that on many occasions when the court staff or lawyers or Justice Shaughnessy attempted to locate documents in the official court files that the lawyers told court staff they "knew" had been filed, there was no record of a filing and the documents could not be located in the official court files. I was also made aware that documents later "appeared" or "reappeared" in the official court files when there was no record of them being placed into the court files. Some of these documents reappeared for no apparent reason, including documents that should have been served upon me and others but were not properly served or registered with the court. I believe that the transcripts would show evidence of this and that it happened more frequently than the transcripts indicate.

As I detailed earlier in my complaint, I believe that there is a strong possibility that court staff, including Jackie Travis, retroactively tried to "fix" or "correct" the Nelson Barbados official court file on their own and/or at the behest of the defense lawyers and/or Justice Shaughnessy, and that this "fixing" included putting documents into the court record long after they were said to have been properly filed and considered by the court. There are even indications of this in the transcripts.

I demand that the Canadian Judicial Council perform a professional and comprehensive investigation into my complaint, including into the chaotic state of the official court records and the abuses and "favours" done in relation to the official court records in the Nelson Barbados case, and how Justice Shaughnessy was not diligent in administering the Nelson Barbados case and official court records.

I demand that the Canadian Judicial Council thoroughly compare the paper records in court with the computerized records and the computerized records metadata to document inconsistencies and other evidence of tampering with the official court files.

Sentenced to Jail with no notice, no trial and no evidence
Warrant issued wrongly

After talking to the trial coordinator and other court staff, making my own observations, and reading what materials I have, I know that throughout the history of the Nelson Barbados case, many documents were not properly filed with the court and paid for, or properly served although Justice Shaughnessy was falsely told the documents had been served and properly filed with the court.

I believe that the judge lost complete control of the situation and then he convicted me without proof, without trial and without me knowing anything until long after the event. He did this because of his bias that had been in place since the start of this case.

I believe that the Canadian Judicial Council investigators will find many more instances than I am aware of where Justice Shaughnessy exhibited bias and loss of control or ceded control in relation to the official court records and the administration of the Nelson Barbados case.

I know that there are many instances where Justice Shaughnessy accepted, relied upon and sometimes even referenced in his decisions, information that was casually placed before him that was not proper evidence, including verbal comments by the defendants' lawyers.

There are many instances where Justice Shaughnessy accepted information that was not evidence properly placed before the court, that any judge would know was not evidence, but Justice Shaughnessy accepted and treated this information as evidence properly placed before the court because it allowed him to manipulate the outcome towards his bias in favour of the defendants.

There are instances where Justice Shaughnessy "cherry picked" from evidence and non-evidence to select only the information that allowed him to manipulate the outcome towards his bias in favour of the defendants.

Justice Shaughnessy also selectively ignored information and evidence that countered or discredited his "cherry picks" or that would make it difficult for him to manipulate the outcome in favour of the defendants. This included Justice Shaughnessy ignoring and covering up evidence of the defendants and their legal team committing violations of the Criminal Code and other laws and protocols when that evidence of violations is clearly contained in sworn affidavits submitted on behalf of the defendants. One example of this is the October 21, 2009 affidavit of Jim Van Allen (**Attachment #11**). I also understand that the Kwidzinski affidavits also contain and published Identity Information to the public. I do not currently have a copy of the Kwidzinski affidavits, but the CJC can and should obtain copies from the court records.

Justice Shaughnessy selectively ignored these violations of the Criminal Code and other laws after I informed him of these violations in writing. It was not a situation of Justice Shaughnessy failing to notice the violations. He deliberately ignored and covered up the violations of law because of his bias.

Justice Shaughnessy's biased selecting, ignoring and manipulation of information was especially the case in the matter of the "evidence" that Justice Shaughnessy relied upon and quoted when he convicted me of Contempt of Court, sentenced me to 90 days in jail and issued a committal warrant for my arrest.

Justice Shaughnessy ignored laws and protocols and worked together with the defendants and their lawyers to engineer a situation where I could be declared in contempt.

Backdating of Court Order

I know that Justice Shaughnessy improperly backdated the "November 2nd" court order to assist the defendants and their lawyers by manipulating the process and court records to set me up for contempt. Justice Shaughnessy did this because he was biased against my lawyer, my company, my witnesses, our family members and me.

On November 16, 2009, Trial Coordinator Jackie Travis told me that an order requested by Mr. Ranking eventually came out of the November 2, 2009 court date and that it wasn't until Friday November 13, 2010 that Mr. Ranking finished passing it back and forth between the lawyers to create and modify the wording and what it ordered and delivered it to Justice Shaughessy for signing.

Because of what Jackie Travis told me, I strongly believe that whatever "order" Justice Shaughnessy promised to make during the November 2, 2009 court date, it was not the same order that he signed on November 13, 2009. It was different and the lawyers changed it to what he signed on November 13th, so Justice Shaughnessy should not have dated it November 2nd as he knew it was not the same order that he saw or ordered on the 2nd.

This indicates that whatever Justice Shaughnessy did on November 2, 2009, he did not make an order because the wording that he signed was not created until Friday, November 13, 2009. If the judge did make an order on November 2, 2009, then he was amending the order on November 13, 2009, but that was not the procedure that was followed.

Ms. Travis also informed me that the signed order was sent out on Friday, November 13, 2009 to Mr. Ranking via courier and that the signed order was not sent out to anyone else by the Court, including to Nelson Barbados or me.

Consider that the moment that Justice Shaughessy signed the order on November 13, 2009 the order put me already in contempt because I had not delivered documents to the defense by November 10th as required by the order. November 10th was three days before the order was created by Mr. Ranking and the other lawyers and signed by Justice Shaughnessy.

I don't understand how I can be found in contempt of the November "2nd" order to produce documents to the defense before November 10th, when the order wasn't even created or signed by Justice Shaughnessy until November 13th, and I had no knowledge of the order until November 16th, when Ms. Travis informed me verbally about it, although I still did not know about the contents of the order in detail.
Consider that at the moment the order was signed by Justice Shaughnessy, it was too late to deliver it to me in time for the Tuesday, November 17, 2009 questions at Victory Verbatim, even if I had been standing there to receive it as Justice Shaughnessy's order said four (clear) days. Justice Shaughnessy knew that when he signed the order. Justice Shaughnessy knew that Mr. Ranking had not delivered the

order to him in time for it to be signed and delivered to my company four days before the November 17, 2009 examination as Justice Shaughnessy's own order required. Justice Shaughnessy therefore backdated the order to November 2, 2009 for the convenience of Mr. Ranking and to circumvent the established laws and court procedures.

Justice Shaughnessy didn't care about the rules or his backdating of a court order as part of a trumped up scheme to engineer my "contempt" through manipulation of the court procedures and records and by intimidating, threatening and committing criminal offenses against my family and me.

I understand that Mr. Ranking sent out a faxed copy of the signed order on Monday November 16, 2009 after 6pm to all the other lawyers, which tends to prove what the trial coordinator told me that the signed order wasn't sent out to Ranking until Friday, November 13th via courier after being signed by the judge. Ranking never had the signed Judge's order in his hand until Monday, November 16th, the day before I was to be examined.

In his November 16, 2009 fax sent after 6pm, Mr. Ranking states that he is "Taking steps to have the Order issued and entered in Barrie, Ontario." Therefore the signed order had not been properly issued and entered into the official court files at the time the fax was sent.

Jackie Travis told me that the signed order was sent to Mr. Ranking via courier, so where are the records as to when the order was sent and when it was received? This is vital because it also proves that Justice Shaughnessy knew, or should have known, that I could not have possibly received a copy of the order, and could not possibly have told Mr. Ranking and Mr. Silver that I did receive a copy of the order as they falsely claimed and told the Court. Justice Shaughnessy knew or should have known just by the date that he signed the order that Mr. Silver and Mr. Ranking were lying to him.

Justice Shaughnessy knew or should have known that Mr. Ranking and Mr. Silver also lied to the other lawyers present about what had transpired prior to them entering the room.

I believe that Justice Shaughnessy knew that Mr. Ranking and Mr. Silver were lying to the court, and that the other lawyers remained silent even though they should have spoken up. Justice Shaughnessy is thus complicit in Obstructing Justice and Fabricating Evidence contrary to the Criminal Code. I believe that your investigations will confirm this.

As attachments to this complaint, I include my December 1, 2009 letter to Justice Shaughnessy (**Attachment #3**) and my December 1, 2009 letter to Mr. Ranking (**Attachment #12**). I also include the November 18, 2009 letter from Gerald Ranking to me, Donald Best (**Attachment #13**) and the Victory Verbatim fabricated evidence memo dated November 17, 2009. (**Attachment #14**).

It is important to remember that on December 1, 2009 I faxed a copy of the following to Justice Shaughnessy and that he covered up the evidence and allegations of criminal and other offenses:

December 1, 2009 letter to Justice Shaughnessy (**Attachment #3**)

December 1, 2009 letter to Mr. Ranking (**Attachment #12**).

November 17, 2009 Victory Verbatim fabricated evidence memo (**Attachment #14**).

October 30, 2009 Barbados Underground article "The Shady, Secretive World Of Peter Andrew Allard And The Graeme Hall Nature Sanctuary: Does Barbados Need Any Of It?" (**Attachment #2**)

I also copied my letters to the defense lawyers.

This event is important because when the defense lawyers deliberately, falsely told Justice Shaughnessy that I said to them in our conversation that I received a copy of Justice Shaughnessy's order, they committed the offenses of Obstructing Justice contrary to the Criminal Code, Section 139(2) and Section 137 Fabricating Evidence.

The lawyers succeeded in Obstructing Justice because Justice Shaughnessy acknowledges in his January 15, 2010 Reasons On Motion for Contempt that he accepted Mr. Ranking's account and also that the account is not disputed by counsel who were present with Mr. Ranking. Justice Shaughnessy accepted their false statements and fabricated evidence.

I believe that Justice Shaughnessy knowingly accepted their false statements and fabricated evidence. This makes him a party and a co-conspirator to the Criminal offenses.

The CJC will initially view the above paragraph as outrageous, but I urge you to look at the facts and the evidence dispassionately. When you examine the evidence in this manner you will be as shocked as I was, and as I remain.

Your investigation should also look at what was said in court as I believe a transcript will provide further evidence that Mr. Ranking and Mr. Silver gave Justice Shaughnessy further false information and that Justice Shaughnessy made no investigations or inquiries about my written complaints to him and Mr. Ranking about criminal and other offences committed by the defendants and their lawyers.

Justice Shaughnessy knew they were lying and he became complicit and did everything he could to cover up and to facilitate this Obstruction of Justice and Fabrication of Evidence.

The defendants' lawyers talking in court is not evidence. The defendants' lawyers making a memo about their memories is not evidence. It is not a "transcript". Especially after my written allegations the judge should have demanded a sworn affidavit from the lawyers about their conversation with me and my alleged "confession" that I received a copy of the judge's order.

Justice Shaughnessy knowingly accepted the false information because he was biased. Justice Shaughnessy was willing to overlook multiple Criminal offences committed by the defendants and their lawyers as detailed in my letters. Justice Shaughnessy covered up.

History of threats and intimidation. Judges misconduct in this area.

When investigating my complaint it is important that you fully examine the long history of threats, intimidation and crimes committed against persons on my side of

the case because then you will fully understand the magnitude, extent and duration of Justice Shaughnessy's continuing misconduct in this area.

I previously spoke about creating a timeline and this is foundational to a proper investigation by the Canadian Judicial Council. I demand that the CJC creates a comprehensive and complete timeline for the Nelson Barbados case.

Your investigations will show what Justice Shaughnessy knew about the threats, intimidation and harassment, when he knew, and what his response was to each incident and the escalating situation over the course of the period the case was before him.

Your investigations will show that the threats and harassment of witnesses in my case goes back over 20 years and that Justice Shaughnessy knew of this and in great detail.

Your investigations will show Justice Shaughnessy ignoring, whitewashing, excusing, then facilitating and finally participating in what can only be described as an ongoing campaign of threats, intimidation and crimes committed against persons on my side of the case.

When I first became involved with the dispute over what is commonly called "the Kingsland matter" I had no idea of what I was facing. I knew that the dispute was generally over an estate originating in Barbados that, according to some, was worth between five hundred million to a billion US dollars.

I did not fully appreciate what other persons associated with my side of the case had been experiencing for years before my involvement. I did not fully understand the seriousness of the threats, harassment and criminal actions emanating from the other side. I did not understand how frequently incidents of intimidation happen in Barbados, not only in litigation but also in other areas such as business, employment, politics and in relation to the news media.

There is a cultural and historical layer to this case that is relevant because it explains the motivations and history of the people on the other side of this case who use threats, intimidation and criminal acts as part of their legal strategy. There is similar fact evidence showing that in other cases, unrelated to mine, litigants against some of the same defendants in my case were also targeted with threats, harassment, arson and violence. Justice Shaughnessy knew this, as did the opposing lawyers.

One of the opposing law firms had even acted in the past for one of my witnesses, Mr. Nitin Amersey, and knew of arson, threats and intimidation directed against his family. Justice Shaughnessy was aware of this too, yet he covered up the evidence by sealing it so that a defendant, Barbados Chief Justice David Simmons, would not be embarrassed by the revelation.

Once again, the purpose for the Canadian Judicial Council investigators to become fully aware of the history and nature of the threats etc. is so you will know what Justice Shaughnessy knew and when he knew it, because then you will fully understand the magnitude, extent and duration of Justice Shaughnessy's continuing misconduct in this area.

Law Firms involved in threats, harassment, intimidation and law breaking.

What I did not sufficiently realize was how the large amount at stake (assets worth up to a billion US dollars) could cause law firms in Toronto, Canada and elsewhere to

participate in a campaign of unethical and illegal activity directed at witnesses and involved persons associated with my side of the case.

Your investigation will reveal that several law firms on the other side of the case have been directly involved in threats, harassment and other illegal activities, including breaches of the Criminal Code against persons on my side of the case, and that Justice Shaughnessy knew this.

I recount some of those activities throughout my complaint, along with evidence substantiating the allegations, and proving that Justice Shaughnessy was aware of all this, but took no action except whitewashing, cover-up and finally participating in the intimidation and breaches of the Criminal Code himself.

Some of my witnesses living in Barbados and Florida have been receiving anonymous threats and harassment via emails and over the internet since at least 2003 to my knowledge. Another witness, Nitin Amersey, and members of his family received threats, violence (including an arson attack at the family home) and harassment and intimidation for over 20 years that continues to this day. Justice Shaughnessy knew this.

It is acknowledged, well documented and proven that from 2004 onward, and continuing to 2010, some of these threats were sent from the Miller Thomson LLP law firm in Toronto, Canada. (Refer to **Attachment #4, Attachment #5** and **Attachment #29**)

Why didn't the judge look into this? Why didn't the judge do something about this? Justice Shaughnessy did nothing because he was initially biased, and then went on to be an active participant in the campaign to terrorize persons on my side of the case. He even violated the Criminal Code to do so.

More threats, harassment and criminal acts against persons on my side of the case.

Incidents of threats, harassment and other criminal activities were in evidence before the court. Justice Shaughnessy ignored evidence just like when he ignored criminal harassment and threats directed at my family and the criminal publication of my Identity Information on the internet on October 30, 2009.

Attached to my complaint as **Attachment #30** is an affidavit of Stuart Heaslet, sworn September 12, 2007 in Hollywood, Florida, USA.

Stuart Heaslet's affidavit recounts his background and how he came to work in Barbados with Peter Simmons, the former High Commissioner for Barbados in London, England in promoting a National Park in the Graeme Hall area of Barbados.

Peter Simmons is the brother of Chief Justice Sir David Simmons, who was a defendant on the other side of my case.

Mr. Heaslet was not involved in any way with my lawsuit or other lawsuits concerning Kingsland. He recounts receiving threats and intimidation in the following circumstances:

- In a meeting with Mr. Heaslet on or about March 14, 2007, Chief Justice Sir David Simmons threatened that unless my lawsuit was discontinued the Graeme Hall National Park initiative would be unsuccessful.

- In early August, 2007, Peter Simmons phoned Mr. Heaslet and stated that some of the other defendants in my case were pressuring him.
- Peter Simmons said that the employment of my witness, Professor John Knox, would be terminated if he continued to testify for me. Peter Simmons stated that some of the defendants would be influencing the President of the University of the West Indies to terminate Professor Knox.
- In a subsequent phone calls on August 10 and 13, 2007, Peter Simmons restated that Professor Knox would lose his job if he continued to testify in my case.
- Peter Simmons also told Mr. Heaslet that my lawyer, William McKenzie, "was in danger" and that he should "watch his back" as people in Barbados were angry with him about my lawsuit.
- In a series of phone calls, Peter Simmons explained more than once that his intent was that the message for my lawyer to "watch his back" should be relayed to Mr. McKenzie. That use of a third party to relay a threat leaves no doubt that Peter Simmons' actions were a violation of the Criminal Code.
- Peter Simmons told Mr. Heaslet, "McKenzie has to be very careful when he walks the streets of this country." (Barbados)
- The seriousness of the threat against Mr. McKenzie is evident because Mr. Heaslet was concerned if he would be safe in Barbados and he asked Peter Simmons if he should be concerned about his physical safety too when he came to Barbados. Peter Simmons answered, "No, you're okay." The meaning is that Mr. McKenzie was "not okay".

There is no doubt in my mind what Justice Shaughnessy's response would have been had the circumstances been reversed, and that I had called up a third party and asked that a message be relayed that a defendant witness should cease testifying or he would lose his job.

There is no doubt in my mind what would have happened to me if I called up a third party and asked that a message be relayed to one of the lawyers on the opposite side of the case that the lawyer "must watch his back" and that people in my town are "extraordinarily angry" with the lawyer.

Can you imagine what would happen if I called a friend of lawyers Andrew Roman, Gerald Ranking, Lorne Silver or Paul Schabas and said "Tell Gerald Ranking to watch his back" and that the lawyer "has to be very careful when he walks the streets" in my town?

Had I done that, I wouldn't have seen the outside of a jail cell for months, yet Justice Shaughnessy gave a pass to this and other criminal activity by the defendants because he was biased in favour of the defendants and their lawyers.

On or about November 12, 2007 one of my witnesses, John Knox, swore an affidavit that I include as **Attachment #15**. Justice Shaughnessy would be familiar with the contents of this affidavit, and the incidents recounted in it which include:

- Mr. Knox traveled to Miami, Florida to swear the affidavit because of threats made against my lawyer, William McKenzie, which made Mr. McKenzie fearful of traveling to Barbados.
- There were threats made against my witness, John Knox, that if he continued to testify in the case, he would lose his employment as a professor at the Cave Hill campus of the University of the West Indies.
- In fact, the threat was carried out as Mr. Knox's employment with the University was not renewed, and the committee that did not renew his employment included one of the defendants: Leonard Nurse.
- Mr. Knox states "I have lived in Barbados all my life and I have no doubt that some of the Defendants in this case, many of whom are public officials, have the means to make my life very unpleasant if they choose to do so."
- Mr. Knox's sister, Kathleen Davis, is also a witness. Mrs. Davis is a naturalized American citizen living in Miami and she is frightened to travel to Barbados due to the history of threats.

This November 12, 2007 affidavit of Mr. Knox also provides background on the litigation that might be of assistance to the Canadian Judicial Council in understanding current events. To put Mr. Knox's and his family members' fears in perspective, their home country of Barbados is a small island 21 miles long and 14 miles wide, and as indicated in the affidavit, the Chief Justice of Barbados, Sir David Simmons (who was a defendant in my matter), apparently saw nothing wrong with himself sitting as a Judge on a matter in Barbados in which he was an involved party. Justice Shaughnessy would have been aware of this.

In another instance documented in Mr. Knox's affidavit, Chief Justice David Simmons delivered the judgment on a case where he had previously acted as counsel for one of the involved parties. Justice Shaughnessy would have been aware of this.

Mr. Knox's fears about the power of some of the defendants who are Barbados public officials is further substantiated by his evidence that portions of his family's land were expropriated ostensibly for government purposes, but subsequently ended up in the hands of a private company. In fact, it is my understanding that after expropriation, some of his family's land ended up being occupied by a Minster of the Barbados Government!

Justice Shaughnessy would have been aware of this and should have been concerned as any normal person would be to read all the material, but he was biased so he didn't care.

OBN Security and Investigative Consultants

Due to the threats against my lawyer Mr. McKenzie and other persons on my side of the case, I attended at OBN Security and Investigative Consultants in Toronto, Ontario late in 2007 and spoke with their personnel. OBN professionals performed some risk assessments about Barbados and produced reports that were filed with the court. I do not currently have a copy of these reports with me. When you freeze the court files and copy them you should obtain these assessments and consider why Justice Shaughnessy covered up and disregarded the reports as he did with all evidence about the ongoing campaign by the defendants and their lawyers to terrorize persons on my side of the case.

I recall that one of the OBN security professionals who was most familiar with Barbados informed me that Barbados had a homicide rate of approximately four times that of Canada. He also told me that in Barbados and the region that murder can be contracted for the price of the handgun and that illegal guns and shootings are common on Barbados island.

If the CJC investigators are not already familiar with the high rate of violence and gun crime in Barbados and throughout the Caribbean, a few minutes of research or reading about Barbados would confirm the OBN statements.

I mention in other sections that the CJC investigators should be aware that there are cultural layers to this case that may not be immediately apparent to the uninitiated, and that Justice Shaughnessy deliberately discounted this evidence because of his bias.

Nitin Amersey

Earlier in my compliant I wrote of how Justice Shaughnessy covered up the January 10, 2008 Sworn Testimony of my witness Nitin Amersey. (**See Attachment #7**) At one point I traveled to Michigan and met with Mr. Amersey who told me of how persons in Barbados targeted his family members for the sole reason that Mr. Amersey was involved in a lawsuit with the government of Barbados. He told me of how some of the Nelson Barbados defendants threatened his family and him in Barbados and in Canada.

Mr. Amersey told me of how his family was terrorized during an organized campaign designed to have him abandon his litigation against the government of Barbados. He told me of how other persons were also targeted and had to leave the island, and of the terror he and his family experienced when their Barbados home was firebombed.

After considering what happened to the Amersey family, the family members of my other witnesses, my lawyer and his family and my own family, I strongly believe that some of the defendants (including powerful persons in government and positions of authority in Barbados) and their legal firms and lawyers habitually employ threats, harassment and other criminal acts as a strategy when involved in lawsuits. Further there is strong evidence that these defendants and their lawyers target the family members of opposing litigants, and that they have done so for many years and not just in the Nelson Barbados case.

The Canadian Judicial Council investigators will see evidence of this strategy by the defendants, and must ask themselves why Justice Shaughnessy went to such lengths to quash, ignore, seal and discount this evidence.

Justice Shaughnessy is highly aware of the issues, rules and laws pertaining to Identity Information, Identity theft, Identity fraud and the Protection of Privacy.

Justice Shaughnessy is an experienced, senior judge who was until recently responsible for the supervision and training of many other judges.

He is a highly educated, highly trained senior member of the Canadian Judiciary who is fully immersed in the law and is regularly updated and educated about the laws of Canada by a Judicial and legal system that is probably the finest in the world. Justice Shaughnessy lectures and speaks publicly about the law. He frequently participates in professional training, seminars and discussions.

Justice Shaughnessy may recall attending the Ontario Bar Association Justice Stakeholder Summit in June 2007 where The Hon. Rob Nicholson, Minister of Justice, Attorney General of Canada said during the opening speech:

"We get people who report to us and you've heard it as well: People in whole areas what we call identity theft. I don't have to tell you, that if somebody steals your credit card and uses it, that is a crime. If you forge a credit card, that's a crime. But there is a whole new business out there. And these are people are collecting your personal information. And we have to close those gaps so we get at those individuals who are doing that collecting that information and passing that on to others who are in the business of committing crimes."

Justice Shaughnessy is highly aware of the issues, rules and laws pertaining to Identity Information, Identity theft, Identity fraud and the Protection of Privacy, and has even been quoted in the press making suggestions and comments regarding new legislation and procedures concerning Identity Theft and Identity Fraud.

He is also highly aware of how the laws, rules and protocols of evidence and other court procedures have developed in response to concerns about new technologies, including the internet and computerized data, images and documents.

This awareness of the issues, rules and laws pertaining to Identity Information, Identity theft, Identity fraud and the Protection of Privacy also applies to the opposing lawyers who represented the defendants in the case.

Justice Shaughnessy violated the laws, rules and protocols as an individual, and as part of a group.

Although Justice Shaughnessy's actions and decisions were his own, the fact that the defendants' lawyers were also highly aware of the laws and protocols and took parallel and supporting illegal actions means that the violation of these laws and protocols by all was in effect and in reality, a joint action and a conspiracy with each person furthering the joint effort.

In a previous section of my complaint, I showed how Justice Shaughnessy is also aware of the long history of threats, intimidation and harassment against persons associated with my side of the case. I showed how Justice Shaughnessy is aware that the opposing side illegally accessed my identity information and posted it on the internet on October 30, 2009 with calls for criminals and rogue police officers to find me and my family members.

Justice Shaughnessy is also aware that I complained to him about this issue, and expressed my fears about identity theft, and that my Identity Information (as defined by the Criminal Code) was illegally obtained, widely distributed and posted online as a method of harassment and intimidation. (See **Attachment #3** and included materials.)

Justice Shaughnessy chose to do nothing about my written complaint to him, and he ignored my concern about identity theft, but he was well aware of it.

Notwithstanding all this knowledge, in the months following my written complaint to him, Justice Shaughnessy then actively participated in further reckless distribution of additional Identity Information, including my Identity Information, Identity Information of my family members and acquaintances and also the Identity Information of other people.

Some of the persons whose Identity Information was recklessly distributed by Justice Shaughnessy and the opposing lawyers have nothing to do with this case.

Justice Shaughnessy's knowledge, training, education, professional experience, and statements he personally made about Identity Information, Identity theft, Identity fraud and the Protection of Privacy and the issues, rules and laws pertaining to these subjects prove beyond a reasonable doubt that his misconduct in this area was deliberate.

Further, given the history of intimidation, threats and harassment against persons on my side of the case, and how Justice Shaughnessy allowed this activity to continue, I believe his intent in releasing and distributing my, and other persons', Identity Information was punitive and malicious and intended to threaten and intimidate me and other persons involved in the court process. Given the history of the case and his extensive knowledge of identity theft issues, there is no doubt that Justice Shaughnessy's actions were reckless by any standard, and were "reckless" as prohibited by the Criminal Code sections dealing with Identity Information.

When Justice Shaughnessy sanctioned and participated in the reckless distribution of Identity Information it was not an accident. It was not carelessness. It was not for lack of knowledge or training. It was not simple neglect.

Justice Shaughnessy's actions were deliberate, punitive, malicious and reckless. His actions were also Criminal.

In this section of my complaint, I provide evidence that Justice Shaughnessy is highly aware of the issues, rules and laws pertaining to Identity Information, Identity theft, Identity fraud and the Protection of Privacy.

A basic internet search shows that there are hundreds if not thousands of online articles, documents, news articles and records of seminars and conferences about the Canadian legal system's concern with Identity Information, Identity Theft and related subjects.

These issues have been the subject of intense discussion and a priority in the training and education of Canadian Judges and the legal community for at least a decade if not longer. There have also been many laws, regulations and protocols created in the past decade pertaining to Identity Information, Identity theft, Identity fraud and the Protection of Privacy.

Justice Shaughnessy is well aware of the laws as he was quoted in the press in 2006 as calling for new laws to deal with these issues.

Justice Shaughnessy is well aware of all of the following:

I will start by referring to a Recommended Protocol for Judges published by the Canadian Judicial Council: *"Use of Personal Information in Judgments and Recommended Protocol"*.

The Canadian Judicial Council's investigation will also show that besides his wholesale violation of Section 402.2(2) of the Criminal Code, Justice Shaughnessy also included my Identity Information in at least one, and perhaps more, of his written decisions in the Nelson Barbados case, contrary to various laws and protocols.

Source: Canadian Judicial Council

Item: March 2005, "Use of Personal Information in Judgments and Recommended Protocol"

In March, 2005, the Canadian Judicial Council approved a recommended protocol created by the Judges' Technology Advisory Committee. The published report is called "Use of Personal Information in Judgments and Recommended Protocol" and is included with my complaint as **"Attachment #16"**.

This report and recommended protocol by the Canadian Judicial Council strongly warns Judges about releasing *"Personal Data Identifiers"* including date of birth, bank account numbers, credit card numbers, licence or serial numbers and other like information:

"This type of information is susceptible to misuse and, when connected with a person's name, could be used to perpetrate identity theft especially if such information is easily accessible over the internet. Individuals have the right to the privacy of this information and to be protected against identity theft."

The protocol recommends, *"omitting personal data identifiers which by their very nature are fundamental to an individual's right to privacy."*

The protocol also recommends, *"omitting other personal information to prevent the identification of parties where the circumstances are such that the dissemination of this information over the internet could harm innocent persons or subvert the course of justice."*

Two of the stated objectives of the protocol are: *"1) ensuring full compliance with the law;"* and *"3) protecting the privacy of justice system participants where appropriate;"*

The following quotes are taken from the report.

> *"Recommended Protocol for the Use of Personal Information in Judgments*
>
> *II. Objectives of the Protocol*
>
> *There are four objectives which must be taken into account when determining what information should be included or omitted from reasons for judgment:*
>
> *1) ensuring full compliance with the law;*
>
> *2) fostering an open and accountable judicial system;*
>
> *3) protecting the privacy of justice system participants where appropriate; and*
>
> *4) maintaining the readability of reasons for judgment."*
>
> *(Part of Section II, [19])*
>
> *III. Levels of Protection*
>
> *[21] The protocol addresses the following three levels of protection:*
>
> *A. Personal Data Identifiers: omitting personal data identifiers which by their very nature are fundamental to an individual's right to privacy;*
>
> *B. Legal Prohibitions on Publication: omitting information which, if published, could disclose the identity of certain participants in the judicial*

proceeding in violation of a statutory or common law restriction on publication; and

C. Discretionary Protection of Privacy Rights: omitting other personal information to prevent the identification of parties where the circumstances are such that the dissemination of this information over the internet could harm innocent persons or subvert the course of justice.

A. Personal Data Identifiers

[22] The first level of protection to be considered relates to information, other than a person's name, which serves as part of an individual's legal identity. This type of information is typically referred to as personal data identifiers and includes:

- day and month of birth;
- social insurance numbers;
- credit card numbers; and
- financial account numbers (banks, investments etc.).

[23] This type of information is susceptible to misuse and, when connected with a person's name, could be used to perpetrate identity theft especially if such information is easily accessible over the internet. Individuals have the right to the privacy of this information and to be protected against identity theft. Except in cases where identification is an issue, there is rarely any reason to include this type of information in a decision. As such, this type of information should generally be omitted from all reasons for judgment. If it is necessary to include a personal data identifier, consideration should be given to removing some of the information to obscure the full identifier."

Source: Canadian Judicial Council

Item: September 2005, "Model Policy for Access to Court Records in Canada"

(See **Attachment #17**)

Part of the Canadian Judicial Council's September 2005, "Model Policy for Access to Court Records in Canada" states:

"2.1 Inclusion of Personal Information
Rules that govern the filing of documents in the court record shall prohibit the inclusion of unnecessary personal data identifiers and other personal information in the court record. Such information shall be included only when required for the disposition of the case and, when possible, only at the moment this information needs to be part of the court record.

2.2 Responsibilities of the Parties
When the parties prepare pleadings, indictments and other documents that are intended to be part of the case file, they are responsible for limiting the disclosure of personal data identifiers and other personal information to what is necessary for the disposition of the case.

2.3 Responsibilities of the Judiciary
When judges and judicial officers draft their judgments and, more generally, when court staff prepare documents intended to be part of the case file, they are responsible for avoiding the disclosure of personal data identifiers and limiting the disclosure of personal information to what is necessary and relevant for the purposes of the document."

Source: The Supreme Court of Canada

Item: "Policy for Access to Supreme Court of Canada Court Records" (Attachment #18)

Item: February 2009 Supreme Court of Canada, "Press Release" (Attachment #19)

Item: Supreme Court of Canada "Guidelines for Printed and Electronic Versions of Appeal Documents" (Attachment #20)

The Supreme Court of Canada is highly concerned with the abuse and unauthorized use of court records and legal documents and is highly concerned about the posting of Identity Information and other personal information onto the internet by the court itself and others.

The Office of the Registrar of the Supreme Court of Canada announced in a Notice to the Profession that its Policy for Access to Supreme Court of Canada Court Records took effect on February 9, 2009, although the changes had been discussed for some time within the profession.

The **press release** by the Supreme Court stated in part:

> *"If an appeal factum contains personal information that should not be made widely available over the Internet (for example, an individual's home address, social insurance number or bank account number), the lawyer preparing the factum will be required to provide an electronic version of a factum that omits such information. Similarly, as set out in the Guidelines for Printed and Electronic Versions of Appeal Documents, information that is subject to a publication ban will have to be redacted. The redacted version of the factum will be posted on the website, unless the factum contains sensitive information that may not be suitable for posting."*

The **"Guidelines for Printed and Electronic Versions of Appeal Documents"** states in part:

"Sensitive Information and Redacted Versions

If any of your appeal documents

- *include or reveal information that is subject to a sealing order,*
- *include information that is subject to limitations on public access (this restriction is usually imposed by federal or provincial legislation; it might apply, for example, in a case involving adoption or children in need of protection), or*
- *include information classified as confidential (information which when disclosed, could cause injury to the national interest; for example, in a case involving terrorism),*

Contact Joanne Laniel, Manager, Registry Branch, at 613-996-7810, regarding specific requirements for the preparation of redacted printed and electronic versions."

Further, the **"Guidelines for Printed and Electronic Versions of Appeal Documents"** also states in part:

*"**Requirements Related to the Posting of Factums***

You must provide an electronic version of a factum that is suitable for posting on the SCC website. The following information should be omitted:

- information subject to a publication ban, and

- personal data identifiers or personal information that, if combined with the individual's name and made widely accessible to the public, could pose a serious threat to the individual's personal security.*

** The following are some examples of personal data identifiers or personal information that could pose a threat to an individual's personal security (as a result, for example, of identity theft, stalking or harassment):*

- names of individuals together with their addresses, social insurance numbers,

- account numbers for bank accounts, lines of credit, credit cards or other assets and corresponding PINs, and

- medical records."

The **Policy for Access to Supreme Court of Canada Court Records** states in part:

"4.8 Personal Data Identifiers

Personal data identifiers include elements of personal information that, when combined together or combined with the name of an individual, would enable the direct identification of the individual and pose a serious threat to the individual's personal security.

4.9 Personal Information

Personal information is information about an identifiable individual, including:
- information relating to the age of the individual, including day and month of birth;
- any identifying number (including telephone, social insurance or financial), address (including civic, postal, e-mail), symbol or other particular assigned to the individual;
- information relating to unique physical characteristics of the individual, including bio-metrical information such as fingerprints."

And:

4.11 Sensitive Case Files

Sensitive case files are case files that contain information that falls under one or more of the following categories:
- information subject to a publication ban;

- information subject to limitations on public access;
- information subject to a sealing order;
- information classified as confidential (dealing with issues of national security such as terrorist matters).

The Canadian Judicial Council should take note that Identity Information as defined in the Criminal Code is subject to limitations on public access.

Further, **The Policy for Access to Supreme Court of Canada Court Records** also states in part:

"5. Creation of Court Records 5.1 Inclusion of Personal Information

Personal information, including personal data identifiers, shall not be included in a court record unless it is required for the disposition of the case."

Further, **The Policy for Access to Supreme Court of Canada Court Records** also states in part:

"5.2 Responsibilities of the Parties

1. When the parties prepare any document or court record that is intended to be part of a case file, they are responsible for:

a. advising the Court if the document or court record is subject to a publication ban, sealing order, or contains information classified as confidential, in accordance with the requirements of the Rules of the Supreme Court of Canada, SOR/2002-156;

b. limiting the disclosure of personal data identifiers and personal information to what is necessary for the disposition of the case; and

c. advising the Court whether the document or court record includes personal data identifiers and personal information that, if combined with the individual's name and made widely accessible to the public (e.g., posted on the internet) could pose a serious threat to the individual's personal security (e.g., identity theft, stalking and harassment).

2. When required by the Rules or a Notice to the Profession, or when requested by the Registrar, parties must file a redacted version of a document or court record that omits:

a. information subject to a publication ban
b. information subject to a sealing order
c. information classified as confidential
d. personal data identifiers and personal information that, if combined with the individual's name and made widely accessible to the public, could pose a serious threat to the individual's personal security.

3. Where a redacted version of the document or court record is filed, the Court may determine that members of the public may only have access to the redacted

version of the document or court record. Such a determination will be made at the discretion of the Registrar, who will advise whether the restriction of access to the redacted version of the document or court record applies to remote access, on-site access or both.

5.3 Responsibilities of Court staff

When court staff prepare documents intended to be part of the case file, they are responsible for avoiding the disclosure of personal data identifiers, if appropriate and possible, and limiting the disclosure of personal information to what is necessary and relevant for the purposes of the document."

Further, **The Policy for Access to Supreme Court of Canada Court Records** also states in part:

"9. Policy Dissemination
The Court shall inform the public and participants to the judicial system of the extent to which court records are made available to the public, and of the measures that are taken pursuant to this policy to protect their personal information."

Source: Law Society of Upper Canada

Tribunals Committee: Report To Convocation June 28, 2007

Protection of Identifying Information in Law Society Proceedings: Amendment to Rule 3.06(1) of the Rules of Practice and Procedure

Practice Direction: Protection of Identifying Information in Law Society Proceedings

Included in my complaint as **Attachment #21**

This LSUC report explores same issues as Canadian Judicial Council's "Use of Personal Information in Judgments and Recommended Protocol" as they apply to LSUC Tribunals and includes the CJC report as an appendix. It relates how some Judges have addressed the problem of dealing with large numbers of documents by not redacting the information but by issuing restrictions on the access and publication of court records, exhibits, transcripts etc that prohibit revealing information the court deems "protected". This LSUC report includes some case law references.

Justice Shaughnessy could have at a minimum issued such a restriction on communicating "Identity Information" as defined in the Criminal Code Section 402.1, but he was complicit in wholesale violations of the Criminal Code and other laws, protocols and policies, so the public domain release of sensitive personal information, personal identifiers and Identity Information was the least of Justice Shaughnessy's concerns. In fact it was his intent to damage persons on my side of the case through the deliberate release of this information.

The following is quoted from the LSUC report:

*"**Requirement not to reveal protected information***

In this approach Rule 3.06(1) of the Rules of Practice and Procedure would be

amended to delete the words "or otherwise made public" so that it would read,

A tribunal may order that information disclosed in the course of a proceeding open to the public is not to be published by any person...

Panel orders would indicate that the affected persons' names and identifying information "shall not be published or broadcast." This would permit the public or media to examine the file documents, but prohibit them from "publishing" or communicating the information to anyone else. A clear warning would be placed on the file to alert those reviewing the documents of the prohibition."

"Overall, however, this approach reflects that observed by the courts. The media, which is the largest source of requests for information, is familiar with the process and understands the consequences of breach. The warning provided to anyone who is granted permission to examine protected documents would set out the terms on which the access is provided."

Further, the following warning and direction about Identity Theft is quoted from page 23 of the LSUC report:

"As a matter of course, panels should not provide more personal information on any person than is necessary for clarity and cohesion in reasons for decision. Personal privacy can and should be respected to the degree possible within the nature of the proceedings before a panel. In addition, there is a risk that the inclusion of too much personal and financial information could expose individuals to identity theft or other risks, such as mortgage fraud.

Whether persons are named in a decision or there is a non-publication order the following information should never be included in decisions, orders or reasons unless specifically relevant to the decision:

a. Date and month of birth.
b. Social insurance information.
c. Credit card numbers.
d. Financial account numbers.
e. Home and business addresses.
f. Family members or acquaintance information."

Source: Toronto Star Newspaper

Article: "ID thief stole home — from his mom"

Published Friday, October 20, 2006

Included in my complaint as **Attachment #22**

This newspaper article reports the case of Frank Basso, an identity thief who accessed personal documents and committed mortgage fraud. Justice Shaughnessy heard his case and is therefore aware of mortgage fraud and identity theft issues.

Further, in the Toronto Star article Justice Shaughnessy is quoted as asking *"whether the province had passed legislation to protect homeowners from being victimized by real property fraud"*

I would respectfully suggest that since Justice Shaughnessy made his comments in 2006 and called for the enactment of laws to protect persons from identity theft and mortgage fraud, several laws have been enacted to protect homeowners from being victimized, including the enactment of Criminal Code Sections 402 (1) (2) and 403 respecting the reckless distribution of Identity Information: a law that Justice Shaughnessy violated.

In the newspaper article Justice Shaughnessy appears concerned about potential victims of identity theft and mortgage fraud, but in the Nelson Barbados case his concern did not, and does not, extend to me or any other person associated with my side of the case.

The following is quoted from the article:

> *"Prosecutor Michael Demczur told Superior Court Justice Bryan Shaughnessy that the crime had to be taken seriously because "there are real victims here such as Rosa Basso and any homeowner who cannot rest secure in their own property."*
>
> *The case played out against a political backdrop prompted by a series of Toronto Star stories about mortgage fraud. Government Services Minister Gerry Phillips introduced the government's real property reform legislation early yesterday afternoon.*
>
> *These comments prompted Justice Shaughnessy to ask yesterday morning whether the province had passed legislation to protect homeowners from being victimized by real property fraud and to reform the compensation system."*

In the Toronto Star newspaper article Justice Shaughnessy called for new laws to protect homeowners from real property fraud caused by Identity Theft. The Federal Government answered Justice Shaughnessy's call for new laws by the creation of Section 402.2(2) of the Criminal Code. Justice Shaughnessy violated this law.

Source: Canadian Bar Association

September 2008: Information to Supplement the CODE OF PROFESSIONAL CONDUCT - Guidelines for Practising Ethically with New Information Technologies

Included in my complaint as **Attachment #23**
This is taken from the CBA guidelines:

> *"Confidential personal information should be appropriately safeguarded. Confidential personal information is more vulnerable when it is aggregated and stored in one file location and is also more at risk for identity theft. Confidential personal information should not be accessible on the Internet."*

Source: CBC News and others

October 27, 2010: The passing of Bill S-4, creating Criminal Code offenses relating to Identity Theft.

The legislation that eventually became Criminal Code Section 402 dealing with Identity Information had been in development in Canada and widely reported in the

public news media for many years. The legislation received double the normal media and legal profession coverage because it was initially announced in 2007 and almost passed through the process in Parliament, except that the minority government fell.

The legislation was then re-introduced in early 2009 and had a second cycle in the media and legal profession coverage.

The Canadian Judicial Council will be able to document the extensive discussion and coverage of this legislation and related issues in professional legal publications for over a decade.

In addition to noting the public discussion about Identity Information, Identity Theft and the related issues and new laws, the Canadian Judicial Council will undoubtedly be able to document what training and communications Justice Shaughnessy received regarding Identity Information and the new legislation. I demand that the CJC document this because it goes to Justice Shaughnessy's mens rea.

The new Criminal Code sections dealing with Identity Information were widely reported in the news media on October 27, 2009 only 3 days before my Identity Information was posted on the internet by the defendants and their lawyers with the full approval of Justice Shaughnessy.

Here is one example of the hundreds of news stories published around this time that reported the new section of the Criminal Code:

Source: CBC News

"Tough identity theft law passed"

Dated: Tuesday, October 27, 2009

Included in my complaint as **Attachment #24**

Quoted in full:

> ***Tough identity theft law passed***
>
> *CBC News*
>
> *The federal government has passed tough new legislation to give police and courts added powers to fight identity theft.*
>
> *"This legislation ... will better address identity theft and provide police with the tools they need to help stop these crimes before they are committed," Justice Minister Rob Nicholson said in a statement released Tuesday in Ottawa.*
>
> *Bill S-4 creates three new Criminal Code offences related to identity theft, including:*
>
> *Obtaining and possessing identity information with the intent to use the information deceptively, dishonestly or fraudulently in the commission of a crime.*
>
> *Trafficking in identity information, an offence that targets those who transfer or sell information to another person with knowledge of, or recklessness as to, the possible criminal use of the information.*
>
> *Unlawfully possessing or trafficking in government-issued identity documents that contain the information of another person.*

All three offences carry five-year maximum prison sentences. In addition, the legislation gives courts the power to order offenders to pay restitution to a victim of identity theft as part of their sentence.

Identity theft costs Canadian consumers, banks and credit card firms, stores and other businesses an estimated $2 billion annually, according to the Canadian Council of Better Business Bureaus.

Sources: Various

The following pages are included in my complaint as representative samples of the thousands of Canadian publications and seminars in over last ten years, dealing with Identity Information, identity theft and related issues. These are only a few of the thousands of like documents available on the internet that show these topics have been a priority in the Canadian legal and judicial communities for over a decade. Justice Shaughnessy and the defendants' lawyers who committed offenses with Justice Shaughnessy undoubtedly were and are highly aware of these types of documents. Justice Shaughnessy has undoubtedly attended many seminars and training sessions on these topics as a lawyer and as a judge.

I have printed only the first page of each document as a sample. This complaint would be many thousands of pages if I printed each document in its entirety.

Attachment #25: First pages of the following documents about Identity Information, identity theft and related issues:

- October 2007 Department of Justice Canada, Backgrounder: Identity Theft
- October 2, 2007 Department of Justice Canada, Canada's new government to tackle Identity Theft
- July 2009 LawPro Newsletter: Anatomy of a Fraud Alert
- PhoneBusters Canada, Consumer Identity Theft Kit
- June 2004 LawPro Newsletter: Fighting fraud: be wary of providing ID services
- November 22, 2007 Michael Geist: Canada's Identity Theft Bill
- June 2004 LawPro Newsletter: Fighting Fraud: Organizations Collaborate
- November 2007, Ontario Research Network for Electronic Commerce: Identity Theft.
- October 2, 2007, Office of the Privacy Commissioner of Canada: Privacy Commissioner welcomes government action on Identity Theft.
- May 11, 2009 Slaw: Warning to Ontario Lawyers – Organized Fraud Targeting You – Business Loans from Halifax or Montreal
- June 2004 LawPro Newsletter: Corporate Fraud, Identity Theft with a Difference.
- May 5, 2006 Consumer Measures Committee: Identity Theft a Consumer Issue for Business
- July 6, 2005 Ontario Ministry of Government Services: McGuinty government seeks public input on how to best prevent identity theft.
- Canada Consumer Measures Committee: Be informed about Identity Theft!
- September 23, 2009 Vancouverite: Ontario government officers issued driver's licences in false names.

- Summer 2007 LawPro Newsletter: Real Estate fraud legislation.
- 2004 LawPro Newsletter: Identity Fraud
- Industry Canada, Canada's Office of Consumer Affairs: Privacy & Identity Protection.
- July 1, 2009 LawPro Newsletter: Identity Theft and the dangers of posting personal and professional information on social networking sites.
- Canadian Bankers Association: Identity Theft
- March 5, 2008 Public Safety Canada: Identity Theft
- February 2007 Gazette: Just the facts on Identity Fraud

Jim Van Allen Affidavit and Invoices

In a previous section of my complaint, I recount Justice Shaughnessy's cover-up of my December 1, 2009 letter to the court wherein I alerted Justice Shaughnessy of criminal acts and other offenses against my family and me committed by the defendants and their lawyers, and provided Justice Shaughnessy with prima-facie proof of the same.

The "private investigator" reports of Jim Van Allen figured prominently in my December 1, 2009 letter to the court although I did not know Mr. Van Allen's name at the time. Justice Shaughnessy though was fully aware of Mr. Van Allen's name, work and affidavit, especially after the court received my letter.

There were further issues regarding Private Investigator Jim Van Allen that were known to Justice Shaughnessy but not to me at the time. These other issues and the "Van Allen Redacted Invoice Exhibits" (See **Appendix #26**) later submitted by lawyer Gerald Ranking should have, and probably did, raise red flags with Justice Shaughnessy: notwithstanding that Justice Shaughnessy chose to ignore these red flags because of his bias.

Justice Shaughnessy's failure to publicly note and address these red flags regarding the illegal activities of the private investigator provides more proof of his ongoing lack of diligence, his bias and judicial misconduct in the Nelson Barbados case.

Jim Van Allen background and Standard CV

Jim Van Allen is a retired Detective Sergeant who held a high profile position with the Ontario Provincial Police Behavioural Sciences Unit for many years. Justice Shaughnessy probably already knew about Van Allen and his work prior to the Nelson Barbados case. Jim Van Allen may have even testified in previous cases before Justice Shaughnessy, either personally or by affidavit.

During his time with the OPP Behavioural Sciences Unit and since then, Mr. Van Allen appeared extensively in the print and broadcast news media relating to his work with high profile cases such as serial killer Paul Bernardo, the Abortion Doctor Sniper, the Holly Jones homicide, the Cecelia Zhang abduction and homicide, the Lisa Posluns' homicide, the Ianiero family murders in Mexico and many more similar cases in North America, Europe and Australia.

Mr. Van Allen is an OPP and FBI trained, internationally recognized expert in the matter of stalking, threats, threat assessments, workplace and family violence, and threats against public figures and politicians. His standard CV states that he has testified at all levels of the Ontario Court of Justice about stalking, workplace violence and similar crimes. The contents of Mr. Van Allen's "standard CV", and his

expertise regarding threats, intimidation, stalking, harassment and targeted violence and the impact upon victims of such crimes are significant in the Nelson Barbados case, as I explain below. (**Attachment #27** Van Allen standard CV as found on the internet.)

In 2008, Mr. Van Allen's work with the OPP Behavioural Sciences Unit became a subject of interest at the Goudge Inquiry into the Ontario Forensic Pediatric Pathology Unit and disgraced Pathologist Dr. Charles Randal Smith.

During his Inquiry, Justice Goudge learned that Detective Sergeant Jim Van Allen had wrongly on several occasions provided expert evidence and opinion that Miss Lianne Gagnon had murdered her 11-month old son Nicholas, when she had not.

While testifying at the Goudge Inquiry, Inspector Robert Keetch formally apologized for the police falsely accusing Miss Lianne Gagnon of murdering her baby, and for the devastation the police caused in her life. Jim Van Allen's wrong expert evidence and opinion was part of the reason for the devastation. By coincidence or not, Mr. Van Allen retired soon after the Goudge Inquiry.

Mr. Van Allen founded "Behavioural Science Solutions Group Inc." (BSSG) in Orillia, Ontario. According to his website at http://www.bssg.ca, the motto of BSSG is "Don't miss an opportunity to intervene." (**Attachment #28**) Mr. Van Allen is a contributor to "The Canadian Lawyer's Guide to The Law of Criminal Harassment and Stalking".

Justice Shaughnessy aware of Van Allen issues

Justice Shaughnessy was most certainly aware in detail of the Goudge Inquiry and probably aware that Jim Van Allen and the OPP Behavioural Sciences Unit were subjects of interest. Justice Shaughnessy should therefore have taken a keen interest and diligently examined the Van Allen affidavit for the information it contained, and how that information was presented, packaged and limited or abridged to achieve the result of having the court draw certain conclusions, and not others.

Even if Justice Shaughnessy had never heard of the Goudge Inquiry, the OPP Behavioural Sciences Unit or Detective Sergeant Van Allen, Justice Shaughnessy would recognize that Mr. Van Allen's affidavit contains Identity Information as defined by the Criminal Code 402.1, and that such Identity Information is prohibited from being recklessly distributed or from being placed unredacted into the public domain through the court.

Justice Shaughnessy must have also recognized that the Van Allen affidavit in and of itself is evidence of law breaking on the part of Mr. Van Allen and those who assisted in the affidavit's creation, as in the affidavit Mr. Van Allen recounts how he illegally obtained my Identity Information from the Toronto Police Association.

Justice Shaughnessy would also recognize that the Van Allen affidavit is carefully crafted with loaded statements of opinion, belief and conclusion that demand a diligent judge to ask further questions. Given Van Allen's high public profile and background with investigating threats, stalking and harassment, Justice Shaughnessy should have questioned why the Van Allen affidavit CV was purged of all references

to Van Allen's expertise in the stalking of victims and witnesses, while his normal CV includes such references.

It is also noteworthy that Mr. Van Allen's affidavit is carefully crafted to make my use of UPS Store mailboxes appear to be sinister, when both Mr. Van Allen and Justice Shaughnessy know full well that the use of mailboxes by current and former police officers and other professionals at risk is a standard and necessary practice. The absurdity of the Van Allen affidavit's sinister portrayal of the use of a UPS Store mailbox is underlined by the fact that Mr. Van Allen himself provides an address on his website that is a UPS Store mailbox in Orillia.

I believe that Mr. Van Allen had to have been most uncomfortable with the final version of his affidavit given the fact that in it he confesses to law breaking.

Even without being informed by others, Justice Shaughnessy would have realized that the Court could not ignore the problems and offenses against the law contained in the Van Allen affidavit. Especially in light of my December 1, 2009 letter to both the court and the defense lawyers stating that criminal and other offenses must have been committed for my Identity Information to have been obtained as it was by the private investigator (Van Allen) and placed on the Internet, Justice Shaughnessy can have no excuse for allowing the Van Allen affidavit and the Identity Information it contains to remain in the public court record and in the public domain as it does to this day.

Upon seeing the Van Allen affidavit, and especially upon receiving my December 1, 2009 letter, Justice Shaughnessy should have immediately and diligently taken control of the court process and acted to prevent further and continuing breaches of the law. Instead, Justice Shaughnessy did not care about the threats to my family and me. He did not care about the risk and worry of identity theft. Justice Shaughnessy did not care about the breaches of the law by the defendants, their lawyers and their private investigator, Jim Van Allen. To the contrary, Justice Shaughnessy approved of these breaches of law and even participated in further similar breaches.

Further, when Gerald Ranking later submitted Mr. Van Allen's invoices to the court as evidence in the costs hearing, Justice Shaughnessy would and should have noticed that a great amount of information was redacted from Mr. Van Allen's Invoices. There are two invoices from Mr. Van Allen, one dated October 24, 2009 and the other November 4, 2009. (See **Attachment #26**, Van Allen Redacted Invoices)

Justice Shaughnessy would know by the very nature of an invoice that it is designed to inform the client (Mr. Ranking) about Mr. Van Allen's work, and that Mr. Van Allen probably sent the invoices to Mr. Ranking in a complete form. Thus Mr. Ranking or a person at his law firm would have redacted the now missing information before submitting the invoices to the court.

This redacted information is another red flag that Justice Shaughnessy would have noticed, again especially considering my allegations of illegal investigations and actions by the defendants, their lawyers and investigators as detailed in my December 1, 2009 letter. The case is over. Why conceal the nature of the investigations if they were legally performed? Did Justice Shaughnessy ever ask himself what the redacted information stated?

The October 24, 2009 invoice shows redactions intended to hide the nature of the "(redacted) information checks", "(redacted) checks", "(redacted) records checks", "(redacted) checks", "(redacted) telephone interviews"

As mentioned elsewhere in this complaint, I strongly believe that Jim Van Allen performed unauthorized and criminally illegal checks of my police file, medical and other data held by the Ontario Ministry of Transport, RCMP, the Ontario Provincial Police, the Toronto Police and CPIC: the Canadian Police Information Centre. Justice Shaughnessy knew this but did nothing because of his bias and lack of diligence.

Justice Shaughnessy's subsequent actions (and especially on June 8, 2010 in recklessly releasing some 100,000 solicitor-client privileged documents into the public domain) prove his intent and bias in covering up my December 1, 2009 letter to him and in sanctioning the law-breaking evidenced in the Jim Van Allen affidavit. Justice Shaughnessy sanctioned and participated in the chaos and fear inflicted upon my family and me.

Solicitor-Client Privilege waived, tens thousands of documents released with no restrictions.

I understand that at some time during this trial, Justice Shaughnessy removed the privilege between myself and my lawyer, Mr. McKenzie. I understand that the court does this on extremely rare occasions, and that when this happens judges normally provide extensive reasons for doing so, and establish clear boundaries and rules for all parties when this happens.

It is also my understanding that when privilege is removed it is never done on a wholesale basis, but is done so that the object of removing the privilege can be achieved with as little impairment to the privilege as possible.

Never before have I heard of a situation where a Judge removed the privilege from an entire file, a hundred thousand documents, without a care for what was in the file and without putting any restrictions on the use or distribution of the solicitor-client privileged documents and all the information they contain.

Never before have I heard of a situation where a Judge knew that solicitor-client privileged documents contained Identity Information as defined in the Criminal Code of Canada and knowing this he recklessly placed those documents into the public domain and onto the Internet. That is exactly what Justice Shaughnessy did.

Justice Shaughnessy knew that the McKenzie privileged documents contained Identity Information as defined in the Criminal Code.

As you will see when you examine all the evidence during your investigation, Justice Shaughnessy was aware of the fact that documents from the case had been appearing on the internet for many years, and that there was a history of threats being made on the internet against persons on my side of the case.

I cover the internet threats in more detail in another section of my complaint. In

consideration of all that had occurred previously in the Nelson Barbados case, Justice Shaughnessy knew or should have known that any documents he released into the public domain on June 8, 2010 would end up on the internet. Therefore his release of documents containing Identity Information (as defined by the Criminal Code) was done with the knowledge that the documents would end up on the internet.

As you will see, Justice Shaughnessy declared a free-for-all and I am only one of many victims of his action. It is my understanding that extensive Identity Information is contained within the 100,000 documents Justice Shaughnessy recklessly distributed in the public domain. I believe that Justice Shaughnessy deliberately released this information into the public domain so that persons can do whatever they want to do with the Identity Information.

Never before have I heard of a situation where the Judge dictated that the removal of the privilege survived the trial, and allowed the filing of additional evidence from a lawyer's file with no restrictions (in this case Mr. McKenzie's file on my case) after the case was closed. It looks to me as if Justice Shaughnessy effectively transferred his Judicial authority and powers to the defendants' lawyers.

This from the same judge who sealed the videotapes of the examination of Sir David Simmons and other defendants (without giving reasons for doing so), in a show of favoritism and bias so that embarrassing videotapes of David Simmons would not find their way onto the internet.

I understand that subsequent to Justice Shaughnessy removing the solicitor-client privilege from Mr. McKenzie's legal files, the senior lawyers themselves (Mr. Silver, Mr. Ranking and others) and their assistants attended a McKenzie's law firm in Orillia Ontario and spent considerable days examining the boxes of McKenzie's files in the Nelson Barbados matter. Surprisingly, I understand that these lawyers also examined files in some of McKenzie's non-Barbados cases that have nothing to do with the Nelson Barbados case. The lawyers even informed Justice Shaughnessy of this on June 8, 2010. Many documents and information from these other cases have been filed with the court and released by Justice Shaughnessy for publication to the world.

I understand that on June 8, 2010, the opposing lawyers appeared before Justice Shaughnessy and that computer disks containing the scans of approximately 100,000* solicitor-client privileged documents that were Mr. McKenzie's "entire" legal files for this case were placed into the court record via an affidavit (The "Zagar affidavit").

* I do not know the exact number of Zagar Affidavit documents filed with the court but I believe that the number is tens of thousands. The 100,000 estimate was stated on Barbados Underground blog, as several authors of that "anonymous" blog website were apparently sent copies of the electronic files containing all the McKenzie documents. That blog has been publishing various Zagar Affidavit solicitor-client privileged documents and information on the internet.

I attach a copy of the transcript of that June 8, 2010 court appearance that I downloaded from the Barbados Underground website. **(Attachment #1)**

The lawyers informed Justice Shaughnessy that Mr. Silver (and I understand aided by the other lawyers) examined "virtually the entire McKenzie file" and that the Zagar affidavit disks contain "effectively all of Mr. McKenzie's file."

The words "virtually" and "effectively" indicate that the documents filed with the court are not 100% of the McKenzie file. I am sure the CJC investigators would be curious as I am as to what was omitted from the documents filed with the court, why these documents were omitted and the current location of the missing documents not filed with the court.

Justice Shaughnessy was also informed that the computer disks also contained "additional documentation from other files."

> *"In fact, we - this affidavit, you'll see on the back, was served yesterday. Unfortunate - it's like every file, but these discs were inspected in the middle of May, but these discs didn't become available to us until Friday afternoon, no fault really of anybody. That's a big job to - there are seven boxes - there are actually eight complete boxes of the lawyers correspondence files, plus additional documentation from other files."*

The comment about the Zagar Affidavit Disks containing "additional documentation from other files" is most telling in light of all the non-relevant solicitor-client privileged documents that were filed with the court and recklessly distributed to the public and on the internet without any restrictions.

The fact that the Zagar Affidavit disks contain trust account banking information (Identity Information as defined in the Criminal Code) is discussed in the June 8, 2010 transcript, but Justice Shaughnessy also had previous knowledge of Identity Information being in the McKenzie files as this information was mentioned previously in court and in affidavits over the course of many months.

Justice Shaughnessy confirmed on the record that he had previously received briefs and summaries and the trust account information that came from the McKenzie files, so there can be no dispute that Justice Shaughnessy was aware that the McKenzie files contained Identity Information as defined in the Criminal Code.

Further, Justice Shaughnessy knew that the disks contained "virtually the entire McKenzie file" in a complex international case spanning many years and involving dozens of defendants and witnesses and other lawyers.

On June 8, 2010 when the defendants' lawyers presented Justice Shaughnessy with their Minutes of Settlement and the Zagar Affidavit with "virtually the entire McKenzie file", Justice Shaughnessy had a duty in law, a duty to various rules, protocols and case law, and a moral duty, to look the defendants' lawyers in the eye and demand to know from them:

- if the defendants' lawyers needed all 100,000 documents to be accessible to the public in the court files and placed onto the internet,
- if the defendants' lawyers examined each document.
- if the defendants' lawyers could show that each of the documents was relevant

to the case,
- if any of the documents contained any information that was not associated with this case,
- if any of the documents contained sensitive, private, personal information that should be omitted or redacted according the laws of Canada, Ontario and the protocols of the Court.
- If any of the documents contained "Identity Information" as defined by the Criminal Code that should be omitted or redacted.
- If the defendants' lawyers had redacted the bank account information that he was aware was in the file.

I believe that your investigation will show that, concerning the filing of the Zagar Affidavit, Justice Shaughnessy was not diligent in fulfilling his legal and moral duties. He was deliberately reckless and meets the tests for Criminal culpability.

Knowing what Justice Shaughnessy did, how can I, and other Canadians, trust the judicial system?

I believe that the Canadian Judicial Council has a responsibility to protect those people who have been put at risk by the actions of Justice Shaughnesy. I believe that the CJC has a legal responsibility to determine which persons and entities are at risk and to notify them as soon as possible, and that includes my family members and me.

I believe that the Canadian Judicial Council has if not a legal responsibility mandated by laws, then a civil liability, and a moral responsibility to examine each of the 100,000 pages to discover each of the victims of Justice Shaughnessy's violation of the Criminal Code. The Canadian Judicial Council has a duty and a social responsibility to take steps to mitigate the damage caused by your judge, and to protect the victims from further harm caused by the wholesale reckless distribution of their Identity Information and other private, personal and solicitor-client privileged information contained in the 100,000 documents. Further, I demand that the Canadian Judicial Council do everything it can to identify and protect the victims from further harm.

Further the same goes for the investigation reports and affidavits in the Nelson Barbados case that were distributed with Identity Information in 2009 and prior.

Justice Shaughnessy and the defendants' lawyers cannot be trusted to take any role in the assessing and mitigation of the risk and damages. The Canadian Judicial Council must not delegate this responsibility.

I sincerely believe that if the Canadian Judicial Council fails to diligently pursue its duty to protect the victims of Justice Shaughnessy's criminal acts from further harm, Canadians will be appalled and will lose faith in the Justice system and lose their faith in the Canadian Judicial Council that is charged with oversight of federally appointed judges.

Justice Shaughnessy recklessly released 100,000 pages (I am told) of McKenzie's privileged files, containing Identity Information as defined by the Criminal Code. Many persons on the internet brag about having the entire 100,000 pages, and have

posted information and copies of the documents. One anonymous website, "The Barbados Underground", stated in a July 25, 2010 article that they have the entire files of William McKenzie "from the public domain", of over 100,000 pages, and that the documents were distributed to many (anonymous) persons.

According to many laws and protocols, the documents should have been held at court and examined and then only the relevant documents presented to the court to make a decision and perhaps even redact, seal or otherwise protect those relevant documents.

This was not done. Therefore I believe the supervising authorities of the Judge and the Lawyers (because Justice Shaughnessy and the defendants' lawyers cannot be trusted) have a duty to:

- Comply with the Criminal Code and all other laws, rules and protocols, even at this late date.
- Recall the Identity Information and trace the possessors.
- Recall the entire "100,000" solicitor-client privileged documents and trace the chain of possession and identify all possessors, past and current.
- Where possible, have the documents and information from the documents removed from the internet.
- Initiate a continuing program to identify any new or recurring appearances of the documents and the information on the internet, so the documents and information can be removed from the internet.
- Recognize that it may not be possible to recall all copies of the information.
- Examine every page to locate Identity Information according to the CC.
- Examine every page to locate personal, private and privileged information.
- Notify the owners of the information so they can take steps to mitigate damages, prevent identity thefts, bank account frauds etc.
- With expert assistance, professionally formulate and diligently execute a comprehensive plan to protect the victims of Justice Shaughnessy's actions.
- Seek outside expert assistance from the Privacy Commissioner of Canada in all of the above and especially in the matter of notifying the persons at risk as the notification itself entails potential risk and privacy breaches.

I believe that once they are told about it, both the Law Society of Upper Canada and the Canadian Judicial Council become morally if not legally and civilly responsible to diligently examine each page, find the identity information and then notify the people who might be negatively impacted and take other steps to protect them.

I believe that Canadians would be shocked and outraged to know this happened, but more so if the Canadian Judicial Council said "We don't care. It's not our responsibility to stop the ongoing criminal offense and to limit the damages and future harm caused by a judge we supervise."

Justice Shaughnessy deliberately interfered in the lawful political process of another sovereign nation, Barbados.

I understand that as Justice Shaughnessy was releasing tens of thousands of pages of solicitor-client privileged documents containing vast amounts of Identity Information

to be recklessly distributed to the general public and placed onto the internet without restrictions, he expressed words to the effect that democracy was imperiled in the Nelson Barbados case. That is an interesting editorial commentary by Justice Shaughnessy considering his actions.

I understand that least 53 pages and perhaps more of the released solicitor-client privileged documents from Mr. McKenzie's files show that Peter Allard and Mr. McKenzie lawfully provided political support to a Barbados politician, Dr. Denis Lowe (now Minister of the Environment), and also charitable support for a children's summer camp sponsored by Minister Lowe.

In his June 8, 2010 monologue, Justice Shaughnessy seemed to be expressing an opinion that he disagreed with this political support by Mr. Allard and Mr. McKenzie. Perhaps Justice Shaughnessy also disagreed with Minister Lowe for accepting political donations and support from non-Barbadians.

The political donations and campaign support as revealed in the released solicitor-client privileged documents are lawful mechanisms of democracy in Barbados and Canada. Mr. Justice Shaughnessy apparently disagreed with Barbados laws and that country's lawful democratic process and normal mechanisms and took it into his own hands to expose campaign funding and support for a Barbados politician who has nothing to do with this case. Environment Minister Dr. Denis Lowe has to my knowledge never met Marjorie Knox or John Knox or Kathy Davis or me and has nothing to do with the Kingsland and Nelson Barbados matters.

Mr. Allard's and Mr. McKenzie's charitable support for a summer camp for underprivileged latch-key children has nothing to do with this case. As I write this complaint, it is my understanding that the camp will probably not reopen in the coming summer for reasons having to do with Justice Shaughnessy's release of the privileged documents that exposed the source of the camp's funding.

As with tens of thousands of other solicitor-client privileged documents and information recklessly released and distributed by Justice Shaughnessy, there is no way that the "Denis Lowe political donation documents" should have been released to the public. I doubt that Justice Shaughnessy can satisfactorily explain his reasoning, agenda and legal purpose in removing the solicitor-client privilege without restrictions and his wholesale release of these "Denis Lowe political donation documents."

It is my understanding that according to the laws and protocols of Barbados, all political donations are confidential. Political parties, candidates and politicians are not required to make the names of their donors and supporters public. Justice Shaughnessy is not satisfied with this. His statements about "democracy" further show that his release of Identity Information and non-relevant solicitor-client privileged information was deliberate, punitive and malicious, and in the case of Environment Minister Lowe, was aimed at destroying the political career of a properly elected and serving member of the Barbados government.

Justice Shaughnessy should not have used his position as a Canadian judge to influence or interfere with the lawful political process in Barbados.

Justice Shaughnessy's actions in releasing the "Denis Lowe political donation documents" and his comments about democracy were directly responsible for new intimidation and public threats of violence on the internet against Dr. Lowe, an elected Member of Parliament and Minister of the Government of Barbados.

Justice Shaughnessy must know that participation in politics in some other countries can be far different from the situation in Canada. Justice Shaughnessy is an educated and intelligent person and as such he must be aware, and must have been aware that participation in elections, party politics and the political process in other countries sometimes carries risks of retaliation and even violence directed against citizens participating in the political process.

As an example, it was widely reported in the Barbados press during the 2008 Barbados election, that shots were fired at the home of one of Doctor Lowe's fellow party candidates, Irene Sandiford-Garner, and human feces was smeared upon the front of her business, railing and the door handle of the building. Justice Shaughnessy also knew from evidence in the Nelson Barbados case that a Member of Parliament of Barbados, a Doctor Duguid, confirmed to my witness Kathleen Davis, that some of the threats of violence against my witnesses originated from a computer in the Members' Lounge at the Parliament building in Bridgetown, Barbados. These are only two examples of a hundred or more incidents of threats and intimidation that occurred during the life of the Nelson Barbados case, dozens of which threats were brought to the attention of Justice Shaughnessy and then ignored or covered up by him.

In that historical and social context, when an August 9, 2010 internet posting at Barbados Underground warns Dr. Lowe "Fear not Denis, you will be repaid." it is a clear threat and Justice Shaughnessy must take responsibility for the event. What did Justice Shaughnessy think would happen when he released documents showing that Allard and McKenzie provided political donations to Minister Lowe? After hearing of threats and criminal acts in this case for two years, Justice Shaughnessy must have known what would happen to Environment Minister Lowe.

To my knowledge, at least 53 pages of the "Denis Lowe political donation documents" were published on the Barbados Underground blog website as a direct result of Justice Shaughnessy's actions.

By exposing confidential political donations received from white foreigners, Justice Shaughnessy seriously damaged Dr. Lowe's political career. I understand that Justice Shaughnessy's statements about democracy appeared on the internet at Barbados Underground and other websites, where his words were seized upon to whip up calls against Dr. Lowe, the DLP political party and the government that Dr. Lowe represents as Minister of the Environment.

I understand that much of the public discussion in Barbados that followed Justice Shaughnessy's revelations about Dr. Lowe's receipt of political donations from Peter Allard and William McKenzie centered upon the fact that Mr. Allard and Mr. McKenzie are white and foreigners. Once again, Justice Shaughnessy is an educated and intelligent man and would realize that racial factors play a major part in the

politics of Barbados and throughout the Caribbean. This is no surprise or secret given the history of Barbados and the region.

Justice Shaughnessy also knew that race played a part in the Nelson Barbados case as he read the threats against my witnesses that were presented to him as evidence. Many of these threats had a racial component based upon the victims' white or Indian racial heritage.

The same Barbados Underground blog website where Dr. Lowe is being criticized and threatened for accepting political support from white foreigners regularly publishes other racial comments. Canadian Judicial Council investigators should understand the societal dynamics that played a role in the Nelson Barbados case and ask themselves (and ask Justice Shaughnessy) why Justice Shaughnessy ignored or gave a pass to racially motivated threats that he saw in the evidence presented to him. Racially motivated threats are especially unacceptable in Canada. Racially motivated crimes or crimes that have a racial component are punished more severely in Canada.

Given all this, why did Justice Shaughnessy decide that evidence of racially motivated threats was unworthy of consideration or mention in the Nelson Barbados case? Why did Justice Shaughnessy cover up for the perpetrators of these racially based threats and empower them? Justice Shaughnessy saw evidence of published racial threats against my witnesses such as:

> *"Kill dah fucking white dog Loveridge like rasshole"*
>
> *"We gine bus in she r a s s h o l e head! Stinking WHITE c u n t. FELIZ NAVIDAD YUH R A S S H O L E ! ! ! !"*
>
> *"Beat ye well the loud-mouthed limey,.... Beat his wife the ugly Margey,... Cause of death? Put strangulation,"*

I provide some examples of writing from Barbados Underground website so that CJC investigators can be more familiar with a website that played a pivotal role throughout the Nelson Barbados case and appears to be administered and written at least in part by the defendants and their law firms. Here are some of the typical writings published on Barbados Underground:

> *"Yes, I said murdered Canadian tourist (Terry) Schwarzfeld is white trash. I make no apologies for calling her that."*
>
> *"these blasted coolie people in this country"*
>
> *"I do not give a damn about any stinking, white European life."*
>
> *"rat catcher/mango seller Indians & Chinese"*
>
> *"The elimination & extinction of sub-human, half make Europeans from this earth will undoubtedly bring about a more peaceful, stable & morally uplifting world."*

"Indians are only bidding their time in Barbados."

"We black people created an illusion that those white human pests are untouchable."

"positive action to be taken against non-nationals especially the Indo-Guyanese scums."

"This country should control the build up of any particular ethnic group outside the Black population of Barbados. Particular emphasis must be place on the Indo-Guyanese scums & the rat catcher/mango seller Indians & Pakistani."

"It is also about removing... the European white thrash from Barbados."

Further, in relation to the "Denis Lowe political donation documents", Barbados Underground website published 53 pages of documents and emails from Mr. McKenzie's solicitor-client privileged files that have to do with the political activities and support for Member of Parliament, Denis Lowe. The information in these documents about Environment Minister Denis Lowe has nothing to do with the Nelson Barbados case or Kingsland matters.

Environment Minister Denis Lowe has nothing to do with the Nelson Barbados case or Kingsland matters.

Barbados Underground confirmed that the issue of political support to Environment Minister Denis Lowe would impact the politics in Barbados:

"As promised BU has had the opportunity of going through more of the voluminous files of K. William McKenzie, with an emphasis on the connection/relationship Allard/McKenzie and Minister (then Senator) Denis Lowe. Given the silence to date on questions asked in earlier blogs BU exposes subsequent findings HERE likely to interest the Barbados electorate."

I note that Environment Minister Denis Lowe is in the DLP (Democratic Labour Party), and is a political opponent of the party of defendant Chief Justice Sir David Simmons, the BLP (Barbados Labour Party). As I mention in another section of my complaint, I observed that Justice Shaughnessy in his actions, decisions and comments was unfairly biased in favour of Chief Justice Sir David Simmons.

Sir David Simmons is the former Barbados Attorney General, Acting Prime Minister and Chief Justice of Barbados. His political party of record, the BLP Barbados Labour Party, profited politically from the controversy created by Justice Shaughnessy when the judge released the "Denis Lowe political donation documents" to the public and caused them to be published on the internet.

Prior to releasing the 53 pages of "Denis Lowe political donation documents" that had nothing to do with the Nelson Barbados case, did Justice Shaughnessy consider the fact that exposing political contributions from Allard and McKenzie would favour the political party of Sir David Simmons and embarrass Simmons' political opponents?

Given the history of the case, the evidence he heard and the high government positions of some of the defendants Justice Shaughnessy must have known that his release of the "Denis Lowe political donation documents" would have political and other consequences for Environment Minister Dr. Denis Lowe.

Why did Justice Shaughnessy release these 53 pages of "Denis Lowe political donation documents"? Was it to embarrass Allard and McKenzie? Was it to punish the people in Barbados who worked with them at the nature sanctuary and children's summer camp? Was it to "expose" which politicians and political parties Allard and McKenzie were lawfully supporting? Was it to alert the Barbadian people that Canadians in general sometimes make lawful political donations in Barbados?

Was it the intent of Justice Shaughnessy to bring attention to the fact that the Democratic Labour Party of Barbados accepted support from white foreigners, and make this the public racial issue that it became?

Was it the intent of Justice Shaughnessy to send a message to the Barbadian people that they should change their laws respecting the confidentiality of political donations? Was it a warning to other Canadians to not lawfully make political or charitable donations to Barbados?

Was it to impose Justice Shaughnessy's standards of "democracy" upon Barbados?

Was it the intent of Justice Shaughnessy to support the political party of Sir David Simmons by harming Simmons' political opposition?

Please ask Justice Shaughnessy what his reasons were for violating the many laws and protocols that should have governed his actions when he released tens of thousands of pages of solicitor-client privileged documents containing vast amounts of Identity Information to be distributed publicly and placed onto the internet without restrictions. What was his thinking at the time? What was his intent?

Other threats as a result of Justice Shaughnessy recklessly distributing privileged documents

Adrian and Margaret Loveridge own a small hotel in Barbados. During the Nelson Barbados case Justice Shaughnessy received evidence that Adrian and Margaret Loveridge had been the subject of internet threats of murder, rape and to burn their hotel. Justice Shaughnessy also knew that subsequent to the internet threats to burn their hotel, there were two fires, a break in and an incident where a ladder was placed against their bedroom window in the middle of the night. All or most of these incidents occurred within a short period of time. Mr. Loveridge had also previously been fired from his position as a newspaper columnist after a Government Minister from Sir David Simmons' political party demanded he be fired for criticizing Simmons' government. Justice Shaughnessy saw evidence of this firing incident as well.

Justice Shaughnessy also knew that Mr. Loveridge had filed a formal written complaint with the Royal Barbados Police Force (RBPF) about the threats and, like

my other witnesses who complained to the RBPF of internet threats to murder, etc., the police did not pursue an investigation and did not even bother to interview Mr. and Mrs. Loveridge. Justice Shaughnessy was aware of this evidence.

As related in another section of my complaint, I remind you that the defendants' lawyers worked to block an investigation into the source of the internet threats, and Justice Shaughnessy aided them.

I also remind you that Dr. William Duguid, a Member of Parliament for Barbados and the former Secretary General of the Barbados Labour Party had a conversation with one of my witnesses, the transcript of which was read and released by Justice Shaughnessy, wherein Dr. Duguid admitted and apologized for the fact that some of the internet threats against my witnesses originated from a computer at the Parliament of Barbados. In the transcript Dr. Duguid also confessed that no Barbados politician would ever pass transparency and anti-corruption legislation.

Justice Shaughnessy would have known of Dr. Duguid's confirmation that some of the threats to my witnesses came from the computer in the Members' Lounge at the Barbados Parliament. Justice Shaughnessy knew of the threats to Mr. and Mrs. Loveridge and the arsons at their business, but he nonetheless released solicitor-client privileged documents about them.

As a direct result of Justice Shaughnessy releasing solicitor-client privileged documents that referred to meetings with Adrian Loveridge, Mr. and Mrs. Loveridge received further internet threats and harassment when the information was published on the internet at Barbados Underground by the defendants and their lawyers exactly as Justice Shaughnessy knew and should have known it would be.

Justice Shaughnessy knew the story of the threats and arson against Mr. and Mrs. Loveridge, and he knew or should have known that the release of new information about them into the public domain would result in a new wave of attacks.

I believe that Justice Shaughnessy knew the havoc he was creating for persons associated with my side of the case when he released the 100,000 solicitor-client privileged documents, but he was determined to maliciously ensure that everyone even remotely associated with my lawyer and/or me would pay the price and be deterred from ever again seeking justice against the defendants.

Justice Shaughnessy was the best and most effective advocate that the defendants had in the Nelson Barbados case.

Thanks to Justice Shaughnessy, Mr. and Mrs. Loveridge continue to pay the price for their minor association with my side of the Nelson Barbados case.

Justice Shaughnessy is not unaware of the welfare, psychological and emotional health of persons involved in the Nelson Barbados case, it is just that his concern extends only to the defendants and, judging by his actions and words, not at all to persons on my side of the case who faced years of proven threats, intimidation and crimes committed against them by the defendants, the defendants' lawyers and in the end by Justice Shaughnessy himself.

Justice Shaughnessy said in the transcript of June 8, 2010 about his concern for Chief Justice Sir David Simmons and the other defendants:

> *"And you know, it's the parties too that gave me great concern. I - did any, I'm sure you have, but as a judge I kept putting myself into the shoes, not just because I'm in the judiciary, not just the Chief Justice, but all of those other parties. Sitting there, day after day, the costs mounting to astronomical levels. I mean, it would shock me. I personally would have to declare bankruptcy. I couldn't afford to litigate this type of case or - and be a defendant in it.*
>
> *And I grew increasingly concerned about them throughout and - and so I hope you forgive me but at the end, finally near - in the latter few weeks, I just decided that you know, enough is enough. These parties have endured uncertainty, they've endured having to instruct lawyers on - over three years and - and were frankly, I think, put in a very, very inappropriate position throughout. And I - so my heart went out to them. I thought frankly, they - this is not healthy for anyone psychologically, emotionally, or any other way."*

At the same time that Justice Shaughnessy spoke these words, he had no problem recklessly distributing the 100,000 unredacted solicitor-client privileged documents, knowing what they contained, knowing they would be published on the internet and knowing what the result would be to persons on my side of the case and to the many innocent persons who were not even remotely associated with the Nelson Barbados case.

Justice Shaughnessy's long-term bias, double standards and hypocrisy in the Nelson Barbados case brought the administration of Justice into disrepute.

Canadian Judicial Council Process

By now it should be evident to Canadian Judicial Council staff that there is a strong prima-facie case against Justice Shaughnessy for criminal and other serious misconduct.

In addition, any reader of the June 8, 2010 court transcript (**Attachment #1**) and Prime Minister Thompson's June 4, 2008 speech (**Attachment #31**) must also have deep concerns that the Court's handling of the Nelson Barbados case was improperly impacted by outside influences. Knowledge of the history, politics and high financial stakes of the relationship between Canada and Barbados compounds these concerns.

After reading the June 8, 2010 transcript and considering the actions and misconduct of Justice Shaughnessy in total, there is no doubt in my mind that Justice Shaughnessy improperly received, improperly acknowledged and was influenced by improper communications and external pressures.

The Canadian Judicial Council will realize that many of the issues raised in my complaint are much larger than the Nelson Barbados case and impact all Canadians and others who come to Canada's courts seeking justice.

My future has been ruined, but I am not the only person harmed by Justice Shaughnessy's long term and deliberate misconduct. I want my complaint

investigated not only for my family members and me, but also for my witnesses, my lawyer and the many other families and victims of Justice Shaughnessy. I want the Canadian Judicial Council to properly investigate the Nelson Barbados case so this will never happen again in our courts.

My allegations are sufficiently serious, and enough evidence is immediately apparent, that Canadians have every right to expect that the Canadian Judicial Council will immediately launch a diligent, comprehensive and professional investigation into Justice Shaughnessy's criminal and other misconduct in the Nelson Barbados case.

Canadians will also expect that the CJC will act diligently to mitigate the damage caused by Justice Shaughnessy's outrageous release of Identity Information and other personal, private and privileged information into the public domain.

Earlier in my complaint I demanded that the Canadian Judicial Council take immediate action to secure and freeze all the paper and electronic court records and all other possible evidence so that CJC investigators can consider the evidence without providing an opportunity for the records to be further modified or deleted. This demand also includes all electronic evidence and its metadata.

I said that it is imperative that the CJC approach this investigation properly, using Search Warrants and other legal means and authority to locate, secure and freeze all evidence that is vulnerable to change or destruction or addition.

I allege and provide evidence that Justice Shaughnessy himself, defense lawyers and court staff have already improperly created, modified, moved, stored and accessed Nelson Barbados documents and court files.

With all that is detailed in my complaint and the attachments, any CJC failure to actively secure the paper and electronic court records and all other evidence in a timely and professional manner will be an immediate indication to Canadians that a cover-up is in progress.

The same would be true for a failure by the CJC to employ the services of a professional and experienced forensic computer specialist to seize and examine electronic evidence and the associated metadata.

This is a major complaint of criminal and other serious misconduct on the part of a federally appointed Canadian Judge, and there is enough credible evidence immediately apparent in my complaint and attachments alone to cause the Canadian Judicial Council to dedicate extensive resources to the investigation. Given the seriousness of the complaint, any failure by the CJC to dedicate sufficient resources to the investigation will not be acceptable to Canadians.

There is evidence of improper outside communications and influence directed at Justice Shaughnessy in the Nelson Barbados case. The Canadian Judicial Council and individual staff members and investigators might also be improperly approached or pressured in attempts to influence the outcome of your investigation and I urge you to be vigilant and strong in fulfilling your professional duties.

This document and the attachments form my official complaint against Justice J. Bryan Shaughnessy. I reserve the right to forward additional evidence and analysis to the Canadian Judicial Council as it comes to my attention.

Yours truly,

Donald Best

Attachments to the complaint of Donald Best

1. June 8, 2010 Transcript of Proceedings on Motion before Justice Shaughnessy
2. October 30, 2009 Barbados Underground article "The Shady, Secretive World Of Peter Andrew Allard And The Graeme Hall Nature Sanctuary: Does Barbados Need Any Of It?" containing Donald Best's Identity Information and threats.
3. December 1, 2009 Letter Donald Best to Justice Shaughnessy
4. April 22, 2010 letter from Broad and Cassel, Florida Attorneys, to Andrew J. Roman of Miller Thomson warning that Mr. Roman threatened Kathleen Davis and broke several Florida laws, plus 19 pages of attachments.
5. April 13, 2010 threatening letter from Andrew Roman of Miller Thomson LLP to Kathleen Davis. (20100413Romanthreat.pdf)
6. October 26, 2010 Toronto Star news article "Activist back in jail after Crown attorneys allegedly threatened"
7. January 10, 2008 Sworn Testimony of Nitin Amersey
8. June 7, 2010 Minutes of Settlement
9. November 16, 2010 letter from Donald Best to Trial Coordinator Jackie Travis.
10. January 25, 2010 Reasons on Motion for Contempt.
11. October 21, 2009 Jim Van Allen affidavit
12. December 1, 2009 letter Donald Best to Gerald Ranking
13. November 18, 2009 letter Gerald Ranking to Donald Best
14. November 17, 2009 Victory Verbatim memo
15. November 12, 2007 affidavit of John Knox.
16. Canadian Judicial Council "Use of Personal Information in Judgments and Recommended Protocol"
17. Canadian Judicial Council "Model Policy for Access to Court Records in Canada"
18. Policy for Access to Supreme Court of Canada Court Records

Attachments List for Complaint of Donald Best re Justice J. Bryan Shaughnessy

19. February 2009 Supreme Court of Canada, "Press Release"

20. Supreme Court of Canada "Guidelines for Printed and Electronic Versions of Appeal Documents"

21. June 28, 2007 Law Society of Upper Canada Tribunals Committee: Report To Convocation

22. October 20, 2006 Toronto Star "ID thief stole home — from his mom" quoting Justice Shaughnessy

23. September, 2008 Canadian Bar Association: Information to Supplement the CODE OF PROFESSIONAL CONDUCT - Guidelines for Practising Ethically with New Information Technologies

24. October 27, 2009 CBC News "Tough identity theft law passed"

25. First pages of various documents about Identity Information, identity theft and related issues.

26. Jim Van Allen Redacted Invoices to Gerald Ranking as filed with the court.

27. Jim Van Allen standard CV (Van Allen CV.pdf found on the internet)

28. Jim Van Allen – Behavioural Science Solutions Group Inc. website printouts www.bssg.ca

29. October 30, 2009 letter from Donald Best to Justice Shaughnessy

30. September 12, 2007 affidavit of Stuart Heaslet

31. June 4, 2008 speech of Prime Minister Thompson

FEDERAL COURT OF CANADA
Court File No. T-604-16

Donald Best Applicant

Supplement to Exhibit 28

DB 015936-1

CJC
CCM
Canadian
Judicial Council
Conseil canadien
de la magistrature

Ottawa, Ontario K1A 0W8

This is EXHIBIT 29
To the Affidavit of
J. FONTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

Personal and Confidential

Our File: 11-0032

1 May 2012

Mr Donald Best
By e-mail: SailKiwi@hushmail.com

Dear Mr Best:

I am responding to your undated letter in which you complain about the conduct of the Honourable Bryan Shaughnessy of the Ontario Superior Court of Justice. I regret the delay in providing this response; however, much time was needed to thoroughly review the matter.

In accordance with the *Complaints Procedures*, I referred your complaint to the Honourable Richard Scott, Chief Justice of Manitoba and Chairperson of the Judicial Conduct Committee of Council. After a careful review of your complaint, the attachments provided and the related court decisions, Chief Justice Scott directed me to provide you with this response.

The mandate of Council

The mandate of the Council in matters of judicial conduct is to determine whether or not to make a recommendation that a judge be removed from office in certain specific circumstances. The reasons for removal are set out in the *Judges Act* and address situations where a judge has become incapacitated or disabled from performing the duties of a judge. This can be as a result of age or infirmity, misconduct, a failure to execute the duties of the position, or being in a position incompatible with the functions of a judge.

All complaints received by Council are reviewed in accordance with the Council's *Complaints Procedures*. It is important to note that the role of the Council at this early stage of the review process is to determine whether there is sufficient credible evidence to warrant further enquiries into the allegations. The Chairperson of the Judicial Conduct Committee of Council may, after due consideration of the allegations and available material, close the file if the complaint is found to be trivial, vexatious, made for an improper purpose, manifestly without substance or simply that it does not warrant further consideration. The Chairperson may also close the file if the issues raised fall outside the jurisdiction of the Council because they do not involve conduct. These steps are

.../2

all part of the "screening procedure" of complaints prescribed in the Council's *Complaints Procedures* pursuant to Council's authority under subsection 63(2) of the *Judges Act*. For your information, that procedure is described by the Federal Court of Appeal in *Canada* v. *Cosgrove*, 2007 FCA 103 (paragraphs [69] to [74]).

I note that your complaint includes allegations regarding the conduct of some of the Defendants and their counsel in the various court proceedings. If you have any concerns in regard to the conduct of a lawyer, it is open to you to file a complaint with the appropriate Law Society that regulates the legal profession of lawyers. The Council has no jurisdiction in this regard.

In your complaint, you request that the Council include the Privacy Commissioner, as well as the Attorney General of Canada as part of its investigation team to determine potential charges of breach of privacy and potential criminal charges by Justice Shaughnessy. The process to review complaints made to Council about federally appointed judges is distinct and independent from any possible investigation by the Privacy Commissioner or of possible criminal investigations by the Attorney General of Canada.

You also request that the Council take action to secure and freeze all paper and electronic court records, including electronic evidence and metadata, in the court matter that concerned you and Nelson Barbados Group Ltd (Nelson Barbados), for the purposes of reviewing the evidence. It is important to understand that the Council has no authority to review a judicial decision for the purpose of determining its correctness; nor is it the role of Council to review a judge's evidentiary findings in a court proceeding. Given the principle of independence of the judiciary, the Council's complaints process is not concerned with judicial decision-making or the exercise of judicial discretion. The core functions of a judge during a hearing include reviewing the evidence, making determination as to its admissibility and its reliability, assessing the credibility of witnesses and, after weighing the evidence and applying the law, reaching a decision on the issues. If a litigant is dissatisfied with a judicial decision or how a judge exercised judicial discretion, the proper avenue to contest these is through the courts, usually by way of appeal.

Background

You complain about the proceedings in the Ontario Superior Court, in which Nelson Barbados, a company which you are the sole director and shareholder, commenced an action in 2007 against a list of 62 Defendants. Nelson Barbados was represented by Mr Kenneth William McKenzie of the firm of Crawford, McKenzie, McLean, Anderson and Duncan.

Some 37 Defendants brought nine separate motions contesting the jurisdiction of the Superior Court of Ontario to hear the matter. Justice Shaughnessy was assigned to hear all motions in the proceedings, including the jurisdiction issue. From 2007 to 2010, there were numerous hearings and decisions in the matter, including Justice Shaughnessy's decision of 4 May 2009, in which he stayed Nelson Barbados' action on the basis that Ontario was not the proper forum to hear the

.../3

matter. Costs proceedings were initiated by the Defendants against Nelson Barbados, yourself, your lawyer (Mr McKenzie) and his firm. All matters related to costs were later settled.

Complaint

In your 88 page complaint you make numerous allegations against Justice Shaughnessy. Amongst these, you say that the judge was biased in order to produce results that favoured the Defendants; violated several laws and protocols relating to the publication of personal and confidential information; allowed threats and intimidation "from the Defendants side of the case;" and convicted and sentenced you for contempt, without notice or trial. You list some 42 points which you say constitute judicial misconduct on the part of the judge. Many of your allegations are repeated under several headings, throughout your complaint. For simplicity, the essential points of your complaint have been summarized and considered under the following headings.

1. Allegation that you were sentenced without trial or notice

You allege that Justice Shaughnessy convicted you of contempt of court and sentenced you to 90 days in jail, in a civil suit on costs, without a trial or notice and with no right of appeal. You maintain that there was no evidence of you having been properly served, except for the judge relying on his own ruling that sending documents to a postal box was adequate service.

You state that the reason you did not attend Court was because you were forced to flee the country with your family out of fear due to the actions of the Defendants and their lawyers. You maintain that you were unreasonably denied your day in court by a system that "refused to protect you, your lawyer, your witnesses and their families."

You allege that Defence counsel's statements to the Court about what was said during the 17 November 2009 telephone conversation between yourself and them is not accurate. You assert that the judge "cherry picked" from the evidence and other select information in order to manipulate the outcome "towards his bias in favour of the Defendants."

You also make several other allegations regarding the court process, including that the judge back-dated a court order "to set you up for contempt;" that the judge improperly accepted documents, verbal statements and "innuendos," as well as private written communications from the Defendants lawyers that were not properly filed as evidence and contained incorrect information.

You are of the opinion that your conviction, the sentence and the resulting warrant for your arrest were engineered to destroy your credibility.

Chief Justice Scott notes that there were several dates scheduled for you to appear and to produce documents as directed by the court. Justice Shaughnessy's decisions and orders in this regard are detailed and comprehensive. The different steps taken and orders issued for your attendance and to

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produce documents and which ultimately resulted in Justice Shaughnessy finding of contempt against you are summarized in the judge's Reasons on Motion for Contempt of 25 January 2010. Justice Shaughnessy explained why he had directed an alternative to personal service, including that it was apparent to him from correspondence sent by you and conversations you had with the trial coordinator that you were aware of all aspects of the proceedings and deliberately avoiding service. After reviewing the facts and applicable law, Justice Shaughnessy found that you were in contempt of Court:

> [24] Mr Best stated his intention not to appear on the examination of November 17/09 when he called counsel the same day. He also failed to attend the examinations of November 25, 2009 and January 15, 2010 all of which I find beyond a reasonable doubt are contemptuous acts.
> ...
>
> [33] However the information detailed in paragraphs 30 and 31 does lead me to the conclusion that Donald Best is a seasoned litigator and therefore knowledgeable concerning the necessity for compliance with Court orders and likewise the consequences for non-compliance with Court orders.

Chief Justice Scott is of the view that Justice Shaughnessy's findings, including: what transpired during the 17 November 2009, the attempts made to serve you, whether you were trying to evade service, what would constituted appropriate service under the circumstances, and the reasons for his decisions, were all part of the judge's assessment of the matter before him. They are all judicial decisions.

Even if Justice Shaughnessy erred in some of his decisions (and Chief Justice Scott expresses no opinion in this regard), the judge's findings clearly fell within his decision- making authority. As such, they do not raise issues of judicial conduct. The same applies to your other allegations relating to the judge's acceptance of evidence and documents during the contempt process.

Chief Justice Scott notes that you were not present at any of the scheduled Court proceedings. He also notes that Justice Shaughnessy provided in his decision and order relating to your contempt that you could bring an application before him to purge your contempt. He further notes that the judge confirmed during the 8 June 2010 proceedings that because the contempt order and resulting warrant for your arrest could not be settled between the parties that it was nonetheless open to you to attend before the court:

> THE COURT: That's my view and since it's my order and it is contempt, I - it is - he is in contempt of this court and he has an opportunity - had an opportunity and I would still open the opportunity to purge his contempt, but it requires attending before me and I'm not - I don't know what I would do because I'd - I'd have to wait until that happens.
> (Transcript p. 10)

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Chief Justice Scott is of the view that your allegation that the contempt proceedings were engineered to destroy your reputation is without foundation.

2. Allegation that the judge allowed intimidation and harassment

You allege that Justice Shaughnessy covered-up and deliberately ignored complaints and real evidence of threats, intimidation, violence, racist motivations and other criminal acts conducted over many years by the other side against you, your lawyer, your witnesses and their families. You suggest this will be apparent if Council reviews the affidavits filed on your side of the case against the judge's statements and actions or inactions in regard to this evidence. You further suggest that it is necessary for Council to examine fully the long history (over 20 years) of threats, intimidation and crimes committed against persons on your side of the case.

These are serious allegations. Chief Justice Scott has carefully considered the points you raise. He notes that the examples of threats described in your complaint were, in fact, considered by Justice Shaughnessy in his 8 February 2008 decision. One of the issues before the Court was whether, in relation to the jurisdiction issue, Nelson Barbados should be permitted to cross-examine Defendants residing in Barbados in Canada. Nelson Barbados argued that this was necessary because of alleged serious threats against Mr McKenzie, his legal team and John Knox, Nelson Barbados' principal affiant. Voluminous materials were filed in support of this motion, including expert reports by both sides.

Following a four day hearing in the matter, in his decision of 8 February 2008, Justice Shaughnessy reviewed the background leading to the motion, the extensive evidence presented, as well as the parties' arguments and the applicable law. The judge's comprehensive and thorough reasons for decision explain why Nelson Barbados' motion was dismissed. Justice Shaughnessy acknowledged that threats to counsel and witnesses was a serious matter and that the protection and safety of participants in court matters was of upmost importance:

> [101] The analysis of this issue on this motion must begin with the fundamental acknowledgment that threats to counsel or witnesses is a serious assault on the administration of justice and our democracy. The protection of the lives and safety of **all participants in the administration of justice** is of the utmost importance to this Court. Accordingly, a significant amount of time has been afforded to hearing and reviewing this matter. I find that **all defence counsel** understood and carried out their ethical obligations as officers of the Court to preserve the integrity of the justice system. They recognized their obligations and made serious inquiries as to their respective client's knowledge or actions concerning the issue before this Court.

Chief Justice Scott notes that in his subsequent decision dealing with the jurisdiction issue, Justice Shaughnessy again addressed and dismissed the issue of alleged threats. It is evident that you do not agree with the judge's decisions in this regard.

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However, Council has no authority to embark upon a fresh review of the evidence, comparing it against the judge's findings to determine whether the evidence might support a finding that threats did, in fact, occur as you have suggested. Simple disagreement with the judge's findings, no matter how forcefully you are convinced that the findings were in error, does not establish any misconduct on the part of the judge. The appropriate channel to dispute judicial findings is a matter for the courts to review.

Chief Justice Scott notes that Nelson Barbados did appeal Justice Shaughnessy's decision and that its appeal was dismissed. On appeal, Justice Howden was satisfied that Justice Shaughnessy had assessed the evidence and the risk of harm to the participants based on the evidence before him and that his decision was correct:

> [25] ... Shaughnessy J. considered all of the relevant evidence, assessed the risk of harm to all participants based on the evidence, had regard to the procedural and practical unfairness to both sides, and made an appropriate finding, balancing the relevant factors. In so doing, he did in fact consider the strength of the case of alleged threat to court participants, respective prejudice, and irreparable harm.
> ...
> [26] I have no doubt as to the correctness of the decision.

Chief Justice Scott finds that this aspect of your complaint is in reality a disagreement with the decision of Justice Shaughnessy and an attempt to have the evidence and submissions on this issue reviewed by the Council. This clearly falls outside the mandate of the Council.

3. Allegation that personal information was illegally published

You allege that on 30 October 2009, the Defendants and their lawyers illegally published on the internet your identity information (as defined by s. 402.1 of the *Criminal Code*), including your name, Ontario driver's license and date of birth, obtained from your employment records. You also allege that they "published calls for criminals I had professionally dealt within the past to hunt my family and me down." You state that you wrote to Justice Shaughnessy and provided him with proof from the internet that the Defendants and their lawyers were committing criminal acts, but that the judge did nothing about it, thereby sanctioning and participating in the reckless distribution of your identity information. You maintain that Justice Shaughnessy included identity information about you "in at least one, and perhaps more, of his written decisions...contrary to various, laws, rules and protocols."

You also complain that Justice Shaughnessy approved a settlement agreement that contained "outrageous violations of law, accepted legal practices and protocols." You say that on 8 June 2010, the judge recklessly placed 100,000 un-redacted solicitor-client privileged documents (containing identity information and private legal information) into the public domain, without

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restrictions. In your view, the judge allowed, facilitated and covered-up multiple breaches of federal and provincial laws. You assert that by approving the Minutes of Settlement, Justice Shaughnessy, without any authority, "illegally authorized an extrajudicial process." You state that the judge's actions on 8 June 2010, in regard to the settlement agreement constitute "the smoking gun that shows his long term misconduct was deliberate, malicious and punitive." You allege that the judge's actions were intentional, malicious and intended to intimidate everyone on your side of the case.

Chief Justice Scott has carefully considered the allegations you make. He notes that identity theft and identity fraud are serious matters. While the Courts must take certain precautions in regard to personal information, the principle of open justice remains a cornerstone of our judicial system. Proceedings before the courts are open to the public, except in the most exceptional cases. This often means that a balancing of interests must take place in regard to personal information.

The Canadian Judicial Council published in 2005 the *Use of Personal Information in Judgments and Recommended Protocol*, to foster consistency in this area. The protocol is intended to assist judges in striking a balance between protecting the privacy of litigants in appropriate cases and fostering an open judicial system when drafting reasons for judgment. For example, publication bans are not unusual in the context of criminal matters involving youths or relating to sexual offences.

Chief Justice Scott would agree that any unnecessary publication of identity information is regrettable. However, he does not accept the inference that any such publication constitutes judicial misconduct. The personal references contained in the judge's reasons for decision were properly part of the judge's determination of the issues before the Court.

The fact that the judge did not respond to your letter of 1 December 2009, written directly to him while matters were pending before the court, cannot be construed as improper. To the contrary, it would have been improper for the judge to communicate directly with you on this point. On all issues, judges must hear arguments from all the parties in open Court.

With respect to the Minutes of Settlement regarding the costs settlement of certain of the Defendants (PwC and the Cox Defendants), Chief Justice Scott notes that the provisions include that the settlement and the minutes are not confidential. He also notes that the reasons for this provision and others found in the Minutes of Settlement, were reviewed and explained before the Court during the 8 June 2010 proceedings. These included the fact that there was evidence of similar proceedings having been commenced in another jurisdiction. In order to avoid having to re-litigate some of the same issues, the Defendants concerned wanted to be able to use the information filed with the Ontario court in those proceedings.

All parties to the costs proceedings were represented by experienced counsel. The Minutes of Settlement were agreed by all parties named. In these circumstances, Chief Justice Scott finds it was part of the judge's judicial authority to approve the Minutes of Settlement, as agreed. Your

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argument that the judge should not have approved the Minutes of Settlement or should have imposed restrictions on some of the provisions, is in essence an attempt to have the Minutes of Settlement judicially reviewed. This is a matter for the courts.

You maintain that the judge "recklessly" agreed to endorse a settlement and authorized Defendant's counsel to continue to add documents that will not be confidential. The judge's endorsement of the settlement provides as follows:

> Cost motion has settled for all parties. The settlement for Mr. Ranking's and Mr. Silver's clients are not confidential and are embodied in the Minutes of Settlement executed June 7, 2010, filed in accordance with the Minutes of Settlement, the affidavit of Jessica Zagar, sworn June 7, 2010 and attached CD's, are also filed with the court. Also, in accordance with the Minutes of Settlement, further material are to be permitted to be filed.

Chief Justice Scott notes that any "further material" permitted pursuant to the judge's endorsement is not unlimited, as you state but "in accordance with the Minutes of Settlement."

Given all of the above, Chief Justice Scott finds that your allegations of misconduct in regard to the publication of personal information are simply without foundation.

4. Allegations of bias and conflict of interest

A recurrent theme throughout your complaint is your allegation that the judge consistently showed bias in favour of the Defendants and against Nelson Barbados, yourself and your lawyer.

You say that Justice Shaughnessy exhibited "professional infatuation" with selected Defence counsel and their high profile clients. You maintain that the judge's bias was apparent by his words and actions, including that he addressed some of the Defendants by their title. You refer to several of the judge's rulings against Nelson Barbados, including his findings in regard to the relevancy of certain evidence or the sealing of some documents, as indicating that he must have been influenced by the "titles, positions and status" of certain Defendants.

You also say that the transcript of the 8 June 2010 proceedings shows that the judge: allowed himself to "become worn down emotionally;" ceded control of the case to the lawyers for the other side; admitted that he received and felt outside pressure; engaged in uncalled for, personal and defamatory attacks against your lawyer; stated that the Defendants deserved justice; and called Defendants' lawyers "Heroes."

You raise a concern about possible political interference and influence, due to various tax treaties and other agreements between Canada and Barbados. You also suggest that Justice Shaughnessy

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acting in his official capacity as a federally appointed judge in Canada may have interfered in the lawful political process of Barbados "apparently in an attempt to impose his own personal concepts and standards of "democracy" upon that country."

Chief Justice Scott finds that you have provided no evidence to support your bald allegations of bias, including the grave allegation of political influence. The Supreme Court of Canada noted, in the *Wewaykum Indian Band* case, that impartiality is key to our judicial process and is presumed. A person who alleges bias must be in a position to demonstrate real or apparent lack of impartiality of the judge. Similarly, in a complaint to the Council about the conduct of a judge, the threshold of required credible and reliable information to establish bias is very high before the Council is required to exercise its authority under the *Judge's Act*. This is because the investigative power of Council is to be exercised with prudence and with full regard for the principle of judicial independence.

The judge's findings, with respect to the relevancy of certain evidence, as, for example, in regard to the affidavit of Mr Nitin Amersey or how the judge dealt with other evidence throughout the various proceedings, fell squarely within Justice Shaughnessy's judicial decision-making authority. No matter how strongly you feel the judge may have erred in his assessment of the evidence, this does not establish that the judge was biased.

With respect to the judge referring to some of the Defendants by their title, Chief Justice Scott advises that the use of someone's title in referring to a party in an action or in a decision, of itself, is not indicative of bias. Indeed, Chief Justice Scott observes that it is expected, as a common courtesy, to refer to persons in Court by their title.

Chief Justice Scott has carefully reviewed the different passages of the transcript which you assert show that the judge was biased. You maintain that Justice Shaughnessy's comment at the start of the 8 June 2010 proceedings in regard to the boxes of documents in his office establish that he was becoming "worn down emotionally" by the case:

> ...I had heard - he had called me on the Friday to tell me that - how things had progressed wonderfully and I was so delighted and those boxes had been in the boardroom, which I didn't mind at the other courthouse. But they, you know there was eight of them in my new offices. I deplored looking at them. I have no other boardroom that I can slip them into. So out of , I - I really overreacted and I got Tom Mills, my CSO, I said "Tom, for God's sake, get a cart and get those boxes and ship them to Barrie. I don't want to see them again." Not that I mind you, the counsel involved, but it just seemed like I was never going to see the end of those bankers boxes.
> (Transcript p. 1 and 2)

Viewed in its proper context, it is clear to Chief Justice Scott that the judge was simply noting that

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he was happy to hear that the parties had reached a settlement and that he was now able to move the many boxes of documents. given the limited space in his office. Chief Justice Scott rejects your suggestion that this demonstrates bias. The following exchange was also considered:

> MR SILVER: ...And so, those are the brief comments that I make. I just want to thank the court, the staff of the court, Mr. Ranking in particular, for being such a pleasure to work within this file. It's not just the details of this file that I'm so proud to have been involved in but I act for clients that include the current Prime Minister, the Attorney General. I think I've said this to you before, not to put more pressure on you, but there were a lot of eyes from far away...
>
> THE COURT: Oh I felt that.
>
> MR. SILVER: ...watching this and I'm proud to have been involved in - in a result and I've got to give thanks to the new counsel who came on - who came on because they assisted in not dragging this out any further and putting an end to it.
> (Transcript p. 21)

You submit that this is an admission by the judge that "he was biased, throughout the entire case." Chief Justice Scott disagrees. Judges occupy the dominant position in any court proceeding; they make important decisions and, not surprisingly, may feel pressure from time to time. Justice Shaughnessy's acknowledgment of this reality does not establish bias or a lack of impartiality in his determination of the many controversial issues before him. Chief Justice Scott notes that many of the Defendants, including Mr Silver's clients, were in fact foreign residents. He also notes that the proceedings were difficult ones that lasted for over three years.

Similarly, the judge's observation that the moment had come where the *parties* deserved justice was simply his way of saying that had the parties not arrived at a settlement, it was time that the matter be determined.

You also say that the judge made personal and defamatory comments about your lawyer. In this regard, it is useful to reproduce the paragraph in the transcript which you complain about:

> ... I- I find no satisfaction frankly in - in having to write about the conduct of a lawyer and frankly the reply material as it started coming in, and the Jessica Duncan affidavit, just knocked me off my feet. I - didn't speak about Mr. Allard because I - I speak about evidence. But did I think that Mr. Allard had a pivotal role in this throughout the case? I did. But I wasn't going to state that or make any comments because the evidence had to lead me there. And obviously appellate review would - would suggest that judges don't make comments or idle comments unless it's backed up by the evidence. *But it - it frankly disheartens me to see a lawyer who sells his soul to the devil, who for the*

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> *sake of the almighty dollar, sacrificed a career.* It is so sad and I was finding no joy in having to write a decision on this. I would have to do it if required. And I would do it. But I found no joy in it whatsoever.
>
> ...
>
> (Transcript p. 29 and 30)

Chief Justice Scott advises that the entire comment must be read in context. Justice Shaughnessy was on the eve of having to determine a complex motion on costs, when the parties reached a settlement. Pursuant to the Minutes of Settlement, Mr McKenzie (through his professional liability insurer) his former law firm and Mr Allard, agreed to pay virtually all of the costs incurred by the Defendants in defending Nelson Barbados' action against them in Ontario. Mr McKenzie's conduct of the lengthy proceedings before the court would have been a central factor in the judge's determination.

In this context, it was necessary for Justice Shaughnessy to review the settlement. In doing so, he commented on the fact that he would have determined the motion, if required, but would have taken no joy in so doing, as it would have necessarily required that Mr McKenzie's conduct be subject to close scrutiny.

Chief Justice Scott acknowledges that other judges might have chosen different words, but when looked at with knowledge of the history of the proceedings, the comment made about counsel is not inappropriate. In arriving at this conclusion, Chief Justice Scott took into consideration the full context in which the comments were made by the judge, namely, a hearing to confirm unique Minutes of Settlement, following long and costly proceedings, involving numerous parties, where substantive amounts of costs were paid by Mr McKenzie's professional liability insurers, his former law firm and others.

Chief Justice Scott also notes that Justice Shaughnessy prefaced his comments by stating that he did not normally make comments but that this was "an exceptional case with exceptional counsel." The judge also noted that he had not decided anything in this matter of costs and that his comments were to be understood on that basis. A review of the transcript of 8 June 2010 proceedings shows that Justice Shaughnessy thanked Defence counsel for their work in leading and coordinating other counsel. Because counsel were well prepared and presented the case clearly, this he noted had helped him immensely. Chief Justice Scott is of the opinion that the expression of gratitude by the judge, in these circumstances, were neither unusual nor improper. As previously noted these were long, complicated and very difficult proceedings involving an unusual number of parties.

Finally, Chief Justice Scott notes your suggestion that the judge should have disqualified himself from the proceedings. He advises that a key principle, in situations of real or apparent conflict of interest, is that a decision to recuse or not to recuse is a judicial decision. A party who is of the view that a conflict of interest may require a judge's recusal has the onus of raising the issue in court. In this case, there is no mention in the many decisions relating to this matter of any issue of potential conflict having been raised by Nelson Barbados or its counsel.

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Conclusion

For all of the above reasons, Chief Justice Scott has concluded that your allegations are either outside the jurisdiction of the Council to review or that they do not warrant further consideration by the Council pursuant to its mandate under the *Judge's Act*. Accordingly, he has directed me to close the file.

Yours sincerely,

Norman Sabourin
Executive Director and Senior General Counsel

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This is EXHIBIT 4 to the Affidavit of Donald Best, sworn April 25, 2016

A Commissioner, etc.

Ottawa, Ontario K1A 0W8

Personal and Confidential

CJC File: 15-0514 (11-0032)

28 January 2016

This is EXHIBIT 30
To the Affidavit of
J. FANTINO
Sworn SEP 08, 2016
[redacted]
A Commissioner, etc.

Mr Donald Best
132 Commerce Park Drive, Unit K
Suite 115
Barrie, ON L4N 07

By email: info@donaldbest.ca

Dear Mr Best:

I am in receipt of your correspondence dated 5 January 2016, 7 January 2016, and 21 January 2016, in which you complain about the Honourable Bryan Shaughnessy of the Superior Court of Justice of Ontario.

The mandate of the Canadian Judicial Council (Council) was previously explained to you in a letter sent by the Council and which related to a complaint you had filed against the same judge and the same court matter.

In your correspondence to the Council, you allege that Justice Shaughnessy secretly created and substituted a new and changed Warrant of Committal that illegally denied you statutory remission and secretly increased your jail time by a month, that Justice Shaughnessy ordered your exclusion from the normal court process and, that Justice Shaughnessy ordered that your case was never to be brought before him again.

As also previously explained to you in previous correspondence, the Council is not a court. Given the principle of independence of the judiciary, the Council's complaints process is not concerned with judicial decision-making or the exercise of judicial discretion. Your allegations concern the judicial decision-making process and not conduct.
In your correspondence, you make various demands related to how you want the complaint process to unfold. The early process of screening of complaints is governed by the

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Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges (the "Review Procedures"). Under the *Review Procedures*, my duties as Executive Director include the initial review of complaints. Once I complete this review, I must decide whether or not the matter warrants further consideration by Council. This complaint process does not and will not vary on demand.

I have carefully considered your complaint and conclude that it does not involve misconduct. Accordingly, I will be taking no further action.

Yours sincerely,

[redacted]

Norman Sabourin
Executive Director and Senior General Counsel

Court found that the Chairperson committed no reviewable error in dismissing the complaint where there was no evidence supporting the claims of corruption.[86]

88. In *Taylor*, the Court of Appeal made it clear that normally the appeal process will suffice to cure problems in a judge's decision, and it is rare that it will be appropriate to engage the CJC Process for judicial decision-making.[87] While the decision under review as made at a later stage in the Complaint Process, *Taylor* confirms the general proposition threshold is high for a decision to become conduct.

89. The jurisprudence of the Federal Courts is consistent with the *Matlow* standard that judicial decision-making does not become conduct unless it is tainted by impropriety amounting to "abuse of office, bad faith or analogous conduct." Moreover, this case law confirms that an allegation of such impropriety must be substantiated, including in the initial complaint which is subject to Early Screening. The complaint must identify facts or evidence which indicates that the decision was tainted by an improper motive.

c. Best does not advance a viable alternative standard for when judicial decision-making becomes conduct

90. At no point in his factum does Best argue that the standard from *Matlow* is wrong. Indeed, at no point does Best articulate any clear standard for when judicial decision-making becomes conduct. Instead, he simply affirms that conduct can include judicial decision-making in some situations.[88]

91. The closest Best comes to articulating a standard for what constitutes misconduct is when he states in his factum that "the CJC document, 'Ethical Principles for Judges' ('EPFJ'), sets out a guideline for the ethical conduct of judges and, as a corollary, what is judicial misconduct."[89] This statement is flatly contradicted by the same document he cites, which on the very first page after the Table of Contents states:

> The Statements, Principles and Commentaries are advisory in nature. Their goals are to assist judges with the difficult ethical and professional issues which confront them and to assist members of the public to better understand the judicial role. They are not and shall not be used as a code

[86] *Akladyous v. Canadian Judicial Council*, 2008 FC 50 at paras 58-60.
[87] *Taylor v. Canada (Attorney General)* 2003 FCA 55 at paras 65-66.
[88] Memorandum of Fact and Law of the Applicant Donald Best at paras 18-23.
[89] Memorandum of Fact and Law of the Applicant Donald Best at para 26.

This is EXHIBIT 31
To the Affidavit of
J FANTINO
Sworn SEP 08, 2017
[redacted]
A Commissioner, etc.

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This is EXHIBIT 2 to the
Affidavit of Donald Best,
sworn April 29, 2016

[redacted]
A Commissioner, etc.

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

This is EXHIBIT 32
To the Affidavit of
J. FANTINO
Sworn SEP. 28, 2017
[redacted]
A Commissioner, etc.

January 5, 2016

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

Attention: Complaints Investigations

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

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

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

Date of misconduct: May 3, 2013

> *"Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary."*
>
> *"Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons."*
>
> Judicial Conduct Principles – Integrity, Canadian Judicial Council, page 19. ISBN 0-662-38118-1

Dear Sir or Madam:

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

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

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

See footnote 28

DB 015868-246

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CJC CCM
Canadian Judicial Council
Conseil canadien de la magistrature

This is EXHIBIT 4 to the Affidavit of Donald Best, sworn April [redacted], 2016

[redacted]
A Commissioner, etc.

Ottawa, Ontario K1A 0W8

Personal and Confidential

CJC File: 15-0514 (11-0032)

28 January 2016

This is EXHIBIT 34
To the Affidavit of
J. FANTINO
Sworn Sep 28, 2017
[redacted]
A Commissioner, etc.

Mr Donald Best
132 Commerce Park Drive, Unit K
Suite 115
Barrie, ON L4N 07

By email: info@donaldbest.ca

Dear Mr Best:

I am in receipt of your correspondence dated 5 January 2016, 7 January 2016, and 21 January 2016, in which you complain about the Honourable Bryan Shaughnessy of the Superior Court of Justice of Ontario.

The mandate of the Canadian Judicial Council (Council) was previously explained to you in a letter sent by the Council and which related to a complaint you had filed against the same judge and the same court matter.

In your correspondence to the Council, you allege that Justice Shaughnessy secretly created and substituted a new and changed Warrant of Committal that illegally denied you statutory remission and secretly increased your jail time by a month, that Justice Shaughnessy ordered your exclusion from the normal court process and, that Justice Shaughnessy ordered that your case was never to be brought before him again.

As also previously explained to you in previous correspondence, the Council is not a court. Given the principle of independence of the judiciary, the Council's complaints process is not concerned with judicial decision-making or the exercise of judicial discretion. Your allegations concern the judicial decision-making process and not conduct.
In your correspondence, you make various demands related to how you want the complaint process to unfold. The early process of screening of complaints is governed by the

../2

Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges (the "Review Procedures"). Under the *Review Procedures*, my duties as Executive Director include the initial review of complaints. Once I complete this review, I must decide whether or not the matter warrants further consideration by Council. This complaint process does not and will not vary on demand.

I have carefully considered your complaint and conclude that it does not involve misconduct. Accordingly, I will be taking no further action.

Yours sincerely,

[redacted]

Norman Sabourin
Executive Director and Senior General Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Detailed Account of Misconduct

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

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

> "WHEREAS I have found that Donald Best is in contempt of this court and have ordered imprisonment as punishment for the contempt,
>
> YOU ARE ORDERED TO ARREST Donald Best and deliver him to a provincial correctional institution, to be detained there for a period of 3 Months"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "I'm dealing with contempt, already found. I've already found you in contempt of the court and in contempt of court orders and you're seeking to change that. It's as simple as that." (Exhibit M: December 11, 2012 transcript: pg 24, line 19)
>
> "But I'm saying to you, I'm not expanding this to a brand new hearing. I'm not re-litigating. You must understand this Mr. Best; I am not the Court of Appeal. I made - I gave a judgment. I made a finding. I am not the Court of Appeal. The Court of Appeal deals with anything that they feel I did wrong. The Court of Appeal is where you make applications for new evidence, not me." (Exhibit M: December 11, 2012 transcript: pg 25, line 4)
>
> "But this narrows down to, you've been found in contempt. I gave reasons why I found you in contempt.
>
> I cited principles of law that I applied and I imposed a sentence." (Exhibit M: December 11, 2012 transcript: pg 35, line 23)

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

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

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

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

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

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

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

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

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

On May 3, 2013, Justice Shaughnessy said:

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

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

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

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

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

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

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

> "1. THIS COURT ORDERS AND ADJUDGES that the Application for an Order setting aside the Contempt Order made January 15, 2010, be and is hereby dismissed.
>
> 2. THIS COURT FURTHER ORDERS AND ADJUDGES that the Application for an Order setting aside the Warrant of Committal issued against Donald Best on January 15, 2010, be and is hereby dismissed and, accordingly, the stay on the Warrant of Committal is lifted and Donald Best shall be taken into custody to serve his three (3) months sentence, as provided for in the January 15, 2010 Order of this Court, starting today."
>
> (Exhibit T: Judgment dated May 3, 2013)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Justice Molloy reversed Justice Shaughnessey's perfidy and ordered:

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

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

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

Justice Shaughnessy said:

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

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

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

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

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

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

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

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

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

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

My Expectations of the CJC

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

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

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

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

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

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

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

I expect and demand that the Canadian Judicial Council will:

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

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

Yours truly,

[redacted]

Donald Best

Exhibits

Can be downloaded in .PDF format online from Hightail:

https://www.hightail.com/download/ZWJYMWZNTkxCMTRaQ2NUQw

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

This is EXHIBIT 35
To the Affidavit of
J. FANTINO
Sworn Sept. 28, 2017
[redacted]
A Commissioner, etc.

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DB 015924-309

Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

AFFIDAVIT OF JIM VAN ALLEN
Sworn October 21, 2009

I, **JIM VAN ALLEN**, of the City of Orillia, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am the President of Behavioural Science Solutions Group Inc., an Ontario corporation that provides investigative analytical services to a broad range of firms and corporations.

A. Background and Experience

2. I have in excess of thirty years law enforcement experience; as an investigator, and investigative supervisor. and have personally investigated, assisted, supervised or been consulted on a vast number of investigations and crimes.

3. My involvement has been at various phases in the investigations, including the initial police response and analysis, efforts to identify unknown offenders in unsolved crimes, efforts to apprehend offenders, pre-arrest and post arrest interviews, case preparation and trial.

4. I am certified as a criminal investigative analyst by the International Criminal Investigative Analysis Fellowship, and have participated in investigations across Canada, the United States, Australia, the Netherlands, and Belgium. I have assisted to train and mentor 22 Criminal Investigative Analysts from Canada, the United States and Australia.

5. I have also completed numerous advanced criminal investigative and behavioural analysis courses. I am a graduate of the FBI National Academy Program in Quantico, Virginia. I am a regular guest presenter at the University of Toronto, Laurentian University, Trent University and other colleges on various issues, including criminal profiling, offender motivation and applied criminal psychology. I have also lectured at law enforcement training venues, conferences and symposiums.

B. Investigation Regarding Donald Best

6. On October 7th, 2009 I was contacted by Mr. Gerald (Gerry) L.R. Ranking of Fasken Martineau DuMoulin LLP to locate Mr. Donald Robert Best. Mr. Ranking wanted me to locate Mr. Best so that he could be served with a Summons to Witness (for the purpose of having his evidence available) for use at the hearing of a cost motion to be heard in Whitby, Ontario on November 2, 3 and 4, 2009. I was told by Mr. Ranking, and subsequently by his law student, Mr. Sebastien Kwidzinski (collectively "Faskens"), that they had not been able to locate Mr. Best.

7. From the information I received from Faskens concerning Donald Best, I immediately noted a lack of any meaningful information regarding the whereabouts of Mr. Best. In particular, I noted that Mr. Best had taken care not to disclose a residential address that would permit a third party to determine his actual whereabouts. The addresses (or supposed addresses) for Mr. Best shows a history of rental post office boxes, instead of normal residential or corporate addresses. By way of summary, Mr. Best's addresses are as follows:

(a) 427 Princess Street, Suite 200, Kingston, Ontario, K7L 5S9;

(b) 250 The East Mall, Suite 1225, Toronto, Ontario;

(c) 250 The East Mall, Apartment 1225, Etobicoke, Ontario;

(d) 250 The East Mall, Suite 1715, Etobicoke, Ontario; and

(e) 113 Dunlop Street East, Unit 1928, Barrie, Ontario.

8. Donald Best took steps to avoid disclosing a residential address when obtaining his motor vehicle licence. Motor vehicle licence searches performed on "Donald Robert Best" did not reveal a residential address. Rather, the only address disclosed was 122-250, The East Mall, Apartment 1225. I was informed by Mr.Kwidzinski that this address refers to a mailbox at the UPS Store (store 122) located in Cloverdale Mall, Etobicoke, Ontario.

9. Internet searches of various types were also unhelpful in locating any residential addresses for Mr. Best. Although internet searches such as Canada 411 customarily provide address histories (and address locations), for individuals, none of the searches conducted with respect to "Donald Best" provided a current reliable residential address for him. I also note that some of Mr. Best's addresses used the word "Suite" whereas other records use an apartment number. I cannot explain the different terminology but it would certainly suggest an intention to portray a "mailbox" as an actual residential address.

10. Other searches have also failed to disclose Donald Best's whereabouts. Mr. Best's date of birth is [redacted] and his driver's licence number is [redacted]. I was not able to use that information to secure a current residential address.

11. Using available search methods, I was also unable to locate a current telephone number for Mr. Best.

12. 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. No current address was available for him.

13. In my experience in conducting, supervising, and assisting many hundreds of investigations, it is my belief that Donald Best is intentionally and deliberately concealing and obscuring his current residence address.

14. Given my inability to locate Mr. Best (despite extensive efforts), I believe that Mr. Best has deliberately used false addresses to prevent him from being located by conventional methods normally used to locate individuals.

15. 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.

SWORN BEFORE ME
at the town of Greenhurst
in the Province of Ontario,
on October 21, 2009

[redacted]
A COMMISSIONER FOR TAKING AFFIDAVITS

Georgina Irma Ladany, a Commissioner, etc., Province of Ontario for Homer A. Frank, Barrister and Solicitor. Expires March 5, 2011

[redacted]
JIM VAN ALLEN

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Nelson Barbados 2010 ONSC 569
COURT FILE NO.: 07-0141
DATE: 2010/01/25

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Nelson Barbados Group Ltd.

Plaintiff

-and-

Richard Ivan Cox, Gerard Cox, Alan Cox, Philip Vernon Nicholls, Eric Ashby Bentham Deane, Owen Basil Keith Deane, Marjorie Ilma Knox, David Simmons, Elneth Kentish, Glyne Bannister, Glyne B. Bannister, Philip Greaves a.k.a. Philip Greaves, Gittens Clyde Turney, R.G. Mandeville & Co., Cottle, Catford & Co., Kebie 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,

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

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

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

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

Sarah Clarke for the Defendant First Caribbean International Bank

This is EXHIBIT 36
To the Affidavit of
J. FANTINO
Sworn Sep. 28, 2017
[redacted]
A Commissioner, etc.

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

Defendants

) HEARD : January 15, 2010

Justice J. Bryan Shaughnessy

REASONS ON MOTION FOR CONTEMPT

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

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

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

Order of November 2, 2009

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

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

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

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

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

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

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

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

Order of December 2, 2009

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

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

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

> In the usual course a motion to hold a person in contempt should be served personally. However, the circumstances in the present case are most unusual.
> Mr. Donald Best, the President, director and shareholder of the Plaintiff Corporation has set up a somewhat elaborate procedure for mailings and other communications. He has a UPS post box address in Kingston which in turn forwards all correspondence to yet another UPS post box at the Cloverdale Mall in Toronto.
> Further, it is apparent from correspondence sent by Mr. Best, including conversations he states he had with the Trial Coordinator at Whitby, that Mr. Best is aware of all aspects of this proceeding including my order of Nov. 2/09.
> Mr. Best called the Verbatim office on the day of the scheduled examination and attempted to conduct the examination over the telephone.
> Mr. Best has sent material to the Trial Coordinator and me which is not in Affidavit form.
> Mr. Best refuses to provide any address where he resides but suggests he is out of the country. Extensive investigations have not resulted in locating where he resides.
> I find that Donald Best is deliberately avoiding personal service of the contempt motion. There are no other steps that can be taken by the defendants to locate Mr. Best.
> In these unusual and unique circumstances I find that an Order for substitutional service of the contempt application is appropriate and it is so granted.
> Mr. Donald Best will be substitutionally served with the motion for contempt and my endorsement at:
>
> > 1) the UPS address in Kingston Ont. as detailed in the order of Eberhard J.
> > 2) at the UPS address at the Cloverdale Mall in Toronto.

> The contempt motion is now set to be heard by me on January 15, 2010 at 9:30 am at Whitby Ont.
> Costs of today's attendance and costs thrown away are reserved to the January 15, 2010 date.
> The cross-examination of Mr. McKenzie has been delayed pending this aspect of the proceeding. Further, 3 days for the hearing of costs have been reserved for the end of February 2010. It is therefore necessary that dates and timelines be adhered to in order that this matter can be completed in both a fair and expeditious manner.

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

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

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

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

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

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

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

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

Law related to Contempt

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

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

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

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

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

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

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

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

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

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

Remedy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Expressvu Inc. v NII Norsat International Inc., [1997] F.C.J. No. 276. This action involved certain parts of six affidavits filed by the plaintiffs. Mr. McKenzie represented the plaintiffs. Donald Best was one of the affiants on behalf of the plaintiffs. The Reasons note that Mr. Best's affidavit was sworn on October 30, 1996 indicating that he and Mr. McKenzie were acquainted at some point before this time.

(b) WIC Premium Television Ltd. v. General Instrument Corp. (2000), 8 C.P.R. (4th) 1 (Alta. C.A.). This action involved an appeal brought by the defendants to appeal the dismissal of their applications to set aside service *ex juris* and to strike the claims brought against them by the plaintiffs. Mr. McKenzie represented the plaintiffs. Mr. McKenzie sought to introduce fresh evidence in the appeal. Part of this fresh evidence was the affidavit evidence of Donald Best.

(c) Bell ExpressVu. Ltd. Partnership v Rex, [2002] 2 S.C.R. 559. This case involved an appeal to the Supreme Court of Canada brought by the plaintiffs relating to wording in the *Radiocommunication Act.* Mr. McKenzie represented the plaintiffs and he presented affidavit evidence of Mr. Best sworn November 15, 1999 and he cited Mr. Best in his factum.

(d) Kudelski S.A. v. Love, [2002] MBQB 65. This matter involved a motion to extend service and to approve substituted service. Mr. McKenzie represented the plaintiffs as well as Mr. Best and The Nelson Group Limited. Mr. McKenzie, Mr. Best, and The Nelson Group Limited, among others, were third parties. Mr. Best had been retained to assist in the execution of an Anton Pillar order. The defendants were successful in obtaining an order for substituted service on Mr. Best and The Nelson Group Limited. The defendants were unable to locate Mr. Best. At paragraph 26 of the Reasons the presiding judge states : "Mr. McKenzie, when asked by me whether he knew where Mr. Best was, indicated that he "believed" that Mr. Best is now in Thailand. Mr. Best, according to corporate documents filed with the Companies Branch in Ontario, would appear to be the operating mind of The Nelson Group Limited." A corporate search of The Nelson Group Limited details that a "Donald Robert Best" is listed as a Director and Officer. The company was incorporated on March 15, 1993 and its last annual return was filed in 2003.

(e) CAMT Speed-I-Com Inc. v Pace Savings & Credit Union Ltd. (2005) WL 2158674 (Ont. S.C.J.). This action involved applications by both parties for interlocutory injunctions as well as to request the appointment of a receiver. Mr. McKenzie represented the plaintiff. Mr. Best was involved in an accounting investigation on behalf of the plaintiff and he is described in the Reasons as being a retired police officer with some experience in forensic financial matters.

(f) Love v News Datacom. Ltd., (2006) MBCA 92. This matter involved an appeal to the Manitoba Court of Appeal brought by the plaintiffs after the motions court struck a third party notice as disclosing no reasonable cause of action. On the appeal, Mr. McKenzie was a third party respondent and he also

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

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

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

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

Imposition of a Fine

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

Conclusion

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

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

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

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

(a) To Mr. Ranking's clients costs of $ 50,632.90 inclusive of GST (comprised of $ 45,000 in fees and $ 5,632.90 in taxable disbursements).

(b) To Mr. Silver's clients costs of $ 13,230 inclusive of GST

(c) To Mr. Roman's clients costs of $ 5,512.50 inclusive of GST

(d) To Ms. Clarke's clients costs of $ 3,500 inclusive of GST.

Dated: January 25, 2010

[redacted]

Justice J. Bryan Shaughnessy

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Nelson Barbados Group Ltd.

Plaintiff

-and-

Richard Ivan Cox, Gerard Cox, Alan Cox, Philip Vernon Nicholls, Eric Ashby Bentham Deane, Owen Basil Keith Deane, Marjorie Lima 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., Kebie Worrell Ltd., Eric Iain Stewart Deane, Estate of Colin Deane, Lee Deane, Errie Deane, Keith Deane, Malcolm Deane, Lionel Nurse, Leonard Nurse, Edward Bayley, Francis Deher, David Shorey, Owen Seymour Arthur, Mark Cummins, Graham Brown, Brian Edward Turner, G.S. Brown Associates Limited, Golf Barbados Inc., Kingsland Estates Limited, Classic Investments Limited, Thornbrook International Consultants Inc., Thornbrook International Inc., S.B.G. Development Corporation, The Barbados Agricultural Credit Trust, Phoenix Artists Management Limited, David C. Shorey and Company, C. Shorey and Company Ltd., First Caribbean International Bank (Barbados) Ltd., Price

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

Defendants

REASONS FOR JUDGMENT

Justice J. Bryan Shaughnessy

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Jim Van Allen – Curriculum Vitae

Personal Profile

- President – Behavioural Science Solutions Group Inc., Langley, British Columbia, Canada
- Risk Assessment Consultant
  Member of Canadian Association of Threat Assessment Professionals
- Certified Profiler – International Criminal Investigative Analysis Fellowship Inc.
- Behavioural investigative advisor to private investigators, legal counsel, corporate security and human resource personnel, and justice agencies
- Instructs workshops on risk assessment and risk management across North America

Experience

- Has prepared risk assessments and response strategies for incidents with a potential for violence from the private and public sectors
- Experienced in a broad range of cases involving: threats, workplace violence, stalking, intimate partner violence, school violence, mental illness, arson, sexual misconduct, abduction, product tampering and extortion
- Has prepared threat and risk assessments for corporate directors, justice officials, public figures, celebrities, politicians, and developed personalized safety plans
- Developed discreet personality assessments of individuals with questioned mental instability
- Developed forensic interview strategies that assisted to conclude high profile and serious investigations
- Experienced in the analysis of anonymous written and electronic communications (letters, emails, blog posts, etc.)
- Has lectured extensively within the Ontario Police Training System and at venues including; Toronto Police C.O. Bick College, Canadian Police College, York Regional Police Academy, Ottawa Police Academy, FBI Academy, The Justice Institute of British Columbia, Georgia Public Safety Training Center, and numerous conferences and symposiums in Canada and the United States to justice officials, corporate personnel, educators, and medical professionals
- Has lectured to Federal Police Agencies in The Netherlands, and Belgium, and South Africa on behavioural analysis, Threat Assessment, evaluation and dangerous individuals and their pathways to violence
- Guest lecturer at the University of Toronto, Laurentian University, Trent University, and various community colleges
- Has provided expert testimony at all levels of the Ontario Court of Justice on risk assessment, investigative procedures, stalking, workplace violence, Psychopathy, crime reconstruction and sexual misconduct. Has also testified at the Court of Queen's Bench, Manitoba

This is EXHIBIT 37
To the Affidavit of
J. PANTINO
Sworn SEP. 28, 2017
[redacted]
A Commissioner, etc.

Jim Van Allen – Curriculum Vitae

Achievements

- Invested as a Member of The Order of Merit of the Police Forcesby Her Excellency, The Right Honourable Michaelle Jean, Governor General of Canada – May 2010
- Graduate – FBI National Academy, Quantico. Virginia (Applied criminal psychology)
- Certification - International Criminal Investigative Analysis Fellowship
- Completed numerous senior and advanced courses in threat assessment, dynamics of crime, applied criminal psychology, crimes of interpersonal violence, and behavioral analysis at venues across North America
- Has trained and mentored twenty-four criminal profilers from Ontario, RCMP, Surete de Quebec, Georgia, Virginia, Texas, Florida, California, and Australia
- Contributor to The Psychology of Criminal Investigations – The Search for the Truth
- Contributor to The Canadian Lawyer's Guide to The Law of Criminal Harassment and Stalking

Related Career History

May	1979 - Appointed – Ontario Provincial Police
May	1986 - Promoted – Shift Supervisor - Corporal
	1987 – Re-designated Sergeant
January	1992 - Criminal Investigative Supervisor
June	1995 - Manager, Criminal Profiling Unit
October	2008 - Founded – Behavioral Science Solutions Group Inc. - President
October	2010 – Retired - Ontario Provincial Police – Detective Sergeant

Languages:

English

Contact Information

Jim Van Allen
President,

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Telephone 604-626-9572
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Email: Behaviouralsolutions@gmail.com

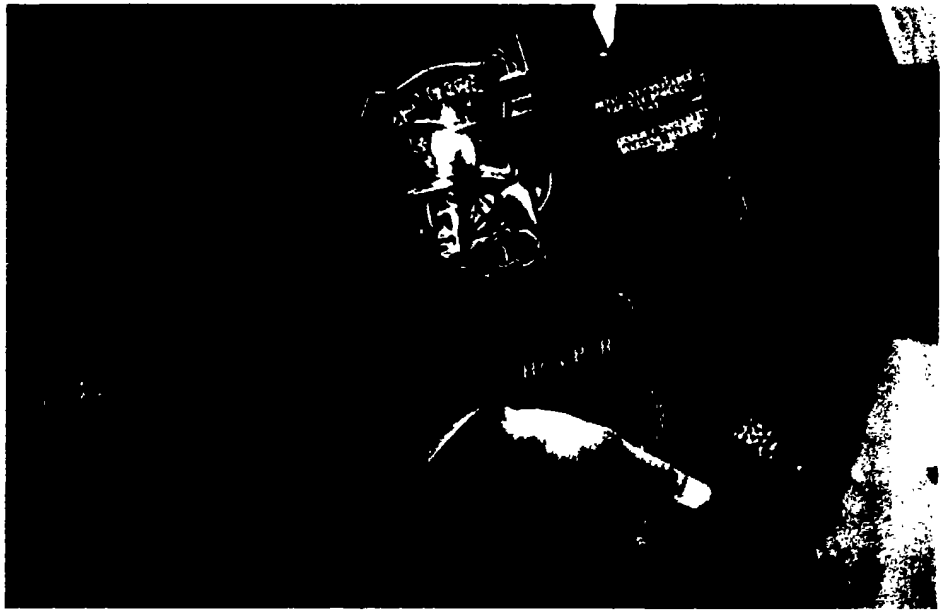
DB 016043-1

SOOTODAY .com

Awards apprehended by local police (8 photos)

Jun 17, 2014 6:12 PM by: Kenneth Armstrong

VIEW PHOTO GALLERY



This is EXHIBIT 38
To the Affidavit of
J. FANTINO
Sworn SEP 28 2017
A Commissioner, etc.

Police officers from the Sault Ste. Marie Police Service and local detachments of the Ontario Provincial Police, RCMP and Anishinabek Police Service were recognized at the 17th annual Police Services Awards Luncheon held Tuesday by the Sault Ste. Marie Chamber of Commerce.

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Newly appointed Sault Ste. Marie Police Service Chief Bob Keetch spent his second day on the job at the ceremony, getting to know community partners and officers from surrounding police services at the event.

"That's another on of my growth curves, to reach out and contact various detatchment commanders and establish a relationship," said Keetch.

The new chief added that the Greater Sudbury Police Service, where he served previously, doesn't have a comparible award ceremony in partnership with their chamber of commerce.

"It's about putting a name to a face and beginning to establish a relationship with the various services and the community," said Keetch.

View photo gallery here

A news release from the Sault Ste. Marie Chamber of Commerce follows.

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Several local police officers were recognized as Officers of the Year at the Sault Ste. Marie Chamber of Commerce 17th annual Police Services Awards Luncheon on Tuesday June 17.

Officers from each of Sault Ste. Marie's four area police services received the distinction.

The recipients included:

- Constable Darin Rossetto of the Sault Ste. Marie Police Service.
- Constable Barry Kelly of the Ontario Provincial Police - Sault Ste. Marie Detachment.
- Constable Dan Chevalier of the Royal Canadian Mounted Police - Sault Ste. Marie Detachment.
- Senior Constable Marlene Martin of the Anishinabek Police Service - Garden River Detachment.

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Criteria for the Officer of the Year awards include:

- continued efforts in the pursuit of excellence as a police officer.
- a high standard of performance and dedication in the day to day duties of a police officer.
- any performance that is over and above the call of duty.
- any incidence of bravery, life saving or attempted life saving or rescue.
- community-mindedness and overall service to the businesses and citizens of our community.

Each award is sponsored by a local business or agency that recognizes the efforts of our local police services and the important role that they play in the overall betterment of our community.

2014 award sponsors included: the Station Mall Merchants Association, Stone's Office Plus, Northwood Funeral Home, and Women In Crisis (Algoma) Inc. – a United Way member agency.

Ironside Consulting Services Inc and Northern Dental Care were contributing sponsors of the luncheon.

Mark Barsanti, Sault Ste. Marie Chamber of Commerce President and master of ceremonies for the event drew attention to the fact that Sault Ste. Marie and the surrounding area is fortunate to have four exceptional police services safeguarding our citizens and our communities.

He noted that it is very important that we take the time to honour the hard work and commitment of the police officers safeguarding Sault Ste. Marie and area and extended thanks to the hundreds of additional officers who work in-and-around our community.

Tuesday's luncheon featured a presentation by Certified Criminal Profiler, Jim Van Allen, who discussed the role of behavioural analysis and psychological profiling in serious criminal investigations.

Van Allen was the Manager of the OPP Criminal Profiling Unit for fifteen years and is a graduate of the FBI National Academy.

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He is recognized internationally for his expertise, and is regularly called upon by major news and media outlets to comment on, and offer insights into high profile crimes and criminal incidents.

On behalf of those in attendance and the 750 plus member businesses of the Chamber of Commerce, the ceremonies concluded with congratulatory remarks and a sincere thank you to all of the police officers of Sault Ste. Marie and area was extended "for making the community a safer place to live, to work and to raise our families."

****

Comments

1 Comment Sort by **Oldest**

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Jim Routledge · Caretaker at Huron Superior Catholic District School Board

Haha an article on the police and the usual handful of donkeys that always shoot them down aren't commenting! Hahaha!!!!

Like · Reply · 4 · Jun 17, 2014 5:51pm

Facebook Comments Plugin

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DB 016043-5

About the Author: Kenneth Armstrong

Kenneth Armstrong is a news reporter and photojournalist who regularly covers municipal government, business and politics and photographs events, sports and features.
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THE CHARLES SMITH BLOG

Part Three: Interrogation Of An Innocent Mother: The Behaviourist;

Before the Goudge Inquiry began I was well aware of the central role that Dr. Charles Smith had played in Nicholas' case at the request of the Ontario Chief Coroner's office.

However, I was was surprised to learn from evidence called at the Inquiry that the Sudbury police force had turned to an Ontario Provincial Police (OPP) "behaviourist" named Detective-Sergeant Jim Van Allen, a member of the OPP's Behavioural Sciences Unit, for an opinion on whether Lianne Gagnon had murdered her 11-month old son Nicholas.

What makes this intervention fascinating - in light of our knowledge that Nicholas suffered a tragic accident and was not murdered - is that Van Allen concluded, based on his analysis of a statement made by Lianne to the police within hours of Nicholas dying, that Lianne was responsible for his death.

We learn from an Overview report prepared by Goudge Inquiry staff, that on May 12, 1997 - just five weeks before Lianne was summoned to the police station for what an oppressive interrogation in which she was accused of being responsible for Nicholas' death - Sergeant Robert Keetch had a meeting with Van Allen.

During the course of the meeting, Keetch gave Van Allen a copy of a statement which Lianne gave Keetch on November 30, 1995 - the same day that Lianne lost her son - and asked him to analyze the document.

To my eyes, the statement, which began with the words *"he woke up this morning at 8.30"* - and went on to describe what in every respect was a normal day until her son suddenly died - was the outpouring of a young mother desperately trying to come to grip with the unthinkable reality that her tender young son was forever gone.

Email address. . Submit

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This is EXHIBIT 39
To the Affidavit of
J. FANTINO
Sworn SEP. 28/2017
[redacted]
A Commissioner, etc.

Detective Sergeant Van Allen didn't see it that way.

"It is my opinion, that the statement reveals that that Lianne Gagnon had an active role in the death of (Nicholas), and is concealing information," the letter dated May, 14, 1997 - five weeks before Lianne was summoned to the station, told the case had been re-opened and subjected to an oppressive interview - begins.

"The following observations are offered in support of this opinion," it continues.

"Ms. Gagnon never referred to the deceased as her son, her child or by his name,which indicates a poor relationship between them at that time. She only mentioned that she lived with other people by referring to a sewing table of her mothers. It appears that the relationship with her parents, if they reside with her, was also strained.

The statement contains no emotions. It is expected that after the death of their child, a parent would include the emotional impact it had.

Words such as "after" and "start" are unnecessary connections which indicate areas of a statement where information has intentionally been removed. After and start are used in the following places.
*"**After**" lunch I got him dressed..."*
*"**After** he was done eating, he **started** crawling around on the family room floor.He got underneath my mother's sewing machine and he bumped his head and he started to cry" (Please note: this sentence describes the alleged injury of the child that lead to its death. It begins and ends with **after** and **start** and contains passive language. It should be considered very sensitive, and unreliable)*

*Repeating activities is an indicator of deception particularly in cases of homicide. Ms. Gagnon repeated that she made dinner. She changed her language from **sat on** to **played on** which also suggests that deception may be present at this point. Experience indicates for most parents that young children don't sit still waiting for their dinner to be prepared.*

Two things are referred to as unusual in this statement and should be clarified in a subsequent interview, they are, not usually feeding the child in the family room, and the child's cry after he "bumped his head."

Passive language is an indicator of possible deception, or a way of attempting to remove responsibility from oneself. Passive language is contained in the following phrases.

*...**He got underneath** my mother's sewing machine..."*
*...When I picked him up, the crying stopped, his mouth was open but **no sound was coming out***
***"but his breath kept getting cut off"** (Please note: the subject used the word breath, and not breathing. Breath indicates the air being exchanged, and breathing is the mechanical action of drawing breath)*
*..."I slapped his back and shook him to try and make him catch his breath **but it didn't work**."*

*The phrase, "but his breath **kept getting cut off**" is a suspicious choice of words in a death where petechial hemorrhaging is found.*

Unjustified changes in language are usually an indicator of possible deception at that point in a statement. Ms. Gagnon states:
*"His crying was unusual, so **I ran right to him**."*
*"**I immediately** rann across the street"*
It could be reasoned that although she was concerned, the manner of running in both instances was not the same. Had they been similar, she would likely have referred to them the same way.

*The phrase, "When I picked him up **the crying** stopped..." indicates the child was crying **until**, and stopped **after** she picked him up.*
*"**The crying**" does not have a possessive pronoun such as **his crying, his first nap, his second nap, his dinner, his head, his breath, his mouth, his back**. This is another indicator that deception is present, and makes me suspect that "**the crying**" was the problem.*

Conclusion:

The language contained in the statement is indicative of tension and possibly a bad relationship between Ms. Gagnon, her child and her parents. Areas of possible deception, and intentionally removed information are noted. Efforts to minimize or avoid responsibility through the use of passive language are evident.

These findings cause me to believe that Ms. Gagnon is responsible for the action that led to the death of her child. A mechanism of asphyxia is suggested.

If further information concerning this analysis, or assistance

regarding this investigation is required , please contact me direct at.....contact information provided."

(To be totally fair to Detective Sergeant Van Allen: His report begins with the following preamble, which I am providing in its entirety;

"This analysis was prepared by Detective Sergeant Jim Van Allen of the Ontario Provincial Police Behaviour Sciences Section, using principles of Scientific Content Analysis. (SCAN). SCAN is intended for use, and is most effective for "pure version" statements which are verbatim. How close the statement is to verbatim, will determine how the interviewer should apply the analysis to this investigation. This analysis contains opinions, and is provided for "lead value" only. It should not be considered an absolute indicator of the opinions offered.")

I will leave it to my readers to make up their own minds about the OPP opinion - except to say that I am sad and angry to see these words written about an innocent mother who lost her child by someone who never met her - all in the name of science.

But believe it or not, in the next posting you will see how the Sudbury police continued to pursue Lianne Gagnon with one of the ugliest excesses of state power that I have ever seen - the execution of a search warrant on a baby's coffin.

Next posting: Interrogation of an innocent mother: Part Four;

Harold Levy...hlevy15@gmail.com;

But you

HAROLD LEVY THURSDAY, JANUARY 17, 2008

G+

THE CHARLES SMITH BLOG

Part Five: Interrogation Of An Innocent Mother: Another Opinion From The OPP Behaviouralist;

"IT IS OUR OPINION, THAT THE INFORMATION IS CONSISTENT TO A HIGH PROBABILITY, WITH LIANNE GAGNON BEING RESPONSIBLE FOR THE DEATH OF (NICHOLAS). THE FOLLOWING IS SUBMITTED IN SUPPORT OF THIS OPINION."

FROM REPORT OF ONTARIO PROVINCIAL POLICE BEHAVIOURAL SCIENTIST DETECTIVE SERGEANT JIM VAN ALLEN BASED IN PART ON A LETTER SEIZED UNDER A SEARCH WARRANT FROM NICHOLAS' CASKET.

(The recently posted concise chronology for this series will hopefully help the reader negotiate this series of several postings which is called, "Interrogation of an innocent mother;")

At the end of the last posting, I suggested that the obtaining of a search warrant to seize a letter placed in Nicholas' casket by his mother was, a "mere prelude to an outright investigative assault on Lianne Gagnon."

Let me explain.

The "overview report" prepared by Commission staff and a "case history" prepared by the Sudbury Regional police force, tell us that the police did more than simply open and read Lianne's letter: They faxed a copy of it to Detective Sergeant Jim Van Allen, a member of the Ontario Provincial Police Behavioural Sciences Unit.

Van Allan is the officer who determined that Lianne Gagnon had likely been responsible for Nicholas' death after analyzing a statement she gave to the police just after Nicholas had suddenly died in the family home.

The police also provided Van Allen with a transcript of an "interview" conducted with Lianne on June 19, 1997, which along with the letter seized from the casket, would serve as a basis for his opinion.

Email address... Submit

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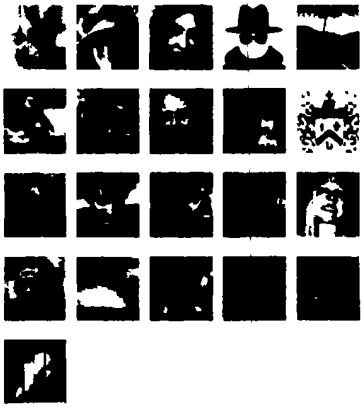

Follow

(The police clearly prefer words like "interview" suggesting an application for a job rather than "interrogation," which is what this aggressive confrontation really was. H.L)

As the overview report indicates:

"D/Sgt. Van Allen provided a further statement analysis with investigative suggestions to Sgt. Keetch. D/Sgt. Van Allen's investigative suggestions included involving Mr. Tolin in attempting to elicit a confession from Ms. Gagnon. D?Sgt. Allen suggested this attempt be made at the ens of July 1997. He observed Ms. Gagnon had planned to marry on August 2, 1997. He noted, "(t)he preceding period, in conjunction with waiting for the police investigation to conclude will be a very emotional time for her. This should be added to, by orchestrating events by police.' D/Sgt. Van Allen suggested the promise that of forthcoming forensic results, "sudden developments" in the investigation and renewed police contacts may cause Ms. Gagnon to disclose the truth."

Van Allan's letter to the Sudbury force, dated July 9, 1997, is lengthy but worthy of reproduction in full because of the insight it gives us into the art of police behavioural science - especially as we now know that Lianne was an utterly innocent mother who's beloved 11-month old died a tragic but accidental death.

It is addressed to Detective Sergeant Keetch re: Statement analysis & investigative suggestions death investigation of (Nicholas) second report.

"This analysis was prepared by Detective Sergeant Jim Van Allan, in consultation with other members of the the Ontario Provincial Police Behavioural Sciences Section. Principles of scientific content analysis and criminal investigative analysis were used to consider the following information," the letter begins.

"- Video taped interview of Lianne Gagnon;
- Indirect personality assessment;
- Letter obtained from casket of (Nicholas);
- Consultations with investigator on 01 and 04 July, 1997;
-Consideration of previous analysis of written statement of Lianne Gagnon."

Then there are some caveats:

"This analysis is is based upon the accuracy of the information submitted, and the training, education, and experience of the analysts.

"This analysis contains fact, theories and speculation, Where necessary, opinions will be identified as such, so that the proper weight can be attached to them. It is not a substitute for a well planned and thorough investigation."(

I'll drink to that! H.L.)

Then Van Allen provides final line, saying: *"It is our opinion, that the information is consistent to a high probability, with Lianne Gagnon being responsible for the death of (Nicholas). The following is submitted in support of this opinion."*

Now for the bulk of the Van Allen's letter to Keetch, under the heading; **"Analysis of Letter from Casket of (Nicholas):**

"In comparison to the written statement of L. Gagnon, in which she didn't refer to the deceased by name, or as her son, this letter contains numerous changing references to the child. (Nicholas, my darling, sweetie, babies, my beautiful baby boy, and my precious Nicholas) In comparison, this is an overuse of terms which are unjustified by the changes."

(As I read this I think I am starting to feel nauseous. H.L.)

"In our opinion, the letter appears to be written for others to read, and seems to contain quotes from others, which she does not include herself by using personal pronouns such as I or me. These are:

"There are no other babies in the world as beautiful as you are, or as smart and personable and funny."

"Everyone loves your precious blue eyes, golden blond hair, and a smile that could light up a room."

"It is unexpected that the mother of a deceased child would refer to him in the past, present and future tense. Gagnon refers to her child in with me" two tenses in some sentences "...but I wished you could be here with me", is past tense, and suggests that she doesn't wish he could be with her at the time of writing."

(I am becoming increasingly ill the more I read this "analysis"; H.L.);

Part Ten: Interrogation Of an Innocent Woman: Back...

The "Confidential Memo" Kingston Police Went To Co...

Part Nine: Interrogation of An Innocent Woman: Par...

Part Eight: Interrogation Of An Innocent Woman: ...

Part Seven: Interrogation of An Innocent Mother: ...

Part Six: Interrogation Of An Innocent Mother: A l...

Chronology: Interrogation Of An Innocent Mother S...

Part Five: Interrogation Of An Innocent Mother: A...

Part Four: Interrogation Of An Innocent Mother; Po...

Part Three: Interrogation Of An Innocent Mother: T...

Part Two: Interrogation Of An Innocent Mother: Li...

Part One: Interrogation Of An Innocent Mother;

Blind Eye: An excellent Book On Cover-Ups Within ...

A Clue As To How Dr. Charles Smith Attained His R...

Goudge Inquiry: What did the Hospital For Sick Chi...

UP--DATED: Goudge Inquiry: Dr. Huyer's Memory;

Dr. Dirk Huyer, Former SCAN Team Head, Says Mian ...

Damage Control And Lost Opportunity: The Hospital ...

Lauwer's Supports Calls For Review of 142 "Shaken-...

Goudge Inquiry: Dr. Albert Lauwer's Wise Words;

Goudge Inquiry: Can Of Worms;

"The letter contains no indication of grief, despair, or hopelessness for the future without the child. Gagnon doesn't add that she loved the child until the closing of the letter. In the sentence, "You *loved* and your love was returned a million times by your mommy and everyone who knew you", the distance in the sentence between the child and the mother is significant, and is believed to reflect the distance in the exact relationship. Distances in the relationship is appear in other sentences as well".

(As I read this drivel, I am thinking how poor Lianne Gagnon got the worst that our criminal justice system can offer: First, Dr. Charles Randal Smith and now this... H.L);

"References to being loved, are "passively stated" which doesn't indicate personal commitments to the statement, such as; "you are loved and how sincerely you will be missed". Everyone loves your..."And you are loved in heaven".

"References of bad conduct are not expected in a farewell to a deceased infant, such as; "Aggrivate (sic), you be a good boy, and hard time".

The sentence, "I hope as a friend says, you sid among the clouds with golden wings..... is a curious misspelling which suggests a consideration of S. I.D.S. (Sudden Infant Death Syndrome) to explain the death as something other than an accident".

(Absurd and preposterous. H.L.)

"The writer refers to herself in the third person as "your mommy" which deflects commitment in statements, instead of using personal pronouns such as I or me. The writer signed as "mommy", which was not capitalized anywhere in the letter. In comparison, I, Christmas, You,Tom Petty, Everyone, We, Danny, Jake, Grandpa, Muffin, Tibby, and Mooch are capitalized".

(Give me, oh please give me a break H.L.)

*"The sentence, "I'm afraid sweetie, **I don't understand**" begs for further explanation, and isn't in the context of an accidental death."*

*"The final sentence of a letter is important. I expect it would be very important in a final farewell and contain heartfelt emotion. "Be careful dear, and **don't bump your head**", suggests it is more*

Part Three: Dr. Chai...

Goudge Inquiry: Can Of Worms: Part Two: Ottawa De...

The Hospital For Sick Children's Irreparable Breac...

Dr. Charles Randal Smith: A Disaster Waiting to H...

Goudge Inquiry: Can Of Worms: Part One; Oppositio...

A Glimmer of Understanding; Part Three: A Dangerou...

A Glimmer of Understanding; A Fatal Decision Part ...

► 2007 (103)

HAROLD LEVY

My interest in forensic pathology began with my Toronto Star investigative reporting into once famed since disgraced former doctor Charles Smith. I began this Blog after retiring from the Star in 2006 in order to follow the aftermath into the independent Goudge inquiry into many of Smith's cases. I have now begun to focus on cases involving flawed forensic science no matter where they occur (the recent Amanda Knox prosecution in Italy, for example) and am fascinated by the interest in the Blog from people in countries throughout the world. In another development, my interest in "junk science" "pseudo-experts" and the miscarriages of justice they all too often cause has drawn me deeply into the on-going U.S. death penalty debate where so many troubling cases involve issues relating to DNA

important for the writer to have people believe the child bumped his head".

(I just held back what I was going to say - and will leave it to the readers of this Blog to fill in the blanks. H.L.);

The letter then proceeds to the next topic: **"Analysis of video-taped interview":**

"This interview did not receive an admission, as it attempted to resolve an issue which Gagnon has apparently resolved in her mind. It attempted to generate empathy for the deceased, however, there is no indication that Gagnon truly bonded with the child. Gagnon did not refer to the child by name or as her son in this interview."

*"To summarize, Gagnon's language indicates deception, lacks sufficient detail, lacks commitment to facts, and evades issues. She avoided telling the truth by stating what **usually** happens instead of what did **happen**. She contradicted herself in sentences like"I put him down for a **long nap** that was **unusually short**";"*

*"She said that she **tried** to put him down for another nap, indicating that she was unsuccessful. She mentioned that he cried and whined during the day, and didn't want to go to sleep, or go into his high chair, suggesting possible sources of irritation for her. (This irritation is reflected in the letter in the coffin by references to conduct.)"*

*"Deception is indicated by changes in pronouns towards the child; the mouth V **his** mouth and the eyes V **his** eyes. Deception is also noted regarding the child crying, where Gagnon said "it just stopped".*

*"It is unlikely the bump on the child's head could have risen between the time of the alleged contact with the sewing table, and death. Gagnon referred to it as "that **incident**" which is characteristic of a deceptive and involved person minimizing the event".*

*"I missed a seminar of school with **him**," shows distance between her and the child. Gagnon didn't deny involvement after a positive confrontation by police, that she was responsible for the death, and didn't adamantly defend herself, or deny the "mistake analogy."*

*"Gagnon offered information consistent with the forensic findings of asphyxial death by stating, "I didn't **cover his face and choke** him".*

and other developments in the world of forensic science. For all of this I rely on my experience as a reporter at the Toronto Star, my work as a lawyer in Ontario's criminal courts, and my abhorrence of injustice. Please send cases and developments which may be of interest to this Blog to hlevy15@gmail.com. Read on! Harold Levy.

VIEW MY COMPLETE PROFILE

This has not been said by others, and I believe it may indicate the means by which the child died".

(YeS, we know about those forensic findings, don't we? H.L.)

"Gagnon continually covered her face, shielded her eyes, and avoided contact with the interviewer with her posture, indicating evasiveness. She suggested she had difficulty remembering what she said to police a year and a half ago,rather than relying on the actual memory of what occurred approximately eight months previous. Truthful people are expected to accurately recount details from important events in their life with only some minor discrepancies."

(Of course! Especially when they have been sand-bagged by the police for an unscheduled interview - without any lawyer or parents present - and confronted with allegations that they are responsible for the death of their child. Absolutely! H.L.)

"In the post interview comments to her fiance, she admitted that maybe she did have something to do with it, but didn't know for sure. (How could he have not wondered whether the horror of the situation made her wonder if she could have been responsible for her very own son's death? H.L.) She stated, "I guess everything is over, no shower, no wedding, no nothing." This appears to be more a primary focus than the unresolved death of her child".

On to the topic of **"Personality Assessment."**

"Information about Lianne Gagnon suggests she is spoiled by her parents, and immature for a twenty-three year old female. She is well-socialized, intelligent, secretive about close personal matters (Aren't the rest of us? H.L.), has a capacity for anger, competitive, with a frequent need for recreation and stimulation. (How incriminating! H.L.) *She has high personal standards for herself, and others, and set personal goals that may have been compromised by the necessities of her single parent situation. Resentment of the child would be possible in this situation, with a strong emotional reaction likely result in periods of frustration".*

(So much for single parents! (H.L.)

Last section: Investigative suggestions:

"The following idea is suggested for consideration by investigators and supervisors in light of the fact that conventional investigative

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methods have failed or are likely to fail".

(Perhaps because she might be innocent? H.L.)

Authorized consensual interception of private communications;

"In light of the continued communication, and attempts to obtain information and intelligence by Gagnon, from her former boyfriend and biological father of the child, we suggest that an affidavit under section 184.2 of the Criminal Code be presented to a Provincial Division judge".

"To this end, the ex-boyfriend if agreeable, should be taken into confidence, and participate in a conversation designed to elicit a confession of the truth from Gagnon. We note that Gagnon planned to marry on 02 August, 1997. The preceding period, in conjunction with waiting for the police investigation to conclude will be a very emotional period for her. This should be added to, by orchestrated events by police. If the ex-boy-friend continues to be supportive, trusted, and a potential source of information concerning the investigation, Gagnon may be inclined to disclose to him. Should the events not occur during this period, a significant advantage may be lost".

"Lack of contact with the investigator on annual leave, promise of forthcoming forensic results, and "sudden developments" in the investigation, and renewed police contacts to generate conversation in the final week of July, may be sufficient to cause Gagnon to disclose the truth. The ex-boyfriend must appear to have some type of importance to her, and aligned with her rather than police."

"The letter winds up with a standard offer of continuing assistance and the provision of relevant contact information".

Next Posting: "Part Six: Interrogation of an innocent mother;" How Sudbury police take Van Allan's suggestions to heart and enlists Nicholas' father in a wiretap operation targeting Lianne Gagnon.

Harold Levy...hlevy15@gmail.com;

HAROLD LEVY THURSDAY, JANUARY 17, 2008

G+

THE CHARLES SMITH BLOG

Part Six: Interrogation Of An Innocent Mother: A last resort;

"IN SUMMARY, DR. SMITH BELIEVES THIS CHILD DIED AS A RESULT OF A NON-ACCIDENTAL BLUNT FORCE INJURY TO THE HEAD. AS WE HAVE STATED PREVIOUSLY THIS IS NOT CONSISTENT WITH THE STORY GIVEN BY THE MOTHER AT THE TIME AND I AM AWARE THAT YOUR DEPARTMENT IS STILL PURSUING THIS DEATH AS A CRIMINAL INVESTIGATION.

ACCORDINGLY, I WILL NOT BE GIVING THE FAMILY A COPY OF THIS AUTOPSY".

LETTER FROM DEPUTY CHIEF CORONER DR. JIM CAIRNS TO THE SUDBURY, ONTARIO,POLICE FORCE;

It was a last resort.

The Sudbury police force had thrown everything they could at Lianne Gagnon - but she hadn't buckled.

They grilled her but that didn't work.

She didn't confess.

They had tried to find incriminating evidence - a farewell letter Lianne had placed in Nicholas' casket - but there was no incriminating evidence there.

Just a grieving mother's farewell words to her dead son.

They had consulted a police "behaviouralist" who reviewed Lianne's initial statement, the transcript of her interrogation, and the letter from the casket.

Lots of theories, opinions and speculation - but no evidence.

Email address... Submit

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In desperation, they followed the police behaviorist's advice to enlist the support of Steven Tolin - Nicholas' father (separated from Lianne) - as one of a battery of psychological ploys aimed at getting Lianne to confess to the crime she so adamantly denied committing.

Here's how it happens, as detailed in an "overview report" on the case prepared by Goudge Inquiry staff.

On July 21, 1997, Detective Sergeant Keetch persuades Tolin to sign a consent to electronically intercept his conversations with Lianne. (No details of this conversation are set out in the Commission documents);

Two days later, Keetch obtains the authorization from Provincial Court Judge Mahaffy - the same judge who issued the search warrant for Nicholas' casket.

The authorization places Lianne's private communications with Tolin under secret state scrutiny for almost a month - until September 10, 1997.

On July 28, 1997, Tolin informs Lianne that Keetch has asked him to drop by the station the next day - regarding new developments in the investigation and they agree to speak after Tolin has met with the police.

(This is part of the plan created by Van Allen - the behaviouralist - to put Lianne on edge so that she will confess.")

The next day Steven gets ready to entrap Lianne.

He gets together with a member of the Sudbury force's technical support team who installs a recording device in the car, and wires him for sound.

The police case book tells us that:

"At 1847 hours on the 29 July, 1997, Tolin telephoned Gagno at her residence and the two agreed to meet. Tolin picked Gagnon up at her residence and drove her to the parking lot overlooking Bell Park where he became involved in a recorded conversation with her regarding the death of (Nicholas);

"Tolin returned Gagnon to her residence at 2006 hours and then proceeded to the police station where the recording devices were removed..."

We have not been told what Lianne told Steven that night while the recording devices did their nosy job - but it is clear that once again, the Sudbury police department's frontal assault on an innocent 23-year-old mother missed its target.

The last resort of the police efforts to find evidence on which to charge Lianne with murdering Nicholas - so that she could be put behind bars for life - had failed.

Lianne Gagnon's innocence had prevailed and now the end game between The police and Lianne was to be played out as the Dr. Charles Smith - determined after the second autopsy that Nicholas' death was not accidental;

As Deputy Chief Coroner Dr. Jim, Cairns put it in a letter to the Sudbury Chief of Police dated October 30, 1997:

"In summary, Dr. Smith believes this child died as a result of a non-accidental blunt force injury to the head. As we have stated previously this is not consistent with the story given by the mother at the time and I am aware that your department is still pursuing this death as a criminal investigation.

Accordingly, I will not be giving the family a copy of this autopsy.

If you have any further questions, do not hesitate to contact me, Dr. Smith and myself are available to you at any time for consultation during your further investigation."

Around the same time that the Chief Coroner's office was intensifying its conviction that Lianne was guilty, the force conducted several interviews which pointed to his innocence.

One was with Sophie Laframboise,a friend who attended at the hospital on November 30, 1995.

Laframboise told police, in a statement dated November 11, 1997, that when she babysat Nicholas a few days before his death, he fell forward and bumped his head.

"I think there was a bruise probably on the (left)side of his forehead,"

she said.

A week later, Lianne's mother noted in a statement that Nicholas fell and hit his head on Mrs. Marshall's coffee table about two weeks before his death, and his forehead was swollen and blue - and that Nicholas had fallen while Ms. Laframboise was watching him.

About three weeks later, the Sudbury Regional force informed the Gagnon family that criminal charges would not be pursued.

The "overview report" tells us that on March 28, 2000, Dr. Cairns advised the force that the cause and manner of death are now indicated as "undetermined" and that although the Chief Coroner's file was not closed - it was dormant, and that no further investigation was anticipated unless new information came to light.

"Dr. Cairns trusted this information would help the Sudbury Regional Police complete its file regarding the investigation of Nicholas' death," the document said.

When all is said and done, the Sudbury Regional Police force had it right when they originally concluded, as had the local coroner, that Nicholas' death was not suspicous.

It was only when Chief Coroner's Office got involved at the highest levels - and inserted Dr. Charles Smith in the case - that Lianne began to be viewed as a murder suspect.

From another perspective, Lianne Gagnon had become a pawn in an ideological controversy where the Sudden Infant Death Syndrome (SIDS) - a well established syndrome - had fallen out of favour in that office, and suspicion of criminality (dirty thinking) was the order of the day.

But that doesn't take the Sudbury Police Force off the hook for its oppressive and destructive investigation of an innocent, young, single mother and her family.

Next Posting: Part Seven: Interrogation of an Innocent Mother; Inspector Robert Keetch's Remarkable Apology;

Harold Levy...hlevy15@gmail.com;

alone against the defence experts. This is entirely consistent with his evidence that he relied on others from the outset to bolster his opinion. When they recanted their opinions, Dr. Smith was no longer willing to hold on to his.

Reference: Dr. Smith's Written Evidence, PFP303346, at p. 86
Evidence of Dr. Smith, 28/01/2008, p. 86, line 6 to p. 87, line 21

8.02(8) Withdrawal of Charges against Louise Reynolds

718. Dr. Smith maintains that the Crown misrepresented the state of the medical evidence in the statement to the Court explaining the decision to withdraw charges against Louise Reynolds. Specifically, Dr. Smith gave evidence that the statement was erroneous in several respects:

(a) It suggests that Dr. Smith knew of the possibility of a dog attack causing death at the time of his initial post mortem examination. He did not;

(b) It suggests that the Police were aware of the theory of the dog attack causing death prior to charges being laid against Louise Reynolds and that based on Dr. Smith's unequivocal opinion that the wounds were stab wounds and not dog bites, they proceeded to charge Louise Reynolds. As stated above, the police were not aware of the defence theory until several months after the post mortem examination and Dr. Smith did not render an unequivocal opinion until that time;

(c) It suggests that Dr. Smith had disclosure of the reports of Drs. Ferris and Dorion prior to the preliminary hearing. He did not; and

(d) It fails to point out that there were other experts who agreed with Dr. Smith: Dr. Wood, Dr. Reid, Dt. Van Allen, etc. These experts all supported the Crown theory that Louise had killed her daughter.

Reference: Dr. Smith's Written Evidence, PFP303346, at pp. 86-87

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To the Affidavit of
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Sworn SEP. 28, 2017
[redacted]
A Commissioner, etc.

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--- Upon recessing at 3:25 p.m.
--- Upon resuming at 3:41 p.m.

THE REGISTRAR: All rise. Please be seated.

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COMMISSIONER STEPHEN GOUDGE: Okay, Mr. Wardle, my sense of it is you have about thirty (30) minutes more, is that about right?

MR. PETER WARDLE: That's correct.

CONTINUED BY MR. PETER WARDLE:

MR. PETER WARDLE: So, Inspector Begbie, just before we go on, I wanted to look quickly at one (1) document. It's in your binder at Tab 2, and it's called "The Synopsis".

And this would have been a synopsis prepared by the team for disclosure purposes at some point.

MR. BRIAN BEGBIE: I believe it was actually prepared by Sergeant Bird, but -- he was the officer in charge of the case. I'm -- I'm certain that he prepared it, but --

MR. PETER WARDLE: All right.

MR. BRIAN BEGBIE: -- I've seen the document.

MR. PETER WARDLE: And just looking at it quickly, and I'm not going to take you through all of it, but I notice at -- first of all, at page 6 of the document, you'll see it says -- and this is dealing with various steps in the investigation interviews.

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To the Affidavit of
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Sworn SEP. 28, 2017
[redacted]
A Commissioner, etc.

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In the middle of the page:

"Guarding against tunnel vision, the police commenced an intensive area of canvass and witness interviewing blitz."

And then over to the next page:

"As a result of the post-mortem examination..."

And this is about a third of the way down.

"...it was learned that the deceased, Sharon XXXX, had died as the result of severe blood loss secondary to multiple stab wounds, head, neck, upper body area, a large part of her scalp had been removed. There was evidence of head lice infestation.

Weapon: Probably one (1) of knives or pair of scissors seized at scene. It was subsequently learned, also, that there was no evidence to indicate that

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a sexual assault had taken place."
And again, that's information that would have been relayed to you as a result of the post-mortem examination done by Dr. Smith, correct?
MR. BRIAN BEGBIE: That's correct.

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MR. PETER WARDLE: And then, just going over the page, you had, at this point, engaged -- is it Sergeant Van Allen from the OPP --
MR. BRIAN BEGBIE: Correct.
MR. PETER WARDLE: -- who had done a review of certain of the statements of Ms. Reynolds?
MR. BRIAN BEGBIE: Correct.
MR. PETER WARDLE: And he'd given you an opinion, and you'll see at page 8 in the middle paragraph, is that the result of Sergeant Van Allen's analysis?
MR. BRIAN BEGBIE: Yes.
MR. PETER WARDLE: Okay. And I'll -- I'll just read it quickly:
"These circumstances include limited access to the child by others being killed in her home; the random sloppy and tightly clustered nature of the crime scene; the spontaneous nature of the crime consistent with an outburst of temper; the depersonalization of the body by scalping; the body being left at the crime scene; the exclusion of other probable motives; the use of a weapon of opportunity that was located

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in the house."
And just stopping there. You were never able to find a single knife, or pair of scissors, or some other instrument that could be identified with some certainty as the murder weapon, were you?
MR. BRIAN BEGBIE: No.
MR. PETER WARDLE: Okay. And the -- and then just finishing the sentence:
"...the personality characteristics of Louise Reynolds and the nature of her relationship with the victim."
And then going over the page, you'll see the reference to the two (2) --
MR. BRIAN BEGBIE: Just if I can -- sorry, to interrupt, Mr. Wardle, the --
MR. PETER WARDLE: Yes?
MR. BRIAN BEGBIE: Just so you know that that -- those are the criteria that he -- how he reached his decision or his -- his opinion. Those are the -- that's the criteria he used and that's what he based it on that --

MR. PETER WARDLE: Correct, and I'm -- and I'm -- there is reference to his report in the overview report.

MR. BRIAN BEGBIE: Okay.

MR. PETER WARDLE: Going over the page, then, you'll see reference in the first third of the page to those two (2) independent witnesses we talked about just before the break.

MR. BRIAN BEGBIE: Yes.

MR. PETER WARDLE: And am I right, just looking at that and without going into the details, that from the evidence of these two (2) people, Ms. Cope and Mr. Trenchard, the police theory was that the crime had occurred between 8:20 p.m. and 8:45 p.m.?

In other words, in a fairly narrow time period, correct?

MR. BRIAN BEGBIE: I think it went -- yeah, whatever -- that -- that would be accurate. I was going to say 9 o'clock, but I think it is closer to a quarter to or ten (10) to, so that's -- that's accurate.

MR. PETER WARDLE: All right. So on the police theory, first of all, Ms. Reynolds would have had to commit the killing. She would have had to dispose of the murder weapon in some fashion. And she would have had to change her clothes so that on 8:45 p.m., she could be seen by an observer on her front step, right?

MR. BRIAN BEGBIE: Well, as far to getting rid of any potential murder weapon, the police weren't called and didn't get to the scene until 9:30, so

---

when they went out and did their -- their search that was taking place in the neighbourhood, some of what you just said could have occurred then, hypothetically.

But yes, for time frame what you're talking about is correct. She's on the step.

MR. PETER WARDLE: And just -- I'll note parenthetically that there was no blood found on Ms. Reynolds, and there was no blood found on the clothes that she turned over to your officers, correct?

MR. BRIAN BEGBIE: There was no blood found on her. I'd have to double check on the clothes. If I may just have a moment?

MR. PETER WARDLE: Sure.

(BRIEF PAUSE)

MR. BRIAN BEGBIE: I'm just checking some of the results against what we seized.

MR. PETER WARDLE: Just help us with the document you're looking at, just so --

MR. BRIAN BEGBIE: Just -- I'm looking at the CFS submission sheets under Tab 32.

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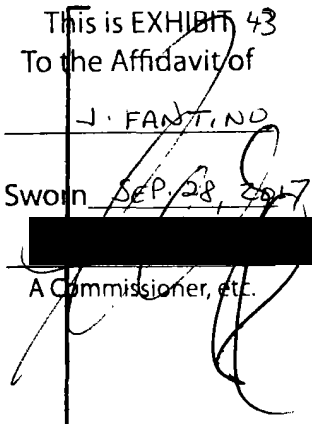
To the Affidavit of
J. FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

Mr. Silver and I have tried to obtain that information, you're aware of that. I then write to Mr. McKenzie, my letter appears - one of my letters appears under Tab B where I'm basically saying, you know, "Could you please confirm that all my materials are being served on Mr. Best, and in the alternative please give me Mr. Best's contact details including address, fax, email", and the response I obtained is under Tab E where Mr. McKenzie simply says, "I note that normal practices is to send documents to the director of a company at his listed mailing address and you've apparently failed to do so. I take it that you're not intending to reach the director of the corporation, but rather to frame things as if they make me responsible for your failure and require me to do things which I'm not required to do." And then, Your Honour, my letter - my response goes back saying, "Please give me the details", and that is also under Tab E. If I then go back to Mr. Kwidzinski's affidavit I've now reached the point where we do not know where he is and as a consequence I ask Mr. Kwidzinski to begin taking steps to try to locate him, and Mr. Kwidzinski is not terribly successful and you will see that at the end of the day we have to retain a private investigator, and the affidavit of the private investigator appears under Tab 4, which is the very last tab of the brief. I'm going to ask you to turn that up. This is the affidavit of Jim Van Allen and he sets out his background and

experience at paragraphs 2 through 5, but I can - let the court know this is an experienced private investigator and paragraph 5 indicates that he's a graduate of FBI National Academy program in Quantico. He is a presenter at the U of T, the Laurentian University, Trent University. He is a very experienced private investigator, and he indicates at paragraph 6 that he was contacted by me and I wanted to locate Mr. Best so that he could be served with a summons to witness for the purposes of having his evidence available for use at the cost motion. Now at this time we were hopeful that the cost motion would proceed in November. Mr. Savinski (ph) [*sic*], Kwidzinski, I should say, provided some information dealing with the addresses we had been able to locate, and also the motor vehicle search which we had been able to locate and I'll come back to that, but what Mr. Van Allen then says in paragraph 9 is that, "Internet searches did not disclose any information." In paragraph 10, "Even though Mr. Van Allen was able to determine date of birth, driver's licence, unable to do anything else." Importantly at paragraph 13 through 15 he states that in his experience in conducting, supervising and assisting many hundreds of investigations it is his believe that Donald Best is intentionally and deliberately concealing and obscuring his current residence address, and he then says that he believes that Best has deliberately used false addresses to



experience at paragraphs 2 through 5, but I can - let the court know this is an experienced private investigator and paragraph 5 indicates that he's a graduate of FBI National Academy program in Quantico. He is a presenter at the U of T, the Laurentian University, Trent University. He is a very experienced private investigator, and he indicates at paragraph 6 that he was contacted by me and I wanted to locate Mr. Best so that he could be served with a summons to witness for the purposes of having his evidence available for use at the cost motion. Now at this time we were hopeful that the cost motion would proceed in November. Mr. Savinski (ph) [*sic*], Kwidzinski, I should say, provided some information dealing with the addresses we had been able to locate, and also the motor vehicle search which we had been able to locate and I'll come back to that, but what Mr. Van Allen then says in paragraph 9 is that, "Internet searches did not disclose any information." In paragraph 10, "Even though Mr. Van Allen was able to determine date of birth, driver's licence, unable to do anything else." Importantly at paragraph 13 through 15 he states that in his experience in conducting, supervising and assisting many hundreds of investigations it is his believe that Donald Best is intentionally and deliberately concealing and obscuring his current residence address, and he then says that he believes that Best has deliberately used false addresses to

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B. Investigation Regarding Donald Best

6. On October 7th, 2009 I was contacted by Mr. Gerald (Gerry) L.R. Ranking of Fasken Martineau DuMoulin LLP to locate Mr. Donald Robert Best. Mr. Ranking wanted me to locate Mr. Best so that he could be served with a Summons to Witness (for the purpose of having his evidence available) for use at the hearing of a cost motion to be heard in Whitby, Ontario on November 2, 3 and 4, 2009. I was told by Mr. Ranking, and subsequently by his law student Mr. Sebastien Kwidzinski (collectively "Faskens"), that they had not been able to locate Mr. Best.

7. From the information I received from Faskens concerning Donald Best, I immediately noted a lack of any meaningful information regarding the whereabouts of Mr. Best. In particular, I noted that Mr. Best had taken care not to disclose a residential address that would permit a third party to determine his actual whereabouts. The addresses (or supposed addresses) for Mr. Best shows a history of rental post office boxes, instead of normal residential or corporate addresses. By way of summary, Mr. Best's addresses are as follows:

(a) [redacted] Kingston, Ontario, K7L[redacted]

(b) [redacted] Toronto, Ontario;

(c) [redacted] Etobicoke, Ontario;

(d) [redacted] Etobicoke, Ontario; and

(e) [redacted] Barrie, Ontario.

This is EXHIBIT 44
To the Affidavit of
J. FANTINO
Sworn SEP. 08, 2017
A Commissioner, etc.

DB 000130-b38-1

This is EXHIBIT 45
To the Affidavit of
J. FANTINO
Sworn SEP 28, 2017
[redacted]
A Commissioner, etc.

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2906

Behavioural Science Solutions Group Inc.

Invoice

Date: November 7, 2009
INVOICE # 012-09

To: Fasken Martineau DuMoulin LLP
Barristers & Solicitors

86 Wellington St W
Suite 4200
Toronto Dominion Bank Tower
Box 20 Toronto-Dominion Centre
Toronto ON, M5K 1N6
Canada

Re: Gerald Ranking

Jim Van Allen — Gerald Ranking (Re: Donald Best) — Due on receipt

Travel time from Orillia to	31 Oct 09	8.25 hrs at 80.00 an hour	$660.00
area check	31 Oct 09	3.5 hrs at 125.00 an hour	$437.50
Mileage 884 Km. @ .50 per km			$417.00
Lunch –	31 Oct 09		$ 7.00
01Nov09 Update to client, Property Roll Inquiry in Front of Yonge Twp		0	0

BN # 83603 0099

Total $1,521.50

Thank you for choosing our services.

[redacted]

2907

Behavioural Science Solutions Group Inc.

Invoice

Date: October 24, 2009
INVOICE # 011-09

To: Fasken Martineau DuMoulin LLP
Barristers & Solicitors

66 Wellington St W
Suite 4200
Toronto Dominion Bank Tower
Box 20 Toronto-Dominion Centre
Toronto ON, M5K 1N6
Canada

Jim Van Allen | Gerald Ranking | Due on receipt

Inquiries RE: Donald BEST 6 Hrs @ $125.00 per hour	750.00	$ 750.00
(Includes information checks, checks, record checks, Telephone interviews of Unsuccessful lead investigation, and update messages to G Ranking and S Kwiatkowski)		
Affidavit Re: Donald Best 3 Hrs @ 125.00	375.00	$ 375.00
Preparation of Affidavit, discussions with G Ranking and S Kwiatkowski, and commissioning affidavit		
Charge for commissioning affidavit per F. Horner Law Firm, Gravenhurst	35.00	$ 35.00
Copy of F. Horner receipt attached		
Courier deliver of affidavit	18.43	$ 18.43
Purolator bill 1069 937 9252 (copy attached)		

BN # 83503 0099

[redacted] Total $ 1178.43

Thank you for your placing your trust in us.

Court File No.: T-604-16

BEST, Donald
Applicant

-and-

THE ATTORNEY GENERAL OF CANADA et al.
Respondents

FEDERALCOURTOFCANADA
Application commenced at
TORONTO

MOTION RECORD

Volume One of Two

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