

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 Two of Two**

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**Counsel for Julian Fantino**

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This is EXHIBIT 46  
To the Affidavit of

J. FANTINO

Sworn SEP 28, 2017

[REDACTED]  
A Commissioner, etc.

***Standards — Documents in Writing***

4.01 (1) A document in writing in a proceeding shall meet the following standards:

1. The text shall be printed, typewritten, written or reproduced legibly, with double spaces between the lines and a margin of approximately 40 millimetres on the left-hand side.
2. The characters used shall be of at least 12 point or 10 pitch size.
3. Good quality white paper or good quality near white recycled paper 216 millimetres by 279 millimetres shall be used. O. Reg. 427/01, s. 4 (1).

***One Side or Both***

- (2) The text may appear on one side or on both sides of the paper. O. Reg. 396/91, s. 2.

***Standards — Electronic Documents***

(3) A document that is issued or filed electronically in accordance with these rules is sufficient, despite subrule (1), if it meets the standards of the software authorized by the Ministry of the Attorney General for the purpose. O. Reg. 43/14, s. 2.

(4)-(11) REVOKED: O. Reg. 14/04, s. 2.

4.01.1 REVOKED: O. Reg. 288/99, s. 4.

## EXPERT WITNESSES

### *Experts' Reports*

**53.03** (1) A party who intends to call an expert witness at trial shall, not less than 90 days before the pre-trial conference scheduled under subrule 50.02 (1) or (2), serve on every other party to the action a report, signed by the expert, containing the information listed in subrule (2.1). O. Reg. 438/08, s. 48; O. Reg. 170/14, s. 17.

(2) A party who intends to call an expert witness at trial to respond to the expert witness of another party shall, not less than 60 days before the pre-trial conference, serve on every other party to the action a report, signed by the expert, containing the information listed in subrule (2.1). O. Reg. 438/08, s. 48.

(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.





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This is EXHIBIT 47  
To the Affidavit of

J. FANTINO

Sworn SEP 28 2017

A Commissioner, etc.

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



J. FANTINO

Sworn SEP 28 2017  
[REDACTED]  
A Commissioner, etc.

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M Ummm hmmm, so...

V But how...

M This sounds, this sounds like it's your expertise, really.

V Yes. I was doing this in the, ah, police career. I was thirty one and a half years with the Ontario Provincial Police and, ah, for fifteen of those I was with the Behavioral Sciences Section doing criminal profiling and and threat assessment.

M ummmm

V And ah

M That must have been very challenging.

V It was very fascinating, one of the most interesting things you could do in a police career, in my, ah, mind. And we've worked hand in hand with the RCMP, the SQ, the FBI and a lot of other, ah, large state agencies in the United States and, ah, I've I've worked all over Canada doing cases similar to what you're talking about, and we've been very experienced in the areas of...

M uh, you were thirty one and a half years in the police force?

V Yes Sir.

M Ah, what, when did you retire? Was it a long time ago?

V Nah, I retired in, um, ah, October, twenty ten, and I have been operating my own, ah, risk assessment consultancy since then..

M mmmmm

V and I do a lot of training, and I work for, um, I do work for lawyers and um private...

M Uh huh

V ... investigators, corporations

M Mister Van Allen, would it be possible for you to send me a confidential copy of your C.V.? I will give you an email address and you sound exactly like the type of person this corporation is looking for...



See footnote 37



This is EXHIBIT 50  
To the Affidavit of

J. FANTINO

17  
Nelson Barbados Group v. Cox *et al*  
Reasons for Judgment – Shaughnessy J.

Sword ~~SEP 28, 2017~~ appeared before me on January 25, 2013. At that  
time, I made the following endorsement:

A Commissioner, etc.

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





Donald Best crex by Mr. Silver

167

1047

- 1 is the Van Allen affidavit.
- 2 724 Q. Yes, got it.
- 3 A. Okay, just give me a minute, please.
- 4 725 Q. Hmm?
- 5 A. Moment please, sir.
- 6 726 Q. Mhmm.
- 7 A. Yes, on number 12 says inquiries
- 8 727 Q. Paragraph 12?
- 9 A. Paragraph 12, yes. Inquiries of the Toronto
- 10 Police Association Mr. Best was a member only revealed a
- 11 former address in Hamilton, namely, 123 Mountain Park Road,
- 12 no current address is available for him. And I called up
- 13 the Toronto Police Association and I spoke to the legal
- 14 director there and I told about that in my December 1st
- 15 letter which I'm going to what it is... Just hang on for
- 16 a second, please. I think that was in the...
- 17 728 Q. Also Exhibit W but in your December affidavit.
- 18 A. Okay.
- 19 729 Q. But stopping there no, I'll let you continue
- 20 but
- 21 A. You asked me, sir, and I
- 22 730 Q. Is your information that Van Allen acted
- 23 improperly limited to paragraph 12 of his affidavit? I
- 24 guess it is.
- 25 A. Just a minute, sir.

This is EXHIBIT 51  
To the Affidavit of

J. FANTINO

Sworn SEP 28 2017

A Commissioner, etc.

1048

1 731 Q. I'm running out of minutes and patience.

2 A. Yes, here it is, on November 24th, 2009, I spoke  
3 with Rick Perry, the legal director.

4 732 Q. Where are you reading from?

5 A. Oh, yes, sorry, page 5 of my December 1st letter  
6 to Mr. Ranking and copied to everyone else.

7 733 Q. Okay, got it.

8 A. W.

9 734 Q. Yes.

10 A. I spoke to Mr. Rick Perry, legal director, and he  
11 told me based on our conversation that he was horrified that  
12 the records had been accessed by somebody on behalf of Mr.  
13 Ranking's private investigator and he thought it was a  
14 criminal offence. And he also also one second here.  
15 Mr. Ranking redacted his invoices and that is at Exhibit Y.  
16 And

17 735 Q. Of which affidavit?

18 A. Of December 10th.

19 736 Q. Yes.

20 A. I mean, you know, hundred thousand documents out  
21 there and this is the one that's redacted. And looking at  
22 it it's quite clear between the first one and the second one  
23 that Mr. Ranking has redacted the types of information check  
24 that and the records checks and the other checks and he's  
25 redacted that. And that's very interesting and I can't



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This is EXHIBIT 52  
To the Affidavit of

J. FAUSTINO

Sworn SEP. 28, 2017

A Commissioner, etc.

which will stand as security for the payment of any cost award this court may make. Now as between the two of those our concern, not lightly held, but our concern is that Nelson Barbados is a sham and we reach that view not only based on the refusals, whether at the cross-examination of John Knox on the 4<sup>th</sup> of November, whether at the examination of Mr. Best by Andrew Roman, but perhaps most importantly based on the fact that Mr. McKenzie was unable to answer the questions of Your Honour when you were fair to a fault and you asked him not once, but at least twice if not three times to either bring the documents that would answer these questions or to have Mr. Best file an affidavit, and as Your Honour will well recall neither was provided. I will go through, momentarily, the difficulties we have then found, or encountered trying to find Mr. Best, but I also pause to observe the legitimacy of this action when one recalls and I will do - the cost motion to be heard in February, I will do - I'm going to treat this case like a fraudulent conveyance case, and I'm going to have the badges of fraud articulated on a chronology for Your Honour. But when I look at Mr. Best I kept asking myself why wasn't he put forward as the affiant? He's the sole officer and director of Nelson Barbados and yet we have John Knox who was put forward, and at best we can determine Mr. Knox having no basis at all as an officer or director of Nelson Barbados, and someone who, when Mr. Silver asked



J. FANTINO

Sworn SEP 28, 2017

A Commissioner, etc.

B Well how did this come to be?

S I have no idea nor do I care.

B Oh. Well they are only calling for, I see. Yes. Guys, I get it! Whoever put this on, whoever let the Ministry of Transport information into the public, they knew what they were doing. Identity theft. Intimidation. I'm intimidated. I know exactly what you guys have done

S I guarantee you Sir that it wasn't me or Cassels Brock.

B Well well. Who was it then? Sir, who hired the private investigator?

S I have no idea. Anyway, so..

B You have no idea?

S Sir, we're going to end the call and we're..

B Don't hang up!

S going to get a certificate of non-attendance

B I would like to, give me the questions, gentlemen. Give me the questions.

24:59 or so

R We're not doing this over the phone. You're required to bring your documents with you. There's a notice of examination. There's a protocol to be followed, we intend to follow it. If you intend to do something different then you need a court order to vary what Justice Shaunnessy has ordered. It's as simple as that.

B Well I'd like to have a copy of the order

R ?

S Incidentally, do you have all the corporate records of Nelson Barbados?

B I'd like a copy of the order, gentlemen.

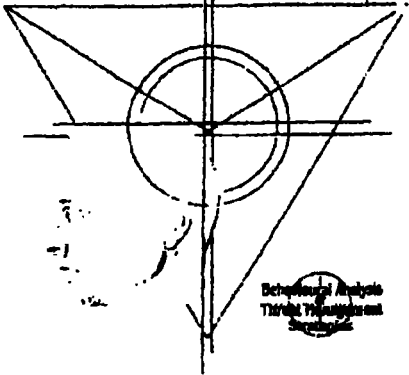
S Sir, you said to ask you a question. I'm asking you a question. Do you have all of the records of Nelson Barbados?

B Is that one of your questions, Sir? I'll write that down.



2906

Behavioural Science Solutions Group Inc.



Invoice

Date: November 7, 2009

INVOICE # 012-09

To: Fasken Martineau DuMoulin LLP  
Barristers & Solicitors66 Wellington St W  
Suite 4200  
Toronto Dominion Bank Tower  
Box 20 Toronto-Dominion Centre  
Toronto ON, M5K 1N6  
Canada

Mr. 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
airus check	31 Oct 09	3.5 hrs at 125.00 an hour	\$ 437.50
Mileage 834 Km. @ .50 per km			\$ 417.00
Lunch -	21 Oct 09		\$ 7.00
01Nov09 Update to client, Property Roll Inquiry to Front of Yonge Twp.			0

BN # 83503 0099

Total \$1521.50

Thank you for replacing your trust in us.

This is EXHIBIT 54  
To the Affidavit of

J. FANTINO

Sworn SEP 28, 2017

A Commissioner, etc





J. FANTINO

Sworn SEP 28 2017

Court File No.: 07-0141

A Commissioner, etc.

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

Defendants

**AFFIDAVIT OF JOANNE BURGOS**  
Sworn November 30, 2009

I, JOANNE BURGOS, Legal Secretary, of the City of Vaughan, in the  
Province of Ontario, MAKE OATH AND SAY:

1. I served Donald Best with a Motion Record (returnable December 2, 2009),  
by sending a copy by Purolator, a courier, to Donald Best at 427 Princess Street, Suite 200,  
Kingston, Ontario, K7L 5S9.

300

2. The copy was given to the courier on November 27, 2009.
3. I served Donald Best with a Motion Record (returnable December 2, 2009), by sending a copy by United Messengers, a courier, to Donald Best at c/o Cloverdale Mall, 250 The East Mall, Suite 1225, Toronto, Ontario, M9B 6L3.
4. The copy was given to the courier on November 27, 2009.
5. I served Donald Best with a Motion Record (returnable December 2, 2009), by sending a copy by ordinary mail to Donald Best at 427 Princess Street, Suite 200, Kingston, Ontario, K7L 5S9.

SWORN BEFORE ME  
at the City of Toronto, in the  
Province of Ontario,  
on November 30, 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

*Emmeline Morse*

)  
)  
)  
)  
)  
)

JOANNE BURGOS



Nelson Barbados v. Richard Ivan Cox, et al.

This is EXHIBIT 56  
To the Affidavit of

J. FANTINO

Sworn Sep 28, 2017,

A Commissioner, etc.

could show up and start singing like a bird and waive privilege and he won't be my problem anymore, but that....

THE COURT: All right. Just draw a halt here.

Gentlemen, where are we? I mean, you've been reasonable, all of you, throughout this case and I include Mr. Dewart. Now, he's really hit on a touchstone, so you want to examine Best, you can, there's no objection.

MR. RANKING: Well, the difficulty, Your Honour, is I have had my own firm try to find him, I've had private investigator try to find him.

THE COURT: Oh, I can make an order.

MR. RANKING: Right, and that's - and that's what we're seeking.

THE COURT: I'll just make an order, because what he says in here, in this letter, and I've got to believe it came from Mr. Best, that - first page, paragraph 4, "Nelson Barbados Group Limited wishes Your Honour to know that the company has not been served with any legal documents since we moved to our Kingston, Ontario mailing address as provided in the courts' order made early in September. The company has not heard anything from the defendant's lawyers." He tells me that's his mailing address. I know it's a UPS.

MR. RANKING: The difficulty, Your Honour, is that absent an order from this court.

THE COURT: Well, I give - no, you won't have to worry about absent an order. I'm going to give an order.



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This is EXHIBIT 57

To the Affidavit of

J. FANTLAND

Sworn Sep 28 2017

A Commissioner, etc.

like to give you a roadmap of the order that I am seeking and then perhaps with your indulgence I'll go back and give you history as to why I think this order is appropriate.

THE COURT: I think that's an appropriate way to approach this.

MR. RANKING: But let me say a couple of things; first of all, I'm not seeking contempt today and there was short service of these materials, because we actually asked Mister - as you will hear Mr. Best did not attend on the 17<sup>th</sup> of November. We then, Mr. Silver and I, wanted to try to avoid a contempt motion and we therefore wrote to him and asked him to come back on the 25<sup>th</sup> of November and Mr. Best then failed to attend on the 25<sup>th</sup>. By reason of having given him the second indulgence we were pressed to be able to get out this contempt motion in time. So, what I propose to do is this; I would like to have an order validating service of the motion that is before you, and then permitting us to serve the contempt motion by means of an alternative to personal service at the Kingston address, and the reason for that, Your Honour, is that - I'm going to take you through, which is very important, and that's why I do need to take you through the history, is despite extensive work and significant funds that have been expended by our firm and our client, we can't find Mr. Best and it's one of those invidious, and I don't use that word lightly, situations where Mr. Best at his will can write

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

to counsel, can make frankly defamatory remarks about Mr. Silver and I to the court without any affidavit evidence, and yet hide away somewhere and yet then expect us to jump over hoops and bring motions and keep coming back and bothering this court and your valuable time, which is indeed, as I say in my respectful submission, invidious. So, I think that when I've gone through the record of the attempts that we've made and the efforts at Mr. Best to avoid detection and most importantly, and I say this with the greatest of respect to the whole administration of justice, the fact that we know Mr. Best to be aware of the fact of what's going on in this court and his letter of November 16<sup>th</sup> is very telling. The fact that we know by reason of that fact that by going by way of substitute service he does get notice that this is one of those rare cases where an order for substitute service of the contempt motion is, indeed, appropriate. So, we will be seeking that and I will dare say that if the court doesn't exercise it's discretion to permit substituted service that we really have reached a situation where Mr. Best, though obfuscation and delay has, in fact, achieved the ends which he intends which are a hundred and eighty degrees opposite to the ends of justice. So, that deals with the backdrop for the order for substituted service.

Now, the next part of the order and you'll have



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received a call from Mr. Best other than when I walked into the reception of Victory Verbatim. And then the last paragraph on page 81, Your Honour, "Once again I want to emphasize that I will make myself available for questioning by lawyers tomorrow, Tuesday, November 17<sup>th</sup>." Now, Mr. Best did not make himself available. We attended. Everybody in this courtroom were there. Mr. Silver - I took the call initially in reception - have you read the statement that I put on the record, Your Honour, under Tab L?

THE COURT: Yes.

MR. RANKING: Okay.

THE COURT: The transcript.

MR. RANKING: Yes.

THE COURT: Yes. I'm just wondering is this a good point to just give the staff a short break here?

MR. RANKING: Absolutely. Thank you, Your Honour.

R E C E S S

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

THE COURT: Yes, Mr. Ranking?

MR. RANKING: Thank you, Your Honour. I'm very nearly complete. I'd just would like to thank you for your indulgence, and that we took a little longer than we expected, but I can let you know what we're doing and then finish my submissions and if either counsel have other comments, of course, but over the break I think

and my letter of November 18<sup>th</sup> appears under Tab N, and I confirmed to Mr. Best the fact that he had not attended, and I also made reference to his own letter of November 16<sup>th</sup>, at the first page, and the fact of our telephone call and that's where, just to again - where I did make the error where I referred to January 17<sup>th</sup>, not November 17<sup>th</sup>. And I think what is important from this letter, and I should say both on behalf of Mr. Silver and myself and I think I also speak for Ms. Clarke, although she wasn't actually in the eyes of Mr. Best, so I actually never spoke to her about the accusations, but it goes without saying that we categorically reject Mr. Best's version of events that day. And what is important though is we tried to set the matter down for two o'clock, he wouldn't tell us where he was, he wouldn't tell us whether he was in the jurisdiction. Mr. Silver then offered to do the examination on Wednesday or Thursday. I offered to have the examination in my office. I think it's fair to say that while we were not in agreement with respect to whether or not he'd been served with materials, we certainly tried our utmost to afford him an opportunity to either do it later that day or later that week, and Mr. Best was thoroughly non-committal on all fronts and it was at that point that we ultimately said, you know, discussing matters further with Mr. Best wouldn't help and it was quite apparent that he wanted us to read the questions. Mr. Silver started and he said,

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also invited him to attend the cross-examination of Mr. McKenzie and you will have seen from my letter that's now been deferred and - but that has not yet been re-scheduled.

Mr. Best did not attend on the 25<sup>th</sup>. On this occasion he did not call. We heard nothing from him until his letter of yesterday, which came to my office when I was in court on another matter, but apparently about four o'clock; just before leaving the motion record and dealing with the letter. We, obviously, obtained a certificate - a notice of examination is under various tabs and the certificate of non-attendance, the affidavit of Ms. Oullette - and I went through the same practice. On this occasion Ms. Rubin was not in attendance. Mr. Roman was there. Mr. Silver was there, Ms. Clarke was there, I was there, my student was there, but Ms. Rubin was not there on the second attendance and the statement that was made for the record appears under Tab R.

So, for the purposes of today's motion I think the important points to emphasize are that virtually every time before we attend before you and the dates for you are October 30<sup>th</sup>, and we got the first letter from Mr. Best November 16<sup>th</sup> when we got his second letter and December the 1<sup>st</sup>. Mr. Best clearly knows what's going on. He surprisingly knows Ms. Traviss. He's able to call her and get information, but the bottom



## EXHIBIT B

M: Martina, receptionist  
DB: Donald Best

M: Victory Verbatim, Martina speaking.

DB: Hello, Martina, its Donald Best calling. I'm, ah..

M: Hello Donald.

DB: Hi.

(laughter)

DB: I'm supposed to be, um, examined today..

M: Yes.

DB: ..ah, in Nelson Barbados vs. ah, whomever..

M: Ok

DB: Ok, and um..I need to, ah, speak with, ah, whoever is there and ah, also, ah, get everything on the record and get the teleconference going.

M: Do you mind if I just put you on hold for a second, sir? Just one second.

DB: Sure.

(hold music)

M: Sorry, sir, there was just a rush of people coming in for their rooms.

DB: No problem.

M: Um.

DB: I need to speak, I guess with the reporter, whoever is going to set up the telecomferene because it's going to be done initially, anyway.

M: Oh, it is, ok. Because nobody actually made us aware of that, that is was going to be done by telephone.

DB: Oh, well, ah. Well, I..

This is EXHIBIT 58  
To the Affidavit of

J. FANTINO

Sworn SEP 28 2017

[REDACTED]  
A Commissioner, etc.

M: Interesting. Because, ah..

DB: Um, ah, what's happened is I am unable to be there right now. But I would like to appear, but I would like it all on the record. I am unrepresented. So when I speak to everyone, or anyone there, I'd like it to be on the record and recorded with the reporter there

M: Yes.

DB: ..and everything. So..

M: I just, I'm not sure about setting that up, though, see they should have told us, because we have to make arrangements for that, for a telephone to be put in the room. And as far as I knew showing up to be examined.

DB: Oh my goodness, no way, I sent a letter.

M: Yeah. So..

DB: To the court, yesterday, even telling them I would be here. So, no, no, I'm willing, ready, willing and able to be cross-examined, but..

M: Ok.

DB: ..ah, I need it to be on the record. Now, now..

M: Ok, I need to, I need to just put you on hold, sir, to see if we can actually do this for you. As far as we're concerned nobody let us know that were gonna be on the telephone.

DB: You guys are the biggest and the best..

(laughter)

DB: I've testified at your places a lot, especially when I was a police officer.

(hold music)

B = Best  
R = Ranking  
S = Silver

R This is Gerald Ranking. Am I speaking to Donald Best?

B Uh, yes, yes, but I'd like to go on the record with the reporter there, Mr. Ranking.

R We're in the reception. We're waiting for you to attend. Where are you?

B Well I'd like to go on the record.

R Well you don't have an option of wanting to go on the record. You're, a court order requires you to be here. So, we're waiting here...

B I'm happy to explain on the record and..

R Well we're not on the record, my friend, and that's not the way it works. We're standing in the reception waiting for you to attend...

B Well I don't know that Sir, but in any event I'd like to, ah, testify...

R Well I'm standing in front of with three other lawyers who are listening to this conversation. You can't go on the record.

B I'm perfectly willing and able to be cross-examined here and now, um, but I ...

R We're waiting for you. Where are you Mr. Best?

B Well I'd like to go on the record, Sir.

R Where are you, Mr. Best? I'm asking you a simple question for which there is a simple answer.

B Look, I...

R Where are you?

B Can we talk and go on the record, Sir?

R We can't go on the record because we're in the reception of a reporter's office.

B Well then, I can phone back in five minutes. It's not a problem.

R Well why is it that you need to go on the record?

B Well frankly Sir I...

R No, look. The short answer is this. You know there's a court order requiring you to be here. If you don't show up you're going to be in contempt and we'll deal

with it. So we're not going on the record. What I'm prepared to do is if you tell me where you are, I'm prepared to stand the matter down as a courtesy to you so you can get here. But we're not going on any court record. You don't go on the record until you're here. Okay?

B Well Sir, okay well let me say this. I was told by the court reporter that I, that the order wasn't.

R If you're not prepared to tell me where you are, I'm not prepared to extend any further indulgences.

B Well I want to testify now, Sir. I'm prepared to answer...

R Well you can't testify. We don't do this by conference call. This isn't California, sir.

B Well, I'm frankly worried about my safety Sir.

R Well you don't need to be worried about your safety.

B Well then let's go on the record and talk about that. I'm willing to come but...

R Look, we're not going on the record. It's very nice of you to call.

B Don't hang up...

R I'll be getting a certificate of non-attendance and..

B Don't hang up, Sir.

R and we'll just move forward. I'm not hanging up. I'm just telling you. I'm waiting for you here. There's a court order requiring you to attend. If you don't want to attend, that's fine. We'll go back and we'll deal with your non-attendance.

B Well, I'm...

R But we're not going to go and start having you doing this on some conference call. That's not what the judge ordered.

B but

R The judge ordered you to attend. You have a copy of Justice Shaunassy's order dated November the 2<sup>nd</sup>?

B I do not Sir.



R Pray tell, how did you...

B I do not. As a matter of fact, the court reporter told me yesterday that there's all sorts of documents I don't have, and..

R Well look

B And the court was told that I've been served...

R Well I'm not your counsel. I'm not your counsel, I can't start giving you advice

B ?

R What I am telling you is that people are here to examine you. We're waiting for you. If you don't show up, we're getting a certificate of non-attendance and we'll take this back to Mr. Justice Shaunessey.

B Well,

R Okay? You need to file an affidavit to explain things and that's what you'll have to do, but at this point in time, we expect you to attend.

B Well sir, can you tell me this?

R (aside to unknown) He won't come here.

B Can you tell me this, Sir? Sir?

R Ahhh, yes Sir?

B Okay

R Can I tell you what?

B Okay, is Mr. Lorne Silver there?

R Yeah, Mr. Silver is here.

B Okay, can

R We're not, we're not going to play one lawyer against the other...

B No. no. No.

R You're dealing with me. That's your problem.

DB 000107-14j-29

07:48

B Is he listening right now?

R He is in my presence. Everybody's here. We're making a bit of a gong show in Victory Verbatim (laughing in background)

B Sir? Sir? Can he hear my voice?

R I don't know that he can hear your voice cause you're on the phone Sir.

B Alright, well..

R We are in the reception at Victory Verbatim.

B Okay. Then I'd like to speak to him on the phone, Sir.

R (Laughing) Well, I'm happy to have you speak to Mr. Silver.

B Okay.

R (to receptionist) You want to transfer it into another room?

Receptionist: Yeah.

(UK male) Put him on the speaker phone.

(Music plays)

Receptionist: One moment please. Here's Mr. Silver.

B Thank you

S Is there a conference?

R Do we need it hands free?

Receptionist: Do you want it hands free?

R? Yes we do.

S Hello?

B Mr. Silver?

S Mister Best. How are you?

B Well, ah ah, you're Mr. Silver of Cassels Brock?

S I am. Yes. And you're on a conference. You're on a speakerphone.

B Alright.

S Mr. Ranking and Mr.

K Kwidzinski

S Kwidzinski are with me in a, ah, in an office at Victory Verbatim and we're waiting for you.

B Okay, Sir.

S Where are you?

B Well I'm, I'm prepared to be cross-examined and um, and um..

S Well great. So

B But, but well, hang on Sir. First of all, couple of things. One, I found out about this yesterday. I phoned the trial coordinator as I've been doing occasionally and, and, she told me that the order was signed by the judge on Friday and it wasn't sent to me. I don't have a copy of it. She said it wasn't, she said she sent it to, ah, I forget, but, anyway ah Mr. Ranking on Friday when he signed it on Friday but to no one else. But, but, nonetheless I'm, I'm phoning.

S Sir. Sir, the order was made on November 2<sup>nd</sup>

B Well, I didn't know that.

S And it was sent to you earlier and I'm sure you didn't know but it doesn't matter because a court order was made and you're in contempt of it by not being here today Sir.

B Well, well Sir. Let me say this. She told me there's lots of documents that the court has been told I've been sent but they weren't sent to me. That's what she said. That's, just, miss, ah Jackie ah..

R? Mister, Mister Best!

B But anyway, anyway. Listen, why I wanted to speak to Mr. Silver. Mr. Silver?

S I'm listening to you.

B All, Alright. I, I understand, and I see right on the web right now that you and your firm have published my Ministry of Transport driver's license number, date of birth, on the web. It's gone viral. All my, what purports to be my driver's license, my date of birth, my my, um, address history since I was seventeen years old.

S My, my my firm has posted this?

B Yes Sir. That's what it says. Your email address is here to send information and, and they are calling for ah, rogue police officers and ah bikers to... and criminals to track down my family and this private investigator that you have hired has gone into secret Toronto Police records and published stuff there from my employment record. And it's all, it's all on the web now.

So what I wanted to ask you, Sir. I'm perfectly willing to testify. You know, it would be nice to have the documents, but I wanted to know, I want guarantees from everybody there that not you, not your law firm and none of your defendants, none of your clients have hired surveillance there to take pictures of me cause it will be on the web tomorrow. And I want guarantees from each one of you.

S I, I, well first of all

B My family, my family hasn't slept in weeks, Sir! I've been, I've been on

S They haven't what?

B My family has not slept in weeks. I have been on the phone for days. Not hours, days! I mean, you know, identity theft here. Identity theft. You published, well. Come on. You guys knew what you were doing. You put out my confidential, Ministry of Transport, what purports to be my confidential Ministry of Transport driver's license, address, date of birth, the whole works and you published it in public...

S? Well, well, I just want you to know that two more people have joined the conference call (inaudible) to you. Um, I'm sorry, I've forgotten your name.

H Heidi Ruben (sp?), I'm Bill McKenzie's lawyer

S? And Marc LeMeux's (sp?) just joined us, so that you're aware who's on the call.

B Yeah, well. Oh oh, Marc LeMeux, Marc LeMeux, he's in this article too, okay? They're calling for him, they're calling to do harm to him too.

S That's, that's in my, my firm's website?

B No Sir.

S You said?

B No Sir.

S Huh?

B Barbados Underground blog, but it's also on the motorcycle gang blog and it's all over the place. Because the confidential...

S I thought you said it was on my firm's website.

B No. It says you posted it here, Sir.

S Oh. I posted it on this, I posted on the Barbados Underground website?

B Well..

S Is that what it says?

B Yeah, you've got your email address here. You got the..

S Sir. Sir. Sir. You're making a serious allegation in front of a lot of people and, and, ah, so are you saying that..

B I'm saying what it says. Okay? I mean..

S Well .

B You, you, you, can..

S You know that I didn't post that. I don't know what you're talking about but I can guarantee you that you know that I didn't post that. Right?

B No. I don't know that at all, Sir. But if you say so, okay. Ah..

S Sir, you have my unconditional guarantee that I, that there's no surveillance that I have arranged or know of and you need to be here, Sir, NOW! Otherwise you're going to be in contempt of a court order. We would like to move forward with the cross-examination and deal with the costs of the motion that I suspect you know all about and how long can it take you to get down here?

You can bring whatever documents you have and the other documents that we'll need, you'll either refuse or you'll undertake to provide them. There was a court

order that you're already in breach of that requires you to deliver them a week ago. We'll deal with that. We want to move forward.

B Well, I didn't, uh, sir..

S So where are you? How far away are you from this office building?

B First of all, sir..

S 222 Bay Street.

B I found out about this yesterday, and I've been told that there's a bunch of documents, by the court reporter, by the court, ah coordinator..

S Mr. Ranking sent you all that doc, all of the documentation that the court thought you required before you were cross-examined

B Well she says, she says that a lot of the stuff the court, ah, wasn't sent to me and the court was told it was

But, but, you know

S Okay, take it all up with Justice Shaunessey, but, but..

B Look..

S You got to do something about that. Right now you're required by court order to be at this office building that we're all waiting for you at.

B Well I can't be there Sir. I can't be there

S Why not? Why?

B Well, I found out about it yesterday and it would take me, ah, too long to get there for one thing. And, and, for another thing, uh..

S Can you be here at two o'clock?

B No Sir. I, well, well, first of all let me ask about my..

S Sir, I'm not your lawyer but I'm trying to help you because I'm telling you, the position that's going to be taken is that you're in contempt of a court order. So it doesn't get, you'll speak to your own lawyer or whoever you take advice from but you're compounding a problem for yourself.

B Sir..

R Could you just let us know where you are, Mr. Best?

B Oh, Oh, yeah, so I'll let you know exactly, That's what they're asking on the blogs so they can..

R I'm asking you because I'd like to know if you can come here by two o'clock. That's the reason for my question.

B I can't.

R You can tell me you're in Barrie. I'm not asking for your residential address.

B I, I..

R Just tell me where you are! Whether you're in the jurisdiction or not. And if you're in the jurisdiction, where?

B I, I, I cannot make it, Sir. I found out about this yesterday and I cannot make it. I don't have any documents. I haven't seen an order. I mean, the order hasn't been sent to me. I've been told stuff hasn't been sent to me. Now, I'm willing to answer questions. I'm willing to answer them right now.

S? Can you be here tomorrow?

B I can't Sir.

S? Oh. So when can you be here? Er, should we... What date would work for you?

(whispering)

B Well, uh..

S? How about Thursday?

B Well, let's talk about my safety Sir.

S Sir, how about Thursday? Can you make it here Thursday? Or tomorrow?

B Well, can everybody who is going to be there, can you all, ah, guarantee me that there is no surveillance? That none of your clients have hired, uh, I mean, the location's unsafe, but oh, you know, can you all guarantee me that? Are you willing to?

18:00

R? I have, I'm happy to have the examination in my office if that's going to make it any better for you.

S? Or mine.

B Well..

S? Whatever you're more comfortable but, ah, Mark Lemuix's here. He's got experience in these things and if he thought that there was surveillance or, he'd ah, he'd alert you to it.

B Gentlemen. Gentlemen, I can tell you that what I see online here, somebody has committed...

S Oh, Mark's not doing anything. Anyways...

B But listen

S You heard from me that there's been no surveillance. The only surveillance that is going to take place is a written transcript. You're going to ah, answer questions under oath and there's going to be a transcript of that record, and that's going to be put before Justice Shaunessey in respect of costs submissions and any other use of it, I mean, I'm not your lawyer but there are rules that deal with this and with the greatest of respect, ah, you're raising a non-issue.

B I'm..

S For the purposes of trying to explain why you..

B A non-issue, Sir!

S ...appear to be in contempt of a court order.

B I'm intimidated, Sir. There's been a criminal offence, Provincial offences, Federal offenses for this thing to appear on..

R Let me interrupt, I just want to, Mr. Ranking, ah Mr. Best. One more person has entered. I'll have her identify herself.

C Hi, Mr. Best. Sarah Clark from (inaudible) Elliot.

B I couldn't..

C I'm with Caribbean



R     Alright, we have Mr. Best on the phone. Sorry to interrupt, I just wanted you to know when somebody else came into the room Mr. Best.

S     Sir, can you be here tomorrow?

B     I cannot be there tomorrow, Sir.

S     Can you be here Thursday?

B     I doubt I could be there Thursday.

S     Can, can you tell us a date when you can first be here? And then we're going to end this conversation and we're going to go on the record

B     Well, alright.

S     and

B     Well, well why don't we do this, Sir. The, the court coordinator told me that somebody could put together a package of everything that they say I've been served with and they could deliver it to me with the affidavits of service and then I could take that to a lawyer or study it and then I could do it, but guys, she has told me and I see from the few things that I have, that that I haven't, I dunno, half the stuff. And, and, the court has been incorrectly told that I have

R     Mr. Best, it's Ranking. Let me just answer that. I wrote to you and I spent a lot of money putting together the very package you wanted and it was couriered to your post office box in Kingston on the sixth of November, okay? So, and I know because I looked at the UPS box that as soon as it gets to Kingston, it gets re-directed to your post office box at the Cloverdale mail. So the stuff that you're saying you don't have, I'm going to be able to show that you do have or that it was certainly sent wherever it was supposed to be sent. So if you go to your post office box and you just speak to, ah, the people there I think you're going to find that you'll have all the stuff you need.

B     Well..

R     Have you gone to your post office box?

B     Well, Sir, if this must be..

R     Now listen! Just answer the question! Have you gone to your post office box?

B     Sir..

S That's not a bad question, Mr. Best. You, you're claiming that you're not prepared and it's, it's really appears to be your own, ah, carelessness or or intentional conduct, so..

B Well, you know, then lets just have all this on the record..

S You can raise all those things with Justice Shaunnessey. You could have done it before. You could do it after. Tell him all your problems. Don't tell us. We are proceeding by way of court orders because of the difficulty that we had to try to locate you previously. Justice Shaunessey has made orders and we're following them. And the order requires you to be here today Sir.

B Well, I didn't know..

S And the rest of all that you have to say is really no moment to us as lawyers because we have clients that have instructed us to proceed by way of court order to make sure that things take place properly, and that's all we're doing.

B Well..

S And you're in breach of a court order.

B Well, I never got the court order Sir.

R Well, let me ask you the question again. Have you gone to..

B Well, what I'd like to..

R Have you gone to your post office box? I want it noted for everybody's record that Mr. Best has refused to answer the question as to where he is. He's also refused to answer the question that I posed numerous times as to whether he had gone to his post office box to pick up the materials that were sent to him pursuant to Justice Shaunnessey's order and in compliance with Justice Eberhart's order which was the address for service. I must have asked the question three times and I am noting that you're refusing an answer.

B but

R And if you want to change your position, that's fine I'll here from you now.

B Yeah, well, well, my position is ah, you're asking, they've got death threats here. You know? From the..

R I'm just asking whether or not you went to you post office box. I'm not asking about any death threats.

DB 000107-14j-38

B Well, I, I..

R Cause if I send it to you again, you're going to have the same problem. Unless you want to give me your residential address. Otherwise I can put together another four packages and you're never going to get them..

B A residential address? Well, I don't..

R Look you can give me any, look, I'm not going to get into a debate with you

B What's debate..

R I've asked the question, you've refused to answer

R And I'm in the position I can't even help you any further.

S What do you propose that we do, Mr., ah, Best?

23:35

B Well first of all, I'd like to know who posted what purports to be..

("Kill this" is whispered)

B and how did it come that Ministry of Transport, ah, confidential..

S I have no idea

B (Being talked over by Silver)

S I have no idea and I can't help find that out nor would I if I could.

B Well it says they have a copy of a report from a private investigator from, ah, the firm of Cassels

S Oh. From the firm of Cassels?

B That's what it says.

S Okay. Well I can tell you that the firm of Cassels doesn't have a report on a, on a, you.

B Yes? Does anyone?

S Whoever posted it, posted the wrong information.

B Well how did this come to be?

S I have no idea nor do I care.

B Oh. Well they are only calling for, I see. Yes. Guys, I get it! Whoever put this on, whoever let the Ministry of Transport information into the public, they knew what they were doing. Identity theft. Intimidation. I'm intimidated. I know exactly what you guys have done

S I guarantee you Sir that it wasn't me or Cassels Brock.

B Well well. Who was it then? Sir, who hired the private investigator?

S I have no idea. Anyway, so..

B You have no idea?

S Sir, we're going to end the call and we're..

B Don't hang up!

S going to get a certificate of non-attendance

B I would like to, give me the questions, gentlemen. Give me the questions.

24:59 or so

R We're not doing this over the phone. You're required to bring your documents with you. There's a notice of examination. There's a protocol to be followed, we intend to follow it. If you intend to do something different then you need a court order to vary what Justice Shaunnessy has ordered. It's as simple as that.

B Well I'd like to have a copy of the order

R ?

S Incidentally, do you have all the corporate records of Nelson Barbados?

B I'd like a copy of the order, gentlemen.

S Sir, you said to ask you a question. I'm asking you a question. Do you have all of the records of Nelson Barbados?

B Is that one of your questions, Sir? I'll write that down.

DB 000107-14j-40

S That's one of them.

B (writing) Do you have..

S Yes

B all the. Okay.

S Are you going to answer it?

B I would like to put all the questions down first, and then I will answer them, Sir. Do you..

S Ok. Mr. Best

(laughing)

S Mr. Best. Thanks for the call. What we're going to take away from it is that you're not attending today. You're not attending tomorrow or Thursday and you won't give us a date when you will attend and we'll take it up with Justice Shaunnessy.

B Well, if you'd send me all the stuff gentlemen, all the, everything that

S Well we're not sending you anything further than what you've already got because what you've got is in compliance of a court order and, ah, we're in compliance but you're not and we're going to move forward. We're not going to continue, ah, this discussion where, um, you're just ah, you're not helping your cause or ours..

B Well, I'm ready..

S Okay?

B Well, I'm ready for the second question..

S We'll ah

S If you're position changes on anything, I'm sure you have our fax, our fax or email numbers. Let all counsel know what your position is.

B Well I..

S Otherwise we're going to go back to Justice Shaunnessy and ah, and ah, deal with this breach of his court order.

B I'm ready for the second question, gentlemen.

R Thank you very much

S Okay, thanks Mr. Best. I'm going to hang up, okay? Does everybody agree? Does anybody else have anything to say to Mr. Best? No. So everybody agrees that we should end this call now?

B I'm not agreeing.

S So

B I'm ready to take the questions, gentlemen. What is the next question?

R Thank you, Mr. Best

S Okay. We're going to go now. Speak to you later.

(Sounds of receiver being returned.)

(man coughs)

S Okay

Unknown (inaudible) I was (inaudible) going, whoo. Where the hell is everybody?

S Do we want to put anything on the record?

27:20 or so

R (inaudible)

Unknown (inaudible) he just called here?

R We were doing this for five minutes out there.

Unknown Oh yeah.

R And I finally put it on speaker phone.

Unknown So..

R Ok. (inaudible) certificate of non-attendance..

27:35 or so

R I'm happy to put it on the record. Do you want to put it on the record? There might actually be some utility in that for us. Going on the record.

S Well, at least to ah..

U/K fm ? on the record

R Yeah, just confirm what we've done.

U/K fm We're all here.

R No, but

S No, there (talking over each other.) will be a contemporaneous record

R ? (overtalk)

S and if anybody disagrees they can .... I think we should put it on

R Yeah

27:55

UK fm Its your party.

R Yeah, I know. It's my record, right?

S And then what's happening once we're all in here about these other cross-examinations? That's why Mark's..

Mark? That's why I'm here. I don't...

S To conduct cross

Mark (Overtalk)

R I wrote to whoever, Jessica. I'm not (presenting?) my guy.

I have no idea, I know she's been in a couple of

R No, Andrew Roman wrote and said he ? wouldn't rely upon it for Justice ??? motion and then I wrote another letter saying, well (inaudible)

S Right. And then Mark sent another one back and disagreed with you and said

DB 000107-14j-43

R No, he wrote, he responded to ?

S (inaudbi

Mark? But I was supposed to appear, so here I is.

U/k female Hi Mark!

Mark How are you?

U/K fm Good (conversation fades as Mark and f/m walk out?)

(everybody standing up to leave etc. except Ranking and Silver)

28:40

R That was Barrie. And he called to appear.

S Unbelievable. (???)

S I'll even testify... ?

S ... there with him. ?

? Best?

S Sure, yeah. McKenzie's there...

??? And I'm sure they taped that.

??? Have ...be careful (then?)

???? (garbled - moving)

???? Can't say... might... taped...

???? (garbled - moving)

(Conversation fades as Silver and Ranking walk further away. Female's voice reenters phone area maybe in front of door. Not relevant.)



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**

**Affidavit of Edward J. Primeau**

I, Edward J. Primeau, MAKE OATH AND SAY AS FOLLOWS:

1. I am an audio forensic expert and have been practicing for over 27 years. I have testified in courts throughout the United States and worked on various international cases. My forensic practice includes audio authentication, restoration and voice identification, as well as video and computer forensics. I operate my business Primeau Forensics from Rochester Hills, Michigan.
2. I am a Registered Investigator and a Certified Forensic Examiner with the American College of Forensic Examiners Institute and hold memberships with the International Association for Identification and the Audio Engineering Society. I have also been nominated and elected to the American Board of Recorded Evidence.
3. Attached as Exhibit A to my affidavit is my 2013 Curriculum Vitae, which includes a list of several of the cases I have worked on as an illustration of my normal practice case load.
4. I was retained by Donald Best, who asked that I authenticate a digital audio recording of a November 17, 2009 conversation between Mr. Best and other parties at Victory Verbatim in Toronto, Canada.
5. As per my instructions, Donald Best submitted to me a digital file 'Victory Verbatim on 2009-11-17 at 09.48.mov'. Mr. Best requested that I determine through

my forensic authentication process if the voice recording is an actual representation of the events as they occurred.

6. Once I downloaded the file, I imported it into my software program for forensic authentication. I noted that the file had four channels, two of the channels (1 and 2) from the caller, and two of the channels from the recipient (3 and 4) for a total of 4 channels.
7. I noted the meta data properties of the file including the size, which is 51.6 MB, the date created, which is November 17, 2009 and the time, 9:48 AM. This information further acknowledges that this digital audio file is authentic.
8. After critical listening, visual examination of the sound wave as well as electronic measurement, I conclude beyond a reasonable degree of professional certainty that this recording is authentic and genuine and is an actual representation of the events as they occurred during this phone call.
9. Further, using critical listening skills I created a Forensic Transcript of the subject November 17, 2009 Victory Verbatim telephone conversation, that is attached to my affidavit as Exhibit B.
10. I made this affidavit for use as evidence to place before the court and for no improper purpose.

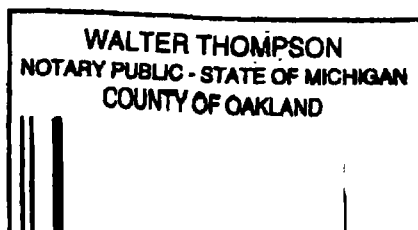
Sworn before me at *Bank of America*

  
Edward J. Primeau

This 7 day of January, 2013

A Notary, etc. 

*Jan 7. 2013*





## Submissions on Application to Purge Contempt (Best)

This is EXHIBIT 59  
To the Affidavit of

1  
2 J. FANTINO

3  
Sworn

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31  
32  
A Commissioner, etc.

I am not going to get into mediation briefs, sorry. Go ahead.

MR. BEST: Okay. Actually, this was redone as a hearing brief, Your Honour, but in any event, it's all exhibits that are already in before the court.

THE COURT: Right, so why do we duplicate it? Go ahead. Just tell me.

MR. BEST: Well, because I...

THE COURT: It may be of assistance to you. You go ahead. I am not looking at it.

MR. BEST: I see.

THE COURT: I have all those materials.

MR. BEST: I see. Well, Your Honour, my point is about - about the lies surrounding the November 17<sup>th</sup> phone call. All of that started back in October, October 2<sup>nd</sup>, 2009, when Mr. Ranking hired his private investigator and I wanted to take Your Honour - because only by seeing things as they occurred in context and by seeing them in a chronological order do you, for instance, know when Mr. Ranking spoke to you on December 2<sup>nd</sup> during the hearing and said what he did.

THE COURT: He made submissions to me. Please don't say he spoke to me. He made submissions in open court.

MR. BEST: He made submissions and everything.

THE COURT: You are aware of what he said.

MR. BEST: When you see all that in context - and I'm sorry Your Honour hasn't actually listened to the conversation because there's a lot to be said with tenor and pauses and tone and such and it's

April 30, 2013

Nelson Barbados v. Cox et al  
Submissions on Application to Purge Contempt (Best)

1 important. That's why - but Your Honour, I hear  
2 you. I will obey your order for me to move on but  
3 most respectfully, sir, I don't think I'm getting  
4 a fair shot here.

5 **THE COURT:** Again, that is a very unfair comment  
6 because I am bending over backwards to keep you  
7 focused. I have given you direction.

8 **MR. BEST:** All right, sir.

9 **THE COURT:** I have not given you orders. Sir, if  
10 you want to utilize your time on other issues,  
11 you go right ahead. All I am saying to you - I  
12 tried to get you back focused onto the issue so  
13 that you can maximize the time allowance given to  
14 you.

15 **MR. BEST:** All right, sir.

16 **THE COURT:** If you don't wish to do so, sir,  
17 that's entirely up to you. I can do no more.

18 **MR. BEST:** What I would like to do then,  
19 Your Honour, is to show that I've answered all  
20 the - I've answered all the questions. I've done  
21 everything that you wanted. I've done it and more  
22 in your orders. I've done it...

23 **THE COURT:** Well, now you are on the points that...

24 **MR. BEST:** ...all.

25 **THE COURT:** Go ahead.

26 **MR. BEST:** Your Honour - okay, and if I can have  
27 just a moment, here. It's all done, Your Honour.  
28 I answered everything.

29 **THE COURT:** Can we just get out the order itself?  
30 I don't have a memory of it but I know it is in  
31 the materials.

32 **MR. BEST:** Yes, your November 2<sup>nd</sup> order,

April 30, 2013



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

This is EXHIBIT 60  
To the Affidavit of

J. FANTINO

Sworn Sep 28, 2017

A Commissioner, etc.

where he resides, but suggests he is out of the country. Extensive investigations have not resulted in a location where he resides. I find that Donald Best is deliberately avoiding personal service of the contempt motion. There are no other steps that can be taken by the defendants to locate Mr. Best. In these unusual and unique circumstances I find that an order for substitutional service of the contempt application is appropriate, and it is so granted. Mr. Donald Best will be substitutionally served with the motion for contempt and this, my endorsement, at Number 1) the UPS address in Kingston, Ontario as detailed in the order of Eberhard, J., and 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<sup>th</sup>, 2010 at nine-thirty at Whitby, Ontario. Costs of today's attendance and costs thrown away are reserved to the January 15<sup>th</sup>, 2010 date. The cross-examination of Mr. McKenzie has been delayed pending this aspect of the proceeding. Further three days for the hearing of costs have been reserved for the end of February 2010. It is therefore necessary that all dates and timelines be adhered to in order that this matter can be completed in both a fair and expeditious manner." Anything else? Order signed. The only changes that I made to the order - well, you'll see them. I added to paragraph 3, "This court further orders that Donald Best shall appear before the Honourable





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**

**Affidavit of Edward J. Primeau**

This is EXHIBIT 61  
To the Affidavit of

J. FANTINO

Sworn SEP 28 2017

[REDACTED]  
A Commissioner, etc.

I, Edward J. Primeau, MAKE OATH AND SAY AS FOLLOWS:

1. I am an audio forensic expert and have been practicing for over 27 years. I have testified in courts throughout the United States and worked on various international cases. My forensic practice includes audio authentication, restoration and voice identification, as well as video and computer forensics. I operate my business Primeau Forensics from Rochester Hills, Michigan.
2. I am a Registered Investigator and a Certified Forensic Examiner with the American College of Forensic Examiners Institute and hold memberships with the International Association for Identification and the Audio Engineering Society. I have also been nominated and elected to the American Board of Recorded Evidence.
3. Attached as Exhibit A to my affidavit is my 2013 Curriculum Vitae, which includes a list of several of the cases I have worked on as an illustration of my normal practice case load.
4. I was retained by Donald Best, who asked that I authenticate a digital audio recording of a November 17, 2009 conversation between Mr. Best and other parties at Victory Verbatim in Toronto, Canada.
5. As per my instructions, Donald Best submitted to me a digital file 'Victory Verbatim on 2009-11-17 at 09.48.mov'. Mr. Best requested that I determine through



## Submissions on Application to Purge Contempt (Best)

This is EXHIBIT 62  
To the Affidavit of

2 J. FANTINO

3 Sworn 28/28/2009

4 Commissioner, etc.

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Now, on October 27<sup>th</sup>, 2009, Mr. Kwidzinski swore an affidavit and attached to that affidavit as one of the exhibits was a printout of my driver's licence number, Don R. Best, and also my medical status and height and such and address information from the Ministry of Transport records. So that information was all known and Mr. Silver knew about Mr. Kwidzinski. So did all the lawyers. Why? How do we know that? Well, there were letters sent out because Mr. - one of the lawyers wanted to cross-examine Mr. Van Allen and Mr. Kwidzinski and the lawyers fought that. They didn't want that to happen, so there were letters and a series of emails and we know that because I have a couple of them, which I have included as exhibits in some of the affidavits. But we also know that because on November 17<sup>th</sup>, after they hung up on me, they talked about it but the telephone didn't hang up, so I recorded it and I listened.

**THE COURT:** And you wrote a letter that is in your materials.

**MR. BEST:** Mm.

**THE COURT:** I have read it.

**MR. BEST:** Okay. So, on October 30<sup>th</sup>, after they had done all this work with Mr. Van Allen and they have sent the product of his investigation out to their clients, according to Mr. Silver, and so they've done that, it appears on the Internet with threats, death threats. It just morphs into - it went nuclear. And I must say, Your Honour, and I have put in there are all

April 30, 2013



See footnote 64



This is EXHIBIT 64  
To the Affidavit of

J. FANTINO

Court file No. 141-07

Sworn SEP 28, 2017

A Commissioner, etc.

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

Affidavit of Donald Best

I, Donald Best, MAKE OATH AND SAY AS FOLLOWS:

1. Sergeant Laurie Rushbrook of the Durham Regional Police, Professional Standards Unit, recently advised me that in December of 2009, over a month prior to my January 15, 2010 trial in absentia, a Durham Police court constable performed an undocumented investigation into me, Donald Best, most likely in assistance to the court.
2. Late last week I spoke with Sergeant Rushbrook who provided me with an official briefing of the results to date concerning the Professional Standards Unit's investigation into the actions of the Durham Police court constable, whose name has not been revealed to me but is known to the police.
3. Attached to this affidavit as Exhibit A is an email I sent to Sgt. Rushbrook on Friday, April 26, 2013.
4. I am advised by Sgt. Rushbrook that the court constable's investigation of me was entirely undocumented and that no official or unofficial notes, emails, reports, files or records of this court police investigation exist with the Durham Regional Police or at the Court, including in the administrative records of the court in Barrie and Oshawa, or in the Nelson Barbados Group Ltd. court file and court transcripts.
5. I verily believe that an 'undocumented', secret, private or 'on the side' (whatever it may be called) court police investigation of a person facing a potential jail term based on allegations of civil contempt that may or may not occur at a future date would mean that 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.

**FEDERAL COURT OF CANADA**  
**Court File No. T-604-16**

**Donald Best Applicant**

**Rushbrook Conversation**

**Supplement to Exhibit 64**





6. Sergeant Rushbrook advised me that the involved court officer retired a matter of days after enquiries were made regarding the undocumented investigation and that the police force can no longer compel him to provide a statement.
7. Notwithstanding the retirement, I believe that any court can compel the now-retired court officer and the police investigators to testify and to produce all their memo books, notes, files, paper and computer records.
8. Sgt. Rushbrook states that it is likely that this Durham Police court officer was informed in early December 2009, a month before my trial, that the court would be issuing a warrant for my arrest and incarceration at the January 15, 2010 court date. Currently, Sgt. Rushbrook does not know who provided my name, date of birth and other information to the court officer to facilitate the investigation, who requested the investigation or what the court officer did with the product of the investigation, and whom the court officer communicated with. Sgt. Rushbrook does not know the full extent of the court constable's December 2009 undocumented investigation into me.
9. The Durham Police court constable's undocumented investigation of me in December of 2009 was a secret or private or 'on the side' process (whatever it may be called) that was only recently revealed when the Commissioner of the Royal Canadian Mounted Police RCMP commenced an internal audit concerning access to the Canadian Police Information Centre computer database known as CPIC.
10. Further, Sgt. Rushbrook also contacted the Peel Regional Police that is the agency that eventually placed my arrest warrant onto the CPIC system. Sgt. Rushbrook finds it very odd that neither the Durham Regional Police nor the Peel Regional Police have any warrant package or file of me as they normally would have.
11. As a result of the facts recently explained to me by Sgt. Rushbrook and because of my own experience as a Police Sergeant and veteran of internal investigations, I verily believe that there should be an immediate and thorough examination of this undocumented investigation and process.
12. The fact that no records exist (official or otherwise) of this Durham Police court officer's investigation of me such as police notes, files or occurrence numbers, and that nothing exists in the court files, speaks further of a cover up or conspiracy in order to prevent a full hearing into this situation. That adds to the already serious concern that this has been a miscarriage and abuse of justice from the beginning.

Donald Best Affidavit, April 29, 2013

This is EXHIBIT 65  
To the Affidavit of

J. FANTINO

Sworn 28.08.2013

Commissioner etc.


13. Further, I am also informed by Sgt. Rushbrook that this same type of undocumented, secret, private or 'on the side' court police investigation in assistance to the court has also been done on occasion to other accused persons who, like myself, had not yet been found guilty or even come to trial.

14. This is new evidence just come to my attention and I want to file this affidavit with the Court in support of my application.

Sworn before me at TOWN OF  
BRADFORD, IN THE  
COUNTY OF SIMCOE

  
\_\_\_\_\_  
Donald Best

This 29th day of April, 2013

  
A Commissioner, etc.

DEBRA LEE DAVIES, a Commissioner, etc.,  
County of Simcoe, for Evans & Evans,  
Barristers and Solicitors.  
Expires January 29, 2016.



Nelson Barbados v. Cox et al  
Preliminary Submissions on ApplicationThis is EXHIBIT 66  
To the Affidavit of1  
2 FANTINO

3 Sworn SEP 28, 2009

A Commissioner, etc.

about.

MR. BEST: I know, Your Honour. I have an affidavit here. I just found - this is brand new evidence. I was just advised of it. This affidavit was actually sworn yesterday.

THE COURT: Let me see it.

MR. BEST: Yes, Your Honour.

THE COURT: Have you got copies for the others?

MR. BEST: Yes, I do, Your Honour. Your Honour, I was advised by Sergeant Rushbrook of the Durham Regional Police, Professional Standards Unit, that in December 2009, over a month prior to my January 15<sup>th</sup> trial in absentia, a Durham Police court constable performed a secret, undocumented investigation into me, in all likelihood, in assistance of the court. I am advised by Sergeant Rushbrook that this investigation was entirely undocumented and that no official notes, reports or records of this court police investigation exist with the Durham Regional Police or at the court, including in the administrative records of the court in Barrie or Oshawa or in the Nelson Barbados Group Ltd. Court file and court transcripts. An undocumented, secret, private or on-the-side process, whatever it may be called, and a court police investigation of a person facing potential jail term based on allegations of civil contempt that may or may not have occurred at a future date would mean that the entire hearing was polluted to the point where there has been a miscarriage of justice and with great respect, Your Honour,

April 30, 2013



Nelson Barbados v. Cox et al  
Preliminary Submissions on Application

This is EXHIBIT 67  
To the Affidavit of

1 J. FANTINO Your Honour, that speaks further of a cover-up or  
2 a conspiracy in order to prevent a full hearing  
3 Sworn SEP 28 2013 and it adds to already serious concern that this  
4 [REDACTED] has been a miscarriage of justice and abuse from  
5 A Commissioner, etc. the beginning.

6  
7 I am also informed - and this is incredible,  
8 Your Honour. I am also informed by Sergeant  
9 Rushbrook that this same type of undocumented,  
10 secret, private or on-the-side court police  
11 investigation in assistance to the court, has  
12 also been done on occasion....

13 THE COURT: What do you mean by assistance to the  
14 court?

15 MR. BEST: Well, I'm - I'm saying what the police  
16 have officially advised me, sir.

17 THE COURT: I don't care what the police  
18 officially advised you.

19 MR. BEST: Well, if I could...

20 THE COURT: You are insinuating - you are  
21 insinuating that somehow I have been involved in  
22 the process.

23 MR. BEST: I am not insinuating you at all, sir.

24 THE COURT: You use the word "court". Who is the  
25 court if I am not the face of the court?

26 MR. BEST: I see, sir. I see your point.

27 THE COURT: You can talk about the  
28 administration...

29 MR. BEST: And I want to make it absolutely  
30 clear...

31 THE COURT: The police administration is a  
32 different story but I am very sensitive to that

April 30, 2013

Nelson Barbados v. Cox et al  
Preliminary Submissions on Application

1 great respect, it probably means that this court  
2 had to disqualify itself then and has to now.

3 **THE COURT:** Why would you say that?

4 **MR. BEST:** Sorry, Your Honour?

5 **THE COURT:** Don't use those words "respect". It's  
6 insulting to me. What this is insinuating is that  
7 I...

8 **MR. BEST:** No, sir.

9 **THE COURT:** ...in presiding over this case - well  
10 you said "The Court".

11 **MR. BEST:** No, sir, I mean the big small "c" court,  
12 Your Honour. In no way am I saying that  
13 Your Honour - no way, Your Honour, but I'm just  
14 repeating what I have been told officially by the  
15 police and I've been told that the undocumented  
16 court police investigation of me was secret,  
17 private, on-the-side. It was only revealed when  
18 the Commissioner of the RCMP commenced an  
19 internal audit concerning access to the Canadian  
20 Police Information Centre computer database known  
21 as CPIC.

22  
23 The facts that were explained to me recently by  
24 Sergeant Rushbrook and my own experience as a  
25 police sergeant and veteran of internal  
26 investigations call for an immediate and thorough  
27 examination of this court process and court  
28 police investigation. The fact that no electronic  
29 or paper records, official or otherwise, of this  
30 investigation exist with the Durham Police, such  
31 as police notes, files, documents, occurrence  
32 numbers - nothing exists in the court file and

April 30, 2013





Nelson Barbados v. Cox et al  
Preliminary Submissions on Application

1 This is EXHIBIT 68  
2 To the Affidavit of

3 J. FANTINO

4 Sworn SEP 28, 2017

5 [REDACTED]  
6 A Commissioner, etc.

about.

MR. BEST: I know, Your Honour. I have an affidavit here. I just found - this is brand new evidence. I was just advised of it. This affidavit was actually sworn yesterday.

THE COURT: Let me see it.

MR. BEST: Yes, Your Honour.

THE COURT: Have you got copies for the others?

MR. BEST: Yes, I do, Your Honour. Your Honour, I was advised by Sergeant Rushbrook of the Durham Regional Police, Professional Standards Unit, that in December 2009, over a month prior to my January 15<sup>th</sup> trial in absentia, a Durham Police court constable performed a secret, undocumented investigation into me, in all likelihood, in assistance of the court. I am advised by Sergeant Rushbrook that this investigation was entirely undocumented and that no official notes, reports or records of this court police investigation exist with the Durham Regional Police or at the court, including in the administrative records of the court in Barrie or Oshawa or in the Nelson Barbados Group Ltd. Court file and court transcripts. An undocumented, secret, private or on-the-side process, whatever it may be called, and a court police investigation of a person facing potential jail term based on allegations of civil contempt that may or may not have occurred at a future date would mean that the entire hearing was polluted to the point where there has been a miscarriage of justice and with great respect, Your Honour,

April 30, 2013



Nelson Barbados v. Cox et al  
Preliminary Submissions on Application

This is EXHIBIT 69  
To the Affidavit of

2 J. FANTINO

3 Sworn SEP. 28, 2011

4 [REDACTED]  
5 A Commissioner, etc.

about.

MR. BEST: I know, Your Honour. I have an affidavit here. I just found - this is brand new evidence. I was just advised of it. This affidavit was actually sworn yesterday.

THE COURT: Let me see it.

MR. BEST: Yes, Your Honour.

THE COURT: Have you got copies for the others?

MR. BEST: Yes, I do, Your Honour. Your Honour, I was advised by Sergeant Rushbrook of the Durham Regional Police, Professional Standards Unit, that in December 2009, over a month prior to my January 15<sup>th</sup> trial in absentia, a Durham Police court constable performed a secret, undocumented investigation into me, in all likelihood, in assistance of the court. I am advised by Sergeant Rushbrook that this investigation was entirely undocumented and that no official notes, reports or records of this court police investigation exist with the Durham Regional Police or at the court, including in the administrative records of the court in Barrie or Oshawa or in the Nelson Barbados Group Ltd. Court file and court transcripts. An undocumented, secret, private or on-the-side process, whatever it may be called, and a court police investigation of a person facing potential jail term based on allegations of civil contempt that may or may not have occurred at a future date would mean that the entire hearing was polluted to the point where there has been a miscarriage of justice and with great respect, Your Honour,

April 30, 2013

Nelson Barbados v. Cox et al  
Preliminary Submissions on Application

1 great respect, it probably means that this court  
2 had to disqualify itself then and has to now.

3 **THE COURT:** Why would you say that?

4 **MR. BEST:** Sorry, Your Honour?

5 **THE COURT:** Don't use those words "respect". It's  
6 insulting to me. What this is insinuating is that  
7 I...

8 **MR. BEST:** No, sir.

9 **THE COURT:** ...in presiding over this case - well  
10 you said "The Court".

11 **MR. BEST:** No, sir, I mean the big small "c" court,  
12 Your Honour. In no way am I saying that  
13 Your Honour - no way, Your Honour, but I'm just  
14 repeating what I have been told officially by the  
15 police and I've been told that the undocumented  
16 court police investigation of me was secret,  
17 private, on-the-side. It was only revealed when  
18 the Commissioner of the RCMP commenced an  
19 internal audit concerning access to the Canadian  
20 Police Information Centre computer database known  
21 as CPIC.

22  
23 The facts that were explained to me recently by  
24 Sergeant Rushbrook and my own experience as a  
25 police sergeant and veteran of internal  
26 investigations call for an immediate and thorough  
27 examination of this court process and court  
28 police investigation. The fact that no electronic  
29 or paper records, official or otherwise, of this  
30 investigation exist with the Durham Police, such  
31 as police notes, files, documents, occurrence  
32 numbers - nothing exists in the court file and

April 30, 2013

Nelson Barbados v. Cox et al  
Preliminary Submissions on Application

1 Your Honour, that speaks further of a cover-up or  
2 a conspiracy in order to prevent a full hearing  
3 and it adds to already serious concern that this  
4 has been a miscarriage of justice and abuse from  
5 the beginning.

6  
7 I am also informed - and this is incredible,  
8 Your Honour. I am also informed by Sergeant  
9 Rushbrook that this same type of undocumented,  
10 secret, private or on-the-side court police  
11 investigation in assistance to the court, has  
12 also been done on occasion....

13 **THE COURT:** What do you mean by assistance to the  
14 court?

15 **MR. BEST:** Well, I'm - I'm saying what the police  
16 have officially advised me, sir.

17 **THE COURT:** I don't care what the police  
18 officially advised you.

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

20 **THE COURT:** You are insinuating - you are  
21 insinuating that somehow I have been involved in  
22 the process.

23 **MR. BEST:** I am not insinuating you at all, sir.

24 **THE COURT:** You use the word "court". Who is the  
25 court if I am not the face of the court?

26 **MR. BEST:** I see, sir. I see your point.

27 **THE COURT:** You can talk about the  
28 administration...

29 **MR. BEST:** And I want to make it absolutely  
30 clear...

31 **THE COURT:** The police administration is a  
32 different story but I am very sensitive to that

April 30, 2013

Nelson Barbados v. Cox et al  
Preliminary Submissions on Application

345

1 type of an allegation.

2 **MR. BEST:** I am not making that kind of an  
3 allegation at all, Your Honour.

4 **THE COURT:** All right, just continue.

5 **MR. BEST:** I am repeating what the police have  
6 told me and they've said that this court police  
7 investigation in assistance to the court has also  
8 been done on occasion to other accused persons  
9 who, like myself, have not yet been found guilty  
10 or even come to trial and this is undocumented,  
11 Your Honour. This is new evidence that has just  
12 come to my attention and I placed this in an  
13 affidavit which I have given you a copy of.

14  
15 Your Honour, this secret investigation, we don't,  
16 at this point in time, know how deep it went or  
17 what came of it, who requested it, who received  
18 the product of the investigation but a secret  
19 investigation into an accused in assistance to  
20 the court a month prior to the accused's trial  
21 should disqualify any order that was made after  
22 that.

23  
24 The involved court officer - and I don't know the  
25 involved court officer's name. That has not been  
26 told to me. The involved court officer apparently  
27 retired a few days after first being spoken with.

28 **THE COURT:** Don't read the affidavit to me. I have  
29 read it.

30 **MR. BEST:** I'm not. I'm reading some comments I've  
31 made, Your Honour.

32 **THE COURT:** Well, you are. You are reading it

April 30, 2013





Nelson Barbados v. Cox et al  
Preliminary Submissions on Application

This is EXHIBIT 70  
To the Affidavit of

J. FANTINO

Sworn SEP 28 2017

A Commissioner, etc.

1 because that is just what I've read.

2 MR. BEST: I see.

3 THE COURT: I have read it, sir.

4 MR. BEST: And...

5 THE COURT: Just make your point.

6 MR. BEST: Well, Sergeant Rushbrook states that  
7 this Durham Police court officer was informed in  
8 early 2009, a month before my trial, that the  
9 Court would be issuing a warrant for my arrest  
10 and incarceration on January 15<sup>th</sup>. That's just  
11 what the police told me.

12  
13 Currently, Sergeant Rushbrook does not know who  
14 provided my name, date of birth, or other  
15 information to the court officer or what the  
16 court officer did with the product of the  
17 investigation, whom he communicated that  
18 information to. Sergeant Rushbrook does not know  
19 the full extent of the December 2009 court police  
20 officer's investigation into me.

21  
22 Now, Your Honour, this is extremely serious and  
23 it has ramifications, I know you'll appreciate,  
24 that are much bigger than this case, especially  
25 when we've seen the type of corruption that  
26 happens in our justice system when, for instance,  
27 a doctor, Dr. Charles Smith of the Centre of  
28 Forensic Science, and also Mr. Ranking's expert  
29 witness, Jim Van Allen, that together, they both  
30 put innocent mothers into jail for the murder of  
31 their babies. And in other cases, we've seen  
32 police officers blatantly lying, fabricating

April 30, 2013



Bhatnager v. Canada (Minister of Employment and Immigration), [1990] 2 S.C.R. 217



Nelson Barbados v. Cox et al  
Submissions on Application to Purge Contempt (Silver)

This is EXHIBIT 72

To the Affidavit of hope that clarifies that.

2. FANTINO

3. [REDACTED]  
Sworn

4. [REDACTED]  
A Commissioner, etc.

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**THE COURT:** Well, yes and no. I guess, as I read Mr. Best's factum and as I was reading his materials, I was under the impression that effectively he did comply to the best of his ability with my orders. That's the impression I was left with. So, you can see I am sort of looking at you wide-eyed right now because it comes back to has he or has he not?

**MR. SILVER:** Yes.

**THE COURT:** And that is what - I mean purging has a lot to do with - it has to do with a lot of factors but one of them is maybe late compliance but compliance. So, I guess that is what I was really trying to focus on.

**MR. SILVER:** So for the purposes of today, I would say that he has complied with that term of your November 2<sup>nd</sup> order that required him to produce documents in advance of the examination that was ordered for November 17<sup>th</sup>, and he did that on January 25<sup>th</sup> by delivering the USB key and had he made that production a week before November 17<sup>th</sup>, we would have dealt with it on the examination and so we are in that same position.

But vis-à-vis the balance of that position, which is Mr. Best taking the position that he's answered all questions that were ordered to be dealt with back in November and December of 2009, in my respectful submission, what's happened is sometime between the two dates of cross-examination, being January 11<sup>th</sup> and January 23<sup>rd</sup>,

April 30, 2013



Nelson Barbados v. Cox et al  
Submissions on Application to Purge Contempt (Silver)

UPON RESUMING

(3:30 PM)

1 This is EXHIBIT 73  
2 To the Affidavit of

THE COURT: Yes, sir.

3 J. FONTIND

MR. SILVER: Thank you. I will just be a couple  
4 more minutes. I had taken you through our factum

5 Sworn SEP 28 2017

really dealing with the factual - part two, the  
6 facts. The statement of issues starts at page 14.

7 A Commissioner, etc.

I am going to leave much of this to Mr. Ranking  
8 to deal with to the extent required. At page 20,  
9 paragraph 61, we highlight Rule 60.11(8) which  
10 should be reproduced - it is - in Schedule B and  
11 it deals with contempt orders and sub (8) says:

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

16  
17 In analyzing it, it seems as though it's a  
18 substitute for an appeal, that it's permitted,  
19 pursuant to the Rules, that you don't have to  
20 appeal a contempt order. You can ask the judge to  
21 vary, discharge and there are other judges who  
22 said, "That's kind of odd but that's what it  
23 provides for."

24 THE COURT: Read it and considered it.

25 MR. SILVER: And so in our respectful submission,  
26 it would be just to allow Mr. Best one final  
27 opportunity to purge his contempt by complying  
28 with your order and paying our costs. In our  
29 respectful submission, it would be unjust to  
30 allow him to avoid compliance and/or allow him to  
31 comply but without paying costs.

32

April 30, 2013

Nelson Barbados v. Cox et al  
Submissions on Application to Purge Contempt (Silver)

1 Costs in contempt proceedings are *prima facie*  
2 awarded at a substantial indemnity basis. In fact,  
3 that is what you did on January 15<sup>th</sup>. What we  
4 have done for you is we have put our bills of  
5 costs at the back of our factum. You have seen  
6 that.

7 **THE COURT:** Seen them and reviewed them.

8 **MR. SILVER:** Both Mr. Ranking and I have done that  
9 and it sets out partial, substantial and full  
10 indemnity because it is always in your discretion  
11 to award a scale higher than substantial and in  
12 my respectful submission, given the conduct - and  
13 I am limiting it to the conduct in this professed  
14 attempt to purge contempt - by making the serious  
15 allegations that he does against counsel, their  
16 clients and the court deserves the further  
17 sanction of the court.

18  
19 And so I want to finish by handing up to you - I  
20 passed a copy to Mr. Best just when you took your  
21 break this afternoon but it's a draft judgment  
22 and I have styled it as a judgment because I  
23 always thought judgments follow applications.

24 **THE COURT:** I think you are right.

25 **MR. SILVER:** Hmm?

26 **THE COURT:** I think you are right.

27 **MR. SILVER:** Right. So, in effect, we have left  
28 some blanks and I guess we didn't number the  
29 paragraphs either, so it's really draft.  
30 Paragraph number one isn't numbered. That got  
31 missed. But we are asking that there be an order  
32 that Mr. Best appear - we put it before you and I

April 30, 2013



Nelson Barbados v. Cox et al  
Submissions on Application to Purge Contempt (Silver)

remind you on December 2<sup>nd</sup>, you had ordered that Mr. Best appear before you on the 15<sup>th</sup> of January to be examined. Obviously that is subject to your agreement and your availability. We have left the date open. "To give evidence in open court on" and we have left the date open, and at that appearance, he will answer all the questions and we have just taken (a) to (e) that appeared in the prior orders.

Paragraph two, we're seeking an order that by a specified date, which, in our submission, should be before the date fixed for the examination, if you are so inclined, and that Mr. Best, before that date, pay the fine and the costs ordered by you on January 15<sup>th</sup>, and we particularize what they are, the fine and then the four amounts that you ordered on January 15<sup>th</sup>.

And then we also ask that you make an order for costs. That is paragraph three. We have left the amounts blank for each of Kingsland and Pricewaterhouse and we say "within a specified number of days of the date of this judgment.

And in paragraph four, we say that the bench warrant or the warrant for committal shall continued to be stayed provided that Mr. Donald Best remains in compliance with this judgment and the warrant of committal shall be lifted upon Best's full compliance with paragraphs one to three hereof.

April 30, 2013

Nelson Barbados v. Cox et al  
Submissions on Application to Purge Contempt (Silver)

1 And thus, the sanction of incarceration would  
2 stay in place as a possibility until after he  
3 complies with all his obligations, including the  
4 payment of the costs of this application. I know  
5 that I have debated with you, you know, that  
6 sanction in respect of costs before but in my  
7 respectful submission, and Mr. Ranking may  
8 develop this a little bit further, in the  
9 circumstance of this kind of conduct that's gone  
10 on for this long and the amount that Mr. Best has  
11 put my client to in terms of the costs of  
12 responding to this with the plethora - with the  
13 volume of material and plethora of irrelevant yet  
14 aggressive allegations of impropriety and lying  
15 and cheating, all in an attempt to so-called  
16 purge his contempt, should lead you to the  
17 conclusion that the only way that the costs will  
18 get paid for certain is if the sanction of  
19 incarceration applies if he doesn't pay and in  
20 these circumstances, we respectfully submit that  
21 that's appropriate.

22  
23 So subject to any questions that you have, I have  
24 gone over my time and I will turn it over to  
25 Mr. Ranking.

26 **THE COURT:** Well, I should say I did not  
27 understand one statement in the factum but I do  
28 now, which I had circled to ask you or  
29 Mr. Ranking, page 21, paragraph 62 and 63. So, I  
30 thought it was a backhanded submission with the  
31 court giving further attempts to Mr. Best. I  
32 should have properly read it in the context of

1 which you are arguing it now. I didn't read it  
2 that way. I didn't know that you were going to  
3 suggest that he be given yet a further attempt to  
4 comply. However, I do now.

5  
6 I should stop before Mr. Ranking begins just to  
7 say, Mr. Best, without - and we are going to have  
8 to go into tomorrow. I have already called the  
9 trial coordinator. It is perfectly obvious to me  
10 we are not going to get through this evening and  
11 I sure can't do a marathon here until six or  
12 seven o'clock and there will have to be right of  
13 reply.

14  
15 But let me ask this, Mr. Best, right now. You  
16 have seen this draft judgment. Are you prepared  
17 to enter in to such a judgment on consent at this  
18 time, at this point? And to be quite candid to  
19 you, I was not looking forward to an ongoing and  
20 continuing involvement with this matter. I don't  
21 even know what time I could give you because I  
22 have a murder trial that I will be doing now and  
23 in the fall. They are taking months and then I am  
24 going supernumerary January 1<sup>st</sup>. Now,  
25 supernumerary doesn't mean I am fully retired but  
26 that is how far out we are going with me. So, I,  
27 frankly, was of the viewpoint coming into this  
28 that this is it. I mean after six to seven years  
29 of the same case, I have pretty well had it and  
30 this has taken up an extraordinary, extraordinary  
31 number of court hours, not just me but court  
32 hours, on what was originally a jurisdictional

Nelson Barbados v. Cox et al  
Submissions on Application to Purge Contempt (Ranking)

1 motion.

2  
3 However, let me come back to the question I asked.  
4 Mr. Best, are you prepared to enter into, on  
5 consent, the judgment as proposed by Mr. Silver  
6 now?

7 **MR. BEST:** No, I'm not, Your Honour.

8 **THE COURT:** All right. Well, that answers that.  
9 Thank you, have a seat. Mr. Ranking.

10 **MR. RANKING:** Thank you, Your Honour.

11 **THE COURT:** So you don't know what I will be doing  
12 and notwithstanding this may be your proposal, I  
13 have other - I can make any decision I wish at  
14 this point in time. I think I recognize that.

15 **MR. SILVER:** That's absolutely right. I should  
16 have said that. We are telling you what would be  
17 okay for us but it is up to you. The only thing  
18 that I want to add is that I can't - I am in  
19 court in front of Justice Matlow tomorrow. Maybe  
20 we will talk about that at the end.

21 **THE COURT:** Well, it's a judge's conference week,  
22 just so you know, and so I made a call to the  
23 trial coordinator asking that the staff stay on,  
24 so we're going to have issues all over the place  
25 here. In any event, let me hear from Mr. Ranking.  
26 We will use the time that's available.

27 **MR. RANKING:** Thank you, Your Honour.

28  
29 **SUBMISSIONS BY MR. RANKING:**

30 Your Honour, what I want to do, and I will go  
31 through this quickly, and it's from this  
32 perspective. My friend and I agreed that he

April 30, 2013



J. FANTINO

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Nelson Barbados Group v. Cox et al  
Reasons for Judgment - Shaughnessy J.

Sworn 28/7/2012

A Commissioner, etc.

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

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

May 3, 2013



## Statement for the Record - 12

1 This is EXHIBIT 75  
2 To the Affidavit of

3 J. FANTINO

4 Sworn SEP 28 2017

5 [REDACTED]  
6 A Commissioner, etc.

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.

5. 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.





This is EXHIBIT 76  
To the Affidavit of

J. FANTINO

Sworn SEP 28 2017  
[REDACTED]

17

Nelson Barbados Group v. Cox *et al*  
Reasons for Judgment – Shaughnessy J.

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32

AC Commissioner, etc.

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



J. FANTINO

Sworn SEP 28 2017

43

Nelson Barbados Group v. Cox *et al*  
Reasons for Judgment – Shaughnessy, A Commissioner, etc.

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

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

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

May 3, 2013



This is EXHIBIT 78  
To the Affidavit of

359

109

J. PANTINO

Sworn Sep. 28, 2009

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.

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

A COMMISSIONER FOR TAKING AFFIDAVITS

E. Morse

- 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

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.

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.

JEANNINE OUELLETTE

**DAWN K. ROBERTSON**  
Barrister and Solicitor





113 Dunlop Street East, Unit 1928, Barrie, Ontario.

40 Coldwater St E, Orillia, ON, not a drop box, but an address he shared, until very recently (at least officially) with the law firm of Crawford McKenzie McLean Duncan and Anderson LLP, counsel for Nelson Barbados Group Limited and its non-corporate, non-entity fake precursor, Nelson Barbados Investments Inc.

Motor vehicle license searches for Donald Robert Best do not provide a residential address, as they are required to by law. Instead, Donald Best has provided an address which, if you look at the list above, is eerily familiar. It is 122-250 The East Mall, Apartment 1225, Etobicoke, Ontario. This address, in all its Best-manufactured glory, is that of a mailbox at UPS Store No. 122 located in the Cloverdale Mall in the Toronto suburb of Etobicoke, Ontario. It is neither apartment nor suite and cannot be used for a residence. Equally, there is no telephone number (not even a cell phone number) and no fax or even an e-mail. That from a man who has made a living out of internet piracy.

As has previously been pointed out on BU, searches on the Internet on such sites as Canada 411 have been fruitless. BU reported all that was known about Donald Best at

<http://bajan.wordpress.com/2009/03/13/nelson-barbados-group-ltd-vs-barbados-and-other-the-other-side-of-the-kingsland-estate-court-matter-part-xvii/>. All that is known other than that, is the following:

FULL NAME: **Donald Robert Best**

DATE OF BIRTH: [REDACTED]

ONTARIO DRIVERS LICENSE NUMBER: [REDACTED]

ASSOCIATION MEMBERSHIPS: Toronto Police Association (and Allard's BFP and Keltruth mouthpieces have the gall to criticize our RBPF?!!) which gives his former and long-abandoned address of 123 Mountain Park Road, Hamilton, Ontario **AND NO CURRENT ADDRESS.**

It is the considered and expert opinion of the private investigator (and BU has a copy of the report in order to support its claim of fair comment, should anyone be thinking of making any complaints) that Mr. Best has deliberately taken extraordinary steps for a number of years in order to conceal his whereabouts. Wonder why?

Since Mr. Best is a habitué of Barbados, are there any of BU's readers who may be able to assist in tracking down Mr Donald Best, please either post the

## BGIS TV



## PARLIAMENT TV



## BU'S 10 POINT GOVERNANCE PLAN



## BLOGROLL

AfraRaymond.com

BajanFlick

This is EXHIBIT 79  
To the Affidavit of

J. FANTINO

## ARCHIVES

Select Month

Sworn SEP 28, 2017

A Commissioner, etc.

## TOP CLICKS

barbadostoday.bb/2015/03/...

caribbeannewsservice.com/...

globalmajoritynews.com/ta...

barbadosunderground.files...

en.wikipedia.org/wiki/Que...

diabetesreviewer.com/somo...

bajantube.com/play\_audio....



- 3 -

16. That after leaving the police force in 1990, I owned various businesses in the retail, construction, and private investigation industries. Through my company, my work in the private investigation industry focused on intellectual property crime and fraud. I often found myself working against the same criminal organizations against whom I had worked as a police officer, such as biker gangs, various drug cartels, and mafia-type organizations.

17. That since 1977, I have had concerns for my family's safety because of my work. I was first threatened in 1977 by violent gang members. While I was a police officer, I had the wheel nuts of my family vehicle loosened and sugar poured into my gas tank while my vehicle was parked at a Toronto Police facility. In addition, I have been assaulted by members of criminal organizations as a result of my undercover work. During one undercover operation, I was badly beaten, resulting in blood in my urine for weeks after. During another investigation, I was hospitalized after a drug dealer fractured my kneecap.

18. That in 1999, I became aware that at least two criminal organizations were actively seeking the location of my family home as well as current photographs of me and of my family members. Thereafter, I became aware that private investigators had been hired to photograph and follow me, particularly when I was scheduled to testify in court.

19. That since I began working as a police officer, in order to protect my family, I have used unlisted phone numbers and post office boxes to conceal my home address.

20. That during the course of the Nelson Barbados proceedings, an anonymous blog operated on the Internet, entitled "Barbados Underground". It regularly reported on the history and events in the legal proceedings. In addition, it often posted articles and comments which have directly and indirectly threatened and intimidated those who have supported the plaintiff's case.

This is EXHIBIT 80  
To the Affidavit of

J. FANTINO

Sworn SEP 28, 2017

A Commissioner, etc.



- 3 -

16. That after leaving the police force in 1990, I owned various businesses in the retail, construction, and private investigation industries. Through my company, my work in the private investigation industry focused on intellectual property crime and fraud. I often found myself working against the same criminal organizations against whom I had worked as a police officer, such as biker gangs, various drug cartels, and mafia-type organizations.

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18. That in 1999, I became aware that at least two criminal organizations were actively seeking the location of my family home as well as current photographs of me and of my family members. Thereafter, I became aware that private investigators had been hired to photograph and follow me, particularly when I was scheduled to testify in court.

19. That since I began working as a police officer, in order to protect my family, I have used unlisted phone numbers and post office boxes to conceal my home address.

20. That during the course of the Nelson Barbados proceedings, an anonymous blog operated on the Internet, entitled "Barbados Underground". It regularly reported on the history and events in the legal proceedings. In addition, it often posted articles and comments which have directly and indirectly threatened and intimidated those who have supported the plaintiff's case.

This is EXHIBIT 81  
To the Affidavit of

J. FANTINO

Sworn

SEP 28 2017

A Commissioner, etc.

- 4 -

21. That prior to September 30, 2009, incidents of threats and intimidation in relation to the Nelson Barbados and related proceedings have included:

- (i) Threats posted on the Internet regarding killing Marjorie Knox, one of the stakeholders in the estate at issue;
- (ii) Threats to murder a witness in these proceedings, Kathleen Davis;
- (iii) Multiple threats to murder a witness Jane Goddard;
- (iv) Nitin Amersey, a witness in the proceedings, was threatened, his office burgled, and house set on fire. In addition, he and his family experienced death threats as explained in his affidavit, attached and marked as Exhibit 'A' to my affidavit;
- (v) A Barbadian witness, John Knox, was threatened that if he continued to testify, he would lose his job at the faculty of the University of the West Indies. Mr. Knox testified and was dismissed from his job.
- (vi) There were dozens of other incidents of threats, intimidation and harassment against witnesses and others, including my former lawyer, prior to September 30, 2009.

22. That on October 30, 2009, my personal identity information was posted on the internet, on a website called "Barbados Underground". This was particularly devastating to me and to my family given the many years of threats and intimidation tactics I had experienced. Once this personal information, including my address, was published, I no longer felt that I could keep my family safe. Attached and marked as Exhibit 'B' to my affidavit is a printout of a blog post from the website "Barbados Underground", dated October 30, 2009.

- 5 -

23. That I believe that the personal information which was distributed included banking information, account numbers, branch information, and account holder names, email passwords, passport numbers, dates of birth, addresses, computer passwords, and the names of some of my family members, including two of my children.

24. That on October 30, 2009, my Ontario driver's license number, date of birth, history of my residential address since I was 17 years old, and my parents' home address were published on the Barbados Underground website.

25. That accompanying the posts in which my personal information was published were calls for interested parties to intimidate me and my family.

26. That following this publication of my personal information, I and members of my family were threatened and targeted with intimidation tactics. One of my children was personally intimidated by a person who approached and demanded to know if the child was related to me. When my child denied being related to me, the person replied that the child "had better not be". This interaction frightened me, my child and my entire family.

27. That throughout this time, I received harassing and frightening phone calls in the middle of the night from unknown phone numbers.

28. That on the morning of November 5, 2009, I was ambushed and assaulted while walking down the street. As I was walking past this person, he moved quickly and hit me with his left fist in my solar plexus. I fell to the ground and vomited. This man then looked at me and wagged his finger in what I interpreted to be a warning sign. I believe the person who assaulted me was connected with the threats I had previously received.

29. That within a few hours of this assault, I arranged for my family's departure from Canada and booked a flight for November 11, 2009.

30. That on January 17, 2010, someone published a blurry surveillance photograph of me, which had been surreptitiously taken while I was working undercover against

- 6 -

organized crime at an earlier time. In conjunction with its publication, there was a general call for criminals to track down my family. This rhetoric led to further online comments and postings calling for violence against me, my associates, witnesses, and my former lawyer. One comment to the Barbados Underground website was that "I will catch them and will pepper their asses with a 12 guage [sic]" in relation to me, witnesses, and my former lawyer. Attached and marked as Exhibit 'C' to my affidavit is a printout from a January 17, 2010 article posted on the Barbados Underground website.

31. That this threatening behaviour toward me and associated parties has continued. For example, in November of 2011, my former lawyer received a threatening phone call from a person I believe to be a member of organized crime. In addition, one of the witnesses in the litigation had the wheel nuts of their vehicle loosened. Further, our family automobile was shot at late at night while parked in our driveway at home.

32. That as explained above, on November 11, 2009, I felt compelled to leave Canada with my family because of my fear for my personal safety and for my family's safety. These fears had been growing for some time but had escalated to such a level that I viewed it as an emergency situation. My concern for my family resulted in my decision to leave the country. I have not returned to Canada since then.

33. That when my family and I left Canada on November 11, 2009, we travelled through two countries en route to New Zealand where I had family. I arrived in New Zealand on November 24, 2009. I attempted to have my mail routed to me at that location.

34. That on November 15, 2009, prior to my arrival in New Zealand, I arranged for a mailbox in Auckland, New Zealand, to receive mail I intended to have forwarded from Canada.

35. That within days of arriving in New Zealand, I received information that "bad people" were looking for me near Auckland. I believed that this was a result of having my mail forwarded to Auckland, New Zealand.





J. FANTINO

Sworn SEP 28, 2017

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Nelson Barbados Group v. Cox *et al*  
Reasons for Judgment - Shaughnessy J.

A Commissioner, etc.

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

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

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

May 3, 2013



This is EXHIBIT 83  
To the Affidavit of

J. FANTINO

Sworn SEP 28, 2017

A Commissioner, etc.

SUPERIOR COURT OF JUSTICE  
(Central East Region)

Court File No. 141-07

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

THE HONOURABLE )

FRIDAY, THE 3RD

MR. JUSTICE SHAUGHNESSY )

DAY OF MAY, 2013

BETWEEN:

NELSON BARBADOS GROUP LIMITED

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

**JUDGMENT**

THIS APPLICATION, made by Donald Best, for an Order setting aside the Contempt Order of the Honourable Justice Shaughnessy and the Warrant of Committal issued against Donald Best on January 15, 2010, was heard this day at the Courthouse, at 150 Bond Street East, Oshawa, Ontario, L1G 0A2.

ON READING the Notice of Application and supporting Affidavits dated April 18, 2012, September 13, 2012, December 10, 2012 and January 10, 2013 and the exhibits referred to therein (collectively, the "Affidavits"), filed by Donald Best;

AND ON READING the Transcripts of the Cross-Examination of Donald Best on the Affidavits, held on January 11, 2013 and January 23, 2013;

AND ON READING the Responding Parties Motion Record, jointly filed by Kingsland Estates Limited and PricewaterhouseCoopers East Caribbean Firm (the "Respondents");

AND ON READING the Factum filed by Donald Best and the Joint Factum and Book of Authorities filed by the Respondents;

AND ON READING the further Affidavit of Donald Best dated April 29, 2013 and the exhibits tendered to the Court on April 30, 2013 and May 1, 2013, and marked as Exhibits A - F;


AND ON HEARING the submissions of Donald Best and submissions of the lawyers for the Respondents,

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.
3. THIS COURT FURTHER ORDERS AND ADJUDGES that Donald Best's passport, currently being held by Brian Greenspan, shall be returned to Donald

Best on or after August 30, 2013, unless this Judgment is appealed, in which case, the Court of Appeal shall deal with the return of Donald Best's passport.

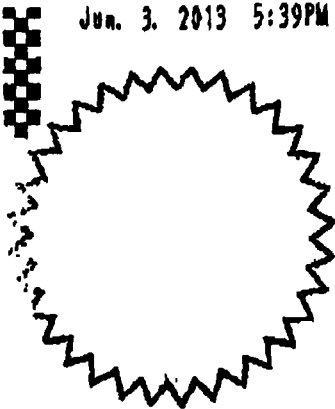
4. THIS COURT FURTHER ORDERS AND ADJUDGES that approval of this Judgment by Donald Best is hereby dispensed with.
5. THIS COURT FURTHER ORDERS AND ADJUDGES that the Respondents shall have their substantial indemnity costs of the Application, fixed in the amount of \$60,250.00 (inclusive of fees, disbursements and applicable taxes) in favour of the Respondent Kingsland Estates Limited and \$50,250.00 (inclusive of fees, disbursements and applicable taxes) in favour of the Respondent PricewaterhouseCoopers East Caribbean Firm, payable by Donald Best.
6. THIS COURT FURTHER ORDERS AND ADJUDGES that the costs provided for in paragraph 5 above and the Fine (in the amount of \$7,500.00) and Costs (in the amount of \$50,632.90 to Mr. Ranking's client, \$13,230.00 to Mr. Silver's clients, \$5,512.50 to Mr. Roman's clients and \$3,500.00 to Ms. Clarke's client) payable pursuant to the Order of this Court dated January 15, 2010 shall be paid by Donald Best prior to and as a condition precedent to any new attempt to purge the contempt provided for in the January 15, 2010 Order.

THIS JUDGMENT bears post-judgment interest, at the rate of three (3) per cent per annum from its date.

  
Justice B. Shaughnessy



Jun. 3. 2013 5:39PM



FORM 60L  
Court of Justice Act  
WARRANT OF COMMITTAL

CV-07-141 (Barris file)

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

The Honourable Justice Shaughtnessy

Friday, May 3<sup>rd</sup>, 2013

Nelson Barbados Group Ltd. vs. Cox, Richard et al

WARRANT OF COMMITTAL

TO ALL POLICE OFFICERS in Ontario

AND TO THE OFFICERS OF Central East Correctional Centre

WHEREAS I have found that Donald Best is in contempt of this court and have ordered imprisonment as punishment for the contempt, (1954-06-07)

YOU ARE ORDERED TO ARREST Donald Best and deliver him to a provincial correctional institution, to be detained there for 3 months.

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

No Remission is Ordered

This is EXHIBIT 84  
To the Affidavit of

J. FANTINO

Sworn SEP 28, 2013

  
A Commissioner, etc.

  
The Honourable Justice Shaughtnessy





16. During the May 3, 2013 hearing, Best explicitly asked Justice Shaughnessy for changes to the conditions of his incarceration. Specifically, Best requested that he receive protection, on the basis that he was a former police officer.<sup>4</sup> Such changes required the creation of a fresh warrant to replace the Old Warrant.

17. The May 3, 2013 hearing also dealt with other issues relating to the civil litigation. Justice Shaughnessy found in favour of the opposing parties on a number of issues, granted them substantial indemnity costs, and dispensed with approval of the judgment by Best. In court, Justice Shaughnessy further instructed opposing counsel to submit a draft judgment for approval, and indicated that he would no longer be seized of the matter. Orders of these types are routinely made by Superior Court judges.

18. After the May 3, 2013 hearing concluded, Justice Shaughnessy issued an updated Warrant of Committal (the "New Warrant"). The New Warrant added instructions to the Superintendent of the correctional facility to consider arrangements which may be necessary to protect Best, as Best had requested.

19. The New Warrant also contains the following provision which had not formed part of the Old Warrant: "No remission is ordered." There is no evidence in the record as to what Justice Shaughnessy intended by this language.

20. Best brought a *habeas corpus* application with respect to this provision in the New Warrant. In a brief decision, dated April 15, 2014, Justice Molloy of the Ontario Court of Appeal ordered that Mr. Best was eligible for early release.

21. Justice Molloy explicitly declined to make a finding that Justice Shaughnessy had purported to deprive Mr. Best of statutory remission in issuing the New Warrant.<sup>5</sup> Instead, she found the wording of the New Warrant to be ambiguous, and held that Best was entitled to statutory early release in any event.<sup>6</sup>

#### **B. The CJC Complaint**

22. On January 5, 2016 Best brought a complaint against Justice Shaughnessy to the Canadian Judicial Council ("CJC"). In the complaint he made three allegations:

<sup>4</sup> Applicant's Application Record Vol. 2 Tab 3S *Nelson Barbados Group Inc. v. Richard Cox et. Al*, Transcript May 3, 2013 at 519-520.

<sup>5</sup> Respondent's Application Record Tab 1. Endorsement of Justice Molloy. Applicant's Application Record Vol. 2 Tab 3V Order of Justice Molloy dated April 15, 2014 at 532-533.

<sup>6</sup> Respondent's Application Record Endorsement of Justice Molloy.

THIS IS EXHIBIT 85  
To the Affidavit of

J. FANTINO

Sworn SEP 28, 2017

A Commissioner, etc.



Curiously the AGO did not invoke Judges Acts. 63(1) and demand that the CJC look into this but rather decided to act for the Judge during this Judicial Review.



See footnote 85



<u>Date_and_Time</u>	<u>IP Address</u>	<u>IP Address Label</u>	<u>BrowserVersion</u>	<u>OS</u>	<u>Resolution</u>	<u>Country</u>	<u>Region</u>	<u>City</u>	<u>Postal Code</u>	<u>ISP</u>
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 To the Affidavit of  
 J. FANTINO  
 Sworn SEP 28 2017  
 A Commissioner, etc.



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page view	Ontario Superior Court Justice J. Bryan Shaughnessy secretly Increased prisoner's jail sentence; in a backroom meeting, off the court re
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page view	Canadian Judicial Council refuses investigation of Justice J. Bryan Shaughnessy. CJC says "No misconduct"   Donald Best.CA
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To the Affidavit of

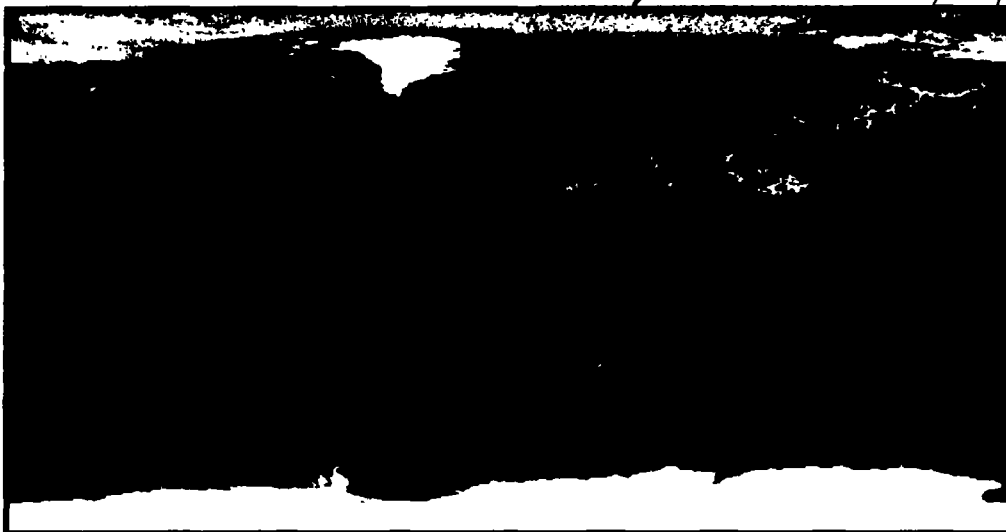
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Sworn 28.28.2017



A Commissioner, etc.

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31 May	11:39:41	J. Bryan Shaughnessy   Donald Best.CA donaldbest.ca/tag/j-bryan-shaughnessy/	author: Donald Best
31 May	11:40:57	Ontario Superior Court Justice J. Bryan Shaughnessy secretly increased prisoner's jail sentence; in a backroom meeting, off the court record, without informing the prisoner.   Donald Best.CA	
31 May	11:41:28	donaldbest.ca/wp-content/uploads/2015/12/20130503-Warrant-Justice-Shaughnessy-SAN1.jpg (Exit Link) donaldbest.ca/tag/j-bryan-shaughnessy/	author: Donald Best
31 May	11:41:54	Ontario Superior Court Justice J. Bryan Shaughnessy secretly increased prisoner's jail sentence; in a backroom meeting, off the court record, without informing the prisoner.   Donald Best.CA	
31 May	11:41:56	donaldbest.ca/wp-content/uploads/2015/12/20100115-Warrant-Justice-Shaughnessy-SAN.jpg (Exit Link) donaldbest.ca/tag/j-bryan-shaughnessy/	author: Donald Best
31 May	11:42:19	Ontario Superior Court Justice J. Bryan Shaughnessy secretly increased prisoner's jail sentence; in a backroom meeting, off the court record, without informing the prisoner.   Donald Best.CA	
31 May	11:42:20	donaldbest.ca/wp-content/uploads/2015/12/20130503-Warrant-Justice-Shaughnessy-SAN1.jpg (Exit Link) donaldbest.ca/tag/j-bryan-shaughnessy/	author: Donald Best
31 May	11:42:52	Canadian Judicial Council refuses investigation of Justice J. Bryan Shaughnessy. CJC says "No misconduct"   Donald Best.CA donaldbest.ca/canadian-judicial-council-refuses-investigation-of-justice-j-bryan-shaughnessy-cjc-says-no-misconduct/	
31 May	11:44:14	Donald Best.CA   Ethics. Privacy. Access to Justice. Misconduct by Lawyers, Police and Judges (No referring link)	
31 May	11:44:49	J. Bryan Shaughnessy   Donald Best.CA (No referring link)	
31 May	13:01:45	J. Bryan Shaughnessy   Donald Best.CA (No referring link)	
31 May	14:04:43	J. Bryan Shaughnessy   Donald Best.CA (No referring link)	
31 May	14:04:43	J. Bryan Shaughnessy   Donald Best.CA (No referring link)	
31 May	14:44:28	J. Bryan Shaughnessy   Donald Best.CA	

387

		(No referring link)
2 Jun	08:32:59	J. Bryan Shaughnessy   Donald Best.CA
		(No referring link)
2 Jun	09:51:30	J. Bryan Shaughnessy   Donald Best.CA
		(No referring link)
2 Jun	09:56:41	J. Bryan Shaughnessy   Donald Best.CA
		(No referring link)
3 Jun	08:13:51	J. Bryan Shaughnessy   Donald Best.CA
		(No referring link)
6 Jun	09:17:58	J. Bryan Shaughnessy   Donald Best.CA
		<a href="https://5.hidemyass.com/index.php?e=curl_error&amp;return=https://5.hidemyass.com/browse.php?u=jLB43_7fOnkYUCVALL47Tlyo5WfQSU5AdgA9bx5JMrOdqyQKqBWgAh2JXhKElhcXmSaRptAo6OVOMijyt5y2LrRhY-Vs3Q3gixV93ZY4Rdb8EqL8cqu18hkHdfJ2p4FKPAhvCka-NJc8MJNNihmC8hr_MnseDhQQAUOcZYcl2TE_sV4sMSTm5dniAcWnOK4oEH76-Zfh7t1zvPpzuDEYAGd6XpBH0tcaAldBox3rKh66fgWmjcmT66KTa9SL7H58T9NWnda4PT4vAE6BndFPEudEYJvUoSLDK_zDvMcQ1C3nh84GtsoKnv0sj683pKxiQ9effszNcRmvQgkw9C85zZ7XHuwrrssGPm2Y_iPppDYjUga1Cccbo3zVyM7Z2cVmpJdLuBuO6VSJzIBN2sYMPVN0xiSSf1dz8YVGglSIVhVm_gek=&amp;f=norefer&amp;idx=1&amp;p=bind+failed+with+errno+97:%2">https://5.hidemyass.com/index.php?e=curl_error&amp;return=https://5.hidemyass.com/browse.php?u=jLB43_7fOnkYUCVALL47Tlyo5WfQSU5AdgA9bx5JMrOdqyQKqBWgAh2JXhKElhcXmSaRptAo6OVOMijyt5y2LrRhY-Vs3Q3gixV93ZY4Rdb8EqL8cqu18hkHdfJ2p4FKPAhvCka-NJc8MJNNihmC8hr_MnseDhQQAUOcZYcl2TE_sV4sMSTm5dniAcWnOK4oEH76-Zfh7t1zvPpzuDEYAGd6XpBH0tcaAldBox3rKh66fgWmjcmT66KTa9SL7H58T9NWnda4PT4vAE6BndFPEudEYJvUoSLDK_zDvMcQ1C3nh84GtsoKnv0sj683pKxiQ9effszNcRmvQgkw9C85zZ7XHuwrrssGPm2Y_iPppDYjUga1Cccbo3zVyM7Z2cVmpJdLuBuO6VSJzIBN2sYMPVN0xiSSf1dz8YVGglSIVhVm_gek=&amp;f=norefer&amp;idx=1&amp;p=bind+failed+with+errno+97:%2</a>
20 Jun	14:48:36	Unknown
		<a href="https://5.hidemyass.com/">https://5.hidemyass.com/</a>
20 Jun	14:53:00	Unknown

author:  
Donald  
Best

*Host Name* - Red text is the user's host name.

*Web Page* - Grey text is the webpage visited.

*Referring Link* - Green text is the referring link

*Exit Link* - Blue text is the exit link.

*Download* - Brown text is the download link





Nelson Barbados v. Richard Ivan Cox, et al.

This is EXHIBIT 90  
To the Affidavit of

J. RANKING

Signed Sep. 28, 2017

A Commissioner, etc.

could show up and start singing like a bird and waive privilege and he won't be my problem anymore, but that....

THE COURT: All right. Just draw a halt here. Gentlemen, where are we? I mean, you've been reasonable, all of you, throughout this case and I include Mr. Dewart. Now, he's really hit on a touchstone, so you want to examine Best, you can, there's no objection.

MR. RANKING: Well, the difficulty, Your Honour, is I have had my own firm try to find him, I've had private investigator try to find him.

THE COURT: Oh, I can make an order.

MR. RANKING: Right, and that's - and that's what we're seeking.

THE COURT: I'll just make an order, because what he says in here, in this letter, and I've got to believe it came from Mr. Best, that - first page, paragraph 4, "Nelson Barbados Group Limited wishes Your Honour to know that the company has not been served with any legal documents since we moved to our Kingston, Ontario mailing address as provided in the courts' order made early in September. The company has not heard anything from the defendant's lawyers." He tells me that's his mailing address. I know it's a UPS.

MR. RANKING: The difficulty, Your Honour, is that absent an order from this court.

THE COURT: Well, I give - no, you won't have to worry about absent an order. I'm going to give an order.

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

October 30, 2009

Justice Shaughnessy  
Superior Court of Justice  
Court House  
601 Rossland Rd. E.  
Whitby ON L1N 9G7

VIA FAX: 905-430-5804  
(Trial Coordinator – Whitby)  
VIA FAX: 905-430-5822  
(Connie or Karen – Judicial Secretary to Justice Shaughnessy)

RE: Nelson Barbados Group Ltd. v Richard Ivan Cox et al  
(Proceeding Monday, November 2, 2009)

Your Honour,

Nelson Barbados Group Ltd. has been unsuccessful in finding a lawyer who is able and willing to become familiar with the case and represent the company without incurring enormous and unreasonable costs. It is the company's position that the money would be better spent satisfying the court's judgment for costs.

Understandably, the lawyers who were consulted stated that the case was complex and conducted over a lengthy period and that they were not comfortable representing Nelson Barbados Group Ltd. in the last one percent of the proceedings without becoming fully knowledgeable about what has gone before.

Nelson Barbados Group Ltd. therefore respectfully asks the court to immediately proceed with the costs hearing that is peremptorily scheduled for November 2, 3 and 4, 2009.

Nelson Barbados Group Ltd. wishes Your Honour to know that the company has not been served with any legal documents since we moved to our Kingston, Ontario mailing address as provided for in the Court's order made early in September. The company has not heard anything from the defendants' lawyers.

Your Honour has always imposed reasonable costs in this case and the company trusts you to be fair now. Nelson Barbados Group Ltd. has always paid the costs as determined by the Honourable Court.

It should be noted, however, that Nelson Barbados Group Ltd. has been deprived of its experienced counsel, in the company's opinion, because of a deliberate tactical maneuver by the defendants' lawyers that was designed to separate Nelson Barbados Group Ltd. from its lawyer, Mr. K. William McKenzie.

Mr. McKenzie represented the company since the beginnings of this lawsuit and has irreplaceable specific knowledge of the case developed over hundreds of hours.

It is unfair and unjust that the defendants deprived Nelson Barbados Group Ltd. of its lawyer for the last, but critical, one percent of the case. It is unfair and unjust that the defendants continually attacked Mr. McKenzie personally with false allegations. In the company's opinion, this was done so they could unfairly sue him for costs and separate Mr. McKenzie from his client.

The defendants' lawyers wrongfully attacked Mr. McKenzie's personal integrity, including by saying that he created evidence and posted court documents on the internet. The defendants' lawyers also cross-examined Donald Best supposedly over this online document issue, when it seemed quite obvious that the defendant Iain Deane either posted documents himself or contributed to documents being posted online. It was later learned that documents posted online by Iain Deane came from the Miller Thompson law firm.

Again, Nelson Barbados Group Ltd. will not be appearing at the cost hearing, but trusts Your Honour to be fair.

Attached to this letter is a 4-page document provided to Nelson Barbados Group Ltd. by Mr. McKenzie prior to his being removed from representing the company.

Yours truly,

Nelson Barbados Group Ltd.

per

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

President



1 wouldn't know what was there before you left Canada on  
2 November 11th?

3 A. It's because you and the defendants distributed my  
4 information, which caused an attack on me and my family.  
5 And you're right, I couldn't go out of the house. And I was  
6 terrified and so were my family. These are real people  
7 we're dealing with, real serious people, okay.

8 707 Q. Who you're so worried about you didn't even call  
9 the police?

10 A. Sir

11 708 Q. Right? That's the same people we're talking  
12 about?

13 A. Sir

14 709 Q. Dangerous people that threatened you and scared  
15 you but you didn't go to the police and there isn't any  
16 documented description of the incident that you say took  
17 place?

18 A. No, sir, I didn't go to the police because Mr.  
19 Ranking's private investigator was into the confidential  
20 records illegally. And he was into the confidential records  
21 and that was published

22 710 Q. Did you complain to the police about that, that a  
23 private eye was improperly into the confidential records of  
24 the police? Why wouldn't you complain about that if it were  
25 true?

This is EXHIBIT 91  
To the Affidavit of

J. FANTINO

Sworn 50-38-207

A Commissioner, etc.

SIMCOE COURT REPORTING (BARRIE) INC.  
134 Collier Street, Barrie, Ont. L4M 1H4  
Bus: (705) 7342070; Fax: (705) 7342328  
simcourt@on.aibn.com



B All, Alright. I, I understand, and I see right on the web right now that you and your firm have published my Ministry of Transport driver's license number, date of birth, on the web. It's gone viral. All my, what purports to be my driver's license, my date of birth, my my, um, address history since I was seventeen years old.

S My, my my firm has posted this?

B Yes Sir. That's what it says. Your email address is here to send information and, and they are calling for ah, rogue police officers and ah bikers to... and criminals to track down my family and this private investigator that you have hired has gone into secret Toronto Police records and published stuff there from my employment record. And it's all, it's all on the web now.

So what I wanted to ask you, Sir. I'm perfectly willing to testify. You know, it would be nice to have the documents, but I wanted to know, I want guarantees from everybody there that not you, not your law firm and none of your defendants, none of your clients have hired surveillance there to take pictures of me cause it will be on the web tomorrow. And I want guarantees from each one of you.

S I, I, well first of all

B My family, my family hasn't slept in weeks, Sir! I've been, I've been on

S They haven't what?

B My family has not slept in weeks. I have been on the phone for days. Not hours, days! I mean, you know, identity theft here. Identity theft. You published, well. Come on. You guys knew what you were doing. You put out my confidential, Ministry of Transport, what purports to be my confidential Ministry of Transport driver's license, address, date of birth, the whole works and you published it in public...

S? Well, well, I just want you to know that two more people have joined the conference call (inaudible) to you. Um, I'm sorry, I've forgotten your name.

H Heidi Ruben (sp?), I'm Bill McKenzie's lawyer

S? And Marc LeMeux's (sp?) just joined us, so that you're aware who's on the call.

B Yeah, well. Oh oh, Marc LeMeux, Marc LeMeux, he's in this article too, okay? They're calling for him, they're calling to do harm to him too.

S That's, that's in my, my firm's website?

This is EXHIBIT 92  
To the Affidavit of

J. FANTINO

Sworn SEP 28, 2017

A Commissioner, Etc.





J. FANTINO

Sworn SEP 25 2017

37

Nelson Barbados Group v. Cox et al  
Reasons for Judgment - Shaughnessy J.

A Commissioner, etc.

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

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

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

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

May 3, 2013



B Well, I, I..

R Cause if I send it to you again, you're going to have the same problem. Unless you want to give me your residential address. Otherwise I can put together another four packages and you're never going to get them..

B A residential address? Well, I don't..

R Look you can give me any, look, I'm not going to get into a debate with you

B What's debate..

R I've asked the question, you've refused to answer

R And I'm in the position I can't even help you any further.

S What do you propose that we do, Mr., ah, Best?

23:35

B Well first of all, I'd like to know who posted what purports to be..

("Kill this" is whispered)

B and how did it come that Ministry of Transport, ah, confidential..

S I have no idea

B (Being talked over by Silver)

S I have no idea and I can't help find that out nor would I if I could.

B Well it says they have a copy of a report from a private investigator from, ah, the firm of Cassels

S Oh. From the firm of Cassels?

B That's what it says.

S Okay. Well I can tell you that the firm of Cassels doesn't have a report on a, on a, you.

B Yes? Does anyone?

S Whoever posted it, posted the wrong information.

This is EXHIBIT 94  
To the Affidavit of

J. FANTINO

Sworn SEP 28/2017

A Commissioner, etc.



J. FANTINO

Sworn SEP 28 2017

  
A Commissioner, etc.

B Well how did this come to be?

S I have no idea nor do I care.

B Oh. Well they are only calling for, I see. Yes. Guys, I get it! Whoever put this on, whoever let the Ministry of Transport information into the public, they knew what they were doing. Identity theft. Intimidation. I'm intimidated. I know exactly what you guys have done

S I guarantee you Sir that it wasn't me or Cassels Brock.

B Well well. Who was it then? Sir, who hired the private investigator?

S I have no idea. Anyway, so..

B You have no idea?

S Sir, we're going to end the call and we're..

B Don't hang up!

S going to get a certificate of non-attendance

B I would like to, give me the questions, gentlemen. Give me the questions.

24:59 or so

R We're not doing this over the phone. You're required to bring your documents with you. There's a notice of examination. There's a protocol to be followed, we intend to follow it. If you intend to do something different then you need a court order to vary what Justice Shaunnessy has ordered. It's as simple as that.

B Well I'd like to have a copy of the order

R ?

S Incidentally, do you have all the corporate records of Nelson Barbados?

B I'd like a copy of the order, gentlemen.

S Sir, you said to ask you a question. I'm asking you a question. Do you have all of the records of Nelson Barbados?

B Is that one of your questions, Sir? I'll write that down.



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

November 16, 2009

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

This is EXHIBIT 96  
To the Affidavit of

J. FANTINO

Sworn

SEP 28 2009

A Commissioner, etc.

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 17<sup>th</sup>) 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 (17<sup>th</sup>), 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 13<sup>th</sup> 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 13<sup>th</sup>, 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 001096 - 1e-4  
2648

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

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

President



See footnote 95



OLB. OHSA, LSUC



J. FANTINO

Sworn SEP 28, 2017

A Commissioner, etc.

**OVERVIEW**

1. This is an application for judicial review of a decision (the "Screening Decision") of the Executive Director ("Director") of the Canadian Judicial Council ("CJC"). In that decision, the Director determined that a file would not be opened with regard to a complaint made by the Applicant, Mr. Donald Best ("Best"), against the Respondent Mr. Justice Bryan Shaughnessy ("Justice Shaughnessy").
2. Justice Shaughnessy heard a civil case in which Best was a litigant. In the course of that proceeding, he found Best to be in contempt of court, and issued a warrant sentencing Best to three months imprisonment.
3. Best disagreed with certain actions Justice Shaughnessy took in relation to the finding of contempt and issuance of the warrant. He made a complaint to the CJC, which was reviewed by the Director.
4. The Director made the Screening Decision pursuant to the guidance set out in the CJC's policy document "Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges" ("Review Procedures"). The Review Procedures prescribe that the Director may decline to open a file if a complaint does not concern a judge's conduct. The Director determined that the complaint related to judicial decision-making rather than conduct.
5. Best makes two broad challenges to the Screening Decision. First, he alleges that the Director erred in determining whether the complaint alleged conduct. Second, he alleges that the process by which the Director can screen out unmeritorious complaints at the outset ("Early Screening") is *ultra vires* the *Judges Act* and the Constitution.
6. Best's application is without merit.
7. The Director committed no reviewable error in finding that the complaint did not relate to conduct. As a general rule, the definition of "conduct" which is subject to CJC sanction does not encompass judicial decision-making. A judicial decision only constitutes conduct if it is an abuse of office, made in bad faith, or analogously improper. There was no basis to conclude that Justice Shaughnessy's decision was tainted in this manner.







396

## Occupational Health and Safety Inspections: What You Should Know

Issued: January 28, 2013

Content last reviewed: January 2013

This is EXHIBIT 100  
To the Affidavit of

J. FANTINO

SWORN SEP 28, 2017

A Commissioner, etc.

### Who are occupational health and safety inspectors?

Occupational health and safety inspectors enforce the Occupational Health and Safety Act (OHSA) and ensure workplace parties are maintaining an effective Internal Responsibility System (IRS).

The IRS incorporates the underlying philosophy of the OHSA by relying on all workplace parties to maintain workplace health and safety.

In addition to enforcing the OHSA, inspectors are trained in specific regulations under the Occupational Health and Safety Act.

The Ontario Ministry of Labour employs a team of specialists who may accompany an inspector during a workplace inspection or investigation to provide additional expertise. These professionals include: engineers, hygienists, doctors, ergonomists and radiation experts.

### Inspector training

All inspectors complete a rigorous nine-month program of classroom training and field experience with a qualified inspector.

New inspectors also receive training on the regulations specific to their respective programs (i.e., construction, mining, health care, industrial and diving).

### Policy and procedures

Occupational health and safety inspectors' enforcement efforts are supported by a comprehensive manual of policies and procedures used in workplace inspections.

### Powers of an inspector

Ministry of Labour Occupational Health and Safety Inspectors have broad powers under section 54 of the Occupational Health and Safety Act to monitor employers' and workers' compliance with the OHSA.

Inspectors' powers include:

#### Power of entry

Under section 54(1)(a) of the OHSA, a Ministry of Labour inspector may enter any workplace without a warrant or notice. By law, you are required to permit an inspector entry to conduct a workplace inspection or investigation.

#### Obtaining information

Once an inspector has begun a workplace inspection or investigation, by law, he or she is permitted to:

- Question any person [section 54(1)(h)]
- Handle, use or test any equipment, machinery, material or agent in the workplace and take away any samples [sections 54(1)(b) and (e)]
- Look at any documents or records and take them from the workplace in order to make copies [sections 54(1)(c) and (d)], and
- Take photographs [section 54(1)(g)].

To review all the powers of an inspector, please see Part VIII of the Guide to the Occupational Health and Safety Act.

## What to expect from a Ministry of Labour visit

Workplace visits by an inspector are typically unannounced and, by law, an inspector must be granted access to enter and access all areas of the workplace. When a ministry occupational health and safety inspector arrives at your workplace, he or she will introduce himself or herself and ask to speak with the most senior member of management available and/or the workplace's health and safety contact. The inspector may also ask for a worker safety representative. If the required parties are not available, the inspector may continue with a limited inspection based on available information or may arrange a follow-up visit later that day or on the following day.

When all workplace parties have been assembled, the inspector will check that all documentation required under the OHSA is in place: the employer's written occupational health and safety policy, the workplace violence and harassment policy and the health and safety awareness poster. These must be displayed in an area accessible by all employees. Any other required documentation that shows workers have been provided information and instruction on tasks they are required to do may also be requested. Finally, the inspector may ask to see where the documents are posted and verify that a copy of the act and regulations is also displayed.

Following the documentation review, the inspector will inspect the workplace to determine if workplace parties are maintaining a safe work environment and complying with the OHSA and its regulations.

Inspectors will apply and enforce the OHSA and its regulations based on the facts as they may find them in the workplace. The Ministry of Labour has produced a number of short videos describing what inspectors look for when inspecting for specific hazards.

## Enforcement tools

The OHSA provides inspectors with enforcement tools to obtain compliance with health and safety requirements. Compliance orders describe actions the employer is obliged to take in order to comply with specific legal requirements. Where there is immediate risk of injury to a worker, a "stop work" order is issued to prevent work from continuing until compliance is achieved. Inspectors also can issue tickets under the Provincial Offences Act or initiate prosecution for non-compliance.

## Orders

Compliance orders may be:

- **Time based** – a time frame is set to comply.
- **Time unknown** – an amount of time to comply is not specified. This type of order will result in a "Stop work" or "Plan." The inspector will explain the requirements for compliance with these types of orders.
- **Forthwith** – the contravention is complied with during the inspector's visit.

Along with any orders, the inspector will also provide a Notice of Compliance. This form is to be completed and signed by the employer and health and safety representative or a joint health and safety committee member. The worker representative must check a box beside the order to indicate agreement or disagreement that compliance has been achieved for the order(s).

Once the Notice of Compliance form has been sent to the inspector, a copy of the field visit report must be posted in the workplace and a copy provided to the worker representative and joint health and safety committee.

## Disputing an inspector's decision

If you do not agree with how an inspector has treated a situation or do not agree with an order, contact the inspector's manager to discuss the concern. The inspector's office information can be found at the bottom of the workplace visit report.

## Appealing an inspector's order

Under the OHSA, anyone who is affected by the decision of an inspector (including a worker or a union) may appeal to the Ontario Labour Relations Board (OLRB) within 30 days.

During the appeal, the OLRB has the power to suspend the order pending a decision. In making a decision, the OLRB has all the powers of an inspector and can uphold the order, rescind it, or issue a new order. The decision of the OLRB is final.

obligations under the Occupational Health and Safety Act (OHSA) and the regulations. It is not intended to replace the OHSA or the regulations and reference should always be made to the official version of the legislation.

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It is the responsibility of the workplace parties to ensure compliance with the legislation. This web resource does not constitute legal advice. If you require assistance with respect to the interpretation of the legislation and its potential application in specific circumstances, please contact your legal counsel.

While this web resource will also be available to Ministry of Labour inspectors, they will apply and enforce the OHSA and its regulations based on the facts as they may find them in the workplace. This web resource does not affect their enforcement discretion in any way.

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Government  
of Canada

Gouvernement  
du Canada

[Home](#) → [Public service and military](#) → [Healthy workplace](#)

→ [Prevention and resolution of harassment](#)

# Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process

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This is EXHIBIT 8 to the  
Affidavit of Donald Best,  
sworn April 29, 2016



  
A Commissioner, etc.

**Statement of Principles  
on Self-represented Litigants and Accused Persons**

This is EXHIBIT 101  
To the Affidavit of

J. FANTINO

Sworn SEP. 28, 2017

  
A Commissioner, etc.

**Adopted by the Canadian Judicial Council  
September 2006**

**CANADIAN JUDICIAL COUNCIL  
STATEMENT OF PRINCIPLES  
ON SELF-REPRESENTED LITIGANTS AND ACCUSED PERSONS\***

**PREAMBLE**

**Whereas** the system of criminal and civil justice in Canada is predicated on the expectation of equal access to justice, including procedural justice, and equal treatment under the law for all persons;

**Whereas** the achievement of these expectations depends on awareness and understanding of both procedural and substantive law;

**Whereas** access to justice is facilitated by the availability of representation to all parties, and it is therefore desirable that each person seeking access to the court should be represented by counsel;

**Whereas** those persons who do remain unrepresented by counsel both face and present special challenges with respect to the court system;

**Therefore**, judges, court administrators, members of the Bar, legal aid organizations, and government funding agencies each have responsibility to ensure that self-represented persons are provided with fair access and equal treatment by the court; and

**Therefore**, it is desirable to provide a statement of principles for the guidance of such persons in the administration of justice in relation to self-represented persons.

**\*Notes:**

1. Throughout this document, the term "self-represented" is used to describe persons who appear without representation. The use of this term is not meant to suggest inferences about the reasons the individual is without representation, nor the quality of their self-representation, and recognizes that some individuals prefer to represent themselves.
2. The Statements, Principles and Commentaries are advisory in nature and are not intended to be a code of conduct.

**A. PROMOTING RIGHTS OF ACCESS****STATEMENT:**

Judges, the courts and other participants in the justice system have a responsibility to promote opportunities for all persons to understand and meaningfully present their case, regardless of representation.

**PRINCIPLES:**

1. Access to justice for self-represented persons requires all aspects of the court process to be, as much as possible, open, transparent, clearly defined, simple, convenient and accommodating.
2. The court process should, to the extent possible, be supplemented by processes that enhance accessibility, informality, and timeliness of case resolution. These processes may include case management, alternative dispute resolution (ADR) procedures, and informal settlement conferences presided over by a judge.
3. Information, assistance and self-help support required by self-represented persons should be made available through the various means by which self-represented persons normally seek information, including for example: pamphlets, telephone inquiries, courthouse inquiries, legal clinics, and internet searches and inquiries.
4. In view of the value of legal advice and representation, judges, court administrators and other participants in the legal system should:
  - (a) inform any self-represented parties of the potential consequences and responsibilities of proceeding without a lawyer;
  - (b) refer self-represented persons to available sources of representation, including those available from Legal Aid plans, *pro bono* assistance and community and other services; and
  - (c) refer self-represented persons to other appropriate sources of information, education, advice and assistance.



**COMMENTARY:**

1. Informed opinion and research suggests that the numbers of self-represented persons in the courts are increasing. However, the average person may be overwhelmed by the simplest of court procedures.
2. Self-represented persons are generally uninformed about their rights and about the consequences of choosing the options available to them; they may find court procedures complex, confusing and intimidating; and they may not have the knowledge or skills to participate actively and effectively in their own litigation.<sup>1</sup>
3. Many self-represented persons have limited literacy skills, and many speak Canada's official languages as a second language, if at all. As a result, many self-represented persons tend to access information about the courts through means other than the written word. For this reason, it is essential that information be provided using other means, including videos and pictures. Further, having an official available to answer questions posed by self-represented persons should, to the extent possible, supplement pre-packaged materials.
4. Given these factors, it is important that judges, court administrators and others facilitate, to the extent possible, access to justice for self-represented persons.
5. Providing the required services for self-represented persons is also necessary to enhance the courts' ability to function in a timely and efficient manner.

---

<sup>1</sup> Hann, Robert *et al.* *A Study of Unrepresented Accused in Nine Canadian Courts*. Ottawa: Department of Justice, 2003.

**B. PROMOTING EQUAL JUSTICE****STATEMENT:**

Judges, the courts and other participants in the justice system have a responsibility to promote access to the justice system for all persons on an equal basis, regardless of representation.

**PRINCIPLES:**

1. Judges and court administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.
2. Self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case.
3. Where appropriate, a judge should consider engaging in such case management activities as are required to protect the rights and interests of self-represented persons. Such case management should begin as early in the court process as possible.
4. When one or both parties are proceeding without representation, non-prejudicial and engaged case and courtroom management may be needed to protect the litigants' equal right to be heard. Depending on the circumstances and nature of the case, the presiding judge may:
  - (a) explain the process;
  - (b) inquire whether both parties understand the process and the procedure;
  - (c) make referrals to agencies able to assist the litigant in the preparation of the case;
  - (d) provide information about the law and evidentiary requirements;
  - (e) modify the traditional order of taking evidence; and
  - (f) question witnesses.

## COMMENTARY:

1. It is consistent with the requirements of judicial neutrality and impartiality for a judge to engage in such affirmative and non-prejudicial steps as described in Principles 3 and 4. A careful explanation of the purpose of this type of management will minimize any risk of a perception of biased behaviour.
2. Judges must exercise diligence in ensuring that the law is applied in an even-handed way to all, regardless of representation. The Council's statement of *Ethical Principles for Judges* (1998) has already established the principle of equality in principles governing judicial conduct. That document states that, "Judges should conduct themselves and proceedings before them so as to ensure equality according to law."
3. However, it is clear that treating all persons alike does not necessarily result in equal justice. The *Ethical Principles for Judges* also cites *Elardge v. British Columbia (Attorney General)*<sup>2</sup> on a judge's duty to "rectify and prevent" discriminatory effects against particular groups.
4. Self-represented persons, like all other litigants, are subject to the provisions whereby courts maintain control of their proceedings and procedures. In the same manner as with other litigants, self-represented persons may be treated as vexatious or abusive litigants where the administration of justice requires it. The ability of judges to promote access may be affected by the actions of self-represented litigants themselves.

---

<sup>2</sup> [1997] 3 S.C.R. 624 *per* LaForest, J. for the court at 667.

**C. RESPONSIBILITIES OF THE PARTICIPANTS IN THE JUSTICE SYSTEM****STATEMENT:**

All participants are accountable for understanding and fulfilling their roles in achieving the goals of equal access to justice, including procedural fairness.

**PRINCIPLES:****For Both the Judiciary and Court Administrators**

1. Judges and court administrators should meet the needs of self-represented persons for information, referral, simplicity, and assistance.
2. Judges and court administrators should develop forms, rules and procedures, which are understandable to and easily accessed by self-represented persons.
3. To the extent possible, judges and court administrators should develop packages for self-represented persons and standardized court forms.
4. Judges and court administrators have no obligation to assist a self-represented person who is disrespectful, frivolous, unreasonable, vexatious, abusive, or making no reasonable effort to prepare their own case.

**For the Judiciary**

1. Judges have a responsibility to inquire whether self-represented persons are aware of their procedural options, and to direct them to available information if they are not. Depending on the circumstances and nature of the case, judges may explain the relevant law in the case and its implications, before the self-represented person makes critical choices.
2. In appropriate circumstances, judges should consider providing self-represented persons with information to assist them in understanding and asserting their rights, or to raise arguments before the court.
3. Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons.
4. The judiciary should engage in dialogues with legal professional associations, court administrators, government and legal aid organizations in an effort to design and provide for programs to assist self-represented persons.

**For Court Administrators**

1. Court administrators should seek to provide self-represented persons with the assistance necessary to initiate or respond to a case and to navigate the court system.
2. In particular, court administrators should be given sufficient resources to be able to:
  - (a) provide, on request, all public information contained in dockets or calendars, case files, indexes and existing reports;
  - (b) provide, on request, access to or a recitation of relevant common, routinely employed rules, court procedures, and fees and costs;
  - (c) provide, on request, information about where to find applicable laws and rules
  - (d) identify and provide, on request, applicable forms and written instructions;
  - (e) answer questions about how to complete forms, but not about how answers should be phrased;
  - (f) define, on request, terms commonly used in court processes;
  - (g) provide, on request, phone numbers for Legal Aid, lawyer referral services, local panels, or other assistance services, such as Internet resources, known to court staff; and
  - (h) provide, to the extent possible, and in compliance with applicable law, appropriate aids and services for individuals with disabilities.
3. Court administrators shall not provide legal advice.
4. Court administrators should educate court personnel regarding the importance of public access to the courts and should provide training to court personnel as to how they should assist self-represented persons.
5. Court administrators should allocate the necessary resources to allow court personnel to provide meaningful assistance.

**For Self-Represented Persons**

1. Self-represented persons are expected to familiarize themselves with the relevant legal practices and procedures pertaining to their case.
2. Self-represented persons are expected to prepare their own case.
3. Self-represented persons are required to be respectful of the court process and the officials within it. Vexatious litigants will not be permitted to abuse the process.

**For the Bar**

1. Members of the Bar are expected to participate in designing and delivering legal aid and *pro bono* representation to persons who would otherwise be self-represented, as well as other programs for short-term, partial and unbundled legal advice and assistance as may be deemed useful for the self-represented persons in the courts of which they are officers.
2. Members of the Bar are expected to be respectful of self-represented persons and to adjust their behaviour accordingly when dealing with self-represented persons, in accordance with their professional ethical obligations. For example, members of the Bar should, to the extent possible, avoid the use of complex legal language. Members of the Bar may be guided by the Canadian Bar Association's *Code of Professional Conduct* and the codes of each jurisdiction (see Guiding Principle XIX (8)) and references therein.

**For Others**

1. Government departments with overall responsibility for court administration should provide Legal Aid plans with sufficient resources to provide a proper range of required services for financially eligible persons, including: education, short-term information and advice, and representation.
2. In addition to providing representation, Legal Aid organizations should be encouraged to create flexible options and models for addressing the challenges of self-represented persons, including programs providing education and short-term information and advice.
3. Providers of judicial education should develop educational programs for judges and court administrators on broad-based methods of assisting and managing the cases of self-represented persons.
4. Government agencies with overall responsibility for court administration should provide courts with the resources and assistance necessary to train court administrators and to provide the funding necessary for them to provide meaningful, broad-based assistance to self-represented persons, including awareness and communications training.
5. Government agencies with overall responsibility for court administration should provide funding for self-help programs for self-represented persons, as well as for programs of assistance to self-represented persons, which falls short of representation.



**COMMENTARY:**

1. The adoption of these principles in individual courts should be guided, as much as possible, by statistical information about self-represented persons and their cases in each particular court jurisdiction.
2. The design of programs to assist self-represented persons should be a collaborative effort among the judiciary, the courts, the Bar, Legal Aid providers, the public, and relevant governmental agencies.
3. A key requirement is that court personnel understand the distinction between legal information and legal advice, which they are forbidden from providing. Legal advice would include, among other things, advising someone on whether or how to best pursue a case, and explaining the law (as opposed to the process, or distributing information on how to access the law). Research suggests that many court officials may be uncomfortable with providing assistance to self-represented persons for reasons that include uncertainty about how far they may go in answering questions from self-represented persons. Training of court personnel helps them to give meaningful assistance without giving legal advice. Training packages may include such elements as multi-step "protocols" for court personnel and scripts for answering frequently asked questions.
4. Education packages for judges may also include multi-step "protocols" which may include possible scripts for commonly experienced situations. Suggested language for judges typically covers the need to explain the process, the elements and potential consequences, the burden of presenting evidence, the types of evidence which may be presented, the rules governing non-lawyers assisting self-represented persons, and so on.
5. Self-help support for self-represented persons may include such elements as conveniently accessible (e.g., online) forms; "virtual libraries" containing Rules of Court, relevant law, and guidelines to the judiciary in issuing key types of orders or rulings; directions to courthouses; summaries of key areas of law; e-filing; clearinghouses for access to legal services; how-to pamphlets on how to prepare and present a case; and the like.
6. Scheduling should take into account the special challenges and needs of self-represented persons.



June 8 2010

Cross motion has settled for all parties. The settlement for Mr. Roubicek and Mrs. Selmer's checks 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.

[REDACTED]

This is EXHIBIT 102  
To the Affidavit of

J. FANTINO

Sworn SEP 28 2017

[REDACTED]  
A Commissioner, etc.



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.



Nelson Barbados v. Cox et al  
 Submissions on Application to Purge Contempt (Silver)

1 UPON RESUMING (3:30 PM)

2 THE COURT: Yes, sir.

3 MR. SILVER: Thank you. I will just be a couple  
 4 more minutes. I had taken you through our factum  
 5 really dealing with the factual - part two, the  
 6 facts. The statement of issues starts at page 14.  
 7 I am going to leave much of this to Mr. Ranking  
 8 to deal with to the extent required. At page 20,  
 9 paragraph 61, we highlight Rule 60.11(8) which  
 10 should be reproduced - it is - in Schedule B and  
 11 it deals with contempt orders and sub (8) says:

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

16  
 17 In analyzing it, it seems as though it's a  
 18 substitute for an appeal, that it's permitted,  
 19 pursuant to the Rules, that you don't have to  
 20 appeal a contempt order. You can ask the judge to  
 21 vary, discharge and there are other judges who  
 22 said, "That's kind of odd but that's what it  
 23 provides for."

24 THE COURT: Read it and considered it.

25 MR. SILVER: And so in our respectful submission,  
 26 it would be just to allow Mr. Best one final  
 27 opportunity to purge his contempt by complying  
 28 with your order and paying our costs. In our  
 29 respectful submission, it would be unjust to  
 30 allow him to avoid compliance and/or allow him to  
 31 comply but without paying costs.

This is EXHIBIT 104  
 To the Affidavit of

31 J. RANTINO

32

Sworn 28/2/17

A Commissioner, etc.

April 30, 2013

Nelson Barbados v. Cox et al  
Submissions on Application to Purge Contempt (Silver)

1 Costs in contempt proceedings are *prima facie*  
2 awarded at a substantial indemnity basis. In fact,  
3 that is what you did on January 15<sup>th</sup>. What we  
4 have done for you is we have put our bills of  
5 costs at the back of our factum. You have seen  
6 that.

7 **THE COURT:** Seen them and reviewed them.

8 **MR. SILVER:** Both Mr. Ranking and I have done that  
9 and it sets out partial, substantial and full  
10 indemnity because it is always in your discretion  
11 to award a scale higher than substantial and in  
12 my respectful submission, given the conduct - and  
13 I am limiting it to the conduct in this professed  
14 attempt to purge contempt - by making the serious  
15 allegations that he does against counsel, their  
16 clients and the court deserves the further  
17 sanction of the court.

18  
19 And so I want to finish by handing up to you - I  
20 passed a copy to Mr. Best just when you took your  
21 break this afternoon but it's a draft judgment  
22 and I have styled it as a judgment because I  
23 always thought judgments follow applications.

24 **THE COURT:** I think you are right.

25 **MR. SILVER:** Hmm?

26 **THE COURT:** I think you are right.

27 **MR. SILVER:** Right. So, in effect, we have left  
28 some blanks and I guess we didn't number the  
29 paragraphs either, so it's really draft.  
30 Paragraph number one isn't numbered. That got  
31 missed. But we are asking that there be an order  
32 that Mr. Best appear - we put it before you and I



Nelson Barbados v. Cox et al  
Submissions on Application to Purge Contempt (Silver)

1 remind you on December 2<sup>nd</sup>, you had ordered that  
2 Mr. Best appear before you on the 15<sup>th</sup> of January  
3 to be examined. Obviously that is subject to your  
4 agreement and your availability. We have left the  
5 date open. "To give evidence in open court on"  
6 and we have left the date open, and at that  
7 appearance, he will answer all the questions and  
8 we have just taken (a) to (e) that appeared in  
9 the prior orders.

10  
11 Paragraph two, we're seeking an order that by a  
12 specified date, which, in our submission, should  
13 be before the date fixed for the examination, if  
14 you are so inclined, and that Mr. Best, before  
15 that date, pay the fine and the costs ordered by  
16 you on January 15<sup>th</sup>, and we particularize what  
17 they are, the fine and then the four amounts that  
18 you ordered on January 15<sup>th</sup>.

19  
20 And then we also ask that you make an order for  
21 costs. That is paragraph three. We have left the  
22 amounts blank for each of Kingsland and  
23 Pricewaterhouse and we say "within a specified  
24 number of days of the date of this judgment.

25  
26 And in paragraph four, we say that the bench  
27 warrant or the warrant for committal shall  
28 continued to be stayed provided that Mr. Donald  
29 Best remains in compliance with this judgment and  
30 the warrant of committal shall be lifted upon  
31 Best's full compliance with paragraphs one to  
32 three hereof.

April 30, 2013

## Submissions on Application to Purge Contempt (Silver)

1 And thus, the sanction of incarceration would  
2 stay in place as a possibility until after he  
3 complies with all his obligations, including the  
4 payment of the costs of this application. I know  
5 that I have debated with you, you know, that  
6 sanction in respect of costs before but in my  
7 respectful submission, and Mr. Ranking may  
8 develop this a little bit further, in the  
9 circumstance of this kind of conduct that's gone  
10 on for this long and the amount that Mr. Best has  
11 put my client to in terms of the costs of  
12 responding to this with the plethora - with the  
13 volume of material and plethora of irrelevant yet  
14 aggressive allegations of impropriety and lying  
15 and cheating, all in an attempt to so-called  
16 purge his contempt, should lead you to the  
17 conclusion that the only way that the costs will  
18 get paid for certain is if the sanction of  
19 incarceration applies if he doesn't pay and in  
20 these circumstances, we respectfully submit that  
21 that's appropriate.

22  
23 So subject to any questions that you have, I have  
24 gone over my time and I will turn it over to  
25 Mr. Ranking.

26 **THE COURT:** Well, I should say I did not  
27 understand one statement in the factum but I do  
28 now, which I had circled to ask you or  
29 Mr. Ranking, page 21, paragraph 62 and 63. So, I  
30 thought it was a backhanded submission with the  
31 court giving further attempts to Mr. Best. I  
32 should have properly read it in the context of

1 which you are arguing it now. I didn't read it  
2 that way. I didn't know that you were going to  
3 suggest that he be given yet a further attempt to  
4 comply. However, I do now.

5  
6 I should stop before Mr. Ranking begins just to  
7 say, Mr. Best, without - and we are going to have  
8 to go into tomorrow. I have already called the  
9 trial coordinator. It is perfectly obvious to me  
10 we are not going to get through this evening and  
11 I sure can't do a marathon here until six or  
12 seven o'clock and there will have to be right of  
13 reply.

14  
15 But let me ask this, Mr. Best, right now. You  
16 have seen this draft judgment. Are you prepared  
17 to enter in to such a judgment on consent at this  
18 time, at this point? And to be quite candid to  
19 you, I was not looking forward to an ongoing and  
20 continuing involvement with this matter. I don't  
21 even know what time I could give you because I  
22 have a murder trial that I will be doing now and  
23 in the fall. They are taking months and then I am  
24 going supernumerary January 1<sup>st</sup>. Now,  
25 supernumerary doesn't mean I am fully retired but  
26 that is how far out we are going with me. So, I,  
27 frankly, was of the viewpoint coming into this  
28 that this is it. I mean after six to seven years  
29 of the same case, I have pretty well had it and  
30 this has taken up an extraordinary, extraordinary  
31 number of court hours, not just me but court  
32 hours, on what was originally a jurisdictional

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

THE HONOURABLE	)	TUESDAY, THE 30TH
	)	
MR. JUSTICE SHAUGHNESSY	)	DAY OF APRIL, 2013

**B E T W E E N:**

**NELSON BARBADOS GROUP LIMITED**

**Plaintiff**

**- and -**

**RICHARD IVAN COX ET AL.**

**Defendants**

**JUDGMENT**

THIS APPLICATION, made by Donald Best, for an Order setting aside the Contempt Order of the Honourable Justice Shaughnessy and the Warrant of Committal issued against Donald Best on January 15, 2010, was heard this day at the Courthouse, at 150 Bond Street East, Oshawa, Ontario, L1G 0A2.

ON READING the Notice of Application and supporting Affidavits filed by Donald Best;

AND ON READING the Transcripts of the Cross-Examination of Donald Best on his Affidavits, held on January 11, 2013 and January 23, 2013;

AND ON READING the Motion Record filed by Kingsland Estates Limited and PricewaterhouseCoopers East Caribbean Firm (the "**Respondents**");

AND ON READING the Factum filed by Donald Best and the Factum and Book of Authorities filed by the Respondents;

AND ON HEARING the submissions of Donald Best and submissions of the lawyers for the Respondents,

THIS COURT ORDERS AND ADJUDGES that Donald Best shall appear before the Honourable Justice Shaughnessy to give evidence in open Court on 2013 at the Courthouse at 150 Bond Street East, Oshawa Ontario at a.m. At the appearance, Donald Best shall answer all proper questions by counsel for the Respondents in open Court (*viva voce* before the Honourable Justice Shaughnessy), and specifically:

- (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 to be answered on April 8, 2009 and all questions reasonably arising therefrom;

- (d) All questions relating to Donald Best's appointment, and subsequent duties/responsibility as an officer of Nelson Barbados Group Ltd. ("**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 Crawford, McKenzie, McLean, Anderson & Duncan LLP; and
- (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.

2. THIS COURT ORDERS AND ADJUDGES that by or before \_\_\_\_\_, 2013 Donald Best shall pay the fine and costs ordered by Justice Shaughnessy on January 15, 2010, and specifically:

- (a) A fine in the amount of \$7,500.00; and
- (b) Costs of the January 15, 2010 contempt motion, on a substantial indemnity basis, as follows:
  - (i) To Gerald Ranking's clients, \$50,632.90;
  - (ii) To Lorne Silver's clients \$13,230.00;
  - (iii) To Andrew Roman's clients \$5,512.50; and
  - (iv) To Sarah Clarke's clients \$3,500.00.

3. THIS COURT ORDERS AND ADJUDGES that Donald Best shall pay the costs of the within Application in the amount of \$ \_\_\_\_\_ to the respondent Kingsland Estates Limited and \$ \_\_\_\_\_ to the respondent PricewaterhouseCoopers East Caribbean Firm within \_\_\_\_\_ days of the date of This Judgment.

4. THIS COURT ORDERS AND ADJUDGES that the Warrant of Committal against Donald Best shall continue to be stayed provided that Donald Best remains in compliance with this Judgment and the Warrant of Committal shall be lifted upon Donald Best's full compliance with paragraphs 1-3 hereof.

THIS JUDGMENT bears interest at the rate of three per cent per year from its date.

---

NELSON BARBADOS GROUP LIMITED  
Plaintiff

and RICHARD IVAN COX ET AL.  
Defendant

Court File No. 141-07

DB 000425-5

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
OSHAWA

**JUDGMENT**

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Firm

SUPERIOR COURT OF JUSTICE – OSHAWA  
EXHIBIT LABEL **BARRIE FILE**

File #: 07/141 Exhibit #: **B**

**Nelson Barbados et al vs. Cox et al**

Produced by ☐ Applicant ☒ Respondent  
☐ Plaintiff ☐ Defendant

On the 30<sup>th</sup> day of April, 2013

Clerk: J. Piccini - Contempt Motion



Court File No.: T-604-16

**FEDERAL COURT OF CANADA**

**BETWEEN:**

DONALD BEST

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

and

THE HONOURABLE MR. JUSTICE  
J. BRYAN SHAUGHNESSY

Respondents

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**AFFIDAVIT OF JULIAN FANTINO**

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K.W. McKenzie  
Barrister and Solicitor  
KWM LAW PROFESSIONAL CORP.  
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Suite 203  
Orillia Ontario  
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LSUC #16891A

Counsel for Julian Fantino



Appendix A-affidavit of Julian Fantino

[DB 015866-141 thru -145] Jan 15, 2010 order,

[DB 015866-57,-58] Jan 15, 2010 Warrant of Committal,

[DB 015866-122] Jan 15, 2010 transcript excerpt re Best sentence 3 months,

[DB 015866-187] line 7, Aug 9, 2012 transcript showing Judge stayed January 15, 2010 warrant so Best could return to Canada.,

[DB 000110-b11-14, 62] Reasons for Judgement

[DB 15866-63] May 3, 2013 Warrant of Committal with 'No Remission' addition

Court File No.: 07-0141

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

<b>THE HONOURABLE</b>  <b>MR. JUSTICE SHAUGHNESSY</b>	) ) )	<b>FRIDAY, THE 15<sup>th</sup> DAY</b>  <b>OF JANUARY, 2010</b>
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**BETWEEN:****NELSON BARBADOS GROUP LTD.**

Plaintiff

- and -

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

Defendants

**ORDER**

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

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

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

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

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

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

6. *ON* ~~DO NOT~~ *BEST MAY BRING AN APPLICATION BEFORE JUSTICE SHAUGHNESSY ON OR BEFORE FEBRUARY 22 2010 TO PURGE HIS CONTENT* *JBS*

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

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

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

7.

8 1.

*THIS COURT FURTHER ORDERS that Mr. McKenzie may not subject to caveats on the basis of confidentiality at his cross-examination with respect to the documents referred to in*

THIS COURT FURTHER DECLARES that the documents referred to in paragraph 6 above are not the subject of litigation privilege or solicitor-client privilege.

*to in paragraph 6 above.*

4 8.

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

McKenzie and Crawford McKenzie shall provide this information ~~on or before~~ ~~within seven (7) days of this~~

order. JANUARY 27 2010.

JBS

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

Mr. Best personally, on a substantial indemnity basis ~~within~~ 30 DAYS AS FOLLOWS:

- (A) TO MR. RANKING'S CLIENTS \$50,632.90
- (B) TO MR. SILVER'S CLIENTS \$13,230.00
- (C) TO MR. ROMAN'S CLIENTS \$5,512.50
- (D) TO MS. CLARK'S CLIENTS ~~Justice Sharnoff~~ \$3,500.00

JUSTICE SHARNOFF



This is EXHIBIT 3A to the  
Affidavit of Donald Best,  
sworn April 19, 2016

Court File No.: 07-0141

A Commissioner, etc.

BETWEEN:

ONTARIO  
SUPERIOR COURT OF JUSTICE

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

## WARRANT OF COMMITTAL

TO ALL POLICE OFFICERS in Ontario

AND TO THE OFFICERS OF provincial correctional institutions in Ontario

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

YOU ARE ORDERED TO ARREST Donald Best and deliver him to a provincial correctional institution, to be detained there for a period of 3 MONTHS *78.*

[REDACTED]

*Justice Shaughnessy*

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

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

COURTROOM REGISTRAR: I believe it's the 21<sup>st</sup>.

THE COURT: 21<sup>st</sup>, for this court?

COURTROOM REGISTRAR: I believe so.

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

- 1 1. I hereby order that the counsel listed on
- 2 the contempt hearing transcript of
- 3 January 15, 2010 shall be served with the
- 4 application and supporting materials.
- 5 2. The application is adjourned to Friday,
- 6 October 12, 2012, 9:30 a.m. before me.
- 7 3. It is further ordered that the execution of
- 8 the arrest warrant shall be temporarily
- 9 stayed until October 12, 2012 to permit
- 10 Mr. Donald Best to return to Canada,
- 11 instruct counsel and, if required, to be
- 12 available for cross-examination on his
- 13 affidavit.
- 14 **MR. GREENSPAN:** Thank you, sir.
- 15 **THE COURT:** That's it on that?
- 16 **MR. GREENSPAN:** Thank you, I appreciate it. I
- 17 take it, unlike my usual practice, I have to
- 18 prepare a formal order, I suspect, for the court
- 19 to execute it.
- 20 **THE COURT:** I'm afraid that's how it happens in
- 21 this arena. I want to raise an issue with you
- 22 right now.
- 23 **MR. GREENSPAN:** Yes, sir.
- 24 **THE COURT:** ...which, frankly, is of no
- 25 consequence or importance to me but I suspect you
- 26 would know because you have a client who you have
- 27 been dealing with for some time. Mr. Best and
- 28 Mr. McKenzie filed a complaint with the Canadian
- 29 Judicial Council.
- 30 **MR. GREENSPAN:** I'm aware, sir.
- 31 **THE COURT:** You know from representing judges and
- 32 other people throughout the time, I don't know

Nelson Barbados Group v. Cox *et al*  
Reasons for Judgment – Shaughnessy J.

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

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

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

15 1. That counsel listed on the contempt hearing  
16 transcript of January 15, 2010 were to be  
17 served with the application and supporting  
18 materials.

19 2. The execution of the warrant for the arrest  
20 of Donald Best was "temporarily stayed until  
21 October 12, 2012 to permit Mr. Donald Best  
22 to return to Canada to instruct counsel and,  
23 if required, to be available for cross-  
24 examination on his affidavit filed".

25 3. The application was adjourned to October 12,  
26 2012 before me.

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

30 a. Set aside the contempt order of January 15,  
31 2010.

32 b. Alternatively, for an order varying the

May 3, 2013

Nelson Barbados Group v. Cox *et al*  
Submissions - Costs

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

2 **THE COURT:** You don't agree. You don't agree. Well,

3 that is fine. You have the right to disagree, sir.

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

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

6 decision.

7 **MR. BEST:** Yes, Your Honour. I - I hear you. I

8 wanted to - to speak to a couple of things, if I

9 could. I look to Your Honour for guidance.

10 **THE COURT:** I am looking for costs. I would like

11 you to respond to the costs which is - it's not a

12 matter that you don't know about because it was

13 in the joint factum.

14 **MR. BEST:** Yes.

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

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

17 **THE COURT:** ...of the respondents, so the costs

18 that they are claiming is there.

19 **MR. BEST:** Yes. Well, I - I would have certainly

20 liked to look - examine their costs and all costs

21 more thoroughly with cross-examinations and a lot

22 of things but I - I think I understand that

23 Your Honour wouldn't permit that.

24 May I speak to the jail, Your Honour?

25 **THE COURT:** Well, I have made a decision, Mr. Best.

26 I have now said I do not accept - I find you are

27 still in contempt. You have not purged your

28 contempt. I am not prepared to set aside the

29 order and so the result of all that is the stay

30 of the warrant is about to be lifted at this

31 moment.

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

May 3, 2013

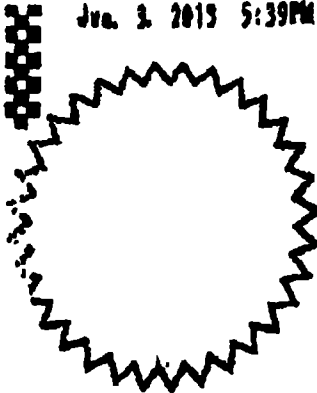
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PAGE 02/02

Jul 3 2013 5:39PM

No. 1391 P. 1



FORM 60L  
 Court of Justice Act  
 WARRANT OF COMMITTAL

CF-67-141 (Barrington)

Superior Court of Justice  
 150 Bond Street East, Cobourg, ON L4G 6A2

The Honourable Justice Shymko

Friday, May 3<sup>rd</sup>, 2013

Hobson Barbados Group Ltd vs. Can, Richard et al

## WARRANT OF COMMITTAL

TO ALL POLICE OFFICERS in Ontario

AND TO THE OFFICERS OF Central East Correctional Centre

WHEREAS I have found that Donald Best is in contempt of this court and have ordered imprisonment as punishment for  
 the contempt, (794-06-07)

YOU ARE ORDERED TO ARREST Donald Best and deliver him to a provincial correctional institution, to be detained  
 there for 3 months.

My Best is a Senior Police Officer and therefore, such arrangements as may be necessary, shall be coordinated by the  
 Superintendent of the correctional facility.

No Recalculation is Ordered

[Redacted Signature]  
 The Honourable Justice Shymko

SCF-6 60L (November 1, 2009)





Court File No.: T-604-16

IN THE FEDERAL COURT OF CANADA

BETWEEN:

DONALD BEST

Applicant

-and-

THE ATTORNEY GENERAL OF CANADA -and- THE HONOURABLE MR. JUSTICE  
BRYAN SHAUGHNESSY

**JULIAN FANTINO'S WRITTEN SUBMISSIONS**

**(MOTION TO APPEAR AS INTERVENER)**

**Overview**

1. Two bulwarks of Canadian democracy underpin the Canadian Justice System: 1) judicial independence and 2) public faith in the impartiality and fairness of judges. These principles are especially important where people do not have a lawyer.
2. Because these principles come under scrutiny in this application for judicial review, it is critical that the public interest be fully and properly represented. As it stands, there is no one speaking for the people of Canada. Mr. Fantino, who has long-served the Canadian public in a variety of roles, is uniquely qualified to serve this function as an intervener in this proceeding.
3. As a long-standing, public servant working various high profile and executive roles in the justice system, Mr. Fantino understands the intricacies of judicial conduct within a complex legal system, particularly where unrepresented litigants are concerned. As a former member of Parliament and Cabinet Minister, Mr. Fantino is also familiar with the larger context of justice issues. He has experience, expertise and insight relevant to a review of the conduct of the Canadian Judicial Council (CJC) and the judges the CJC oversees. Accordingly, the Canadian public would be well-served by the addition of his input in as an intervener this proceeding.
4. The CJC is charged with ensuring coherence and consistency in areas of judicial ethics. This in turn helps ensure and enhance public confidence in the judiciary. In the case at hand, the CJC failed to meet its obligations in this regard.
5. The general context of this judicial review is as follows. The Applicant filed a complaint with the CJC in respect of the actions and decisions of the Respondent Justice Shaughnessy. In handling

complaints, the CJC has a two-fold obligation: 1) to thoroughly review the material submitted, and 2) to be fair, transparent and clear in its communications with complainants. To do otherwise undermines the public's faith in the independence and impartiality of judges and the fairness of the systems they operate within, including the CJC.

6. The complainant was an unrepresented person and, as such, was ill-equipped to understand the complexities and challenges of making a fully informed complaint about a Judge. He could not have understood the intricacies and boundaries of acceptable Judicial conduct.
7. The Applicant made a series of complaints to the CJC relating to his treatment by the Judge. The CJC did not assist him in any way or otherwise focus on the important issues that should have been examined. The CJC neither asked for more information nor reviewed documents which were easily available. As a result, the CJC appears to have overlooked important evidence and failed to fulfill its mandate in dealing with Mr. Best's complaints. It apparently 'cherry picked' the evidence it reviewed while at the same time invoking a vague and opaque definition of Judicial conduct.<sup>1</sup>
8. Instead of conducting a thorough and thoughtful review, the CJC summarily dismissed the complaints. To compound the issue, the CJC was not transparent in its own conduct. The CJC failed to clearly communicate to the Applicant how it processed the complaint, what specific evidence it considered (or dismissed out of hand) and why it rejected the Applicant's allegations. The CJC's statement that the judge's actions and decisions did not constitute 'conduct' could not have been understood by the Applicant.
9. There are several areas where the CJC seems to have overlooked its duty to inquire further before analyzing the Applicant's complaints. Mr. Fantino can assist this Court in its analysis. This is all the more important when it is apparent, as here, that the person who complains to the CJC does not have the expertise or experience to understand the subtleties of the expected conduct of Judges.
10. Mr. Fantino is well placed to assist this Court in its analysis of the context of the Judge's behaviour in what was a complicated and not always transparent proceeding.
11. The CJC did not comment upon, much less investigate, a series of incidents that were reported by the Applicant that appear to be non-judicial behaviour. Mr. Fantino seeks to

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<sup>1</sup> Mr. Best's complaints and CJC responses – see Application Record Volume 1, Tab C2- 3 A to V and CJC response at Tab 4; Fantino Affidavit exhibit 26, 28 Motion Record Tab 26, 28. (this complaint had hundreds of pages attachments and they are supplied in electronic format to the lawyers in anticipation of directions from the Court)

point out to and assist the Court in reviewing these important factors and evidence which the CJC overlooked or ignored perhaps because it did not investigate properly.

12. Full scrutiny by the CJC may very well have changed the outcome of the complaints. The CJC's omissions presumably occurred because this was a complicated matter and the Applicant, an unrepresented person, could not possibly have had the expertise to focus his complaint. He could not have understood the intricacies and boundaries of acceptable Judicial conduct.
13. Without feedback from the CJC Mr. Best did not have any assistance in preparing his complaints and is asking that this matter be sent back to the CJC for a 'better look'. Mr. Fantino can assist this Court in assessing that issue and also in providing an unbiased and objective viewpoint.
14. Mr. Fantino's participation is timely and, with two days scheduled for the hearing, there is more than enough time to accommodate his submissions and evidence.
15. This Judicial Review proceeding presents a rare opportunity to evaluate whether the CJC fully and impartially performed its function in a particular case and, as such, to examine the standards applicable to the CJC. By doing so, this Court has an opportunity to bolster public confidence in the justice system as a whole.
16. The evidence available to the Court is extensive and reliable. With that evidence in hand, the Court can fully examine the standards applicable to the CJC in its role as a guardian of judicial ethics and conduct. First, the Court can ensure that the CJC fully address complaints having regard to all available evidence. Second, the Court can ensure that the CJC understands and carries out its important function of ensuring that Judges remain true to the principles of dispensing justice without bias, interference, or undue influence. In doing so, this judicial review may bolster the highest level of public confidence as seen from the viewpoint of all Canadians.

### **Facts**

17. After the Judge had stayed a legal action against multiple Defendants in the Superior Court of Ontario they then sought costs against the Plaintiff, an Ontario Corporation. The Plaintiff knew that the costs assessment motion was scheduled for November 2<sup>nd</sup>, 2009. The Plaintiff wrote to the Court advising it would not attend and that it was confident that the Judge would be fair in

assessing the costs and then they would be paid. The Plaintiff had promptly paid previous Court cost awards against it. .

18. Even though an earlier Order had specified that 10 days service was required upon the Plaintiff the Judge allowed a Further Amended Motion Record to be filed the day before the November 2<sup>nd</sup> return date. It had not been served on the Plaintiff or Mr. Best but the Judge proceeded anyway.
19. The motion was supported by the affidavit of James Van Allen. This document was suspicious on its face for many reasons including when it said that evidence had been obtained from the Toronto Police Association.<sup>2</sup> That organization, which is the repository of personal information about serving and former police officers –Mr. Best was a former police officer- never releases personal information for obvious reasons: the criminal element constantly wish them harm.
20. No cross-examination of Mr. Van Allen was ever permitted. The Judge did not question his credentials, his expertise, nor did he comment on the apparent release of confidential identity information by the Police Association.
21. Using information obtained via this obvious breach of privacy laws and violation of the Police Association rules Mr. Van Allen then gave his expert opinion that Mr. Best had arranged his affairs so that he could not be found. The tone of the affidavit suggested that Mr. Best was sinister for doing this. Mr. Van Allen must have used his authority as a senior OPP Police officer to obtain Mr. Best's personal information in violation of his oath of office and of the controls set up by the Police Association to prevent such malicious acts.
22. At the time Mr. Van Allen was a serving officer of the Ontario Provincial Police and was breaching his duty under the Police Act by providing this evidence to the Court under the guise of being a private investigator.<sup>3</sup> In addition it was well known that he had been publically criticized for his role in falsely accusing two innocent mothers of murdering their children.<sup>4</sup>
23. The Judge did not make even the most rudimentary inquiries into the bona fides or expertise of this alleged expert even overlooking that there was no C.V. produced for Mr. Van Allen.
24. Based only on Mr. Van Allen's evidence and knowing that Mr. Best could not possibly have known about this Further Amended Motion, the Judge signed an Order on November 12<sup>th</sup>, 2009 that immediately and retroactively placed Mr. Best in contempt.

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<sup>2</sup> Van Allen Affidavit Motion Record Fantino Affidavit Ex 35 Tab 35-

<sup>3</sup> Van Allen Affidavit Motion Record Fantino Affidavit Ex 35 Tab 35-

<sup>4</sup> Motion Record Fantino Affidavit Exhibits See Tab 39, 40, 41

25. Mr. Fantino can assist the Court in its function of analyzing all of the underlying facts including the duties and responsibilities of Mr. Van Allen at the time while he was a senior police officer.
26. Subsequently on January 15<sup>th</sup>, 2010 the Judge found Mr. Best in contempt for failing to obey his November 12<sup>th</sup> Order. Other than the Van Allen affidavit the other 'evidence' the Judge had relied on was the so called 'Statement for the Record'<sup>5</sup> by the prosecuting lawyers. Not only was this not sworn evidence, it contained a false statement when those lawyers assured the Court that Mr. Best had admitted receiving the November 12<sup>th</sup> Order. To the contrary Mr. Best had said repeatedly that he had not received it.<sup>6</sup>
27. Overlooking the *stare decisis* principle whereby the Supreme Court of Canada has mandated that a person cannot be convicted of contempt unless the Court is 100% sure that he has been personally served or has personal knowledge<sup>7</sup> the Judge convicted Mr. Best of contempt *in absentia*. (He had been out of Canada at the time and later said he did not know about the January 15<sup>th</sup> Court date.)
28. When he found out about the contempt Order Mr. Best returned to Canada to ask that it be set aside. The Judge stayed the January 15<sup>th</sup>, 2010 Order to allow him to do so. He did not have a lawyer and hearings were held on April 30<sup>th</sup> and May 3, 2013. His brief to the Judge was characteristic of unrepresented litigants: it was not focused and contained a large number of documents. No assistance was provided to this unrepresented litigant to get it right as he tried to explain the circumstances to the Judge. Instead the Judge decided not to consider evidence filed by Mr. Best and directed Mr. Best to purge his contempt.
29. The Judge chose to overlook incontrovertible evidence (a digital recording of a telephone call with Durham Police Sergeant Rushbrook. It can be listened to on the CD which is filed with the motion record entitled "Donald Best Applicant, Rushbrook Conversation, Supplement to Exhibit 64) that during the period just prior to the January 15<sup>th</sup>, 2010 contempt hearing was to take place there had been an investigation by the Durham Regional Police Court Officer.
30. This surprising evidence included an admission by the Durham Regional Police that its Court Officer had investigated Mr. Best prior to the January 15<sup>th</sup>, 2010 contempt hearing.<sup>8</sup> The Judge stated that he was insulted by this evidence and would not look into it.

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<sup>5</sup> Statement for the Record -Motion Record Fantino Affidavit Exhibit 8 Tab 8 [DB 015924-ATT16 pp. 330-345]

<sup>6</sup> Fantino Affidavit par 37; 78 Motion Record Tab 61 Certifying Digital Recorded conversation dated November 17<sup>th</sup>, 2009-

<sup>7</sup> R v Bhatnager

<sup>8</sup> When Mr. Best raised this issue and said "Your Honour, great respect, it probably means that this court has to disqualify itself..." The Judge retorted: "Don't use those words "respect" It's insulting to me." Then later when Mr. Best asked the Judge to listen to what the police told him and advised that the evidence is "it was the police who told me it was likely done , 99.9%, in

31. In due course the prosecuting lawyers advised the Judge that Mr. Best had complied with all outstanding Orders however that was not enough for the Judge who refused to consider Mr. Best's evidence.
32. Mr. Fantino can assist the Court in this Judicial Review because of his expertise as Toronto Police Chief and, later, Commissioner of the Ontario Provincial Police. This will assist the Court in evaluating the legality and reason for the police investigation and how it may have impacted on the January 15<sup>th</sup> hearing and the later hearings before the Judge. The hearings into whether the January 15<sup>th</sup> contempt Order should be set aside concluded on May 3, 2013. The Order was reinstated and Mr. Best was sent off to serve his three months in jail. Then the Judge secretly increased his time to be served by 50%. Mr. Fantino can assist the Court by providing evidence of this process and the protocols that should have been undertaken by the Court and the jail.
33. Mr. Best complained to the CJC about the Judge's behaviour throughout. The CJC dismissed the complaints.
34. The CJC website which is available to the public says:  
*"The complaint process is described fully in this website, but generally, when the Council receives a complaint about a judge, a member of the Council's Judicial Conduct Committee reviews the complaint and decides how the matter should be handled."*<sup>9</sup>
35. But that is not what happened: instead Mr. Sabourin who is described as *"a person who supports members of the Council in their work."*<sup>10</sup> dismissed the complaints.
36. Mr. Sabourin rejected the complaints because they did not deal with 'conduct'.  
 However the CJC has not published a clear definition of conduct. Generally the CJC does not publish details of all its decisions so it is virtually impossible for an unrepresented or unsophisticated person to comprehend the CJC's view of the meaning of this word. The French version of the word conduct as shown by the CJC's publications is "bonne conduit" which has various meanings depending on context.<sup>11 12</sup>

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assistance to the court." The Judge's response was "I don't care what the police officially advised you." **Ref.** Transcript April 30, 2013 hearing Page 10 line 3-7 ; page 11 l. 17-18; Application Record vol. 2 p. 311-312', 322 l 23, 26

<sup>9</sup> [https://www.cjc-ccm.gc.ca/english/conduct\\_en.asp?selMenu=conduct\\_inquiry\\_en.asp](https://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_inquiry_en.asp)

<sup>10</sup> [https://www.cjc-ccm.gc.ca/english/about\\_en.asp?selMenu=about\\_members\\_en.asp](https://www.cjc-ccm.gc.ca/english/about_en.asp?selMenu=about_members_en.asp)

<sup>11</sup> [https://www.cjc-ccm.gc.ca/french/conduct\\_fr.asp?selMenu=conduct\\_main\\_fr.asp](https://www.cjc-ccm.gc.ca/french/conduct_fr.asp?selMenu=conduct_main_fr.asp)

<sup>12</sup> <https://www.merriam-webster.com/dictionary/conduct> Conduct is defined in the dictionary in various dictionaries and generally can be summarized as follows. "the act, manner, or process of carrying on" and "a mode or standard of personal behavior especially as based on moral principles"

37. It follows that an Unsophisticated Person will have no opportunity to have any insight or access to any consistent definition of 'conduct'. Accordingly it seems all the more important that when an Unsophisticated Person writes to the CJC about a judge there must be a proper evaluation of the complaint but only after there has been a sufficient investigation so that the CJC is not being misled or acting without sufficient information. The CJC web site does nothing to guide the Unsophisticated Person or ensure that all relevant facts are marshalled.
38. The failure of the CJC to investigate and review the background and context of the actions of the Judge and especially the behind the scenes activities leaves many questions as to the Judge's behaviour and motivations. The whole story needed to be heard.
39. The function of the CJC goes much deeper. According to its public statement: " ...judges have the duty to uphold and defend judicial independence, not as a privilege of judicial office but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial judges".
40. It follows that the CJC has the mandate of ensuring that every judge lives up to and complies with this duty. It cannot possibly be able to do this without knowing and understanding all of the events that occurred both in Court and behind the scenes.
41. The complaints in this matter suggested that something amiss had happened. A secondary question that the CJC did not address was whether the totality of the Judge's surrounding actions compromised judicial independence in some way.
42. It follows that if Judges must fulfil their duty then the CJC has similar duties as it carries out its function. The CJC did not gather much less assess all of the evidence and overlooked other evidence which was readily available. In the final result this lack of assistance to Mr. Best and lack of transparency by the CJC is the focus of this Judicial Review and, speaking on behalf of all Canadians, Mr. Fantino's experience and public service viewpoint can be of assistance to the Court.
43. The CJC does not appear to have done its job: it summarily dismissed complaints about what appears to be a very disturbing act by a Judge on the basis that it was not 'conduct'. Its failure to act was inconsistent with its mandate if only because it has never established guidelines or a definition of 'conduct'.

44. *Cosgrove v. Canadian Judicial Council*, [2007] 4 FCR 714, 2007 FCA 103 speaks of the screening process which takes place upon receipt of a complaint. That case was about a judge who had made a ruling in court that the Attorney General did not like and ordered an inquiry under S. 63(1). This was clearly an investigation about judicial conduct and there is therefore no justification for a ruling in another matter that the CJC can decide not to look into judicial conduct. Alternatively the CJC will have to pin down and define what appears to be a floating and incomplete definition of judicial conduct.
45. In *Cosgrove* the Federal Court looked into the conduct of the judge sitting on the bench and made findings that what the judge had done was far beyond what a judge is permitted to do. Using the same analysis here the Judge made findings of fact against the Applicant which were “*unwarranted and unsubstantiated. He misused his powers of contempt and allowed investigations into areas that were extraneous to the real issues in the case.*”<sup>13</sup>
46. With this guidance in mind from the Federal Court of Appeal it shows that the CJC failed to make the proper inquiries even to the point of determining whether there might be evidence that would lead to an inquiry about similar conduct from the Judge. The CJC should have considered whether the Judge’s rulings were based on minimal evidence bolstered by substantial misinformation provided by the prosecuting lawyers. Based on such findings it should have considered whether that led the Judge into the area of obtaining and filing in the Court record evidence that had nothing to do with the real issues in the case.
47. The question remains why then did the CJC not apply full investigative procedures and analysis in order to satisfy itself that there was no such evidence before summarily dismissing the complaint?

**Judge and CJC dealings with unrepresented litigant**

48. The CJC has published guidelines for Judges who are dealing with unrepresented litigants. These guidelines and more apply to the same degree to the CJC when it receives a complaint. The CJC was created by the Judges Act is to serve the people of Canada and ensure that Judges are operating reasonably within their mandate. The more complicated the matter under review the more the CJC has a duty to be helpful to unrepresented and unsophisticated persons.

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<sup>13</sup> *Cosgrove* See Par. 12- see Responding Record of Justice Shaughnessy Volume 1 Tab 10



49. In this matter Mr. Best got no feedback from the CJC during the intake stage and never after that. (Qu. Can the CJC not dedicate resources to interacting with the complainant especially in complicated or not well documented complaints are received? The inconsistencies and irregularities evident on the record in this matter raise questions that were not addressed or maybe not even known to the CJC). Mr. Fantino's background and especially as Privy Councillor and Federal Cabinet Minister gives him a broad perspective of what Canadians need and should be able to expect when they are dealing with the CJC.
50. Given the prevalence and ongoing nature of discussions regarding unrepresented litigants and access to justice the CJC did not take note of nor comment about the exchanges between the Judge and Mr. Best when he raised the issue of unwarranted and suspicious police investigations.<sup>14</sup> Courtesy in challenging an unrepresented litigant who is explaining evidence is a subject that needs further investigation and comment having regard to the CJC's own standards regarding unrepresented litigants.
51. The unanswered question is why did the CJC ignore some parts of the original complaint and not answer each point directly then or at any later stage of its process? On their face these allegations are disturbing enough that resources should have been applied at the CJC to not only substantiate whether these facts are fully known. Then it needed to examine why the Judge agreed to take actions which were far beyond what was needed to complete the finalization of the costs award phase of the legal action that was before the judge.
52. A crucial point that was apparently not addressed by the CJC and would have escaped the notice of Mr. Best is that the Judge had been appointed as the Judge to hear all motions. Such a designation creates a continuum of conduct during and between hearings such that the Judge's actions are cumulative and cannot be reviewed singly.
53. It is not clear from any record of the CJC why it 'cherry picked' parts of the complaints and apparently conducted no investigations. Instead the cherry picked documents, which are not identified by the CJC, seems to have convinced the adjudicator, Chief Justice Scott, of Manitoba to decide that on the first instance and from what he had been given, there was no need to proceed any further.
54. The judicial system and the CJC is complicated and specialized knowledge is required to negotiate it. Where a person does not possess that knowledge it is incumbent on the system itself to reach out and assist. Other tribunals have investigative facilities whereas

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<sup>14</sup> Transcript April 30<sup>th</sup> Motion Record Exhibit 67 Tab 67 [DB000113-g10-10-11]

the CJC has failed to implement any i.e. a complaint may be obviously deficient of relevant facts on its face and the CJC does not assist but rather can reject a complaint simply because it is not complete. While it may be the only body that has the expertise to understand and investigate the operations of Judges within the Judicial System it does not extend its own expertise to assist a complainant.

#### **Police involvement and interference**

55. It is difficult to know when police investigations began given that Officer Rushbrook of the Durham Regional Police advised that this was not the first case where the police have been tasked with investigating matters related to civil lawsuits. However when Mr. Best showed the Judge evidence of suspicious Police involvement<sup>15</sup> the judge became insulted and in effect accusatory toward Mr. Best. This was curious when some people might have thought the appropriate response might be more conducive to discovering what really happened behind the scenes. In any event Mr. Fantino can be of great assistance to this Court because of his background in police work.
56. There has been no investigation or sourcing of facts that may lead to a conclusion that the Judge was influenced improperly by matters that took place outside of the courtroom e.g. the Durham Police Court Officer investigation. Had this been done it would have thrown light on errors in the Judge's see the Reasons of January 15<sup>th</sup>, 2010 when he convicted Mr. Best of contempt.
57. The formal reasons of January 25<sup>th</sup>, 2010 indicate that paragraph 24 might have been different in the light of the police investigation not being considered. The finding in this paragraph is not based on proper evidence contained in the Court record. To the contrary subsequent evidence shows that the Judge relied in part on the Statement of the Record by the prosecuting lawyers which he accepted as true even though it was unsworn and fabricated by those lawyers. The subsequent evidence proved beyond any doubt that the

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<sup>15</sup> Motion Record Fantino Affidavit ex 64- tab 64 April 29<sup>th</sup> 2013 Best Affidavit –Ruling on April 30, 2013 re April 29, 2013 Best affidavit which raises this issue and presents a digital recording of a conversation with Officer Rushbrook. Application Record pages 319=320 which follow submissions by Mr. Best highlighting the disturbing nature of this evidence. Also **Ref.** Peel Police Department Don Best affidavit April 29, 2013-par. 10 Rushbrook- placed arrest warrant on the CPIC system- this is extraordinary from the point of view of police procedure- so it has yet to be determined how it found its way to the Peel Police Department-

Statement of the Record was false. The Judge may also have been indirectly influenced by the police investigation.

### **Secret Proceedings**

58. The CJC did not make any inquiries about the backroom or secret proceeding that occurred on May 3, 2012 after the Judge left the Courtroom. In Court he had declared that the Order and sentence to incarceration that had occurred on January 15<sup>th</sup>, 2017 would be reinstated (it had been stayed) and therefore would take effect. The Judge further stated emphatically that he was done with the proceeding and nothing to do with this matter should ever be brought back before him. This further raises concerns about the secret proceeding that took place after he said that and left the Courtroom.
59. The CJC did not look into this and, because Mr. Best was removed from the Court and taken to jail at the time, he was unable to know that a secret hearing had occurred that increased his sentence. For that reason the summary conclusion that this was Judicial conduct cannot possibly be supported without knowing more. The CJC may have accepted that what the Judge said in Court before he adjourned was the only information they needed to know. If that is the case then the CJC needs to be reminded to look more carefully at the context and surrounding circumstances.

### **Improper evidence**

60. The judge in the transcript December 2<sup>nd</sup>, 2009 says that he warned counsel not to write to him: <sup>16</sup> and yet later the prosecuting lawyers continued to file letters to and from Mr. Best asserting that they were evidence and the Judge read them.

### **Extrajudicial activity**

61. Ultimately when the motion to set aside the January 15<sup>th</sup> contempt Order were underway (Phase II) the Judge said to the prosecuting lawyers "*I was under the impression that effectively he did comply to the best of his ability with my orders.*" And the prosecuting lawyers replied "yes". <sup>17</sup>

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<sup>16</sup> Transcript December 2<sup>nd</sup>, 2009 Page 46 -50

<sup>17</sup> Transcript April 30, 2013 hearing Page 89 line 2-9 ;Application Record vol. 2 p. 390l. 2-9

62. And yet not only did the Judge not take this into consideration in taking a fresh look at the proceedings the Judge actually secretly the sentence. The motivation for this was not clear nor was it explored by the CJC.
63. The answer may lie in another area that was overlooked by the CJC. It appears that the Judge acted outside his powers provided in the Judges Act in trying to assist the prosecuting lawyers in an out of jurisdiction endeavour.
64. Throughout the various court proceedings that were supposed to be focused on costs issues the prosecuting lawyers made it clear and the Judge acquiesced in pursuing another agenda: The action had been stayed at the pleadings stage and there had been no discovery. The Defendants were concerned that the subject matter of the action would be litigated in another country i.e. the United States or Barbados. They decided to use the excuse of bringing a cost motion in Ontario in order to obtain and file evidence in the Court file so that it could be used in those jurisdictions.
65. The Judge encouraged the prosecuting lawyers and assisted their plan. When he could have fixed the costs early on he demurred because the prosecuting lawyers wanted his assistance to obtain evidence and make it available in other jurisdictions.
66. On June 8<sup>th</sup>, 2010 the costs had been settled and the *lis* was extinguished. At that point the Judge pre-approved the filing of evidence with the Court for the sole purpose of it being used in other countries. The Judge failed to exercise any control over this process and ceded power and authority to the prosecuting lawyers without any impediments to their doing as they wished with no judicial supervision.
67. The result was that a great deal of evidence- thousands of pages- that had nothing to do with the action was filed in a special Court file. This included personal and solicitor client as well as confidential medical records with respect to innocent bystanders.<sup>18</sup>
68. These people had no warning or knowledge that their privacy was being violated and those records were now available to the public. The Judge did not know where the information came from, what it was, and did not even bother to ask. The Judge took no cognizance that he was or might have been exceeding his powers under the Judge's Act or that he was violating privacy and Charter rights available to all persons named.

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<sup>18</sup> The Zagar affidavit which contains all of these documents and was filed with the Court is available electronically however the intervenor would not file it with this Court until proper protections are provided to all those named.

69. The CJC will have to examine all of the facts and determine the nature of the Judge's actions and omissions in this matter and how they may have influenced the proceedings.
70. Here unrepresented persons who were not involved in the subject action including the costs issues had their Constitutional and Privacy rights abused. They did not even know that they were being violated. The Judge made no inquiries, examined none of the evidence, and imposed no controls on the actions of the prosecuting lawyers who were given carte blanche to file anything they wished in the Court file.
71. The CJC review ignored the strong evidence that all of the proceedings after November 2<sup>nd</sup>, 2009 were potentially an abuse of process. The record shows that Mr. Best was aware of an Order that said that the November 2 proceedings were to fix costs and peremptory on the parties. He expressed contentment and approval of that process and the Judge and lawyers were aware of that because he wrote them to say so. What he could not have known is that the lawyers and Court agreed that the proceedings were now remarkably different and intended to elicit evidence, after the action had been dismissed, to be used in courts in other jurisdictions. It is virtually impossible for any layperson (and most lawyers) to understand how abusive this process had become and the CJC has ignored it.
72. The December 2<sup>nd</sup>, 2009 transcript does not show that the Judge refused to become involved in the plans of the prosecuting lawyers to continue to utilize the Court to force Mr. Best to settle the cause of action outright or provide evidence to be used in other countries.
73. The evidence that that showed private information of Mr. Best on line might have something to do with Mr. Best's concern that he was being harassed and threatened as part of an intimidation process. The information contained in the documents that were filed in the extra-judicial file may have been part of this process and the CJC did not examine why it was not controlled by the Judge.
74. It is common ground that when a case is resolved by settlement the judge becomes *functus* once having approved the settlement. If a Judge is engaged to approve a settlement he must take several factors in mind even if all parties have agreed to the terms of the settlement. The Judge has to keep in mind larger issues such as the administration of Justice and being a reasonable settlement within the confines of the *lis* that was before him. He must also guard against the release to the public of documents and information

that might abuse the rights of others, especially if they have not been given notice to allow them to intercede. That did not occur here and Mr. Fantino can assist the Court because of his awareness of various protocols and laws that are in place to prevent abuse.

75. However in this matter the Judge is seen to approve a settlement that impacts on the privacy and constitutional rights of many third parties who had no notice. In addition the Judge then went further than the terms of the settlement and appears to have created a shadow judicial system whereby the lawyers became the adjudicators of further materials that they chose to file with the Courts without any supervision by any properly appointed Judicial Officer (i.e. Judge or Master). This 'carte blanche' Order made without notice to anyone arguably far exceeds the powers given to the Judge under the Judge's Act. The motivation for this curious Order needs to be explored and understood and Mr. Fantino has the expertise to assist the Court in examining this issue.

#### **Law**

76. "*The objects of the [CJC] are to promote efficiency and uniformity, and to improve the quality of judicial service, in superior courts.*" Judges Act Sec. 60(1)
77. The CJC's own policy manuals describe its mandate and mission. The attached CJC pamphlet entitled '*The Conduct of Judges, and the Role of the Canadian Judicial Council*' advises that you do not need a lawyer to complain about a Judge. It states that Parliament created the CJC in 1971 to investigate and rule on complaints about the conduct of Judges. It is not clear but it seems to contemplate that when a Judge's behaviour is a concern then the CJC will investigate. The CJC promises to be fair, objective and effective. Mr. Fantino's background can be helpful to this Court to assess the Judge's behaviour in the context of the actions of the Judge and especially behind the scenes events that were not known and/or evaluated by the CJC.<sup>19</sup>
78. Judges AC 63(2) says that the CJC may investigate a complaint or allegation. At present it is difficult to understand how an unsophisticated person might be able to write a complaint with no guidance or assistance. If the CJC is acting fairly and judiciously this clause must mean that it will gather complete information even when it appears that the author of the complaint does not have the ability or understanding to create a solid well reasoned and insightful complaint.

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<sup>19</sup> CJC Pamphlet: 'The Conduct of Judges' is attached.

79. Rule 109 (1) states that the Court may, on motion, grant leave to any person to intervene in a proceeding.

80. In *J.V.D. Mill Services*, the Board also described its approach to granting of status to public law intervenors by drawing upon the principles adopted by the Court of Appeal in *R. v. Latimer*[5]. In *J.V.D. Mill Services*, the Board says at paragraphs 24 *et seq.*:

*[24] Public Law (or often called Public Interest) intervenor status is granted when a court "is satisfied that the participation of the applicant may help the court make a better decision". Public Interest Standing has been recognized by the courts in Saskatchewan. The principles to be applied in determining whether to grant status to a public interest intervenor were set out by the Saskatchewan Court of Appeal in R. v. Latimer:*

- a. Whether the intervention will unduly delay the proceedings?*
- b. Possible prejudice to the parties if intervention be granted?*
- c. Whether the intervention will widen the lis between the parties?*
- d. The extent to which the position of the intervenor is already represented and protected by one of the parties? and*
- e. Whether the intervention will transform the court into a political arena?*

*[25] The Court in Latimer, supra, also noted that "[A]s a matter of discretion, the court is not bound by any of these factors in determining an application for intervention but must also balance these factors against the convenience, efficiency and social purpose of moving the case forward with only the persons directly involved in the "lis".*

81. By analogy to *R v. Hape* 2007 SCC 26 no thought was given by the Court to the abuse of the Charter Rights of each of the persons who was 'outed' in the filing of the documents on June 8<sup>th</sup>, 2010 and thereafter. International Law has no rule of stare decisis (per Lord Denning quoted in *Hape*) and the Judge and CJC failed to examine how filing documents in a special Court file might infringe on the rights of those identified in those documents. The CJC failed to look into why the Judge allowed this exercise which was

- basically providing evidence to foreign jurisdictions in a manner that would not be allowed in Canada without judicial supervision after hearing from the affected parties.
82. In interpreting the Judges Act, the Ontario Courts of Justice Act and the earlier versions of the Judicature Act *Bell ExpressVu v Rex 2002 SCC 42* will be invoked by Mr. Fantino as authority for the fact that the Statutes are not ambiguous and speak for themselves. No power is given to an Ontario Superior Court Judge to create a Court file that contains private, personal, and confidential material for the purpose of allowing it to be used to introduce evidence into a legal action in a foreign jurisdiction.
83. The Judges Act creates and circumscribes the function and duties of a Judge in Canada. The Courts of Justice Act (following after the Judicature Act) in Ontario regulates the power of Judges. The Judge has no powers other than given by statute and his powers are circumscribed by statute.
84. The Supreme Court of Canada has stated that a statute must be plainly read and no authority is found anywhere for a Judge to concern himself with choosing, authorizing, validating or in any way directly or indirectly becoming involved with legal actions that are or may be taking place in foreign jurisdictions such as happened here. A Superior Court Judge has jurisdiction in Ontario to do justice between the parties to a legal action and nothing more. Once that legal action is over, as in the case here, the Judge has no further power to do anything regarding the rights of those parties or, as here, the rights of other parties who did not even know what the Judge was doing.

### **Relief Sought**

Mr. Fantino seeks intervenor status on the basis that no one speaks for the people who are supposed to be served by the Judicial System and the CJC's mandate to assist Parliament by dealing with complaints about the behavior of Judges.

All of which is respectfully submitted by

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CJC Pamphlet

et le rôle du  
Conseil canadien  
de la magistrature

# LA CONDUITE DES JUGES

# THE CONDUCT OF JUDGES

and the role of the  
Canadian Judicial Council

## CANADIAN JUDICIAL COUNCIL

The Canadian Judicial Council is made up of 39 members and is chaired by the Chief Justice of Canada. Membership consists of the chief justices, associate chief justices and some senior judges from provincial and federal superior courts across the country. The Council collectively has authority over a body of more than a thousand federally appointed judges. The Council meets twice a year. In the meantime, it is through committees that the Council does much of its work. Some of these are permanent, standing committees; others are formed to deal with specific issues or projects.

*The operation of Canadian justice relies on the existence of a highly trained, professional and independent judiciary.*

Canadians rightly demand a high degree of professionalism and good conduct from their judiciary. They also need a judiciary that is independent and able to render judgments without fear of reprisal. To that end, Parliament created the Canadian Judicial Council in 1971, giving it power under the *Judges Act* to investigate and rule on complaints about the conduct of federally appointed judges.

Canadian Judicial Council  
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## THE CONDUCT OF JUDGES

Every year, federally appointed judges in Canada make thousands of decisions on matters that range from procedural questions to the most fundamental interests of those appearing before them.

Judges can make mistakes. When one side or the other in a legal dispute thinks that a judge has come to the wrong **decision**, our system of justice allows that person to appeal the decision to a higher court. Appeal courts can reverse or vary the decisions made by other judges. The fact that an appeal court has overturned a judge's decision does not mean that the judge's conduct was improper or that grounds exist for removal of the judge from the bench.

Whether judges are correct or incorrect in their decisions, a high standard of personal **conduct** is expected of them. When someone believes that a judge's behaviour is of serious concern, or that a judge is not fit to sit on the bench, here too our system of justice provides for a remedy. In such cases, a complaint may be addressed to the Canadian Judicial Council.

## AN IMPORTANT DIFFERENCE

When issues arise concerning a judge's role in a trial, the distinction between *decision* and *conduct* is fundamental in deciding where you should go for remedy.

Issue	Remedy
A judge's <i>decision</i> is questioned	Appeal – a higher court reviews the decision
A judge's <i>conduct</i> is questioned	Complaint – the Canadian Judicial Council reviews the judge's conduct

The Council's Judicial Conduct Committee is responsible for reviewing judicial conduct in a way that is fair, objective and effective. It must also guarantee a prompt and fair hearing for judges who are accused of misconduct. In all cases, judicial independence – the foundation stone of Canadian justice – is central to the process.

## The Complaints Process

Canadians can have confidence in their judges. From the tens of thousands of judicial hearings that take place every year in Canada's superior courts comes a very low number of complaints. Although the Minister of Justice or a provincial Attorney General may generate an inquiry, most complaints come from the general public, and around half relate to cases in family law.

- If you wish to make a complaint, you do not need to be represented by a lawyer. Simply make your complaint *in writing* to the Canadian Judicial Council at:

Canadian Judicial Council  
Ottawa, Ontario  
K1A 0W8

Your letter should include:

- Your name and address
- Name of the judge, court, date and circumstances of the conduct in question
- Detailed description of the conduct

- A member of the Canadian Judicial Council's Judicial Conduct Committee examines the complaint and determines whether the judge in question should be contacted. If necessary, an independent counsel may be appointed to make further inquiries. If more than one perspective is needed, a panel made up of Council members and puisne judges (that is, ordinary judges, not chief justices or associate chief justices) may be struck.
- If the matter is very serious, or if the complaint comes from a provincial Attorney General or the Minister of Justice of Canada, an Inquiry Committee may be appointed to hold a public hearing, after which the matter goes on for discussion by the full Council.
- After considering the report of an Inquiry Committee, the Council may recommend to Parliament (through the Minister of Justice) that the judge be removed from office.

- The Council's only power is to recommend to Parliament that a judge be removed from office. Parliament has never had to face such a situation, although sometimes judges retire or resign before the matter gets that far. Where appropriate, the Council may express concerns about a judge's conduct where the matter is not serious enough to recommend that the judge be removed.
- When your complaint has been considered and determined, the Council will advise you of the decision in writing.

### **Authority of the Canadian Judicial Council**

The Council has authority only over federally appointed judges – that is, those presiding over the courts listed below. A complaint about a provincial or territorial court judge should be directed to the judicial council in your province or territory.

#### **Canada**

Supreme Court of Canada  
Federal Court of Appeal  
Federal Court  
Court Martial Appeal Court of Canada  
Tax Court of Canada

#### **Newfoundland**

Supreme Court, Court of Appeal  
Supreme Court, Trial Division

#### **Prince Edward Island**

Supreme Court, Appeal Division  
Supreme Court, Trial Division

#### **Nova Scotia**

Court of Appeal  
Supreme Court

#### **New Brunswick**

Court of Appeal  
Court of Queen's Bench

#### **Quebec**

Court of Appeal  
Superior Court

#### **Ontario**

Court of Appeal  
Superior Court of Justice

#### **Manitoba**

Court of Appeal  
Court of Queen's Bench



Saskatchewan  
Court of Appeal  
Court of Queen's Bench

Alberta  
Court of Appeal  
Court of Queen's Bench

British Columbia  
Court of Appeal  
Supreme Court

Yukon  
Supreme Court

Northwest Territories  
Supreme Court

Nunavut  
Court of Justice

Saskatchewan  
Court d'appel  
Cour du Banc de la Reine  
Alberta  
Court d'appel  
Cour du Banc de la Reine  
Colombie-Britannique  
Court d'appel  
Cour supreme  
Yukon  
Court supreme  
Territoires du Nord-Ouest  
Cour supreme  
Nunavut  
Cour de justice





BEST, Donald  
Applicant

-and-

Court File No.: T-604-16

THE ATTORNEY GENERAL OF CANADA et al.  
Respondents

FEDERALCOURTOFCANADA  
Application commenced at  
TORONTO

**MOTION RECORD**  
**Volume Two of Two**

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