

**SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)**

DONALD BEST

Plaintiff

- and -

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS;
ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP;
CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE;
MARTY KEARNS; JEFFERY R. VIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

**MOTION RECORD
of the Responding Party, Donald Best
Rule 19.03(1)**

TAKE NOTICE THAT the Responding Party (Plaintiff) will apply to a judge of this Court, on Friday March 13, 2015 at 10:00 a.m., for an order striking or ignoring the Affidavit of Jennifer Gambin.

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

THE MOTION IS FOR JUDGMENT AND ORDERS AGAINST

- PRICEWATERHOUSECOOPERS EAST CARIBBEAN;
- KINGSLAND ESTATES LIMITED;
- PHILLIP ST. EVAL ATKINSON;
- RICHARD IVAN COX; AND
- MARCUS ANDREW HATCH:

(a) Striking an Affidavit of Jennifer Gambin filed by them in support of a motion to set aside their noting in default; or

(b) In the alternative, an order that the affidavit be ignored in whole or in part:

(c) Such further remedy as the Court feels is just and appropriate

THE GROUNDS FOR THIS MOTION ARE:

(A) HISTORY/BACKGROUND:

1. The Plaintiff served Statement of Claim on the above-noted defendants who did not file a response in time in accordance with the Rules.

2. The Plaintiff had these defendants noted in default.

3. In support of a motion to set aside the noting in default, these defendants filed an affidavit of Jennifer Gambin which contains conclusory and hearsay statements.

4. The Plaintiff warned the Defendant Moving Parties that this motion would be brought. This was ignored.

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

1. Affidavit of Donald Best, sworn February 6, 2015;
2. Such further material as counsel may advise and this Honourable Court may permit.

THE RESPONDING PARTY MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPLICATION:

By service through:

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

Counsel for the Responding Party (Plaintiff)

/

DATED AT TORONTO, this 6th day of February, 2015.



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LSUC # 25998I

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 Superior Court of Justice
 Barrie, Ontario

AND TO: Mark Polley
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 M5H 2A4

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Counsel for the Moving Party Defendants,
PricewaterhouseCoopers East Caribbean; Kingsland Estates
Limited; Phillip St. Eval Atkinson; Richard Ivan Cox; and Marcus
Andrew Hatch:

**SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)**

DONALD BEST

Plaintiff

- and -

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
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JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

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Court File No.

**SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)**

DONALD BEST

Plaintiff

- and -

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
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JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

NOTICE OF MOTION
Motion for Strike or ignore the Affidavit of Jennifer Gambin
(Motion to set aside Noting in Default)
(Rules 37 and 39)

TAKE NOTICE THAT the Responding Party (Plaintiff) will apply to a judge of this Court, on Friday March 13, 2015 at 10:00 a.m., for an order striking or ignoring the Affidavit of Jennifer Gambin.

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

THE MOTION IS FOR JUDGMENT AND ORDERS AGAINST

- PRICEWATERHOUSECOOPERS EAST CARIBBEAN;
- KINGSLAND ESTATES LIMITED;
- PHILLIP ST. EVAL ATKINSON;
- RICHARD IVAN COX; AND
- MARCUS ANDREW HATCH:

(a) Striking an Affidavit of Jennifer Gambin filed by them in support of a motion to set aside their noting in default; or

(b) In the alternative, an order that the affidavit be ignored in whole or in part:

(c) Such further remedy as the Court feels is just and appropriate

THE GROUNDS FOR THIS MOTION ARE:

(A) HISTORY/BACKGROUND:

1. The Plaintiff served Statement of Claim on the above-noted defendants who did not file a response in time in accordance with the Rules.

2. The Plaintiff had these defendants noted in default.

3. In support of a motion to set aside the noting in default, these defendants filed an affidavit of Jennifer Gambin which contains conclusory and hearsay statements.

4. The Plaintiff warned the Defendant Moving Parties that this motion would be brought. This was ignored.

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

1. Affidavit of Donald Best, sworn February 6, 2015;
2. Such further material as counsel may advise and this Honourable Court may permit.

THE RESPONDING PARTY MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPLICATION:

By service through:

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Counsel for the Responding Party (Plaintiff)

/

DATED AT TORONTO, this 7th day of February, 2015.

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Barrie, Ontario

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Limited; Phillip St. Eval Atkinson; Richard Ivan Cox; and Marcus
Andrew Hatch:

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SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

NOTICE OF MOTION
Respondent Donald Best
(Rue 19.03(1))

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SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and -

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH; PAUL BARKER SCHABAS;
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KINGSLAND ESTATES LIMITED; RICHARD IVAN COX; ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON; PRICEWATERHOUSECOOPERS
EAST CARIBBEAN (FORMERLY 'PRICEWATERHOUSECOOPERS');
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Defendants

AFFIDAVIT OF DONALD BEST

SWORN FEBRUARY 5TH, 2015

I, Donald Best, of the County of Simcoe, Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Plaintiff in this case. I am 60 years of age. I am Canadian born, in Ontario where I have always been resident. Although I was forced starting in late 2009 to spend over two years outside of Canada as a direct result of the actions of the defaulting Barbados defendants now represented by Mr. Mark Polley; namely Kingsland Estates Limited, Richard Ivan Cox, Marcus Andrew Hatch, Philip St. Eval Atkinson, PricewaterhouseCoopers East Caribbean (Formerly 'PricewaterhouseCoopers') ("the Barbados Defendants") and another defaulting Barbados defendant not represented by Mr. Polley (Eric Iain Stewart Deane ("Deane")), and their co-conspirators, I have never applied for or been granted residency or citizenship in any other country.

2. I have read the January 22, 2015 affidavit of Mr. Polley's legal assistant Jennifer Gambin. I note that the Gambin affidavit attaches only selected letters between Mr. Polley and my lawyer Paul Slansky and omits almost half of the highly relevant letters between the two lawyers, concerning the issue of default by Mr. Polley's clients. I have attached the missing letters as exhibits to my affidavit, so the court may consider a complete and accurate correspondence record:
 - a. Exhibit 'A': December 8, 2014 – Slansky to Polley re clients noted in default
 - b. Exhibit 'B': December 15, 2014 – Slansky to all re: Barbados defendants default. Deane default judgement.
 - c. Exhibit 'C': January 14, 2015 – Slansky to Polley re default motion materials
 - d. Exhibit 'D': January 14, 2015 – Slansky to Wardle & Polley re PWCECF
 - e. Exhibit 'E': January 15, 2015 – Polley to Slansky re motion materials.

- f. Exhibit 'F': January 19, 2015 – Slansky to Polley re default motion affidavits
 - g. Exhibit 'G': January 21, 2015 – Polley to Slansky re default motion affidavits
- 3. I note that the letters omitted from Ms. Gambin's affidavit contain evidence contrary to a position advanced by the defendants in their Motion to set aside the noting of default. In summary, Mr. Polley takes a position in the motion and post-default letters that the noting of default against Mr. Polley's clients was an unreasonable, unexpected surprise that occurred in the middle of a mutual discussion by counsel as to how Mr. Polley's clients should proceed.
- 4. The evidence contained in the complete record of correspondence between Mr. Slansky and Mr. Polley confirms and corroborates my memory that from the start my lawyer consistently, clearly and continually warned Mr. Polley and his clients that they must act and respond to my Statement of Claim according to the Ontario Rules of Civil Procedure including the response times therein, or they would be noted in default.
- 5. Mr. Slansky persuaded me several times to extend time past the default dates to allow these defendants to file a Defence or to bring their jurisdiction motion as required by the rules. They refused to do either, despite Mr. Slansky's written warnings that they were already in default and that we would note them in default if they did not serve and file their motion. As Mr. Slansky communicated to the Barbados Defendants, I was prepared to leave the scheduling of the hearing of the motion to the Honourable Mr. Justice McCarthy once the motion was served and filed. This is what was contemplated when the issue was inserted in the proposed agenda for Justice McCarthy. After repeated written warnings and time extensions amounting to eight weeks past the initial 60 days that the defendants had to respond to

the Statement of Claim under the rules, the defendants were noted in default on December 3, 2014.

6. A reading of the correspondence record, including the letters omitted from the Gambin affidavit, corroborates my memory that there was no miscommunication or room for misunderstanding: From the start, Mr. Polley consistently, clearly and continually announced that his clients did not intend to respond to the Statement of Claim within the time allotted and in any manner consistent with the Ontario Rules of Civil Procedure. Despite multiple warnings over an eight-week time extension, Mr. Polley's clients advertently decided to not file a Defence or to bring a motion to challenge jurisdiction.
7. There is no evidence in the affidavit of Ms. Gambin that the Barbados Defendants were made aware of my positions, communicated by Mr. Slansky to Mr. Polley. There is no evidence in the affidavit of Ms. Gambin that, if the Barbados Defendants knew of my positions, that they had an intention to file a jurisdiction motion before they were noted in default. In fact, I listened in at the Case Management Conference before Justice McCarthy on December 16, 2014, after the Barbados Defendants were noted in default. Mr. Polley sought to not file a jurisdictional motion until after others brought and had determined their motion to strike. Mr. Polley only indicated that he would serve and file the jurisdictional motion when directed to do so by Justice McCarthy. There is still no evidence that the Barbados Defendants intend to serve and file a jurisdictional motion to be heard on June 15-19, 2015. There is only the assertion of their counsel. This is not evidence.
8. Further, there is every possibility that either side may appeal an adverse ruling on the motion to strike, and under the Polley defendants' arbitrary and

unreasonable intent, they would then continue to wait for a resolution before filing anything; perhaps waiting for years.

Background to noting in default of Mr. Polley's clients

9. Mr. Polley's October 24, 2014 letter (Exhibit 'G' to the Gambin affidavit) was his initial communication to Mr. Slansky informing that he represented the Barbados Defendants. This letter was delivered on Friday, October 24, 2014, the last business day before defendants Hatch and PricewaterhouseCoopers East Caribbean defaulted by failing to file a response by Sunday, October 26, 2014. October 26, 2014 was 60 days after Hatch and PricewaterhouseCoopers East Caribbean were personally served with the Statement of Claim on August 27, 2014 in Barbados.

10. Mr. Polley's letter states in part:

- a. "In the event that the motion to strike being brought by other defendants does not succeed, we intend to contest jurisdiction on behalf of our clients, and as a result do not intend to serve a Notice of Intent to Defend or a Statement of Defence. As such, we trust you will not note any of our clients in default."

11. In response, Mr. Slansky sent a November 6, 2014 letter (Exhibit 'I' to the Gambin affidavit) that clearly and in no uncertain terms warns that Mr. Polley's clients are in default, or about to be within a few days, and that if they do not take steps to respond according to the rules, they will be noted in default without further notice. As a courtesy, Mr. Slansky provided a total time extension of seven weeks over the original 60 days provided by the rules. Mr. Slansky's letter reflects my position and was sent on my instructions.

12. Mr. Slansky's November 6, 2014 letter states in part:

- a. "Your clients PricewaterhouseCoopers East Caribbean and Hatch are now in default. The others will be in default shortly ((Atkinson: November 9) and (Kingsland and Cox: November 11))."
- b. "I will not move to have your clients noted in default if steps are taken in a reasonably prompt manner to get the case going. Taking the latest date for possible default in respect of your group of clients (November 11), you should be able to comply 2 weeks later. Accordingly, My position is that you must do one of the following:
 - serve a statement of defence by November 25;
 - serve a Notice of Intent to Defend by November 13 and then a Statement of Defence served by November 25; OR
 - serve a motion to challenge jurisdiction returnable on June 15, 2015 by November 25.

That gives you approximately 3 weeks from now and 4 weeks since your October 24 letter, in addition to the time that you have already have been given in accordance with the Rules, to prepare these documents."

- c. "If one of these options is not exercised by November 25, I have been instructed to have your clients noted in default without further notice to you."

These portions of Mr. Slansky's letter reflect my position and was sent on my instructions.

13. On November 20, 2014, Mr. Slansky again warned Mr. Polley in writing (Exhibit 'L' to the Gambin affidavit) that the defendants were already in default, and would be noted in default if they did not "take a real step to deal with this lawsuit as opposed to merely writing letters." As a final courtesy Mr. Slansky again extended the deadline from November 25, 2014 to

December 2, 2014, at which time Mr. Polley's clients would all be noted in default. Mr. Slansky's letter reflects my position and was sent on my instructions.

14. Mr. Slansky's November 20, 2014 letter states in part:

- a. "I gave you a deadline past the date by which you are required to respond to the Statement of Claim: November 25. By writing letters instead of acting you have wasted much of that time. I have persuaded my client to give you a little more time. However, you must take a real step to deal with this lawsuit as opposed to merely writing letters. I will give you until Dec. 2, 2014."
- b. "To keep things proceeding expeditiously, to minimize undue expense to your clients and to give you an option that does not require your clients from attorning to the jurisdiction, my client proposes that you choose one of the following two options:
 - i. Accept the jurisdiction of the Ontario Courts and serve and file a Statement of Defence by December 2, 2014;
 - ii. Serve and file your jurisdictional motion by December 2, 2014, returnable on a date to be fixed and on terms to be fixed by Justice McCarthy at the Case Management Conference."
- c. "No steps will be taken to have your clients noted in default if one of these options is met by December 2, 2014. Your clients are already in default. You have agreed to none of my previous proposals. A failure to accept one of these reasonable proposals or to meet a December 2 deadline will result in your client being noted in default without further notice."

These portions of Mr. Slansky's letter reflect my position and was sent on my instructions.

15. A reading of the letters omitted from the Gambin affidavit corroborates my memory that there was no miscommunication or discussion: Mr. Polley continually announced that his clients did not intend to respond to the Statement of Claim or file a jurisdictional motion within the time allotted and in any manner consistent with the Ontario Rules of Civil Procedure. My lawyer Paul Slansky continually warned Mr. Polley and his clients that they must conform to the rules or they would be noted in default.
16. The first letter omitted from the Gambin affidavit and attached hereto as Exhibit 'A', is a December 8, 2014 letter from Paul Slansky to Mr. Polley, which states in part:
- a. "On December 1, 2014, you wrote and said that you won't serve and file anything but will seek instructions from Justice McCarthy. Absent filing something, you have no status to even address Justice McCarthy. My client has given you several indulgences. You have been warned about being noted in default. Your clients have ignored these warnings.
 - b. Your clients are all experienced professionals well familiar with litigation in general, the litigation in Ontario, and with the issues in this case. They have advertently decided to default, apparently for strategic purposes, notwithstanding being granted multiple extensions of time amounting to seven weeks past the 60 days required by the rules.
 - c. Your clients have now been noted in default."
17. During the December 16, 2014 case management call with Justice McCarthy, Mr. Polley still maintained his clients' unreasonable position that they should

not have to file anything for a period amounting to almost a year after being served with the Statement of Claim. During that meeting, Justice McCarthy rejected this position and declared that Mr. Polley's clients would have to bring a Motion to set aside the default on March 13, 2015, and, if the noting in default was set aside, they would have to file their jurisdictional motion by March 31, 2015.

18. Accordingly, I verily believe that Mr. Polley's clients never intended to file a jurisdictional motion in the time before they were in default and noted in default. This was a deliberate, strategic decision to ignore and/or disobey the Ontario Rules of Civil Procedure.
19. The Polley defendants included only his Assistant's affidavit, despite my lawyer communicating the need for proper evidence to be filed in their motion to set aside the noting of default.
20. After reading the January 22, 2015 affidavit of Mr. Polley's legal assistant Jennifer Gambin, I am no further enlightened as to the Barbados defendants' purported intents, motivations and behaviours leading to their joint decision to default. Ms. Gambin would be unable to answer these and other important questions. Even I as a non-lawyer can see that cross-examination of Ms. Gambin would be a waste of resources and time and would reveal little real evidence. The use of Ms. Gambin is, as far as I know, simply another move in the defendants' larger strategy to refuse cross-examination or examination of defendants, and thereby limit the evidence that is available to the court.
21. On January 14, 2015, Mr. Slansky wrote a detailed letter (Exhibit 'C' to my affidavit) to Mr. Polley addressing his defendants' forthcoming motion to set aside the default, and the quality of evidence that is expected. Mr. Slansky's letter said in part:

"I am writing to you regarding the motion materials that you may be preparing as I write this letter, in respect of your motion to set aside your clients noting in default.

Unless your materials establish a good answer to my concerns, it is my client's position that your clients do not meet the test to set aside a noting in default.

(case law in letter not included here)

Accordingly, my position is that in applying to set aside a noting in default the Court must exercise its discretion and determine:

Whether it is just to set aside the noting in default in light of the factual context.

The Court should consider factors such as:

- (1) the behaviour of the plaintiff and of the defendant,
- (2) the length of the defendant's delay,
- (3) the reasons for the delay,
- (4) the complexity and value of the claim involved
- (5) the intent to defend in the relevant time period and
- (6) the existence of a defence (generally not the strength)

It is expected that my client will dispute each of these factors on your motion. Your clients' default required that the motion to set aside noting in default be heard prior and decided before the motion materials could be served and filed on the motion to strike and jurisdictional motion. The delay in filing caused by the default has unjustly prejudiced my client.

Your clients could have avoided this by filing the jurisdictional motion materials leaving Justice McCarthy to set a date for hearing. This is what ultimately occurred on December 16, 2014. My client gave your clients several opportunities and time extensions to file your jurisdictional motion materials. Your clients have ignored these opportunities. Your clients advertently decided to default, apparently for strategic purposes.

As I advised you in respect of the jurisdiction motion, I expect that your materials will address the factual considerations addressed above. In respect of the jurisdictional motion, I advised you that:

I expect a jurisdictional motion, to be a proper motion based on affidavits from your clients, not an assistant or articling student. In light of the lack of merit to any opposition to jurisdiction, I expect that any basis advanced to challenge jurisdiction will be disputed. Failure to file proper supporting material will result in a motion to strike the affidavit(s) and/or to have the motion summarily dismissed.

The same position applies to your materials in support of the motion to set aside noting in default. Your stated intention at the Case Management Conference was to merely file correspondence. I expect evidence from your clients, not a *pro forma* affidavit with attached correspondence."

Mr. Slansky's letter reflects my position and was sent on my instructions.

Barbados Defendants are sophisticated and experienced international litigators, advised by senior counsel.

22. As detailed herein and in my December 15, 2015 affidavit, I include evidence that each of the Barbados Defendants is a sophisticated litigator, experienced in Canada, Barbados and other jurisdictions. Each person has a minimum of ten years and sometimes decades of experience in various civil litigations, in receiving legal advice and directing senior legal counsel, to do with high-stakes international matters and civil litigation. Each is individually well aware of their responsibility to respond to a Statement of Claim under the rules of various jurisdictions, and of the consequences of a decision to not do so.

23. Kingsland Estates Limited ("KEL") was one of the principal parties seeking costs against me personally, seeking documents from and examination of me and seeking to have me found in contempt. Richard Ivan Cox ("Cox") was the directing mind of KEL and was instructing KEL's counsel to take these steps and how.

24. The other principal party seeking costs against me personally, seeking documents from and examination of me and seeking to have me found in contempt was not a legal entity. Originally, Nelson Barbados Group Limited ("NBGL") sued the auditor, "PricewaterhouseCoopers (Barbados)". Their counsel, Fasken, Martineau DuMoulin ("Faskens") through Gerald Ranking ("Ranking") advised NBGL counsel at the time, Mr. McKenzie, that this was not the proper name of the auditor. NBGL was advised that the proper name was "PricewaterhouseCoopers East Caribbean Firm" ("PWCECF"). This was also supported by an affidavit of Marcus Hatch, who claimed to be a principal of the firm. During a cross-examination of Hatch, both Hatch and Ranking again asserted that "PWCECF" was a legal entity. Based on these assertions, this name was added to and retained in the Statement of Claim. As detailed in other affidavits sworn by me, it was later discovered that PWCECF did not and does not exist. In the course of examinations in 2013, Ranking twice provided documentation about a name change of the entity he was now saying was his client to PricewaterhouseCoopers East Caribbean ("PWCEC") in 2011; years after steps were taken against me by Faskens and Ranking. This partnership was not the entity Faskens and Ranking were previously claiming to represent in 2007-2011 (PWCECF). As the purported principals of PWCEC and PWCECF, Mr. Hatch and Mr. Atkinson, were the directing minds of PWCEC and were the persons instructing Faskens and Ranking to take the actions against me and how.

25. I am aware and have seen documents indicating that defendant Cox and companies he has directed have been involved in high-level international civil litigation since at least 1998 if not before. Similarly I am aware and have seen documents indicating that defendants Marcus Andrew Hatch and/or Philip St. Eval Atkinson and/or their businesses have been involved in various international lawsuits since at least 1997 if not before. As an

example, attached hereto as Exhibit 'H' to my affidavit is a 1999 decision by the Supreme Court of Texas concerning a 1997 civil case involving millions of US dollars where Marcus Hatch and his then accounting business were defendants.

26. I note that the Supreme Court of Texas found:

- a. "In this case, the record supports a finding that Barbados and Hatch sent false information into Texas, knowing it would be relied upon by TIG in determining whether to release the \$7.6 million premium payment to Commercial Acceptance. The record also supports a finding that Barbados and Hatch knew the brunt of the injury from their alleged misrepresentation and fraud would be felt in Texas by TIG from its loss of the \$7.6 million premium payment. Considering these facts de novo, we hold the trial court did not err in determining Barbados and Hatch could reasonably anticipate being haled into a Texas court to answer for their actions and that Texas courts have specific jurisdiction over them."

27. The defaulting Barbados defendant not represented by Mr. Polley, Eric Iain Stewart Deane, is also a sophisticated and experienced international litigator with over two decades of experience as detailed in my December 15, 2014 affidavit.

28. Each Barbados defendant including Mr. Deane is well funded and has previously shown that they are able to retain senior counsel from leading Canadian law offices in major lawsuits where legal fees can approach or exceed millions of dollars.

29. In the Nelson Barbados v. Cox et al lawsuit launched in 2007, Cassels Brock and Blackwell LLP law office representing defendant Kingsland Estates Limited and Richard Ivan Cox invoiced about a million Canadian dollars for two year's work. Similarly Fasken Martineau DuMoulin LLP law office representing defendants Marcus Andrew Hatch and Philip St. Eval Atkinson also invoiced about a million Canadian dollars for the same two-year period.
30. Senior counsel Mark Polley currently represents the Barbados defendants, with the exception of Eric Iain Stewart Deane. Mr. Polley is the senior partner of the Richmond and Bay Street law office bearing his name, Polley Faith LLP. According to his website, he was called to the Ontario Bar in 2001, has wide experience including as an Assistant Crown Attorney and with the litigation group of a large national law office, apparently McCarthy Tétrault LLP. He instructs at Osgoode Hall, and is a former clerk to the Justices at the Ontario Court of Appeal.
31. Mr. Polley's stated "core practice of high-level commercial litigation" representing "institutional clients" indicates to me that Mr. Polley is a senior counsel able to attract and retain high-end clients, and that he would charge towards the upper end of the fees scale. It is my understanding that Mr. Polley's minimum rate is CDN\$625 an hour.
32. Mr. Polley's clients enjoy high-end legal advice from senior counsel. While it is reasonable to assume that, as an experienced senior counsel, Mr. Polley would have advised and cautioned his defendant clients, probably in writing, that their strategic decision to not respond to my Statement of Claim according to the Ontario Rules of Civil Procedure carried certain risks and dangers, and that such a decision was not to be taken lightly, there is no evidence that any of the clients were so advised. Logically, either Mr. Polley

negligently represented his clients by failing to provide this advice or they made a deliberate decision to default, knowing the risks of so doing.

33. I note that the November 17, 2014 letter from Mr. Polley claims as the purported reason that his defendants wish to delay filing any court documents for a year is to avoid “our clients to incur costs unnecessarily.” In context of the Ontario Rules of Civil Procedure and the ability and history of the Barbados defendants to engage high-priced lawyers, I verily believe the defendants’ claim to be worried about costs to be absurd, and an obvious attempt to game the judicial system by deliberate and contrived delay.

Defendants’ Default was deliberate, strategic and with purpose

34. For reasons listed below, and also in my affidavit sworn December 15, 2014 concerning the default of Mr. Deane, I verily believe, and include evidence, that the Barbados Defendants’ and Deane’s joint default and failure to file a defence and/or jurisdictional motion to my Statement of Claim was deliberate and strategic, and came after their extensive consideration, almost certainly in legal consultation with senior lawyers and other defendants, as to the possible benefits, consequences and risks of this strategy to default. The default of all of these defendants shows a unity of purpose and a considered strategy amongst these parties. Attached hereto as EXHIBIT ‘I’ (under separate cover) is my December 15, 2014 affidavit.

35. Considering the following evidence, I verily believe that the decision of the Barbados Defendants and Deane to default, was deliberate, strategic and done with purpose to obtain certain benefits:

- a. As indicated elsewhere in my affidavit, each of the Barbados defendants is a sophisticated and experienced litigant in international

lawsuits. As such, each has experience about and is aware of their responsibility to respond to Statements of Claim and other court documents in a manner conforming to the jurisdictional rules.

- b. Each of the Barbados defendants decided to place no evidence before the court, either in the Gambin affidavit or from themselves, as to why they chose to default, or in the alternate that it was an accident, inadvertent or misunderstanding. The defendants decided to not submit evidence about this crucial issue. There is no evidence before the court from Mr. Polley or his clients about why the Barbados defendants decided to default.
- c. My lawyer, Paul Slansky, repeatedly warned the defendants in writing, that they were in default, and would be noted in default unless they adhered to the Ontario Rules of Civil Procedure.
- d. As a senior counsel, Mr. Polley probably advised and cautioned his defendant clients, probably in writing, that their strategic decision to not respond to my Statement of Claim according to the Ontario Rules of Civil Procedure carried certain risks and dangers, and that such a decision was not to be taken lightly. Nonetheless, Mr. Polley's clients defaulted. That was a decision by Mr. Polley's clients.
- e. The decision to default by Mr. Polley's clients is paralleled by the default of their Barbados co-defendant, Eric Iain Stewart Deane. As indicated in my Statement of Claim, my December 15, 2014 affidavit and my previous affidavits, the wrongdoing against me by Mr. Polley's clients and Mr. Deane is very much a common action by a group including all the Barbados defendants and other co-conspirators. Notwithstanding that Mr. Polley does not represent Mr. Deane, Deane remains a co-defendant in this lawsuit. As such, his actions in the past and now are closely tied to Mr. Polley's clients, as is Mr. Deane's recent decision to default.

- f. As described in my December 15, 2014 affidavit, it is on the court record that the defendant Richard Ivan Cox made statements during the Nelson Barbados civil case, to the effect that a judgement from a Canadian court will never be able to be enforced in Barbados.
- g. This statement by Cox and similar statements made on a website controlled by some of the defendants and their supporters, indicate that Cox and the other Barbados defendants are confident that a judgement from a Canadian court will never be able to be enforced in Barbados. This provides additional motivation and reason for the Barbados defendants to strategically default. As detailed in my December 15, 2014 affidavit, the defendants and their supporters published on this anonymous underground website for many years and use it to illegally and recklessly distribute my Identity Information as defined in the *Criminal Code*, and to threaten, intimidate and harass my witnesses, my lawyer, our family members and me, including to publish the names of my children and to call for acts of violence against me and other persons. Although some of these publications have been moderated, many are still available on the internet in 2015.
- h. As described in detail in my December 15, 2014 affidavit, there is evidence showing, and I verily believe, that the Barbados defendants defaulted in this current civil case because, inter alia, they know that they have no viable defence to the extremely serious allegations against them. The defendants know they can only defend on a procedural basis, and that they cannot defend upon the truth and fact.
- i. As described in my December 15, 2014 affidavit, the defaulting Barbados defendants know that the evidence against them is credible and strong; even overwhelming, and includes irrefutable voice recordings and business records that prove the defendants: fabricated false evidence, lied to the courts on multiple occasions to maliciously

obtain my conviction and incarceration for contempt, illegally hired and paid a corrupt Ontario Provincial Police detective sergeant 'on the side' to commit illegal actions against me, fraudulently claimed to represent a fake, fictitious business entity called 'PricewaterhouseCoopers East Caribbean Firm', recklessly distributed Identity Information contrary to the Criminal Code and committed other wrongdoing.

- j. By the act of defaulting, Mr. Polley's clients gained immediate and long-term strategic benefits for themselves and their Canadian co-defendants as detailed in the following section of my affidavit.

Strategic Benefits to Defendants resulting from their choice to default

- 36. By not engaging in the court process according to the Ontario Rules of Civil Procedure, and by not submitting affidavits from the individual defendants, the Barbados defendants are strategically acting to deny the court and me the evidence, exhibits and knowledge they possess as they know this evidence will either be exposed as perjury or will further incriminate themselves and other defendants, including the Canadian defendants.
- 37. Further, by their default the Barbados Defendants have limited the time to deal with the three (3) motions set to proceed on June 15, 2015. Had the Barbados Defendants complied with the deadlines (i.e., December 2, 2014), there would have been time between December 16, 2014 and June 15, 2015 (6 months) to perfect the motions. Because of the default, there is only 3 months available to perfect these motions. This gives rise to a greater risk of steps not being completed in time and the potential delay of this litigation. This has also caused me needless expense and diverted my lawyer's time and efforts from the main case.

38. Further, it is my belief that many of the Barbados defendants have a history of doing business in Ontario and with Ontario residents, and that they travel and have travelled to Ontario for business purposes, including marketing. The Barbados defendants also wish to avoid examination or cross-examination as they know that their business history in Ontario will undermine their jurisdiction motion.
39. As indicated in more detail in my December 15, 2014 affidavit, the defendants do not want to formally engage in the court process because they know that they face strong evidence implicating them in acts of wrongdoing, including a long running campaign of harassment, intimidation, violence and other criminal acts against myself, other plaintiffs, witnesses, lawyers and our family members who oppose and opposed the defendants and their co-conspirators in various past and current legal actions ('The Campaign').
40. Since my return to Canada in 2012, the defendants and their lawyers have steadfastly refused to allow me to examine any of the defendants responsible for fabricating and placing false/deceptive evidence before the courts, including the defendants who committed fraud upon the courts by fraudulently claiming that they represented 'PricewaterhouseCoopers East Caribbean Firm' when such business entity did not and has never existed. As well, I have never been able to examine the defendants who illegally hired and paid the corrupt Ontario Provincial Police detective sergeant 'on the side' to commit illegal actions and to deceive the courts. Further, no court, including the Superior Court, the Ontario Court of Appeal or the Supreme Court has ever listened to the voice recording of November 17, 2009 that proves I was convicted upon deliberately fabricated and falsified evidence, nor have I been allowed to examine those responsible. As part of their legal strategy, the defendants have always refused to be examined.

41. The choices made by the Barbados Defendants to default, to present an Assistant's affidavit as 'evidence' and to refuse to submit affidavits which would expose them to cross-examination, are a continuation of their long-held legal strategy of ongoing refusals, manoeuvres and delays.

Irrelevant and False and Misleading assertions of re-litigating issues

42. This motion is a motion to set aside the noting of the Barbados Defendants in default. Whether the lawsuit should be struck as an abuse of process is irrelevant to this issue and will be the subject of a motion in June 2015. The Barbados Defendants focus on this irrelevant issue because they have not and cannot justify their deliberate default.
43. While I do not wish to fall into the trap of answering another motion, I am concerned that if these false and misleading assertions of re-litigation are left unanswered, my lawsuit will be seen in a negative light. This is in fact the real strategy of the Barbados Defendants. Accordingly, I feel obliged to briefly address this issue.
44. Contrary to the claims in the defendants' factum (which are primarily argument made as 'fact' without supporting evidence) my *Best v. Ranking et al* civil case contains substantially different and new issues and evidence than has ever been decided by Ontario courts. The NBGL lawsuit was about corporate financial interests in Barbados. It had to do with alleged theft, fraud and breach of trust in respect of an estate and in respect of real estate in Barbados.
45. The present lawsuit is explained in the Statement of Claim. However, by way of summary, it has to do with the manner in I was treated in respect of costs proceedings, an examination and a contempt proceeding in four respects:

- (a) The lies and misrepresentations that led to the finding of contempt and my incarceration;
- (b) The investigations of me by a serving police officer, James Van Allen, unlawfully acting as a private investigator in respect of these proceedings;
- (c) The obtaining, release and publishing of private and confidential information that harmed me;
- (d) The perpetration of a fraud on the Court by acting on behalf of a non-entity, PWCECF.

These issues are completely unrelated to the financial interests of NBGL in a lawsuit in respect of issues in Barbados. The present lawsuit relate to the manner of investigation, litigation, conspiracy and cover-up against me personally in respect of Ontario litigation, leading to personal and financial harm to me personally. Many of their acts of wrongdoing and the harm are ongoing to this day.

46. The proceedings brought by the lawyers and law firms on behalf of Deane and the Barbados defendants for costs against me personally, to seek documents from and examination of me and to have me found in contempt and incarcerated do not flow from the NBGL litigation. Had they merely sought costs against NBGL, this might be arguable. Instead, they targeted me personally for reasons unrelated to costs. The piercing of the corporate veil, to seek allegedly seek costs against me was never litigated and no court concluded that appropriate. This was improperly assumed to be legitimate. The Motion materials returnable on November 2, 2009 makes this clear. A copy of these materials is attached hereto as Exhibit 'J' of this affidavit.

47. The production of documents and examination of me was purportedly for purposes of obtaining costs on the action from me. This was demonstrated to be unconnected to costs on the NBGL action. Costs were fully settled in June 2010. This is clear from the Minutes of Settlement. A copy is attached

hereto and is marked as Exhibit 'K' of this affidavit. When I brought a motion to set aside the finding of contempt made against me in my absence, the Barbados Defendants and some of the lawyers and law firms continued to insist on the production of documents and the examination even though costs had been settled in full. This ulterior motive was conceded by Mr. Ranking three times. Once, on December 2, 2009, he said:

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

48. A copy of the December 2, 2009 transcript is attached hereto and is marked as Exhibit 'L' of this affidavit. Again, during the October 22, 2013 examination of one of the Defendant lawyers, Pendrith, Mr. Ranking said that the reason the answers were still sought to the questions was because it was thought that it may be useful in relation to other continuing litigation. This portion of the transcript of the examination of Pendrith (p. 138) is attached hereto and is marked as Exhibit 'M' of this affidavit. Finally, Mr. Ranking admitted this on a motion before Justice Feldman, as is reflected in her reasons (motion for Security for costs) heard October 13, 2013. A copy of these reasons, in which she found the abuse of process issue based on this fact to be arguable, is attached hereto and is marked as Exhibit "N" of this affidavit. When I was jailed in Lindsay, Ontario in solitary confinement, some of the defendants approached persons whom they knew cared about me, and offered to release me from jail if these persons would settle litigation taking place in other jurisdictions and/or pay them money.

49. The December 2, 2009 contempt motion against me was purportedly for purposes of enforcing the production and examination orders against me for purposes of obtaining costs on the action from me. A copy of the Contempt motion materials returnable on December 2, 2009, which makes this clear, is attached hereto and is marked as Exhibit 'O' of this affidavit. This purpose was demonstrated to be unconnected to costs on the NBGL action. Costs were fully settled in June 2010. This is clear from the Minutes of Settlement. When I brought a motion to set aside the finding of contempt made against me in my absence, the Barbados Defendants and some of the lawyers and law firms continued to insist on the production of documents and the examination even though costs had been settled in full.

50. I was not aware of the examination and production motion or order until I was told about the latter by the trial coordinator on November 16, 2009, the day before the examination was to be conducted on November 17, 2009. I was out of the country at the time. I had left because of threats and actual violence towards me and my family as a result of release of confidential information and a campaign to harm and or intimidate me that is a part of the present lawsuit. I tried to comply by being examined by telephone. When I called in to the Special Examiner's office, I explained to counsel (most of whom are defendants on the present lawsuit) that I had just found out about the order, that I did not have a copy of it and that I was willing to be examined over the telephone. I explained that I could not come soon because I had safety concerns. This was ignored and counsel, primarily Mr. Ranking and Mr. Silver, created a false record stating the opposite of what I had said. This record was presented by them as the truth and my version (sent by letter) was called lies and defamation. The false version was later relied upon by the Honourable Mr. Justice Shaughnessy in finding me in contempt, as reflected in his January 25, 2010 reasons (paragraphs 7, 16, 17, 24). The actual call on November 17, 2009 was recorded by me and proves that the

lawyers lied in writing and orally to Justice Shaughnessy to have me found in contempt.

51. I was unaware of the December 2, 2009 motion return date (although I had been told that a motion might be brought that day).

52. I was unaware of the January 10, 2010 contempt hearing date.

53. In the 2012-2013 application to have the contempt order set aside, evidence was presented to the Court to prove the foregoing three paragraphs. However, because Justice Shaughnessy was assured by Mr. Ranking and Mr. Silver that they were telling the truth and I was lying, Justice Shaughnessy refused to consider any of this evidence. On December 11, 2012, he said that:

But from your affidavit materials, clearly, you know, you've turned your sights on them and I just want to say to you Mr. Best, that's not what I'm dealing with. I'm dealing with contempt, already found. I've already found you in contempt of the court and in contempt of court orders and you're seeking to change that if you're saying that you're going prove that the fundamental basis to set aside was the contempt, was maleficence on the part of Mr. Ranking and Mr. Silver, and I'm going to say to you, go back and read again, my reasons which were then supported in court and **you chose not to attend court when you had notice of the application. But I'm saying to you, **I'm not expanding this to a brand new hearing. I'm not re-litigating**. You must understand this Mr. Best; **I am not the Court of Appeal**. I made - I gave a judgment. **I made a finding**. I am not the Court of Appeal . **The Court of Appeal deals with anything that they feel I did wrong. The Court of Appeal is where you make applications for new evidence, not me.****

A copy of this December 11, 2012 transcript excerpt (mischaracterized as Mr. Ranking, but in fact it was Justice Shaughnessy speaking) is attached hereto and is marked as Exhibit 'P' of this affidavit. This thinking was adverted to in the April 30, 2013 hearing and in the reasons of Justice Shaughnessy dismissing my application to set aside the contempt (May 3, 2013). Accordingly, the initial Contempt order was made based on false evidence

presented by the lawyers and the Barbados Defendants. No *viva voce* evidence was heard, even though the facts presented were disputed, because the Court relied upon the presumed ethics of senior counsel before the Court instead of an absent party. Under the circumstances, it would be inappropriate to say that the challenging of these findings is abuse of process. Further, Justice Shaughnessy never made any findings based on evidence presented by me in my affidavits. That was left for the Court of Appeal. Accordingly, Justice Shaughnessy never adjudicated the issues that are now part of the present lawsuit.

54. In the Court of Appeal, on a motion to remove Mr. Ranking and Silver from the Record, Justice Feldman did not make a finding, but deferred to the decision of Justice Shaughnessy for purposes of the motion. She indicated that the panel on the appeal would ultimately determine the issue. A copy of her Reasons on the motion to remove counsel is attached hereto and is marked as Exhibit 'N' of this affidavit. The decision to which she deferred it was a determination that there had been no misconduct by Mr. Ranking and Mr. Silver. However, it must be remembered that this determination was made without any consideration of my affidavits, which was left to a fresh evidence application on the appeal. That appeal was never heard on the merits because of my inability to pay the costs orders made against me.

55. On a review to a panel, the Court did not make a finding but deferred to Justice Feldman, who deferred to Justice Shaughnessy, who did not consider my evidence.

56. On a motion for a stay pending an application for leave to appeal to the Supreme Court of Canada, Justice MacPherson did not have any of these issues before him. The only issue being considered on the stay application and the leave application was the propriety of administratively dismissing an

appeal of a criminal or quasi-criminal decision involving the liberty of the subject due to the inability to pay costs orders in excess of \$200,000.

57. Based on the foregoing, it is clear that no court has ever considered my evidence to which the present lawsuit relates. Justice Shaughnessy refused to consider it, leaving it to the appeal to the Court of Appeal on the merits. Justice Feldman and the panel on review merely deferred to this non-decision, leaving the issue to the panel hearing the appeal on the merits. That appeal was never heard because of my inability to pay over \$200,000 in costs.

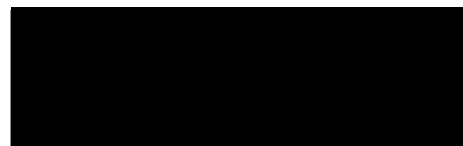
58. Other issues in this lawsuit, in respect of Van Allen, PWCECF and the privacy breaches have never been decided by any court.

59. With respect to the issues and evidence in the Best vs. Ranking et al lawsuit, the vast majority of the defendants' past and continuing acts of wrongdoing against me took place in Ontario and/or were directed to and/or received in Ontario. Similarly the resultant harm against me primarily happened and is continuing in Ontario. I have no idea upon what grounds the Barbados Defendants could successfully contest the jurisdiction in *Best v. Ranking et al*. The jurisdiction issues are simple and very straightforward.

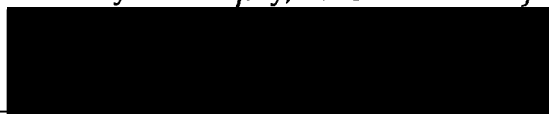
Sworn before me at the City of *Orillia*)

In the County of Simcoe)

This 5th day of February, 2015)



Donald Best



A Commissioner, etc.

Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.

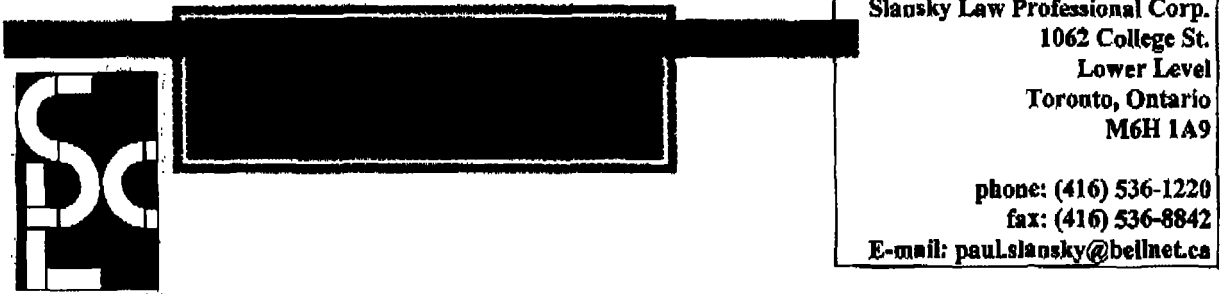
THIS IS **EXHIBIT "A"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015

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

A Commissioner etc.

Kernan Eckstein, a Commissioner, etc.,
Province of Ontario for the Government of
Ontario, Ministry of the Attorney General.

**FAX COVER****DATE:** Dec. 8, 2014**TO:** Mr. Polley**OF:** Polley Faith LLP**FAX #:** (416) 365-1601**FROM:** Paul Slansky**PAGES:** 3**SUBJECT:** Best v. Ranking et. al.; Court File No. 14-0815;
Letter re Noting in Default;**COMMENTS:**

Enclosed:

- letter dated Dec. 8, 2014 (2 pp.)

Contact me if you have any questions.


Paul Slansky



Slansky Law Professional Corp.
1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220

fax: (416) 536-8842

E-mail: paul.slansky@bellnet.ca

Dec 8, 2014 BY FAX

Polley Faith LLP
The Victory Building
80 Richmond St. W.
Suite 1300
Toronto, ON
M5H 2A4

Mr. Polley:

**Re: Best v. Ranking, et. al. (PricewaterhouseCoopers East Caribbean,
Hatch, Atkinson, Kingsland Estates Ltd. and Cox)**

I am writing to you further to your letter dated December 1, 2014.

My client gave you a deadline by which you were required to respond to the Statement of Claim: November 25. By writing letters instead of serving and filing something your clients have wasted much of that time. We told you that failure to serve and file something would result in having your clients noted in default.

I then persuaded my client to give you a little more time. We gave you until Dec. 2, 2014. We again said that failure to serve and file something would result in having your clients noted in default. I gave you the option to serve and file a jurisdiction motion and have Justice McCarthy determine when the motion should proceed.

On December 1, 2014, you wrote and said that you won't serve and file anything but will seek instructions from Justice McCarthy. Absent filing something, you have no status to even address Justice McCarthy. My client has given you several indulgences. You have been warned about being noted in default. Your clients have ignored these warnings.

Your clients are all experienced professionals well familiar with litigation in general, the litigation in Ontario, and with the issues in this case. They have advertently decided to default, apparently for strategic purposes, notwithstanding being granted multiple extensions of time amounting to seven weeks past the 60 days required by the rules.

36

2


Your clients have now been noted in default.

Yours truly,

Paul Slansky

THIS IS **EXHIBIT "B"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015


A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**



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E-mail: paul.slansky@bellnet.ca

December 15, 2014

Tara Lynn Mountney
Assistant to The Honourable Mr. Justice McCarthy
Superior Court of Justice, Newmarket
50 Eagle St.,
Newmarket, Ontario
L3Y 6B1

Dear Ms. Mountney:

Re: Best v. Ranking et. al; Case Management; Update

I am writing to update to my letter dated November 14, 2014 regarding case management.

Please have this letter put before Justice McCarthy prior to the case management teleconference next week, directly or via the trial coordinator. I write to you because this is what I was directed to do by the Regional Senior Justice.

There are three sets of issues that require updating:

- Deane default Judgment;
- Barbados defendants;
- leave to amend the Statement of Claim.

Deane Default Judgement

As mentioned in my November 14 letter, we are seeking default judgement against Mr. Iain Deane, who has already been noted in default. The Motion Record makes it clear that further evidence will be filed on the motion. It is returnable before you tomorrow at the Case Management Conference to be spoken to.

Barbados Defendants

With respect to the Barbados defendants, they are jointly represented by Mr. Polley. He advised me that they intended to challenge jurisdiction. I proposed that we discuss this at the teleconference, on the assumption that a motion would have been filed.

My client agreed to extend time past the default date to allow these defendants to file a Defence or bring their motion. They refused to do either.

I persuaded my client to give them a further extension of time to file their jurisdictional motion and proposed that the timing of hearing of their motion be determined by Justice McCarthy at the teleconference. They again refused and wished to discuss this at the teleconference without having filed anything.

My position was and is that they have no standing to participate at the teleconference unless they filed a Notice of Intent to Defend/Statement of Defence or a jurisdictional motion. They refused to do either. Having advised them that they would be noted in default if they did not file something and having had nothing filed, they have been noted in default. Letters reflecting this history are attached.

The defendants are all professionals, experienced and knowledgeable litigants advised by competent counsel, who have deliberately defaulted apparently for strategic reasons.

It is my position that they have no right to participate in the teleconference unless, and then, only to the extent, that they wish to discuss the scheduling of a motion to set aside the noting in default. I do not expect that my client will consent to set aside the noting in default as we do not accept, *inter alia*, that they have any intention to defend.

Consent to Amend or Service of Motion for Leave to Amend the Statement of Claim

Two of three sets of police defendants (Peel Regional Police and OPP) took the position that we had sued non-entities or inappropriate parties. The proposed amendments seek to address this issue. Accordingly, the only real change to the Statement of Claim is to add the proper police parties. The Commissioner and former Commissioner (Lewis) of the OPP are proposed new parties. The Peel Regional Police Service Board and Chief of Police are new proposed parties. The Durham Regional Police Service Board and Chief and former Chief of Police (Ewles) are proposed new parties. After reviewing further evidence and further research, we determined that these new parties are proper parties to the lawsuit.

A Motion Record for leave should be before you at the time of teleconference and has been served on the parties and proposed new parties, except for the former Commissioner of the OPP and the former Chief of Durham Police. These two persons have not been served because we did not find their coordinates and did not want to include these details in the materials if we had them, out of concern for their safety and privacy. My client, as a former police officer, who is suing, in part of breaches of his privacy, we had hoped that the present Commissioner and Chief, or their counsel, would forward the draft Amended Statement of Claim. We will be seeking such agreement, guidance of the Court and/or orders in respect of service (substituted or ratification). We will be seeking the assistance of the Court in scheduling the motion for leave absent consent.

In light of the positions of the defendants, it was expected there to be consent. In fact, previous counsel for Peel RPS said that they would recommend consent to such an amendment. Present Counsel deny this and have not provided consent or accepted service. Previous Counsel, Blainey McMurtry said:

...we have been retained to defend the interests of the Regional Municipality of Peel Police Services Board (the "Board"). We note that you have improperly named the Board as the "Peel Regional Police Service a.k.a.. Peel Regional Police". Pursuant to s. 50(1) of the *Police Services Act*, the Board is liable for torts allegedly committed by its members in the course of their employment. At this time, I am prepared to recommend that the claim be amended to properly name the Board on consent.

Present Counsel, Ms. LeDrew, said:

In your letter, you improperly stated that counsel for the Peel Regional Police Service had provided their consent to amend. During their representation of the Peel Regional Police Service, Blaney McMurtry LLP had not provided you with their consent to amend but had indicated that the Peel Regional Police Services was not a suable entity.

I confirm that you do not have our consent to amend the Statement of Claim and we will not be able to provide you with our position with respect to any proposed amendments to the Statement of Claim until we are in receipt of your entire draft Amended Statement of Claim...

Additionally, please be advised that we are not able to accept service on behalf of the Peel Regional Police Service Board or on behalf of the Peel Regional Police Service Chief of Police, Jennifer Evans. You are required to serve these parties personally.

If Peel RPS is not a legal entity, one wonders who Ms. LeDrew is presently representing. Presumably, as Blainey McMurtry admitted, they represent the Board. Yet, there has been no accepting or facilitation of service or consent forthcoming. There has only been a deafening silence. They have had the draft Statement of Claim since October 21 (almost two months).

I look forward to discussing these issues in the teleconference.

Yours truly,

Paul Slansky
cc. All defendants

THIS IS **EXHIBIT "C"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015

A Commissioner etc.

**John J. Weinstein, a Commissioner, etc.,
Provided to the Public by the Government of
Ontario, Ministry of the Attorney General.**

From: Paul Slansky [mailto:paul.slansky@bellnet.ca]
Sent: Friday, January 16, 2015 12:58 PM
To: 'Jennifer Gambin'
Cc: 'Mark Polley'
Subject: RE: Donald Best v. Ranking et al | Court File No. 14-0815

Enclosed is a letter sent by fax on Wednesday.

From: Jennifer Gambin [mailto:jgambin@polleyfaith.com]
Sent: Thursday, January 15, 2015 4:08 PM
To: paul.slansky@bellnet.ca
Cc: Mark Polley
Subject: Donald Best v. Ranking et al | Court File No. 14-0815

Dear Mr. Slansky:

Please find attached correspondence of today's date on behalf of Mark Polley.

Sincerely,

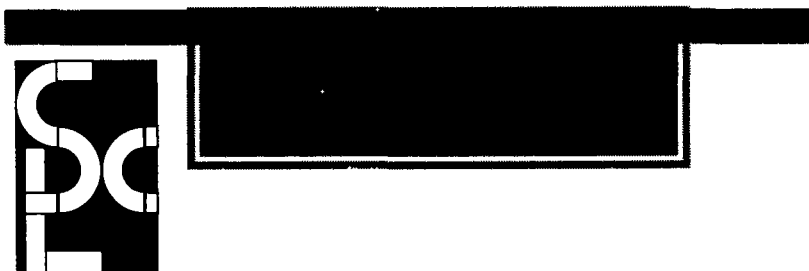
<http://polleyfaith.com/images/polley-faith-barristers-logo.png>

Jennifer Gambin
T: 416.365.1600
F: <tel:416.365.1601> 416.365.1601
<<mailto:jgambin@polleyfaith.com>> jgambin@polleyfaith.com

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<<http://www.polleyfaith.com/>> www.polleyfaith.com

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1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220

fax: (416) 536-8842

E-mail: paul.slansky@bellnet.ca

January 14, 2015 **BY FAX**

Polley Faith LLP
The Victory Building
80 Richmond St. W.
Suite 1300
Toronto, ON
M5H 2A4

Mr. Polley:

Re: Best v. Ranking, et. al. (PricewaterhouseCoopers East Caribbean, Hatch, Atkinson, Kingsland Estates Ltd. and Cox)

I am writing to you regarding the motion materials that you may be preparing as I write this letter, in respect of your motion to set aside your clients noting in default.

Unless your materials establish a good answer to my concerns, it is my client's position that your clients do not meet the test to set aside a noting in default. The test is set out in *Metro Toronto Condominium Corp. 706 v. Bardmore Developments*, [1991] O.J. No. 717 (C.A.) (reaffirmed in *Nobosoft v. No Borders*, [2007] O.J. No. 2378 (C.A.) and in *Flintoff v. von Anhalt*, [2010] O.J. No. 4963 (C.A.) (para 7 "non-exhaustive list")):

18 ... Rule 19.03 provides that a noting in default "may be set aside by the court on such terms as are just", and rule 19.09 provides that a default judgment "may be set aside or varied by the court on such terms as are just". It seems clear that the language in both cases is intended to leave the matter within the discretion of the court ... rather than specific and detailed rules, it is the context and factual situation in which the discretion arises which should determine its application. Such factors as the behaviour of the plaintiff and of the defendant, the length of the defendant's delay, the reasons for the delay, and the complexity and value of the claim involved are all relevant factors to be taken into consideration. However, I consider that it would only be in extreme situations that a trial judge would exercise his discretion to require an affidavit as to the merits of the defence on a motion to set aside a noting in default.

[emphasis added]

Older cases discussed in *Bardmore* also require that there be a an **intent to defend in the relevant time period** and the **existence of a defence** (see paras 11-18; albeit except in "extreme cases", not the strength of the defence)

Accordingly, my position is that in applying to set aside a noting in default the Court must exercise its discretion and determine:

Whether it is **just** to set aside the noting in default in light of the **factual context**.

The Court should consider factors **such as**:

- (1) the **behaviour** of the plaintiff and of the defendant,
- (2) the **length** of the defendant's delay,
- (3) the **reasons** for the delay,
- (4) the **complexity and value of the claim** involved
- (5) the **intent to defend** in the relevant time period and
- (6) the **existence of a defence** (generally not the strength)

It is expected that my client will dispute each of these factors on your motion. Your clients' default required that the motion to set aside noting in default be heard prior and decided before the motion materials could be served and filed on the motion to strike and jurisdictional motion. The delay in filing caused by the default has unjustly prejudiced my client.

Your clients could have avoided this by filing the jurisdictional motion materials leaving Justice McCarthy to set a date for hearing. This is what ultimately occurred on December 16, 2014. My client gave your clients several opportunities and time extensions to file your jurisdictional motion materials. Your clients have ignored these opportunities. Your clients advertently decided to default, apparently for strategic purposes.

As I advised you in respect of the jurisdiction motion, I expect that your materials will address the factual considerations addressed above. In respect of the jurisdictional motion, I advised you that:

I expect a jurisdictional motion, to be a proper motion based on affidavits from your clients, not an assistant or articling student. In light of the lack of merit to any opposition to jurisdiction, I expect that any basis advanced to challenge jurisdiction will be disputed. Failure to file proper supporting material will result in a motion to strike the affidavit(s) and/or to have the motion summarily dismissed.

The same position applies to your materials in support of the motion to set aside noting in default. Your stated intention at the Case Management Conference was to merely file

correspondence. I expect **evidence** from **your clients**, not a *pro forma* affidavit with attached correspondence.

Yours truly,

Paul Slansky

THIS IS **EXHIBIT "D"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015

A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**

From: Paul Slansky [mailto:paul.slansky@bellnet.ca]
Sent: Friday, January 16, 2015 1:00 PM
To: 'Erin Pleet'
Cc: Mark Polley
Subject: RE: Best v. Ranking et al, Court File CV-14-0815

Enclosed is a letter sent by fax on Wednesday.

From: Erin Pleet [mailto:epleet@wdbblaw.ca]
Sent: Thursday, January 15, 2015 9:03 AM
To: Paul Slansky
Cc: ''Jennifer Hunter''; pwright@johnstonecowling.com;
'Moten, Asad (MAG)'; aledrew@sblegal.ca;
ngroot@investigationcounsel.com; pveel@litigate.com;
mpolley@polleyfaith.com
Subject: RE: Best v. Ranking et al, Court File CV-14-0815

Counsel,

I am re-sending my correspondence below, with Ms LeDrew's correct email address.

Kind regards,

Erin Pleet

Erin Pleet
Associate
Wardle Daley Bernstein Bieber LLP
416-351-2774

From: Erin Pleet
Sent: January 14, 2015 5:38 PM
To: 'Paul Slansky'

Cc: ''Jennifer Hunter''; pwright@johnstonecowling.com;
'Moten, Asad (MAG)'; aledrew@sblegal.com;
ngroot@investigationcounsel.com; pveel@litigate.com;
mpolley@polleyfaith.com
Subject: RE: Best v. Ranking et al, Court File CV-14-0815

Mr. Slansky,

We have reviewed your draft Order and cannot provide our consent.

We do not agree that the Order need reference that the Plaintiff consents because of the proposed amendment to the Statement of Claim, as this is not a condition of the Order. Further, underlining in the style of cause would ordinarily indicate an amendment to a pleading. Since these underlines are not in reference to an amendment, it is our understanding that the Court will not accept an Order with such underlining. The draft Order we provided to you sets out who the moving parties are in full.

Kindly provide your consent to our draft Order (attached), failing which we will seek to schedule a case conference with Justice McCarthy for the purpose of settling the Order.

Kind regards,

Erin Pleet

Wardle Daley Bernstein Bieber LLP

Erin Pleet

ASSOCIATE

t 416.351.2774
f 416.351.9196
epleet@wdbblaw.ca

2104 - 401 Bay Street, P.O. Box 21 - Toronto ON M5H 2Y4
Canada

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From: Paul Slansky [mailto:paul.slansky@bellnet.ca]
Sent: January 13, 2015 1:04 PM
To: Erin Pleet

Cc: 'Jennifer Hunter'; pwright@johnstonecowling.com;
 'Moten, Asad (MAG)'; aledrew@sblegal.com;
ngroot@investigationcounsel.com; pveel@litigate.com;
mpolley@polleyfaith.com
 Subject: RE: Best v. Ranking et al, Court File CV-14-0815

Enclosed is a letter addressing this consent order and my signed consent to an updated version of the order sent to you in October.

It is also being sent by fax.

From: Erin Pleet [<mailto:epleet@wdbblaw.ca>]
 Sent: Friday, January 09, 2015 4:18 PM
 To: 'paul.slansky@bellnet.ca'
 Cc: 'Jennifer Hunter' (jhunter@lerner.ca);
pwright@johnstonecowling.com; 'Moten, Asad (MAG)';
aledrew@sblegal.com; ngroot@investigationcounsel.com;
pveel@litigate.com; mpolley@polleyfaith.com
 Subject: RE: Best v. Ranking et al, Court File CV-14-0815

Mr. Slansky,

Further to our case conference with Justice McCarthy, please find attached a draft Order with respect to the setting aside of the noting in default of the defendants Gerald Lancaster Rex Ranking, Sebastien Jean Kwidzinski, Lorne Stephen Silver, Colin David Pendrith, Paul Barker Schabas, Andrew John Roman, Ma'anit Tzipora Zemel, Fasken Martineau Dumoulin LLP, Cassels Brock & Blackwell LLP, Blake, Cassels & Graydon LLP and Miller Thomson LLP, Ontario Provincial Police, Peel Regional Police Service a.k.a. Peel Regional Police, Durham Regional Police Service, Marty Kearns, Jeffery R. Vibert, George Dmytruk, and the Toronto Police Association.

If you could kindly provide your consent as to form and content, we will forward the Order to Justice McCarthy's attention. The moving Defendants have each provided their consent to this draft Order.

Kind regards,

Erin Pleet

Erin Pleet

Associate

Wardle Daley Bernstein Bieber LLP

416-351-2774

From: Jennifer Hunter [mailto:jhunter@lanners.ca]
Sent: Monday, December 29, 2014 10:01 AM
To: 'Mountney, Tara Lynn (MAG)'; paul.slansky@bellnet.ca; Erin Pleet; pwright@johnstonecowling.com; Moten, Asad (MAG); aledrew@sblegal.com; ngroot@investigationcounsel.com; pveel@litigate.com; mpolley@polleyfaith.com
Subject: RE: Best v. Ranking et al, Court File CV-14-0815

Thank you Ms. Mountney for your email.

Counsel,

Attached is a letter that was circulated on December 17, 2014 confirming the schedule that was agreed to during our call with Justice McCarthy, as well as other orders that were made. I would ask all counsel to confirm their approval. Please reply by email to me only. Once all counsel have approved, I will advise Ms. Mountney as requested and will copy everyone.

Thank you,

Jennifer

Jennifer Hunter | Lerner LLP | Partner | phone
416.601.2659 | direct fax 416.867.2417 |
jhunter@lerner.ca | 130 Adelaide Street West, Suite 2400 -
Toronto - Ontario - M5H 3P5

From: Mountney, Tara Lynn (MAG)
[mailto:TaraLynn.Mountney@ontario.ca]
Sent: December 24, 2014 12:36 PM
To: paul.slansky@bellnet.ca; epleet@wdblaw.ca;
pwright@johnstonecowling.com; Moten, Asad (MAG); Jennifer
Hunter; aledrew@sblegal.com;
ngroot@investigationcounsel.com; pveel@litigate.com
Cc: Mountney, Tara Lynn (MAG)
Subject: FW: Best v. Ranking et al, Court File CV-14-0815
Importance: High

Good Afternoon Counsel,

Please find attached correspondence requested by Justice
J.R. McCarthy regarding the above noted matter requiring
your attention.

Kindly confirm receipt of same via email.

Thank you.

Regards,

Tara Lynn Mountney

Tara Lynn Mountney

SCJ Judicial Secretary to

Justices Graham, Olah and McCarthy

75 Mulcaster Street

Barrie, Ontario L4M 3P2

Tel (705) 725-6240

Fax (705) 725-7268

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-----Original Message-----

From: ONP3F00735232@ontario.ca

[mailto:ONP3F00735232@ontario.ca]

Sent: Wednesday, December 24, 2014 12:25 PM

To: Mountney, Tara Lynn (MAG)

Subject:

This E-mail was sent from "ONP3F00735232" (Aficio MP 5001).

Scan Date: 12.24.2014 12:24:56 (-0500)

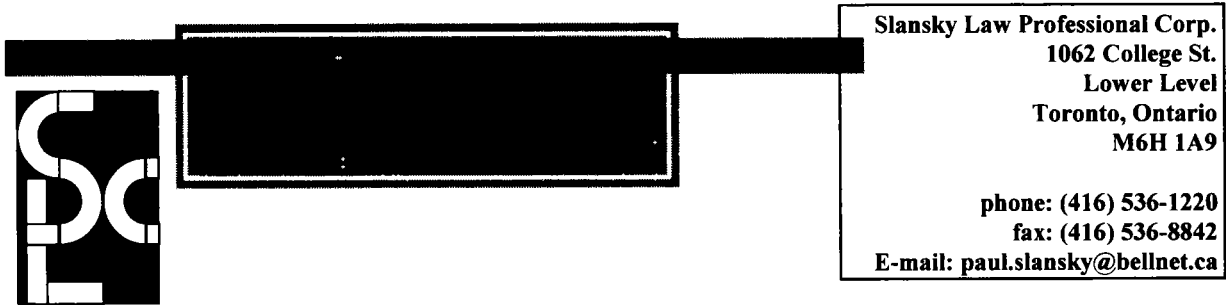
Queries to: <mailto:ONP3F00735232@ontario.ca>
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Slansky Law Professional Corp.
1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220

fax: (416) 536-8842

E-mail: paul.slansky@bellnet.ca

January 14, 2015

BY FAX: 416-351-9196

Peter Wardle and Erin Pleet
Wardle Daley Bernstein Bieber, LLP
2104 - 401 Bay St., P.O. Box 21
Toronto, Ontario
M5H 2Y4
Counsel for Ranking, et. al. ("Lawyers, et al.")

Re: Best v. Ranking et. al.; PWCECF/Purolator/Other issues:
Examinations/documents

Dear Mr. Wardle and/or Ms. Pleet:

PWCECF:

Further to our previous communications a major issue that was not able to be addressed before McCarthy J was the issue of the allegedly fictitious client that Messrs. Ranking and Kwidzinski and Faskens claimed to represent. I am sure you have canvassed this issue not only with your own clients but also with Mr. Polley and/or his 's clients (your clients former clients).

At this point I presume we can all agree that 'PricewaterhouseCoopers East Caribbean Firm' ('PWCECF') never existed as a legal entity. If I am in error please advise.

Absent agreement on this point, please be advised that I will wish to conduct and examination of Mr. Ranking focusing on his 'know your client' investigation at the outset of his representation of this entity in 2007, 2009 and thereafter. Once I receive your materials and I file mine, I will provide a Notice of Examination.

I am of the view that this evidence is not privileged in any way. However, I am prepared to argue that issue if necessary.

Please provide any documentation you have regarding Mr. Ranking's 'know your client' investigation as soon as possible. Please do not bother sending me partnership name change documents twice foisted upon my client as these are irrelevant. They show a name change of a different partnership in 2011 (not 2007-2010) and the partnership name

is changed to "PricewaterhouseCoopers East Caribbean" not "PricewaterhouseCoopers East Caribbean Firm".

In light of the Schedule set during the Case Management Teleconference, this issue will be argued on April 28. Since the examinations must be completed by May 15, I am asking that you ensure Mr. Ranking's availability within the period between April 30 and May 6. Time must be left for a motion in respect of objections and to comply with undertakings prior to May 15.

Purolator

In reviewing the notes and file documents it has come to my attention that the November 2nd, 2009 motion records contains no endorsement from the Judge. I have had this confirmed through a review of the court file. Further, the November 6, 2009 letter that Mr. Ranking purportedly sent to Mr. Best (and later filed with the court) does not contain or list a copy of the Judge's written endorsement which would have been copied and handed to all counsel before they left the Courtroom on November 2nd, had it existed.

A further troubling fact is that an affidavit that was filed with the Court and considered on December 2, 2009 that swears that the November 6, 2009 letter and package was couriered to the Plaintiff and/or Mr. Best does not contain a copy of the courier bill of lading. The affidavit states that the courier company that effected the delivery was Purolator and inquiries of that company have been unable to confirm that they ever received or delivered this package and, in fact, they were quite sure that they had not. Please immediately provide me with the purported November 6, 2009 Purolator courier bill of lading/packing slip referencing my client and tracking number which is routinely processed and preserved within the law firm.

Other

I expect that I will need to examine Mr. Ranking and others on other issues relevant to your abuse of process motion as well. I will advise you on who and in respect of what in letters and Notices in due course. However, it is likely that I will need to do so in respect of Messrs. Silver and Roman and that I will seek the Miller Thompson Deane file(s) on the portion of the Nelson Barbados file that dealt with contempt proceedings against my client.

With respect to the Miller Thompson file on Deane, in light of the noting in default by Mr. Deane and Rule 19.02, the portions of the Statement of Claim that allege that Mr. Deane committed crimes is deemed to be admitted. Accordingly, there is a *prima facie* determination as a matter of law that Miller Thompson's client, Mr. Deane is not entitled to the protection of solicitor-client privilege. Since he is not permitted to rebut this *prima facie* determination, there can be no privilege in respect of this file.

I ask that you obtain and provide this file as soon as possible.

In light of the relevant considerations regarding abuse of process and issue estoppel, which involve issues of fact regarding what was adjudicated and the fairness of the

application of these doctrines, the file and the examination of Messrs. Silver and Roman will also be necessary. I ask that you also ensure their availability within the period between April 30 and May 6. Time must be left for a motion in respect of objections and to comply with undertakings prior to May 15.

If these steps are not taken and examinations cannot be done by May 15, it may result in delay of the June 15 motions. I write this letter as a means to put you on notice to prevent any such delay.

Yours truly,

Paul Slansky

cc Polley Fax: 416-365-1601

E

THIS IS **EXHIBIT "E"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015

A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**

From: Jennifer Gambin [mailto:jgambin@polleyfaith.com]
Sent: Thursday, January 15, 2015 4:08 PM
To: paul.slansky@bellnet.ca
Cc: Mark Polley
Subject: Donald Best v. Ranking et al | Court File No. 14-0815

Dear Mr. Slansky:

Please find attached correspondence of today's date on behalf of Mark Polley.

Sincerely,

<http://polleyfaith.com/images/polley-faith-barristers-logo.png>

Jennifer Gambin
T: 416.365.1600
F: <tel:416.365.1601> 416.365.1601
<<mailto:jgambin@polleyfaith.com>> jgambin@polleyfaith.com

Polley Faith LLP
The Victory Building
80 Richmond St W
Suite 1300
Toronto M5H 2A4
<<http://www.polleyfaith.com/>> www.polleyfaith.com

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POLLEY FAITH LLP

Polley Faith LLP
 The Victory Building
 80 Richmond Street West
 Suite 1300
 Toronto ON M5H 2A4
 Tel: 416.365.1600
 Fax: 416.365.1601
 polleyfaith.com

Mark Polley
 Direct Tel: 416.365.1603
 mpolley@polleyfaith.com

Assistant: Jennifer Gambin
 jgambin@polleyfaith.com

January 15, 2014

VIA EMAIL (paul.slansky@bellnet.ca) AND FACSIMILE (416) 536-8842

Mr. Paul Slansky
 Barrister and Solicitor
 1062 College Street, Lower Level
 Toronto, ON M6H 1A9

Dear Mr. Slansky:

Re: Donald Best v. Ranking et al | Court File No. 14-0815

Thank you for your letter dated January 14, 2015 regarding our motion materials for the motion to set aside the noting in default.

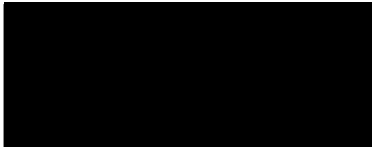
We intend to file material for the motion which will meet the test to set aside a noting in default.

As we work on materials for this motion, we urge you to reconsider your position of requiring a formal motion to be heard. With respect, we can see absolutely no merit to your position. In the context of an exchange of correspondence between counsel regarding the appropriate procedure and timing of steps in the litigation, noting our clients in default was unjustified.

Forcing this unnecessary motion will, of course, cause everyone involved to incur unnecessary costs. As such, we ask you to reconsider your position and to consent to the notice of default being set aside. We intend to rely upon this letter, among other things, in support of full indemnity costs on the motion.

Sincerely,

POLLEY FAITH LLP



Mark Polley
 MP/jg

THIS IS **EXHIBIT "F"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015

A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**



Slansky Law Professional Corp.
1062 College St.
Lower Level
Toronto, Ontario
M6H 1A9

phone: (416) 536-1220
fax: (416) 536-8842
E-mail: paul.slansky@bellnet.ca

January 19, 2015 **BY FAX**

Mark Polley
Polley Faith LLP
The Victory Building
80 Richmond St. W.
Suite 1300
Toronto, ON
M5H 2A4

Mr. Polley:

**Re: Best v. Ranking, et. al. (PricewaterhouseCoopers East Caribbean,
Hatch, Atkinson, Kingsland Estates Ltd. and Cox)**

I am writing to you further to your letter dated January 15, 2015.

In order to consider reconsidering our position our position, it would be important to know whether you intend to file affidavit material sworn by some of your clients on the jurisdiction motion.

Please advise me of your intentions in this regard and my client and I will consider our position regarding the current motion.

Yours truly,

Paul Slansky

THIS IS **EXHIBIT "G"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015



A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**

From: Jennifer Gambin [mailto:jgambin@polleyfaith.com]
Sent: Wednesday, January 21, 2015 4:25 PM
To: paul.slansky@bellnet.ca
Cc: Mark Polley
Subject: Donald Best v. Ranking et al | Court File No. 14-0815

Dear Mr. Slansky:

Please find attached correspondence of today's date on behalf of Mark Polley.

Sincerely,

<http://polleyfaith.com/images/polley-faith-barristers-logo.png>

Jennifer Gambin
T: 416.365.1600
F: 416.365.1601
jgambin@polleyfaith.com
Polley Faith LLP
The Victory Building
80 Richmond St W
Suite 1300
Toronto M5H 2A4
www.polleyfaith.com

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POLLEY FAITH LLP

Polley Faith LLP
The Victory Building
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Suite 1300
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January 21, 2015

VIA EMAIL (paul.slansky@bellnet.ca) AND FACSIMILE (416) 536-8842

Mr. Paul Slansky
Barrister and Solicitor
1062 College Street, Lower Level
Toronto, ON M6H 1A9

Dear Mr. Slansky:

Re: Donald Best v. Ranking et al | Court File No. 14-0815

Thank you for your letter dated January 19, 2015.

Once again, you should reconsider your position with respect to the motion to set aside the noting in default based on the merits of the motion that your client is forcing us to argue.

With respect to the jurisdiction motion, we will file appropriate material to support our motion.

Sincerely,

POLLEY FAITH LLP

Mark Polley
MP/jg

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H

THIS IS **EXHIBIT "H"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015


A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**

Only the Westlaw citation is currently available.

NOTICE: NOT DESIGNATED FOR
PUBLICATION. UNDER TX R RAP RULE 47.7,
UNPUBLISHED OPINIONS HAVE NO
PRECEDENTIAL VALUE BUT MAY BE CITED
WITH THE NOTATION "(not designated for
publication)."

Court of Appeals of Texas, Dallas.
COOPERS & LYBRAND-BARBADOS, Marcus
Hatch, and **Coopers & Lybrand** International,
Appellants.

v.

TIG INSURANCE COMPANY, **TIG Insurance**
Company of Michigan, **Tig Specialty Insurance**
Company, and **Tig Premier Insurance** Company,
Appellees.

No. 05-98-01997-CV.

May 25, 1999.

On Appeal from the 134th Judicial District Court,
Dallas County, Texas, Trial Court Cause No. 97-
04065-G.

Before KINKEADE, MALONEY, and JAMES, JJ.

OPINION

JAMES.

*1 Coopers & Lybrand-Barbados (Barbados), Marcus Hatch, and Coopers & Lybrand International (International) appeal the denial of their special appearances in a suit brought by TIG Insurance Company, et al. (TIG). In a single issue, appellants contend the trial court erred in denying their special appearances. We affirm the trial court's order denying Barbados's and Hatch's special appearances. We reverse the trial court's order denying International's special appearance.

FACTUAL BACKGROUND

TIG is a group of insurance companies incorporated

in California or Michigan and whose national administrative headquarters are located in Irving, Texas. TIG arranged to reinsure part of its risks with a Barbados company, Commercial Acceptance Insurance Company. Under the agreement with TIG, Commercial Acceptance had to show a net worth of at least ten million dollars on audited financial statements before TIG was obligated to release its premium payments to Commercial Acceptance. Commercial Acceptance hired Coopers & Lybrand-Barbados to perform the audit to show Commercial Acceptance's net worth as of December 31, 1994. Hatch was the partner with Barbados in charge of the audit. Barbados performed the audit with the assistance of the Sacramento and San Francisco offices of Coopers & Lybrand L.L.P. During the audit process, Hatch and others at Barbados kept TIG informed of the status of the audit through letters, faxes, telephone conversations, and E-mail.

On May 31, 1995, Barbados issued a draft of the audit report showing Commercial Acceptance had a net worth of \$6.75 million on December 31, 1994. Representatives of Commercial Acceptance, Barbados, and TIG held a conference call on June 7, 1995 to discuss the draft audit report. TIG's representative expressed concern over the draft report, and the parties discussed factors that could alter the \$6.75 million net worth.

On June 26, 1995, Barbados issued a second draft of the audit report. This draft showed a net worth of only \$1.05 million on December 31, 1994. This draft was not circulated to or discussed with TIG.

On July 15, 1995, Barbados issued a third draft of the audit report showing a net worth of \$10.76 million. In August 1995, Barbados completed the audit and reported that Commercial Acceptance had a net worth of \$10.06 million. TIG then released its premium payments of \$7.6 million to Commercial Acceptance. In October 1995, Barbados withdrew the audit report and told TIG it had under-reported Commercial Acceptance's liability for unearned premiums by more than ten million dollars. Instead of having a net worth of over ten million dollars, Commercial Acceptance's net worth on December 31, 1994 was less than zero. Barbados issued a new audit

report in March 1996 showing Commercial Acceptance had a negative net worth of nine million dollars on December 31, 1994.

TIG brought suit in Texas state district court against Barbados, Hatch, International, and Coopers & Lybrand L.L.P. alleging that the defendants negligently prepared the audit, intentionally or negligently made misrepresentations to TIG, and committed fraud or constructive fraud by representing in its audit of Commercial Acceptance that the company had a net worth exceeding ten million dollars. TIG alleged it would not have paid the \$7.6 million dollars in premiums to Commercial Acceptance if the defendants had properly audited Commercial Acceptance and not reported in August 1995 that Commercial Acceptance had a net worth of more than ten million dollars on December 31, 1994.

*2 Barbados, Hatch, and International filed special appearances, which the trial court denied. These defendants bring an interlocutory appeal from the denial of their special appearances. See TEX.CIV.PRAC. & REM.CODE ANN. § 51.014(a)(7) (Vernon Supp.1999).

SPECIAL APPEARANCES

A Texas court may exercise jurisdiction over a nonresident defendant if (1) the Texas long-arm statute authorizes the exercise of jurisdiction and (2) the exercise of jurisdiction is consistent with federal guarantees of due process. See TEX.CIV.PRAC. & REM.CODE ANN. §§ 17.041-.045 (Vernon 1997); Schlobohm v. Schapiro, 784 S.W.2d 355, 356 (Tex.1990); Temperature Sys., Inc. v. Bill Pepper, Inc., 854 S.W.2d 669, 674 (Tex.App.-Dallas 1993, writ dism'd by agr.). The Texas long-arm statute authorizes the exercise of jurisdiction over a nonresident that does business in Texas. See TEX.CIV.PRAC. & REM.CODE ANN. § 17.042 (Vernon 1997); Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C., 815 S.W.2d 223, 226 (Tex.1991). In addition to other acts that may constitute doing business, a nonresident does business in Texas if the nonresident: (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in Texas; (2) commits a tort in whole or in part in Texas; or (3) recruits Texas residents, directly or through an intermediary located in Texas, for

employment inside or outside Texas. See TEX.CIV.PRAC. & REM.CODE ANN. § 17.042 (Vernon 1997). The broad language of the Texas long-arm statute has been interpreted to reach as far as the federal constitutional requirements of due process will permit. See Guardian Royal Exch., 815 S.W.2d at 226; Schlobohm, 784 S.W.2d at 357.

Federal due process requirements mandate that the defendant must have purposefully established minimum contacts with Texas such that the nonresident could reasonably anticipate being sued in Texas. See Nat'l Indus. Sand Assoc. v. Gibson, 897 S.W.2d 769, 772 (Tex.1995). We determine whether (1) the nonresident defendant has purposefully established "minimum contacts" with Texas and, if so, (2) the exercise of jurisdiction comports with "notions of fair play and substantial justice." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-76, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); see Guardian Royal Exch., 815 S.W.2d at 226.

A defendant's contacts with a forum can give rise to either general or specific jurisdiction. See CSR Ltd. v. Link, 925 S.W.2d 591, 595 (Tex.1996). General jurisdiction exists when a defendant's contacts are continuous and systematic, permitting the forum to exercise personal jurisdiction over the defendant even if the cause of action did not arise from or relate to activities conducted within the forum state. See id. General jurisdiction requires a showing that the defendant conducted substantial activities within the forum. See id. In contrast, specific jurisdiction is established if the defendant's alleged liability arises from or is related to its contacts within the forum. See id.

Burden of Proof

*3 The plaintiff has the initial burden of pleading facts sufficient to bring a nonresident defendant within the provisions of the Texas long-arm statute. See Hotel Partners v. KPMG Peat Marwick, 847 S.W.2d 630, 633 (Tex.App.-Dallas 1993, writ denied). When a nonresident defendant challenges a trial court's exercise of personal jurisdiction through a special appearance, it carries the burden of negating all bases for personal jurisdiction. See Kawasaki Steel Corp. v. Middleton, 699 S.W.2d 199, 203 (Tex.1985).

Standard of Review

The exercise of personal jurisdiction requires the trial judge to resolve any factual disputes before applying the jurisdictional formula. *See Hotel Partners v. Craig*, No. 05-92-01625-CV, slip op. at 5 (Tex.App.-Dallas Dec. 30, 1994, pet. denied). When, as here, the trial judge fails to make findings of fact and conclusions of law, we view the trial court's judgment as impliedly finding all the necessary facts to support its judgment. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex.1990).

On appeal, the appropriate standard of review of the trial court's order granting or denying a special appearance is a de novo review, applying the supreme court's jurisdictional formula. *See Craig*, slip op. at 6. We apply a factual sufficiency of the evidence review to all of the evidence before the trial judge on the question of jurisdiction. *See Craig*, slip op. at 5; *KPMG Peat Marwick*, 847 S.W.2d at 632; *see also Guardian Royal Exch.*, 815 S.W.2d at 231-32. Once all factual disputes are resolved or if the facts are undisputed, we examine de novo whether the facts negate all bases for personal jurisdiction. *See Craig*, slip op. at 6.

COOPER & LYBRAND-BARBADOS AND MARCUS HATCH

In a single issue, Barbados and Hatch assert the trial court abused its discretion in denying their special appearances. They argue the Texas courts cannot assert personal jurisdiction over them because the transactions underlying this lawsuit occurred in Barbados and California and not in Texas and because they have no substantial and continuous contacts with Texas. Barbados and Hatch had the burden of negating all possible bases of in personam jurisdiction. *See Kawasaki Steel Corp.*, 699 S.W.2d at 203.

Viewing the evidence in the light favorable to the trial court's judgment, the record in this case contains evidence that Barbados and Hatch knew the audit would be used by TIG in Texas to determine whether to release premium payments to Commercial Acceptance. Copies of much of the correspondence between Hatch and Commercial Acceptance were directed to TIG. Barbados and Hatch also had so many telephone and E-mail communications with

TIG employees regarding the performance of the audit and the preliminary figures from the audit that Commercial Acceptance reminded Barbados and Hatch that it, not TIG, was their client.

*4 Barbados and Hatch rely on a federal case, *Young v. FDIC*, 103 F.3d 1180 (4th Cir.), *cert. denied*, 522 U.S. 928, 118 S.Ct. 329, 139 L.Ed.2d 255 (1997), in support of their argument. In that case, Young obtained a \$550,000 letter of credit from a Bahamian insurance company, SAFIG. To assure Young that it had sufficient assets to back the letter of credit, SAFIG showed Young an audited financial statement prepared by Price Waterhouse-Bahamas stating SAFIG had twelve million dollars on deposit in a South Carolina bank. *See id.* at 1184. In fact, SAFIG, did not have twelve million dollars on deposit in that bank. *See id.* at 1185. Price Waterhouse-Bahamas based its report regarding the twelve-million-dollar deposit on information on a form it received from the South Carolina bank. When SAFIG's letter of credit failed, Young sued Price Waterhouse-Bahamas in South Carolina. The Fourth Circuit held Price Waterhouse-Bahamas' connection with South Carolina, the receipt of a single form from the South Carolina bank, was too tenuous to permit the assertion of personal jurisdiction over the firm. *See id.* at 1191. Young argued Price Waterhouse-Bahamas should be amenable to suit anywhere in the country because it was foreseeable that its audited financial statements might be relied on anywhere in the world. *See id.* at 1192. The Fourth Circuit rejected this argument because "'foreseeability' alone is not 'a sufficient benchmark for personal jurisdiction under the Due process Clause.'" *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980)).

Young is distinguishable from this case because Barbados's and Hatch's connections with Texas are not just a single document but are a series of communications with TIG. Also, it was not merely "foreseeable" to Barbados and Hatch that TIG would be relying on the audited financial statements; they knew TIG would rely on the audited financial statements to determine whether to pay premiums to Commercial Acceptance.

Barbados and Hatch also rely on *Trierweiler v. Croxton & Trench Holding Corp.*, 90 F.3d 1523 (10th Cir.1996). In that case, Trierweiler loaned money to

Croxton & Trench. See *id.* at 1530. The loan was backed by a guaranty from Dublin and by a security interest in GNMA bonds held by Dublin. Trierweiler insisted that Dublin send him an attorney's opinion letter stating that he could obtain an enforceable perfected security interest in the GNMA bonds under the terms of the security agreement. See *id.* Dublin, a Colorado company, hired an attorney in Colorado who drafted the requested letter which Dublin sent to Trierweiler. See *id.* at 1531. Relying on the letter's assurance that Trierweiler could obtain an enforceable perfected security interest in the bonds, Trierweiler advanced the money to Croxton. See *id.* at 1530-31. Later, Croxton defaulted and Dublin refused to pay on its guaranty. See *id.* at 1531. Trierweiler then learned Dublin did not own the bonds and he had no enforceable security interest in the bonds. See *id.* Trierweiler sued many defendants, including the Colorado attorney who drafted the opinion letter for Dublin. See *id.* at 1532. Trierweiler alleged the attorney negligently failed to confirm whether Dublin owned the bonds, failed to tell Trierweiler he had not confirmed Dublin's ownership of the bonds, and failed to tell Trierweiler he needed to confirm Dublin's ownership of the bonds. See *id.* at 1531. The trial court held the Michigan court did not have specific jurisdiction over the attorney. See *id.* at 1533. On appeal, the Tenth Circuit agreed, stating the Colorado attorney could not foresee being haled into Michigan court for preparing an opinion letter for a Colorado company, Dublin, for the benefit of a Florida resident, Trierweiler, whose attorney would review the letter in Michigan. See *id.* at 1534.

*5 The facts in this case distinguish it from *Trierweiler*. In *Trierweiler*, no Michigan resident detrimentally relied on the letter. Here, the party relying on Barbados's and Hatch's audit, TIG, was a Texas-based company bringing suit in Texas for damages it suffered through its reliance in Texas on the audit. The connections with Texas in this case are much more direct than the tenuous connections with Michigan in *Trierweiler*.

Barbados and Hatch also rely on *CMMC v. Salinas*, 929 S.W.2d 435 (Tex.1996). In that case, a Texas winery ordered a winepress from KLR, a winery-equipment retailer that did not have a place of business in Texas. See *id.* at 436; *Salinas v. CMMC*, 903 S.W.2d 138, 141 (Tex.App.-Austin 1995), *rev'd*, 929 S.W.2d 435 (Tex.1996). KLR ordered the

winepress from CMMC, a French manufacturer. The winery negotiated its purchase of the press through KLR and had no direct communication with CMMC. CMMC's only knowledge that the press would be used in Texas was the shipping directions of F.O.B. Port of Houston. Salinas, a worker in the winery, was injured by the press and sued CMMC in Texas. The court of appeals held that CMMC's release of its winepress into the stream of commerce with knowledge of the intended destination is sufficient to subject it to personal jurisdiction. See *CMMC*, 929 S.W.2d at 437; *Salinas*, 903 S.W.2d at 145. The supreme court disagreed and held the "stream of commerce" theory did not provide the Texas courts personal jurisdiction over CMMC because there was no "regular and anticipated flow of products from manufacture to distribution to retail sale" by CMMC into Texas. *CMMC*, 929 S.W.2d at 439 (quoting *Asahi Metal Indus. v. Superior Court*, 480 U.S. 102, 117, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987)).

CMMC is distinguishable because it relied on the rules for personal jurisdiction arising from goods placed in the stream of commerce. This case does not involve goods in the stream of commerce but the rendition of professional services. Barbados and Hatch do not explain how the performance and reporting of an audit are analogous to the sale of goods. They cite no cases showing that the concerns surrounding personal jurisdiction of manufacturers and sellers of goods in the stream of commerce are the same for providers of professional services. Even if the stream of commerce rule were applicable, we would still find *CMMC* distinguishable because CMMC's contacts with Texas were far weaker than Barbados's and Hatch's. CMMC's only contact with Texas was its knowledge that its product was being shipped to Texas for use in Texas. CMMC had no contact with the winery or Salinas, the injured worker. Barbados and Hatch, however, had so many communications with TIG in Texas concerning the audit that Commercial Acceptance reminded Barbados and Hatch that it, not TIG, was their client.

*6 In analyzing minimum contacts, it is not the number, but rather the quality and nature of the nonresident's contacts with Texas that are important. See *Rowland & Rowland, PC. v. Texas Employers Indem. Co.*, 973 S.W.2d 432, 435 (Tex.App.-Austin 1998, no pet.); *Memorial Hosp. Sys. v. Fisher Ins. Agency*, 835 S.W.2d 645, 649 (Tex.App.-Houston

[14th Dist.] 1992, no writ). In determining whether there is a substantial connection between the nonresident defendant and the forum state, foreseeability is a factor considered. See *Memorial Hosp. Sys.*, 835 S.W.2d at 650. Where a defendant sends false information into a state, knowing it will be relied upon by the resident of the forum state, there is a foreseeable consequence of direct economic injury to the resident at its domicile. See *id.* Therefore, if the tort-feasor knows that the brunt of the injury will be felt by a particular resident in the forum, it must reasonably anticipate being haled into court there to answer for its actions. See *id.*

In this case, the record supports a finding that Barbados and Hatch sent false information into Texas, knowing it would be relied upon by TIG in determining whether to release the \$7.6 million premium payment to Commercial Acceptance. The record also supports a finding that Barbados and Hatch knew the brunt of the injury from their alleged misrepresentation and fraud would be felt in Texas by TIG from its loss of the \$7.6 million premium payment. Considering these facts de novo, we hold the trial court did not err in determining Barbados and Hatch could reasonably anticipate being haled into a Texas court to answer for their actions and that Texas courts have specific jurisdiction over them.

Having found the record supports a finding of specific jurisdiction, we must determine whether the assertion of jurisdiction in this case would offend traditional notions of fair play and substantial justice. See *Guardian Royal Exch.*, 815 S.W.2d at 228. In making this determination, courts consider the following factors:

1. The burden on the defendant;
2. the interests of the forum state in adjudicating the dispute;
3. the plaintiff's interest in obtaining convenient and effective relief;
4. the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and
5. the shared interest of the several states in

furthering fundamental social policies.

See *id.* When the defendant is a resident of another nation, the court must also consider the procedural and substantive policies of other nations whose interests are affected by the assertion of jurisdiction by a state court, including the following factors:

1. the unique burdens placed upon the defendant who must defend itself in a foreign legal system; and

- *7 2. the procedural and substantive policies of other nations whose interests are affected as well as the federal government's interest in its foreign relations policies.

See *id.* at 228-29.

In the section of their brief arguing fair play and substantial justice, Barbados and Hatch do not argue the applicability of any of these factors but continue to assert their lack of minimum contacts with Texas. We have already determined the trial court did not err in determining Texas courts have specific jurisdiction over Barbados and Hatch. In the interest of justice, we will consider the *Guardian* factors.

Hatch travels to Texas to do some marketing for Barbados in Texas; thus, Hatch's and Barbados's attendance at a trial in Texas for negligently or intentionally injuring a Texas-based company should not be overly burdensome, even for foreign defendants. Texas has a strong interest in adjudicating this dispute involving allegations that these defendants, through their negligence, misrepresentations, and fraud, caused millions of dollars in damages to a Texas-based company. Texas and the interstate judicial system share the same interest in the convenient and efficient resolution of this lawsuit in a single jurisdiction instead of piecemeal throughout the United States and the world. Texas and Barbados share the same interest of assuring the public that the audited financial statements used by companies in their jurisdictions are correct and that the accountants preparing those financial statements do not attempt to mislead or defraud the public relying on those financial statements. Finally, we know of no detrimental effect this lawsuit could have on the federal government's foreign policies. We conclude the trial court did not err in determining the Texas court's assertion of

personal jurisdiction over Barbados and Hatch in this case would not offend traditional notions of fair play and substantial justice.

We hold the trial court did not err in denying Barbados's and Hatch's special appearances. We resolve their issue against them.

COOPERS & LYBRAND INTERNATIONAL

In its sole issue, International questions whether the trial court erred in denying its special appearance. The record shows International is a non-profit limited-liability association formed as a "Verein" under the law of Switzerland. The members of International are accounting and related service organizations through the world practicing under the name "Coopers & Lybrand." International's purpose is to:

Foster mutual support, cooperation and cohesion among the members with a view to their practices; give a common image to the members; identify business opportunities for the members and establish priorities; Establish professional standards of work, behaviour and ethics for the performance of services and ensure compliance with such standards; Provide advice to the members on the conduct of their practice; Promote the national and international standing of the services of the members.

*8 International is a distinct and separate legal entity from Barbados and Coopers & Lybrand, L.L.P. International has never conducted business in Texas. International was not involved in the audit of Commercial Acceptance and made none of the alleged misrepresentations.

TIG argues International is subject to the jurisdiction of the Texas courts because it uses the "Coopers & Lybrand" name and promotes its use throughout the world, including in Texas. It appears TIG is attempting to argue that International may be liable to TIG under a theory of partnership by estoppel. However, even if the doctrine of partnership by estoppel were applicable, it is a theory of liability only, not a theory to confer jurisdiction by estoppel. See *Howard v. Klynveld Peat Marwick Goerdeler*, 977 F.Supp. 654, 662-63 (S.D.N.Y.1997), *aff'd*, No. 98-9326 (2d Cir. Apr. 16, 1999); *Estate of Pinckard*

v. Lafontant, 94 Ill.App.3d 34, 49 Ill.Dec. 346, 417 N.E.2d 1360, 1367-68 (Ill.App.Ct.1980).

Reviewing the sufficiency of the evidence, we conclude the evidence is insufficient to support the trial court's implied findings that International had sufficient minimum contacts to support the Texas court's exercise of personal jurisdiction over it. The record shows International successfully negated all bases for personal jurisdiction. We hold the trial court erred in denying International's special appearance. We resolve International's issue in its favor.

We affirm the trial court's orders denying the special appearances of Marcus Hatch and Coopers & Lybrand-Barbados. We reverse the trial court's order denying the special appearance of Coopers & Lybrand International and direct the trial court to dismiss Coopers & Lybrand International from this cause for want of personal jurisdiction.

Tex.App.-Dallas,1999.

Coopers & Lybrand--Barbados v. TIG Ins. Co.

Not Reported in S.W.2d, 1999 WL 326303 (Tex.App.-Dallas)

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THIS IS **EXHIBIT "I"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015

A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and -

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH; PAUL BARKER SCHABAS;
ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX; ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON; PRICEWATERHOUSECOOPERS
EAST CARIBBEAN (FORMERLY 'PRICEWATERHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE; MARTY KEARNS; JEFFERY R. VIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK; JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.; TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.; TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

AFFIDAVIT OF DONALD BEST

I, Donald Best, of the County of Simcoe, Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. Introduction of Plaintiff and Background

2. I am the Plaintiff in this case. I am 60 years of age. I am Canadian born, in Ontario where I have always been resident. Although I was forced starting in late 2009 to spend over two years outside of Canada as a direct result of the actions of Eric Iain Stewart Deane ('Iain Deane') and his co-conspirators, I have never applied for or been granted residency or citizenship in any other country. My status between late 2009 and late 2012 while travelling in other countries was that of a visitor.
3. I am a former deep undercover police officer, Sergeant (Detective) with the Toronto Police and investigator of organized crime with about three decades of service in the police and private undercover law enforcement. This is relevant as the defendant Iain Deane and his co-conspirators were well aware of my background and that I was a member of an 'at risk' profession who would therefore have real and understandable concerns for safety. As detailed herein, Iain Deane and his co-conspirators tailored their actions against me to do the maximum harm and long-term damage having regard for my profession and my legitimate concerns for safety.
4. I was a director and shareholder of Nelson Barbados Group Limited ("NBGL"). NBGL commenced a lawsuit in Ontario against Deane and others, who were represented by the lawyers and law firm defendants in the present action. Ultimately, Justice Shaughnessy stayed this proceeding on jurisdictional grounds. The present case does not seek to relitigate those issues, which were not appealed. Rather, the lawsuit seeks to sue some of those defendants and their lawyers, law firms, investigators and police regarding the abusive and tortious manner in which they conducted the civil contempt proceedings, and, in particular, the opposition to my application to set aside the contempt that commenced in late 2012 and continued into 2014.

5. Iain Deane and his co-conspirators waged and continue to wage a long-term campaign of harassment, intimidation, violence and other criminal acts against myself, other plaintiffs, witnesses, lawyers and our family members who oppose Iain Deane and his co-conspirators in various past and current legal actions ('The Campaign'). The Campaign is designed to deter myself and other persons from seeking justice through the courts, or being a witness or lawyer in opposition to Iain Deane and his co-conspirators in high-stakes litigation involving assets worth hundreds of millions of US dollars.
6. These harmful actions by Iain Deane and his co-conspirators included recklessly and illegally distributing to members of the public and publishing on the internet, my Identity Information as defined by the Criminal Code. Iain Deane and his co-conspirators also published on the internet, exhortations to criminals I had arrested and investigated in the past to hunt my family and me down. The defendants published my driver's licence number, date of birth, address history since I was 17 years old and my parents' address; all illegally obtained/distributed and from government, police, and Toronto Police Association records in about October of 2009.
7. The defendants published the names of two of my children on the same website where they urged criminals to hunt me down. They published my photo. Defendants and their supporters posted on the internet that I should be shot, and threatened to come to the house of one of my witnesses in Florida to slit their throat as they slept. Much more remains published on the internet to this day, although some writings have since been moderated. The ongoing publishing of identity information and exhortations to criminals continues to put me and others at risk of crimes including but not limited to physical attacks, fraud and identity theft. I have been forced to live with this since 2009, as a direct result of the defendants' acts. The acts and the harm still continue to this day.

8. Subsequent to the defendants publishing my Identity Information in October of 2009, Iain Deane and his co-conspirators recklessly, maliciously and illegally distributed to the public, tens of thousands of digitized pages of privileged and confidential legal files containing all manner of Identity Information and other private information for me and others, including; full names, addresses, computer accounts and passwords, passport numbers and full passport copies, photos, dates of birth, personal medical reports, detailed bank account information, signature copies, and many legally privileged case files belonging to other clients of my company's previous lawyer when these clients had nothing to do with me whatsoever. This action was maliciously calculated to harm my witnesses, my former lawyer, me and members of our respective families and other persons; most of whom had nothing at all to do with the defendants or associated litigation.
9. In October and November 2009, after Iain Deane and his co-conspirators published my Identity Information on the internet and called for criminals to hunt me down, my family and I began to receive frightening anonymous phone calls. One of Iain Deane's co-conspirators or supporters physically approached, intimidated and overtly threatened one of my children. On November 5, 2009 I was ambushed and physically beaten on the street. Later, our family automobile was shot up while parked at night near the family home.
10. As will be detailed later, this was all in the context of other terrible things happening during the Campaign, including that one of my witnesses on the Caribbean island nation of Barbados was abducted at gunpoint in a home invasion, and beaten until he sustained serious head injuries. The circumstances of the event are such that the occurrence may have been a prelude to murder that was fortunately interrupted by the arrival of other family members. The police told my witness, and I verily believe, that one of the persons involved in the planning of this home invasion is associated

with at least two of the Barbados defendants in my current case: Kingsland Estates Limited and Richard Ivan Cox, co-conspirators of Mr. Deane.

11. On November 11, 2009 I was forced to leave Canada on an unplanned and emergency basis to protect my family and myself. We journeyed to New Zealand where I intended to leave my family with extended family for safety, so I could return to Canada and deal with the crisis. I now know that Iain Deane and his co-conspirators used a court order to learn my whereabouts; after which thugs again targeted me in New Zealand soon after our arrival. My family and I again were forced to leave, and sought safety in other countries while I attempted to deal with the situation.
12. As further detailed herein, while this was going on in late 2009 and January 2010, Iain Deane and his co-conspirators fabricated and placed provably false evidence before the Ontario Superior Court designed to precipitate a finding of civil contempt against me. I was not made aware of these proceedings prior to their commencement. Once I became aware of them, I attempted to deal with the situation from abroad. Further materials were purportedly sent to me which I never received until after the finding of contempt. On January 15, 2010 upon this false evidence I was convicted *in absentia* of Contempt of Court in a civil case costs hearing and sentenced to three months in jail. As remarked upon by His Honour Justice Shaughnessy, this was essentially a private prosecution with the lawyer defendants acting as the prosecutors at the behest of their clients.
13. The defendants rushed the Contempt of Court procedure through the court in a few weeks over the Christmas season, notwithstanding that the lawyers and their clients knew that I was half way around the world to protect my family, was unrepresented by counsel, not served of many crucial legal documents, not notified of the hearing and that their Campaign was the reason that I had left Canada and was seeking

safety for my family. The defendants also knew that they had fabricated false evidence against me and placed this before the court.

14. While evidence to this effect was later presented to the Court on an application to set aside the finding of contempt, Justice Shaughnessy refused to consider this evidence and said that the matter should be brought to the attention of the Court of Appeal by way of fresh evidence application. Later, the Court of Appeal deferred to this refusal to consider the evidence on motions but never considered this evidence or decided the appeal on the merits. The appeal was dismissed because of my inability to pay costs.
15. The defendants knew that one of the pieces of false evidence was that they had falsely told the court in writing and orally that I had informed them during a November 17, 2009 phone call that I had received a copy of a certain court order. In fact, I said exactly the opposite to them many times, but the defendant lawyers lied to the Court about this and about other 'evidence' used to convict me. The defendant lawyers did not know that I secretly made a voice recording of the November 17, 2009 phone call that proves they deliberately lied to the court many times.
16. When I returned to Canada to clear my name and appeal my conviction, defendants successfully used legal manoeuvres and obfuscation and my lack of legal representation to convince Justice Shaughnessy to not consider strong evidence, including irrefutable voice recordings, that showed they had fabricated evidence and lied to the court to obtain my conviction and incarceration. Similarly, defendants refused to be cross-examined. They admittedly continued to oppose my efforts to set aside the contempt through manipulation and fraud, for admitted purposes which were clearly an abuse of process.
17. The defendants also concealed from me and from the Superior Court, the Appeal Court and the Supreme Court of Canada that their 'expert witness' (defendant Van

Allen) was in fact a serving OPP Detective Sergeant, illegally working for the defendants 'on the side' in violation of various laws including, *inter alia*, the *Police Services Act*, the *Private Security and Investigative Services Act* and the *Criminal Code*. The Court of Appeal refused to admit this evidence on a motion in respect of the appeal, regarding costs and removal of counsel. However, the appeal itself and a final determination of whether this was admissible fresh evidence on that appeal was never considered.

18. The defendants also lied to, and committed a fraud upon, the Superior Court, the Appeal Court and the Supreme Court of Canada in the matter of 'PricewaterhouseCoopers East Caribbean Firm' ('PWCECF'), when they told these courts in writing and orally, under oath and as officers of the court, that PWCECF was a genuine registered business entity in Barbados. In fact, 'PWCECF' does not exist now and never has. The defendants fraudulently fabricated this non-entity for the purpose of avoiding liability in the Nelson Barbados Group Ltd v Cox lawsuit, and to commit a fraud upon the court in those proceedings and in the civil contempt proceedings against me. I was convicted of Contempt of Court and thrown into jail upon the request, in part, of lawyers, Mssrs. Ranking and Kwydzynski, purportedly representing a non-entity. These lawyers and other defendants knew this and participated in this fraud on the Court.

19. The defendants demanded that I be incarcerated in respect of a purported refusal to provide documents and to attend to be examined in respect of costs against me personally on the Nelson Barbados Group Limited action. There was no basis nor court order that allowed me to be held personally liable for costs in respect of NBGL. In any case, prior to my application to set aside the contempt, all of the civil costs on that action were settled in full. The costs in respect of the civil contempt proceedings were not included in this settlement. However, those costs orders were not costs in respect of which the documents and examination were sought. This would have been impossible. The costs flowed from contempt proceedings to obtain

such documents and examinations. Accordingly, once the costs of the action were settled in full in 2010, there was no longer any need to obtain these documents or conduct this examination. The opposition to my application to set aside the civil contempt served no legitimate purpose since it was in furtherance of costs on the action that had been settled in full in 2010. The real reason to obtain these documents and to conduct this examination was to obtain information and/or a tactical advantage in respect of litigation in other jurisdictions. One of the lawyer defendants, Mr. Ranking, twice volunteered this during examinations on the record before special examiners and admitted it in open Court before Justice Feldman of the Court of Appeal. This was reflected in Justice Feldman's reasons on a motion, in which she found that the ground of appeal, that the opposition to the motion to set aside the contempt finding was an abuse of process, had merit. The appeal on this issue was never heard because the appeal was dismissed due to my inability to pay the costs orders.

20. In 2013 when I was unrepresented by counsel, I was incarcerated at the behest of defendants and spent my full sentence in solitary confinement, notwithstanding that the defendants knew they had fabricated evidence and lied to the court in writing and orally and abused process to convict me. The fact that I was to be imprisoned in torturous solitary confinement for the full term of my imprisonment was known to defendants prior to them demanding I be incarcerated after my return to Canada; yet they still demanded of the court that I be incarcerated.

21. Iain Deane and the other defendants committed these acts for improper purposes, including inter alia, to obtain evidence for use in other litigations outside of Canada, to extort a settlement from me and from others in other litigations happening in other jurisdictions, and to deter others from seeking justice through the courts in matters concerning the Kingsland Estate.

22. As described more fully later, Iain Deane and the Barbados defendants defaulted in this current civil case because, *inter alia*, they know that all of the above is true, and that they have no viable defence. Strategically they also they desire to deny the court the evidence, exhibits and knowledge they possess as they know this evidence will further incriminate them and other defendants, including the Canadian defendants who have not defaulted.

2. PURPOSE OF AFFIDAVIT

23. I swear this affidavit in support of a motion for an order:

- a. granting default judgement against the defendant ERIC IAIN STEWART DEANE;
- b. abridging the time for service of this motion;
- c. permitting the filing of a factum in support of the default judgment not to exceed 50 pages.
- d. Further, a permanent injunction that the Defendant Deane, and any other person allowed to participate in this motion, may not directly or indirectly distribute or publish any personal information of the Plaintiff, except to the extent ordered by the court and with such protective orders that can be made to provide such protection;
- e. an interim injunctive order that to seal, redact or otherwise protect (non-publication) the private and confidential information filed with the court on this motion to ensure the safety and security of the plaintiff and others;
- f. Such further remedy as the Court feels is just and appropriate;

and for no improper purpose.

3. CURRENT MOTION

24. On July 18, 2014, my lawyer Paul Slansky filed on my behalf a Statement of Claim in the current case 'Best v Ranking' Court File No. 14-0815 before the Superior Court of Justice, Central East Region, Barrie, Ontario; naming Eric Iain Stewart Deane as a defendant, along with others. A copy of the notarized affidavit of Oliver David Moon September 22, 2014, is attached hereto as Exhibit "A" of this affidavit includes a copy of the Statement of Claim.

25. On September 3, 2014, process server Oliver David Moon personally served the defendant Iain Deane with the Statement of Claim and Jury Notice at Iain Deane's home at 6 Augustines Way, Haywards Heath, West Sussex, RH163JH, England. This is clear from paragraph 7 of the September 22, 2014 notarized affidavit of Oliver David Moon (Exhibit "A", *supra*).

26. After being personally served, not only did Iain Deane fail to serve and file a Statement of Defence as required by the Rules of Civil Procedure, Iain Deane never contacted my lawyer Paul Slansky or the Court by any means.

27. On November 7, 2014, my lawyer Paul Slansky filed a Requisition for Default against the defendant Iain Deane, on the grounds that he failed to file a defence to my Claim within the period required by the Rules of Practice. A copy of the Requisition for Default against Iain Deane filed November 7, 2014 is attached hereto as Exhibit "B".

28. Iain Deane's default is deliberate and strategic, and is done, *inter alia*, in order to benefit other defendants.

29. For reasons listed below, I verily believe that defendant Iain Deane's default and failure to file a defence to my Statement of Claim is deliberate and strategic, and that his decision to default came after extensive consideration, almost certainly in consultation with his lawyers and other defendants, as to the possible benefits, consequences and risks of this strategy to default.

30. For reasons listed below, I verily believe that Iain Deane would certainly know that under Ontario's Rules of Civil Procedure, by failing to respond to a Statement of Claim, he has admitted that the facts in the Statement of Claim are true, and he has given up the ability to be notified of, or participate in further court procedures. Iain Deane would know that the Court could now issue a Default Judgement.

31. For the following reasons, I verily believe that Iain Deane's default is deliberate and strategic, and is done, *inter alia*, in order to benefit other defendants:

- a. Iain Deane is a sophisticated and experienced litigator, who, according to his own sworn affidavit and other statements, has legal training and worked for seven years as an articulated legal clerk in a Barbados law office.
- b. In addition to his knowledge and experience gained through his legal training, qualifications and previous duties and employment as a law clerk, Iain Dean is well familiar with civil litigation court procedures and international court procedures as a result of his personal experience. Since 1982, Iain Deane has been executor of the Colin Deane Estate of Barbados, and since that time has been both plaintiff and defendant in extensive and well-funded litigations having to do with the Estate and associated entities where the total involved assets are valued in the hundreds of millions of US dollars. In fact, the total value of the subject assets at one time approached one billion US dollars.

- c. For over three decades, Iain Deane instructed lawyers in Barbados, the United Kingdom and Canada to do with ongoing estate and 'Kingsland' litigations in each of those countries, and in the Caribbean Court of Justice. He also testified, was cross-examined and swore to various affidavits. I cannot imagine a more experienced, knowledgeable and well-funded litigant who is not a lawyer himself.
- d. Iain Deane was and still is personally impacted by the outcomes of the various ongoing litigations and therefore would naturally maintain a keen interest in any litigation involving himself. From 2007 through 2010, Iain Deane was a defendant in the Nelson Barbados Group Ltd. v Cox civil case ('Nelson Barbados case') in Ontario Superior Court, where Nelson Barbados was the plaintiff. He is intimately familiar with litigation in Canadian courts involving Nelson Barbados, his co-conspirators and myself, Donald Best.
- e. Iain Deane is experienced in misusing legal systems to avoid accountability. As recently as 2013, Iain Deane was the subject of decisions by the Caribbean Court of Justice and Barbados Court of Appeal concerning his failure to make any accounting to the beneficiaries of the multi-million dollar estate of Colin Deane during his 30+ years as executor and trustee. For over three decades Iain Deane has refused to account for, gather and distribute assets to beneficiaries as required of a trustee and executor. He has treated the assets of the Estate as his personal property, and through well-financed manoeuvres in and out of the courts and other strategies as assisted by his co-conspirators, avoided his legal duties. This was possible in Barbados where it is generally acknowledged by members of the Bar that even relatively minor civil matters such as non-fatal traffic accidents and condominium disputes routinely take up to 15-20 years or more to be heard and decided.

- f. To my current knowledge, Iain Deane remains in default of the 2013 Caribbean Court of Justice and Barbados Appeal Court rulings that he must properly account.
- g. Iain Deane holds UK, Barbados and Canadian citizenships and by his own evidence lived and worked in Canada a total of 18 years; from 1972 to 1982 and again from 2001 to 2006. This further indicates his knowledge of Canadian laws and legal procedures. During at least some of this time he had access to and sent communications in his own name through the Miller Thomson LLP computer network, as will be detailed later. I do not know if Iain Deane's association with Miller Thomson LLP was only as a client, or if he ever worked as a Miller Thomson LLP employee, law clerk or contractor.
- h. The harmful actions by Iain Deane and his co-conspirators against me as detailed later in my affidavit are part of a long-running campaign of harassment, intimidation, violence and other criminal acts against myself, other plaintiffs, witnesses, lawyers and our family members who oppose and opposed Iain Deane and his co-conspirators in various past and current legal actions ('The Campaign'). The Campaign is designed to deter myself and other persons from seeking justice through the courts, or being a witness or lawyer in opposition to Iain Deane and his co-conspirators in high-stakes litigation involving assets worth hundreds of millions of US dollars. As detailed later in my affidavit, the internet portion of the Campaign started at least as early as 2003.
- i. Iain Deane is aware that he and his co-conspirators face strong evidence implicating them in the overall Campaign and other acts of wrongdoing. Some of this evidence has been previously delivered to Iain Deane, his lawyers and co-conspirators during the Nelson Barbados case, and in other legal matters in Canada, Barbados and Florida.

- j. **Iain Deane is aware that filing a Statement of Defence or otherwise answering my Statement of Claim would expose him to cross-examination and the production of evidence for the court that would further implicate him and his co-conspirators in the Campaign of harassment, intimidation, violence and other criminal acts. He knows that he and his co-defendants cannot possibly refute the evidence against them, and that he, along with other defendants from Barbados as well as the lawyer defendants have been prolific in using the internet including the Barbados Underground Blog, in furtherance of their Campaign.**
- k. **Iain Deane knows that he and his co-conspirators maliciously distributed to the public and published on the internet, privileged and private information and made threats against me and others who support me. Iain Deane knows that the evidence against him and his co-conspirators includes irrefutable voice recordings, business records, internet records, court transcripts and legal records showing the commission of various criminal acts in support of the overall Campaign. This knowledge is strong motivation for Iain Deane and other defendants to default, because they know that they have no viable defence, and they do not want to add evidence to the already strong case against them.**
- l. **As a result of statements made by defendant Richard Ivan Cox during the Nelson Barbados civil case, I verily believe that Cox, Iain Deane and the other Barbados defendants are confident that a judgement from a Canadian court will never be able to be enforced in Barbados. This further indicates that a joint strategy is behind the defaults by Iain Deane and other Barbados defendants. Further, this is consistent with what some of Iain Deane's anonymous supporters on Barbados Underground Blog have said: that a**

Barbados Court would be unlikely to enforce a judgement issued by a Canadian Court.

- m. Iain Deane's default in my case greatly benefits all the other defendants from Canada and Barbados because it is likely that Iain Deane has real evidence, exhibits, communications and knowledge of the misconduct and actions of the defendants who were his co-conspirators. Because of Iain Deane's default, such evidence and knowledge will now be unavailable to me as plaintiff, to the court and to some other defendants who have chosen not to default. I verily believe that this limiting of damaging evidence is part of the motivation for the deliberate default strategy by Iain Deane and his Barbados co-conspirators / co-defendants.
- n. On December 3, 2014, all the Barbados-based defendants named in my Statement of Claim were also noted in default after failing to file a Statement of Defence. These 'Barbados defendants' and co-conspirators with Iain Deane are: KINGSLAND ESTATES LIMITED; RICHARD IVAN COX; MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON; PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY 'PRICEWATERHOUSECOOPERS'). (EXHIBIT C: DEFAULT FOR BARBADOS DEFENDANTS).
- o. The joint default of all Barbados defendants and Iain Deane shows a unity of purpose and a considered strategy amongst these parties.
- p. As is evident in the September 22, 2014 affidavit of professional process server Oliver David Moon, Iain Deane attempted to evade service of my Statement of Claim and Jury Notice. Further, Iain Deane's spouse assisted by lying to Mr. Moon about Iain Deane's whereabouts.

32. For all of the above reasons, I verily believe that Iain Deane's default in my civil case is deliberate, strategic and coordinated with other defendants, because it also greatly benefits all defendants as described.

33. To counter the deliberate sabotage of evidence by Iain Deane and the other defaulting defendants, I believe it will be important for the court to listen to the digital voice recordings and consider the other powerful evidence including court transcripts, business and internet records that prove that Iain Deane and the other defendants and their lawyers acted jointly to mislead the courts, to imprison me upon false and fabricated evidence for illegal and improper purposes, and improperly attempted to use the Ontario courts for the purpose of obtaining evidence for use in other litigation in other jurisdictions.

34. Further, I believe it is important for the court to listen to the digital voice recordings and consider the strong evidence proving that Iain Deane and the other defendants are part of a long-running Campaign of harassment, intimidation, violence and other criminal acts against myself, other plaintiffs, witnesses, lawyers and our family members who oppose and opposed Iain Deane and his co-conspirators in current and past legal actions.

4. General Description of the Campaign and Harm

35. The harmful actions by Deane and his co-conspirators against me as detailed herein and in other affidavits previously submitted to the courts are part of a long-running Campaign of harassment, intimidation, violence and other criminal acts against myself, other plaintiffs, witnesses, lawyers and our family members who oppose and opposed the defaulted defendants and their co-conspirators in current and past legal actions ('The Campaign').

36. Although the Campaign was initially directed against others, and started many years before I became involved with the Nelson Barbados litigation, I became a target in 2007 when I was the Director of NBGL, an Ontario corporation, that became a plaintiff against Iain Deane and his co-conspirators.
37. The Campaign consists of criminal acts using various means of delivery including, but not limited to, the internet, physical mischief, intimidation, violence and abuse of court procedures. The evidence shows that some of the acts against me and others occurred in Canada, while others happened in Barbados, the United Kingdom, Florida and in Asia.
38. Iain Deane and his co-conspirators conducted the Campaign in a public manner, and publicized the Campaign and individual acts in furtherance of the Campaign to ensure maximum impact upon victims and potential victims. The publication of Campaign misconduct or 'successes' against one victim was intended to deter other persons from seeking justice through the courts, or being a witness or lawyer in opposition to Iain Deane and his co-conspirators. This is evident in anonymous postings on Barbados Underground website and other internet venues wherein defendants and their supporters publicly encourage acts of harassment, stalking and violence (including murder), as intimidation, punishment and deterrence against myself, my lawyers, my witnesses and our family members.
39. The Campaign is a true conspiracy in law and fact, as each of the acts of harassment, threats, violence, criminal and other misconduct by individual defendants was and is in furtherance of the overall joint goals of the Campaign and the participants. There is strong evidence showing cooperation, communication, coordination and joint actions amongst defendants in the implementation of various acts during the Campaign.

40. For instance, as one illustration of the coordination and joint actions of Iain Deane and all the Barbados and lawyer defendants, plus some police defendants, in relation to the anonymous publication of harassing and threatening communications on Barbados Underground website ('BU'), evidence shows that:

- a. Since 2008 Iain Deane and other defendants were and still are in 2014 heavily involved with anonymously publishing harassing and threatening communications against me and others on Barbados Underground website ('BU').
- b. The lawyer defendants and their clients knew of my background as an undercover investigator of organized crime with almost three decades of service in the police and in private undercover law enforcement. They knew that I was a member of an 'at risk' profession where it is usual for persons to use unlisted phone numbers and mailbox addresses to protect themselves, their home and their family members.
- c. According to defendant Iain Deane, Miller Thomson LLP lawyer Andrew Roman provided Iain Deane, his client, with court documents relating to me and others. On January 28, 2009, Roman suggested in writing to Iain Deane that Deane should publish the documents on the anonymous website BU. At the time, both Roman and Deane were well aware that BU was an Internet website with a long history of publishing harassment and threats against persons opposing Iain Deane in litigation. Further, it was previously stated on BU on December 8, 2008 that Nelson Barbados court documents published on BU were published with the permission of person(s) in authority amongst the Campaign co-conspirators.
- d. In other words, defendant Miller Thomson lawyer Andrew Roman, and other controlling minds directed that some of the Campaign acts were to be done through Barbados Underground and on the Internet in furtherance of the

Campaign. This and other evidence detailed herein causes me to believe that the Campaign, at least in part, was planned, managed and coordinated by the defendant lawyers and law offices in collaboration with their clients and others.

- e. In October of 2009 defendants Miller Thomson LLP, Gerald Ranking, Sebastien Kwidzinski, Jim Van Allen, Behavioural Science Solutions Group Inc. and Tamara Jean Williamson recklessly and illegally distributed to the public my Identity Information as defined in the *Criminal Code*; including my driver's licence number, date of birth, full name, address history since I was 17 years old, my parents' address and my medical records as held by the Ontario Ministry of Transport. This and other information about my family and me was published anonymously on October 30, 2009 on Barbados Underground website, along with calls for rogue police officers and criminals I had previously investigated to hunt me down. As well, the article exhorted readers, any disaffected family members and anyone who had information about me to send the information to Cassels Brock and lawyer Lorne Silver, and provided Mr. Silver's email address and other contact information.
- f. Immediately after the publication of the October 30, 2009 BU article I received harassing and frightening phone calls in the middle of the night. One of my children was approached by a person who showed my child the BU article about me, and asked if I was the child's father. My child was frightened and intimidated and answered that I was no relation to them. The co-conspirator or supporter of Iain Deane threatened that my child had "better not be" related to me.
- g. On the morning of November 5, 2009 I was ambushed and physically assaulted in an obviously targeted warning directed specifically at me. I detailed this in my sworn affidavit of April 18, 2012, as filed in the Ontario

Superior Court. I believe this and the other attacks on my child, my family and me were all part of the same Campaign as was the publication of my identity information and threats against me in the October 30, 2009 BU article.

- h. I knew from the content of the October 30, 2009 BU article that rogue police personnel had illegally accessed and distributed confidential police information about me, and that at least some of that information had been published on the internet, along with exhortations for criminals to hunt me down. I knew there were one or more police insiders illegally providing confidential information about me, and perhaps about my family members. However, I did not obtain sufficient information to come to any conclusions about who did what until 2014.
- i. What I discovered in 2014, and did not know until that time was that one of these insiders was the defendant James (Jim) Arthur Van Allen, who was in 2009 and 2010 a serving Ontario Provincial Police Detective Sergeant actually in charge of the OPP's Criminal Profiling and Threats Assessment Unit. Faskens, Ranking and Kwidzinski illegally hired Van Allen 'on the side' to work against me as an unlicensed private investigator. Van Allen's and the lawyers' actions in this regard were in violation of various laws including, inter alia, the Police Services Act, the Private Security and Investigative Services Act and the Criminal Code. Initially, I was told in 2013 by the Ontario Provincial Police Professional Standards Unit that Van Allen was retired from the OPP at the time he acted as a private investigator and swore his October 21, 2009 affidavit that was used to convict me. This was later discovered by me to be a lie by the Ontario Provincial Police. The history of the discoveries regarding Van Allen is set out in the February 11, 2014 sworn affidavit of Toronto lawyer Che Claire, which was a part of the February 14,

2014 Motion Record as filed with the Appeal Court of Ontario. This Che Claire affidavit includes two invoices from Jim Van Allen to Gerald Ranking.

- j. The Che Claire affidavit and February 14, 2014 Appeal Court Motion Record provide extensive details on the role played by Van Allen and some other police defendants in the Campaign, and with other documents explains how Iain Deane, his lawyer Andrew Roman and other defendants, used Van Allen's criminal activities and fabricated and false evidence to improperly convict and imprison me for Contempt of Court.
- k. During a November 17, 2009 phone call with defendants Silver, Ranking, Kwidzinski and other lawyers, Lorne Silver lied to me when he stated that he didn't know who had hired the private investigator who distributed my Identity Information. During the phone call I accused Mr. Silver of having a part in the criminal acts against my family and me. My accusation was later borne out to be true.
- l. During the November 17, 2009 phone call in desperation and fear I explained that my Identity Information and my confidential police employment records had been obtained by a private investigator and published on the internet, along with death threats, and that I and my family were now at risk of identity theft. Mr. Silver's reply was to state that he didn't care and wouldn't help me even if he could. Mr. Silver said this to intimidate me and also my family members. The defendant lawyers present with Mr. Silver overheard this and eventually lied to and deceived the court about what was said during the conversation.
- m. When I wrote to the lawyers and the court on December 1, 2009 and complained about what was said to me in the telephone call, and that the lawyers lied to the court about the call, the defendants Ranking, Silver, Kwidzinski, Roman, Zemel and Schabas lied to the court directly and / or by

their silence. At the time they lied to the court, they did not know that I had secretly recorded my telephone call with the lawyers, which irrefutably proves the lawyers deliberately lied to and deceived Justice Shaughnessy.

- n. Defendant CASSELS BROCK & BLACKWELL LLP ('Cassels') as part of the Campaign, set aside a portion of its Toronto-based computer network servers to recklessly distribute to the public, unredacted documents having to do with litigation involving Kingsland. Cassels then anonymously posted the URL (Internet address) on Barbados Underground website on an internet post containing overt threats and harassment of witnesses. Cassels invited the general public to download the documents as part of the Campaign.
- o. Also as part of the Campaign, co-conspirator 'PricewaterhouseCoopers LLP' of 3109 W. Dr. M. L. King Jr. Blvd, Tampa, Florida USA set aside a portion of its computer network servers to recklessly distribute to the public, unredacted documents having to do with litigation involving Kingsland. 'PricewaterhouseCoopers LLP' then anonymously posted the URL (Internet address) on Barbados Underground website on an internet post containing overt threats and harassment of witnesses, and invited the general public to download the documents as part of the Campaign.

41. Request for Directions in Filing of Evidence and Supplementary Affidavit

42. In support of the motion for default judgement, I will be filing in due course a major Supplementary Affidavit, which of necessity will be voluminous and supported with many exhibits. For reasons of convenience and efficiency for the Court and all parties, and also to ensure the safety and security of myself, my family and others, I am respectfully asking the Court for directions in filing my supplementary affidavit, exhibits and other documents in this case.

43. Complexity and Volume of Evidence

44. It is respectfully submitted that the documents are too voluminous to be filed in paper format, and it would facilitate submissions and argument if the Plaintiff is permitted to file copies of all supporting evidence in electronic format (native, pdf, MP3 etc) on a USB memory stick or DVD computer disk for ease of presentation and access by the court.

45. I now list a few examples of the necessity for this use of electronic formats during my civil case:

- a. During the Nelson Barbados Group Ltd. v Cox civil action wherein I was convicted of Contempt of Court, the defendants filed with the court tens of thousands of documents amounting to about one hundred thousand pages, more or less. The majority of these were filed with the court in electronic format on DVDs, with only a few selected documents being reproduced on paper. These documents are vital exhibits in my current case and motion, and in their current electronic form are searchable for ease of reference. If delivered in paper format, searching the documents for specific evidence and issues will effectively be impossible.
- b. During my current case and in support of the current motion, I will be filing as exhibits many hundreds of web pages that were captured in electronic form to begin with. Similarly if delivered to the court in electronic form these exhibits will be instantly searchable electronically and greatly enhance the efficiency of the court process.
- c. During my current case and in support of the current motion, I will also be filing exhibits containing over one hundred and fifty thousand logged website visits, including communications from the defendants and others, having to do with this case. For instance, part of this evidence shows that some defendants communicated with witnesses in their own names, and then later sent anonymous

threatening and harassing communications from the same law office or with the same computer but from a different location.

- d. All this evidence has been originally collected in electronic form and so will be searchable electronically and greatly enhance the efficiency of the court process.

46. Security, Safety and Confidentiality

47. As described below and in other sections of my affidavit, there are serious and well-founded concerns that the evidence to be filed in this case not be misused or otherwise threaten the safety and security of myself or others. Many of the exhibits I will use to support my affidavits and my case contain Identity Information as defined in the Criminal Code and other confidential and private information.

48. It is respectfully requested that the Court declare a protocol and issue an order to seal, redact or otherwise protect the private and confidential information filed with the court to ensure the safety and security of the plaintiff and others.

49. This is unfortunately necessary as in previous litigation involving Nelson Barbados Group Ltd., a company of which I was director, the defendants distributed to the general public tens of thousands of pages of privileged, confidential and private documents, and/or information gained from the documents, and publicly posted the documents and/or information from the documents on the internet, often prior to the documents being filed with the court.

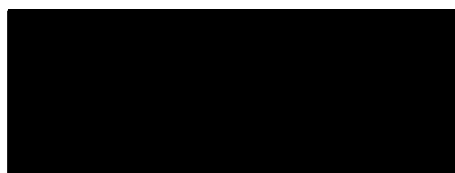
50. Tens of thousands of pages of these documents and information came from the legal files of Nelson Barbados previous lawyer, while other documents or information were illegally obtained from government, police and police association records.

51. These documents contain extensive Identity Information as defined in the Criminal Code for my witnesses, my lawyer, myself, our family members and for other legal

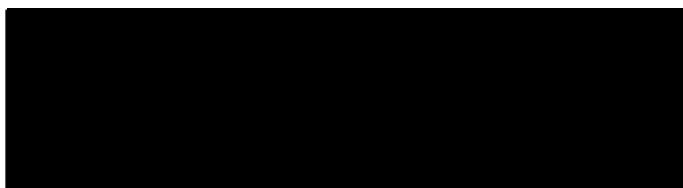
clients not even remotely associated with me or the litigation in question. As one example of the outrageous abuse; the defendant lawyers and their defendant clients even obtained, distributed to the general public and posted on the internet, medical records and end of life instructions to hospital staff for an elderly and dying family member who had nothing at all to do with me or this case.

52. As a result of the defendants' actions, the safety and security of many persons was destroyed. The information is still in the hands of the general public, and much of it continues to be published on the internet to this very day, where the information is still regularly used to attempt identity theft and other crimes against my family members, myself and others.

Sworn before me at the City of Barrie)
 In the County of Simcoe)
)
 This 15th day of December, 2014)



Donald Best



A Commissioner, etc.

*Ann Cecelia Renick, a Commissioner,
 etc., Province of Ontario,
 for the Government of Ontario,
 Ministry of the Attorney General.*

THIS IS EXHIBIT "A"
REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS
15th DAY
OF December, 2014

A Commissioner etc.

EXHIBIT A**AFFIDAVIT OF SERVICE**

I, Oliver David Moon, professional process server, make oath and say as follows:

On Saturday, August 23, 2014 at about 7:45pm, I attended at the home address of Defendant Eric Iain Stewart Deane at 6 Augustines Way, Haywards Heath, West Sussex, RH163JH, England. The door was answered by a male person who verbally identified himself as Mr. Jeremy Deane.

Jeremy Deane informed me that Eric Iain Stewart Deane was currently out of the United Kingdom, visiting Canada, and would not be returning home until October 20, 2014. Jeremy Deane told me that he was unaware of a contact address or telephone number for the Defendant Deane.

On Wednesday, September 3, 2014 I again attended at the Deane residence at 7:15am, and knocked on the door for several minutes. As previously, Mr. Jeremy Deane answered the front door.

I informed Mr. Deane that I was aware that he was the married partner of Eric Iain Stewart Deane, and that he had misled me on my previous visit as to the defendant Deane's travels and his (Jeremy Deane's) purported inability to contact the defendant.

Jeremy Deane told me that the defendant Eric Iain Stewart Deane was in bed but was not willing to come down at such an early time. Jeremy Deane then closed the door. I carried on knocking but did not receive any further response.

Less than an hour later on September 3, 2014 at about 8:05am, I re-attended at the Deane residence and this time the door was opened by Eric Iain Stewart Deane, who confirmed his identity to me. I then personally served Eric Eain Stewart Deane with the Statement of Claim and Jury Notice, copies of which are attached hereto as Exhibits A and B respectively.

Further, I attach hereto as Exhibit C a true copy of the Title to the Deane residence at 6 Augustines Way, Haywards Heath, West Sussex, RH163JH, England, as obtained online from the Land Registry, showing that the Registered owner of the property is the defendant Eric Iain Stewart Deane. I make this affidavit for no improper purpose.

Sworn before me at
10 Assetts Road Horsham
Sussex RH12 7PR
This 29th Day of September, 2014

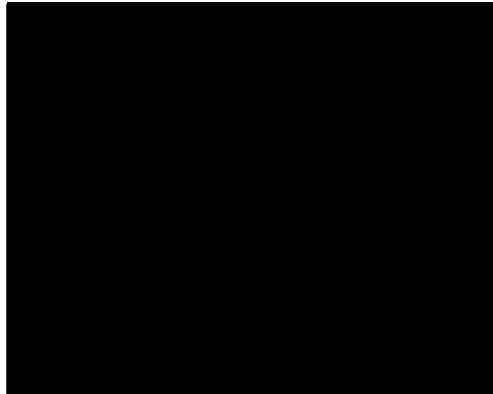
Oliver David Moon

Notary Public

Noel D Chapman
Notary Public
England and Wales

Noted No 0159
2014

This is Exhibit 'A'
to the Affidavit of Oliver David Moon
sworn September 22nd, 2014



Noel D Chapman
Notary Public
England and Wales

EXHIBIT A

62

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and -

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE *a.k.a.* PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE;
MARTY KEARNS; JEFFERY R. VIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

*(Court seal)***STATEMENT OF CLAIM****TO THE DEFENDANTS**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date July 18, 2014

Issued by 

Local Registrar

75 Mulcaster Street
Barrie ON L4M 3P2

TO: Gerald Lancaster Rex Ranking
Barrister and Solicitor
Fasken Martineau DuMoulin LLP
333 Bay St.
Suite 2400
Toronto, ON
M5H2T6
Tel: (416) 865-4419
Fax: (416) 364-7813

AND TO: Sebastien Jean Kwidzinski
Barrister and Solicitor
Fasken Martineau DuMoulin LLP
333 Bay St.
Suite 2400
Toronto, ON
M5H2T6
Tel: (416) 868-3431
Fax: (416) 364-7813

AND TO: Lorne Stephen Silver
Barrister and Solicitor
Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King St. West
Toronto, ON
MSH3C2
Tel: (416) 869-5490
Fax: (416) 640-3018

AND TO: Colin David Pendrith
Barrister and Solicitor
Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King St. West
Toronto, ON
MSH3C2
Tel: (416) 860-6765
Fax: (647) 259-7987

AND TO: Paul Barker Schabas
Barrister and Solicitor
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9
Tel: (416) 863-4274
Fax: (416) 863-2653

AND TO: Andrew John Roman
Barrister and Solicitor
Andrew John Roman Professional Corporation
900-333 Bay Street
Toronto, ON M5H 2T4
Tel: (416) 848-0203 x2234
Fax: (416) 850-5316

AND TO: Ma'anit Tzipora Zemel
MTZ Law Professional Corporation
39 Clovelly Ave
Toronto, Ontario
M6C 1Y2
Tel: (416) 937-9321

AND TO: Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6
Tel: (416) 366-8381
Fax: (416) 364-7813

AND TO: Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON
M5H 3C2
Tel: (416) 869-5300
Fax: (416) 360-8877

AND TO: Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9
Canada
Tel: (416) 863-2400
Fax: (416) 863-2653

AND TO: Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto, ON
M5H 3S1
Tel: (416) 595-8500
Fax: (416) 595-8695

AND TO: Kingsland Estates Limited
c/o Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Eric Iain Stewart Deane
6 Augustines Way,
Haywards Heath,
West Sussex
R1-1163111, England

AND TO: Marcus Andrew Hatch
'West Shore Lodge'
Greenidge Drive
Paynes Bay, St. James,
Barbados, West Indies

AND TO: Philip St. Eval Atkinson
'Random'
Waterford, St. Michael
Barbados, West Indies

AND TO: PricewaterhouseCoopers East Caribbean
(Formerly 'PricewaterhouseCoopers', prior to June 23, 2011)
The Financial Services Centre
Bishop's Court Hill
St. Michael
BB 14004
Barbados, West Indies
Tel: (246) 626-6700
Faxes: (246) 436-1275 and (246) 429-3747

AND TO: Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: Peel Regional Police Service a.k.a. Peel Regional Police
General Headquarters
7750 Hurontario Street,
Brampton, ON, L6V 3W6
Tel: (905) 453-3311

AND TO: Durham Regional Police Service
General Headquarters
605 Rossland Rd. E,
Whitby, ON, L1N 0B8
Tel: (905) 579-1520

AND TO: Marty Kearns
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: Jeffery R. Vibert
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: George Dmytruk
Central East Division
Durham Regional Police Service
77 Centre St. N.
Oshawa, ON L1G 4B7
Tel: (905) 579-1520

AND TO: Laurie Rushbrook
Durham Regional Police Service
General Headquarters
605 Rossland Rd. E,
Whitby, ON, L1N 0B8
Tel: (905) 579-1520

AND TO: James (Jim) Arthur Van Allen
6450 199 Street
Suite 15
Langley, British Columbia
V2Y 2X1

AND TO: Behavioural Science Solutions Group Inc.
 26 Jordon Crescent
 Orillia, Ontario
 L3V 8A9
 Tel: (604) 626-9572
 Fax: (604) 371-1649

AND TO: Tamara Jean Williamson
 Probation and Parole Services,
 Cottage C,
 700 Memorial Avenue,
 2nd floor,
 Orillia, Ontario L3V 6H1
 Tel: (705) 329-6010

AND TO: Investigative Solutions Network Inc.
 1099 Kingston Road, Suite 237
 Pickering, Ontario L1V 1B5
 Tel: (905) 421-0046
 Fax: (905) 421-0048

AND TO: Toronto Police Association
 200-2075 Kennedy Rd
 Toronto, ON M1T 3V3
 Tel: (416) 491-4301
 Fax: (416) 494-4948

AND TO: John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, and Jane
 Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5

CLAIM

(I) CLAIM: REMEDIES

1. The Plaintiff claims damages in the amount of **\$20,000,000** and other relief as follows:
 - (A) For General Compensatory damages in the amount of \$6,300,000
 - (B) For aggravated damages in the amount of \$3,150,000
 - (C) For punitive/Exemplary Damages in the amount of \$9,500,000

(D) IN RESPECT OF COSTS orders and fees:

- (1) Special damages (in the alternative in respect of a category of general damages) in respect of costs orders made against the Plaintiff and fees paid to counsel for the Plaintiff in respect of contempt proceedings (\$650,000);
- (2) Damages reflecting unjust enrichment of defendants in legal fees purportedly or actually paid to lawyers \$1,000,000
- (3) For a mandatory Order that ANY OR ALL OF the Defendants or any of them are prohibited from taking any actions to collect any cost Orders presently outstanding against the Plaintiff until the final resolution of this action including any appeals.
- (4) For a mandatory Order that, in the event that any other Court has or will require the Plaintiff to pay costs, they shall be set off against the damages and costs to be awarded in this action after trial.
- (5) For an Order that any and all costs Orders to be paid by the Plaintiff to any of the Defendants shall be stayed until the disposition of this action and that such costs shall be deducted from the award of damages and costs that the Plaintiff seeks to recover in this action.

(E) For such INTERLOCUTORY AND/OR FINAL injunctions and other orders as are appropriate to protect the safety and security of the Plaintiff including but not limited to:

- (1) an injunction that the Defendants may not directly or indirectly question or present evidence regarding the personal information of the Plaintiff, except to the extent ordered by the court or required by law in these proceedings and with such protective orders that can be made to provide such protection; and
 - (2) The Plaintiff resides in Simcoe County. For reasons of safety and security, which are discussed below, he wishes that his residence information not be disclosed.
- (F) The Plaintiff seeks a tracing and accounting of the funds that were paid to:
- (1) the Fasken Martineau DuMoulin LLP law firm ('Faskens') and Gerald Lancaster Rex Ranking ('Ranking') allegedly for the account of the fictional entity/business called PricewaterhouseCoopers East Caribbean Firm or any individuals instructing counsel;
 - (2) Lorne Stephen Silver ('Silver'), Cassels Brock & Blackwell LLP ('Cassels') regarding Kingsland Estates Limited ('KEL') or any of its principals.
- (G) For injunctive relief that will require the Defendants to take all necessary actions to de-identify or otherwise effect the removal of all defamatory, private, threatening, and untrue information, Identity Information and documentation relating to the Plaintiff from the internet. And where reasonable, to retrieve from clients and members of the public such information that was illegally/improperly distributed, and to account to the court for each distribution and retrieval or attempted retrieval.
- (H) Full indemnity costs.

(II) THE LIABILITY OF THE DEFENDANTS

A. TERMINOLOGY AND NATURE OF LIABILITY:

2. The following defendants and groups of defendants are jointly and severally liable:

(A) "The Lawyers" refers to one or more of Gerald Lancaster Rex Ranking ('Ranking'), Sebastien Jean Kwidzinski ('Kwidzinski'), Lorne Stephen Silver ('Silver'), Colin David Pendrith ('Pendrith'), Paul Barker Schabas ('Schabas'), Andrew John Roman ('Roman'), Ma'anit Tzipora Zemel ('Zemel'), who are all licensed by the Law Society of Upper Canada to practice law in Ontario.

(B) "The Law Firms" are one or more of the partnerships that the Lawyers worked for, as partners or employees and who are responsible and liable for everything that the Lawyers did or did not do as described in this document. They are Fasken Martineau DuMoulin LLP ('Faskens'), Cassels Brock & Blackwell LLP ('Cassels'), Blake, Cassels & Graydon LLP ('Blakes'), Miller Thomson LLP ('Miller'). These law firms knew, were willfully blind, reckless and/or negligent in permitting and encouraging the Lawyers to commit the tortious conduct described herein.

(C) "The clients" refers to the clients of the lawyers and law firms, including Kingsland Estates Limited ('KEL'), Eric Iain Stewart Deane ('Deane'), Richard Ivan Cox ('Cox'), Marcus Andrew Hatch ('Hatch'), Philip St. Eval Atkinson ('Atkinson') and, in the manner and extent described below, PricewaterhouseCoopers East Caribbean ("PWCEC") and Jane Doe #1 and John Doe #1. Ranking, Kwidzinski and Faskens claimed to represent PricewaterhouseCoopers East Caribbean Firm ("PWCECF"). This entity does not and never has existed. Yet the pleadings and documents filed clearly and

repeatedly declared that the full legal name of their client was PWCECF, not PWCEC or any other entity using "PricewaterhouseCoopers" as a part of its name. This PWCECF defendant was added to the original lawsuit brought by Nelson Barbados Group Ltd based on the false representation by Gerald Ranking that this was the proper name of the their client, the relevant auditor. These lawyers and firm fraudulently claimed to represent this non-entity and in the face of accusations to that effect, refused to provide proof to contradict clear evidence that PWCECF did not and does not exist. Instead, they repeatedly bluffed, misled and lied to the Superior Court, the Court of Appeal for Ontario and the Supreme Court of Canada, insisting that PWCECF did and does exist. They went so far as to twice present documents in the course of examinations showing a name change of a partnership to PWCEC as of June 2011, long after the fraud had begun, while falsely asserting that they were presenting partnership documents of their client, PWCECF, even though the documents clearly referred to PWCEC. PWCEC is included as a defendant on the basis that Messrs. Ranking and Kwidzinski and Faskens insisted that this was their client and because this is, as of 2011, a legal entity. However, it is unclear whether PWCEC was ever their client.

(D) "The police" refers to Regional Police Forces, Durham Regional Police Service ("DRPS") and Peel Regional Police Service ("PRPS") and the following specific persons employed by them: George Dmytruk (DRPS); Laurie Rushbrook (DRPS); and the Provincial Police, the Ontario Provincial Police ("O.P.P.") and the following specific persons: Marty Kearns (OPP); Jeffery R. Vibert (OPP); James (Jim) Arthur Van Allen ('Van Allen') (pre-retirement). Police officers John Doe #2 and John Doe #3 and Jane Doe #2 and Jane Doe #3, as yet unknown were also involved.

(E) The "Van Allen Defendants" refers to Van Allen (pre and post-retirement), Tamara Jean Williamson ('Williamson'), Behavioural Science Solutions Group Inc. ('BSSG') and Investigative Solutions Network Inc.('ISN').

(F) The "Toronto Police Association" ("TPA") refers to the incorporated Toronto Police Association and any individuals dealing with the Plaintiff's case who provided information to Van Allen or others in respect of the Plaintiff, the identities not yet known (Jane Doe #4 and John Doe #4).

(G) The term "defendants" refers to all of the defendants in the style of cause, including those whose identities and/or culpable involvement are not yet known, (John Doe #5 and Jane Doe #5).

3. The defendants knew, were willfully blind, reckless and/or negligent in perpetrating the tortious conduct against the Plaintiff described herein. The natural persons had such knowledge and intent. Corporate persons had such knowledge and intent through their directing minds. Based, *inter alia*, on the bad faith and lack of factual and/or legal authority, the Plaintiff seeks the piecing of the corporate veil in respect of these corporations.
4. The defendants knew (in fact or constructively), intended, (in fact or constructively), were reckless and/or foresaw, as would any reasonable person, that their actions would significantly cause real harm, damage and/or endanger the Plaintiff, physically, emotionally, economically and in respect of his reputation.
5. The defendants acted flagrantly, outrageously, in bad faith, maliciously, fraudulently, contrary to their fiduciary duty and/or dishonestly.

6. The defendants targeted the Plaintiff knowing that their actions would directly and indirectly cause him substantial harm in breach of their well-known and generally recognized legal, fiduciary and/or ethical duties and the legal, fiduciary and/or ethical duties of others. They negligently failed to act in accordance with their legal and ethical duties and thereby failed to act in accordance with the applicable common law and statutory rules and standards of care. They acted in such a way as to create an unreasonable risk of substantial harm.
7. The defendants acted in their private capacity and in their official capacities as prosecutors, investigators, peace officers, probation and parole officers and/or labour officials pursuant to statute and common law authority and as officers of the Court.
8. The defendants conspired to do so collectively in pursuit of an agreement, between one or more of them and others, with the predominant purpose of harming the Plaintiff and/or knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff, using lawful and unlawful means, which caused compensable damage to the Plaintiff.

B. CAUSES OF ACTION

9. The defendants are liable on the following bases are all jointly severally liable on the following general causes of action:

(1) IN RESPECT OF CIVIL CONTEMPT PROCEEDINGS AGAINST THE PLAINTIFF:

- (a) Abuse of Process (Common law and/or s.7 of the Canadian Charter of Rights and Freedoms (the "Charter"))**
- (b) Negligent Investigation (Common law and ss.7 and 9 of the Charter)**
- (c) False Imprisonment (Common law and ss.7 and 9 of the Charter)**
- (d) Intentional and/or Negligent Infliction of Harm and/or Mental Suffering**
- (e) Misfeasance and/or Malfeasance of Public Office and/or Abuse of Authority**
- (f) Malicious Prosecution**
- (g) Conspiracy to Injure the Plaintiff**

**(2) IN RESPECT OF INFRINGEMENT OF PRIVACY OF THE PLAINTIFF
(in the course of an action by Nelson Barbados Group Ltd ("NBGL"), which continued during civil contempt proceedings against the Plaintiff):**

- (a) Breach of Common Law Privacy Rights (intrusion on secrecy)**
- (b) Breach of ss. 7 and/or 8 of the Charter**
- (c) Misfeasance and/or Malfeasance and/or Nonfeasance of Public Office/Abuse of Authority**

- (d) **Abuse of Process (common law and/or s.7 of the charter)**
- (e) **Intentional or Reckless Endangerment (by the infliction of harm and/or mental suffering) and/or Negligent Endangerment**
- (f) **Negligent Investigation (common law and ss.7 and 9 of the charter)**
- (g) **Negligent Regulation/Performance of Statutory Duty (common law and/or s. 7 of the charter)**
- (h) **Breach of Fiduciary Duty/Negligence in Respect of Fiduciary duty**
- (i) **Conspiracy to Injure and/or Conspiracy to do Unlawful Act and/or Causing Loss by Unlawful Means**

**(3) IN RESPECT OF EVIDENCE GATHERING BY JAMES VAN ALLEN
AND THE POLICE**

- (a) **Misfeasance and/or Malfeasance and/or Nonfeasance of Public Office/Abuse of Authority**
- (b) **Abuse of Process (common law and/or s.7 of the charter)**
- (c) **Negligent Regulation/Performance of Statutory Duty (common law and/or ss. 7 and/or 8 of the charter)**
- (d) **Negligent Investigation (common law and ss.7 and 8 of the charter)**
- (e) **Invasion of Privacy (Intrusion on Secrecy)**

(f) **Conspiracy to Injure and/or Conspiracy to do Unlawful Act and/or
Causing Loss by Unlawful Means**

**(4) IN RESPECT OF FRAUD ON THE COURT IN CIVIL CONTEMPT
PROCEEDINGS RE PRICEWATERHOUSECOOPERS EAST
CARIBBEAN FIRM ("PWCECF")**

(a) **Abuse of Process (common law and/or s. 7 of the charter)**

(b) **Breach of Fiduciary Duty to the Court**

(c) **Misfeasance and/or Malfeasance of Public Office/ Abuse of Authority**

(d) **Conspiracy to Injure and/or Conspiracy to do Unlawful Act and/or
Causing Loss by Unlawful Means**

C. GROUPINGS OF DEFENDANTS REGARDING LIABILITY

10. The following defendants are primarily jointly and severally liable in respect of the following causes of action, without limiting the generality of the foregoing:

(1) FASKENS DEFENDANTS:

11. Ranking, and Kwidzinski are lawyers in Toronto. Their law firm is Faskens. Their purported client, PWCECF, does not exist. However, PWCEC was later purportedly created and/or identified as the client and individuals instructed counsel at Faskens. Hatch and Atkinson are accountants who work in Barbados and other locations. The partnership PWCEC may have been a client of the Faskens Defendants. These defendants, along with others named as John Doe Defendants (John Doe #1 and Jane Doe #1), concocted a non-existent entity to carry out the activities set out in this claim: 'PricewaterhouseCoopers East Caribbean Firm' (PWCECF) is a fictitious name used by them and other more persons who are known to some or all of the other Defendants. They are all jointly and severally liable for all damages and costs and other relief in respect of all causes of action.

(2) CASSELS DEFENDANTS

12. Silver and Pendrith are lawyers in Toronto. Their law firm is Cassels. Their client is KEL and Cox. They are jointly and severally liable for all damages and costs and other relief in respect of all causes of action.

(3) BLAKES DEFENDANTS

13. Schabas is a lawyer in Toronto. His law firm is Blakes. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(4) MILLER DEFENDANTS

14. Roman and Zemel are lawyers in Toronto. Their law firm is or was Miller. Their client is Eric Iain Stewart Deane. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(5) REGIONAL POLICE DEFENDANTS

15. The DRPS and PRPS are Police Services constituted according to the *Police Services Act*, R.S.O. 1990, c. P-15. George Dmytruk and Laurie Rushbrook were police officers employed by or on behalf of the DRPS. John Doe #2 and Jane Doe #2 were police officers employed by or on behalf of the DRPS and/or the PRPS. These persons spoke on behalf of their police service and conducted illegal and unnecessary investigations of the Plaintiff and also provided the fruits of these investigations to the lawyers, law firms and clients, primarily, but not exclusively the Faskens and Cassels Defendants, through Van Allen and the Van Allen Defendants. They also conspired with these defendants to injure the Plaintiff and/or to cover up for their own and the Van Allen defendants' unlawful activities. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(6) PROVINCIAL POLICE DEFENDANTS

16. The OPP is a Police Force constituted according to the *Police Services Act*, R.S.O. 1990, c. P-15. Marty Kearns, Jeffery R. Vibert, James (Jim) Arthur Van Allen, John Doe #3 and Jane Doe #3 were police officers employed by or on behalf of the OPP, spoke on behalf of their respective police services and conducted illegal and unnecessary investigations of the Plaintiff

over and above and/or in violation of their normal duties and responsibilities and also provided the fruits of these investigations to the lawyers, law firms and clients, primarily, but not exclusively the Faskens and Cassels Defendants, through Van Allen and the Van Allen Defendants. They also conspired with these defendants to injure the Plaintiff and/or to cover up for their own and the Van Allen defendants' unlawful activities. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3). Marty Kearns, Jeffery R. Vibert, James (Jim) Arthur Van Allen, John Doe #3 and Jane Doe #3 are personally responsible for their actions pleaded herein.

(7) VAN ALLEN DEFENDANTS

17. James Van Allen was an OPP police officer. He was at the same time purportedly and unlawfully acting as a private investigator for the defendants. His investigation used police resources directly or indirectly, with the knowing or negligent cooperation of the police (DRPS, PRPS and OPP) and the TPA. Van Allen and/or the police conducted an unlawful secret investigation of the Plaintiff premised on his conviction for civil contempt before this conviction had occurred. This investigation was then reflected in a misleading affidavit filed by the Faskens defendants on behalf of the non-existent PWCECF. The Van Allen defendants also recklessly and illegally distributed to the public, the Plaintiff's Identity Information and other private information. Van Allen did so in a personal capacity and as an officer and director of his company, Behavioural Science Solutions Group Inc., Van Allen's and Williamson's company (as Directors and/or Shareholders) and Van Allen's then girlfriend or common law spouse, Tamara Jean Williamson are also liable for Van Allen's action carried out in his personal and/or corporate capacities. Investigative Solutions Network Inc. acted with knowledge of Van Allen's

status as a serving police officer and assisted him in respect of his tortious conduct. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(8) TORONTO POLICE ASSOCIATION DEFENDANTS

18. The Defendant Police Association is an incorporated entity which represents active and retired police officers and others which are its members. The TPA and Jane Doe #4 and John Doe #4 provided confidential information regarding the Plaintiff, a former police officer, whose identity and location, if revealed would place his life and safety in danger as a former undercover officer. It indeed had this effect. They are jointly and severally liable for all damages and costs and other relief primarily in respect of causes of action as described in paragraph 9, groupings (1), (2) and (3).

(9) OTHER DEFENDANTS

19. The reference to the Defendants as "defendants" or 'they' herein refers to all persons or groups of the Defendants who are known among themselves but not to the Plaintiff and conspirators, known or unknown. They include John Doe #5 and Jane Doe #5. Particulars will be provided following full discovery.

III. PARTICULARS OF THE CLAIM

A. CHRONOLOGY AND LIABILITY

20. The Plaintiff had been an officer of Nelson Barbados Group Ltd ("NBGL"). NBGL commenced action in the Superior Court by Statement of Claim against Ontario and Barbados Defendants. Some of the Defendants brought a motion to contest jurisdiction, which was granted and the action was stayed by Justice Shaughnessy of the Superior Court of Justice ("SCJ") in 2008. The merits of the action were never adjudicated. The only issue remaining issue was costs.

21. When the issue of costs was being considered, the Plaintiff was deprived of counsel and compelled to act as unrepresented litigant.

22. Costs submissions were to proceed on November 2, 2009 and the Plaintiff understood that costs were going to be assessed that day against NBGL which stood ready to pay them. The Plaintiff indicated, on behalf of NBGL, that he would not be attending but leave the issue in the hands of the Court.

23. Prior to November 2, 2009 the Plaintiff was not aware that costs were being sought against him personally. There was never advanced a theory to justify this position and it was never adjudicated *inter partes*. There was no legitimate or lawful basis to seek costs against the Plaintiff Best. This was pursued for an improper and collateral purpose(s), to wit, an excuse to seek discovery of the Plaintiff, a means to intimidate the Plaintiff and/or a means to deter the commencement or continuation of litigation by other parties based on the same general circumstances in other jurisdictions. This ulterior or collateral purpose was repeatedly admitted to the SCJ and the OCA in the course of costs and contempt proceedings in respect of costs.

24. The lawyers, law firms and clients used an affidavit of Van Allen, described as a private investigator to demonstrate that the Plaintiff could not be served with process, and/or that the Plaintiff's actions and motivations were improper and/or suspect. This was known by the Van Allen defendants and the lawyers, law firms and clients to be false and/or misleading. This was successfully used to allow for purported service by mail, which was largely ineffective due to the improper actions of the defendants, including (but not limited to) an intentional campaign to endanger the Plaintiff, forcing him to leave the country with his family for his and their safety, and placing false information and evidence before the court. All of this resulted in the Plaintiff not getting timely notice of court motions or orders, resulting in contempt orders and costs orders against him.

25. In fact, Van Allen was a serving police officer for the OPP at the time of his investigation of the Plaintiff and the swearing of his affidavit. He was not legally allowed to act as a private investigator and his actions in doing so were illegal and void. The Defendants colluded and conspired to cover this up and that his actions were in violation of the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies. Van Allen's investigations of the Plaintiff and creation and swearing of his affidavit took place through his contract with Van Allen and/or his company and Faskens. Van Allen and the Lawyers and Law Firms, in particular but not exclusively the Faskens defendants, prepared the affidavits and redacted invoices to conceal the unlawful use of police services, resources and searches by Van Allen under the instructions and misinformation provided by other defendants. This information was used to secure substituted service orders, in the investigation of the Plaintiff for contempt and to secure an improper

conviction for contempt. The information contained in an affidavit of Van Allen was later relied upon by Justice Shaughnessy in finding the Plaintiff guilty of contempt.

26. During the costs process against NBGL, the Defendant lawyers, law firms and clients brought a motion for the production of documents and examination of the Plaintiff, the President and director of NBGL, and for substituted service on the Plaintiff by mail in relation to costs against NBGL. The materials were not served on NBGL or the Plaintiff before it was returnable on November 2. Using the Van Allen affidavit, the clients, lawyers and law firms were able to convince Justice Shaughnessy on this *ex parte* application to validate service by mail and courier. In Van Allen's affidavit, Justice Shaughnessy was falsely led to believe that the Plaintiff was evading service, and/or that his motivations and actions were improper. Although no endorsement was made, the Court indicated a willingness to grant the order subject to the determination of the terms by the parties in attendance on November 2, 2009. The order was not created and signed until November 12, 2009, even though it required the Plaintiff to produce certain documents on November 10, 2009: two days before the order came into existence.

27. There was no legitimate or lawful basis to seek the discovery of the Plaintiff in respect of costs. This was pursued for an improper and collateral purpose(s), to wit, as a means to intimidate the Plaintiff and/or a means to deter the commencement or continuation of litigation by persons and entities other than the Plaintiff, based on the same general circumstances, in other jurisdictions. This ulterior or collateral purpose was repeatedly admitted to the SCJ and the OCA in the course of costs and contempt proceedings in respect of costs.

28. A draft order which allegedly required document production on November 10 and examination in Toronto (Victory Verbatim) on November 17, 2009, was purportedly sent by

courier on November 6, 2009 to the Plaintiff at the address indicated in the order for substituted service. In fact, the material was never sent by mail, courier or otherwise and as the Plaintiff later advised the Court and the parties, he did not receive the materials or any order, but first learned of the order when he called the trial coordinator to find out was ordered in respect of costs, on November 16, 2009.

29. On November 17, 2009, the Plaintiff called Victory Verbatim Reporting and spoke to the lawyers, primarily Ranking and Silver. The Plaintiff had asked that the conversation take place on the record (recorded by the Special Examiner's office). The lawyers refused. The Plaintiff indicated that he did not have the materials purportedly sent on November 6, 2009 and, in particular, he did not have the November 2 order. He did not have a copy of it. He indicated that he just found out about the order and the examination the day before. He indicated that he could not attend that day or the next. The Plaintiff asked to be examined by telephone. He agreed to answer questions. The lawyers refused to conduct the examination by telephone. They threatened contempt proceedings.

30. During the November 17, 2009 call to Victory Verbatim the Plaintiff refused to tell the lawyers where he was at the time. He indicated that he would not say where he was because he was concerned about his safety and the safety of his family. In fact, the Plaintiff had fled Canada with his family due to the illegal actions of the defendants, and was in the Western Pacific at the time. The Plaintiff alleged that persons, including Mr. Silver or members of his firm, had released confidential information including Identity Information about him (date of birth, drivers license information, addresses and employment records) that was put on the internet that had led to identity theft, death threats and intimidation of him. The Plaintiff is a former police officer and an undercover operator against, inter alia, organized crime and violent criminals. The

Plaintiff asked questions about what Mr. Silver or his firm had done to allow this confidential information to be released onto the internet. Mr. Silver's response was a denial of responsibility and statements to the effect that he did not care and would not help the Plaintiff even if he could.

31. The dissemination and publishing of confidential information received by Van Allen and through proceedings on the earlier action did in fact take place. This caused the Plaintiff actual physical harm. He was assaulted. It caused actual damage to property and economic loss, in that, *inter alia*, he and his family were forced to flee Canada, the family car was shot up, gang members subsequently tracked him down in New Zealand and forced the Plaintiff and his family to flee that country. The Plaintiff suffered significant, visible and provable injury and long lasting mental suffering.

32. The lawyers, law firms and clients knew about this dissemination and publishing of confidential information and, in fact, were actively involved in the dissemination and publication. They did so knowing and intending that would likely endanger the life of the Plaintiff and the life and/or safety of his family. They conspired with Van Allen and the police to injure him in this manner. Even after the Plaintiff begged them to stop distributing to the public his and his family members' private information including Identity Information, the lawyers, law firms and clients distributed and published even more of this confidential information, which they continue to do to this day. The lawyers, law firms, clients and police later conspired to cover up this unlawful activity and the unlawful nature of Van Allen's "private" investigation services while he was a police officer. They did so flagrantly and outrageously. They did so knowing that this was unlawful and criminal. They did so intentionally for the improper and collateral purposes of encouraging the Plaintiff to leave Canada or as a means to pressure him and others in respect of litigation and potential litigation in

other jurisdictions. As officers of the Court, the lawyers and law firms were acting in an official state capacity. Van Allen, as a serving police officer and the police were state agents.

33. The Toronto Police Association ('TPA') owed a fiduciary duty to the Plaintiff and the other defendants knew of this fiduciary duty and the dishonest breach of trust which is explicitly described in Van Allen's affidavit. They assisted in the breach of the fiduciary duty by employing Van Allen to conduct this investigation and by distributing, publishing and disseminating the confidential information. Ranking and the other defendants knew or were willfully blind to the fact of the breach of fiduciary duty by TPA and Van Allen.

34. It was known by the defendants that the distribution, dissemination or publishing of private and confidential information, including Identity Information as defined in the Criminal Code, described above would likely cause physical harm and/or significant mental suffering and trauma to the Plaintiff. The Plaintiff repeatedly requested that steps be taken by defendants to remedy this situation. The defendants had a legal duty to remedy the situation. The defendants to this day have failed to take any remedial action.

35. This investigation and its distribution, dissemination and publishing were also negligent contrary to standard of care owed to the Plaintiff by the lawyers, the law firms in respect of the investigation and Van Allen, the Van Allen defendants, the police and TPA and other defendants in respect of the improper dissemination and publishing of the confidential information.

36. After the November 17, 2009 telephone call, that day, Messrs. Silver and Ranking, on behalf of the clients and/or instructing agents, created a record by making a "Statement for the Record" at Victory Verbatim, in the presence of some other members of the law firms. In this Statement for the Record, they indicated, *inter alia*, that the Plaintiff had admitted to having

received a copy of the Court Order dated November 2, 2009. Mr. Ranking stated that the Plaintiff had admitted that he had received the order prior to November 16, 2009 and that was why he had called the trial coordinator and that the Plaintiff had refused to answer questions. These statements by Messrs. Ranking and Silver were knowingly and deliberately grossly stating the opposite of the truth. These lies were uttered to enable the lawyers, law firms, and clients to conspire to pursue and pursue contempt proceedings against the Plaintiff, which they later did, using these lies to perpetrate a fraud on the court. They persisted in this position even when this was initially disputed by other counsel, Ms. Rubin, who was present for some of the conversation.

37. On November 18, 2009, a package containing, *inter alia*, a letter, the order dated November 2, 2009, a Notice of Examination requiring examination on November 25, 2009 and the Statement for the Record, was sent by mail to the Plaintiff.

38. In a December 1, 2009 letter to Mr. Ranking, copied to all lawyers, and in a letter on the same date to the Court, including the letter to Mr. Ranking, the Plaintiff indicated that he received the material referred in the previous paragraph on November 24, 2009. The letters indicated that he was outside of Canada at the time and alleged that that the "Statement for the Record" was false and that Messrs. Ranking and Silver knew that it was false. It was alleged that, *inter alia*, that:

1. the Plaintiff denied having admitted on November 17, 2009 to having received the November 6 materials, including the draft order;
2. he had not received these materials;

3. the Plaintiff denied having admitted on November 17, 2009 to knowledge of the order prior to being told by the trial coordinator on November 16, 2009;
4. he did not know of the order prior to being told by the trial coordinator on November 16, 2009;
5. he had safety concerns as a result of the actions of the Defendant lawyers, law firms and clients and some of their counsel, including Mr. Silver and his firm.

39. The Plaintiff was not able to and did not attend in Toronto for examination on November 25, 2009.

40. A motion returnable December 2, 2009, seeking the same relief as the November 2 order (except for examination before Justice Shaughnessy) and a contempt order was purportedly served on the by mail Plaintiff, on short service.

41. In court on December 2, 2009, Messrs. Ranking and Silver disputed the truth of the December 1, 2009 letters of the Plaintiff. They called it defamation. They asserted the truth of their Statement for the Record. They falsely insisted that the Plaintiff had knowledge of the order prior to November 16, 2009. They also falsely asserted that the Plaintiff only disputed receipt of the signed order. They falsely asserted that there was no dispute that the Plaintiff had received the draft order prior to November 16, 2009. They relied on the purported service by courier on or after November 6, 2009, the November 16 letter (taken out of context, ignoring the fact that knowledge prior to November 16 was specifically denied) and the supposed admissions of the Plaintiff during the November 17, 2009 conversation (as falsely reflected in the Statement for the Record).

42. The Court accepted the facts as submitted by counsel on December 2, 2009, because they were proffered as facts under the express and implied assurances that the facts were true and reliable in accordance with the ethical obligations of the lawyers, as Officers of the Court, to tell the truth and to not mislead the Court. The Court rejected the contrary assertions by the Plaintiff in the December 1, 2009 letters because they were not under oath and did not come from an Officer of the Court. The lawyers, in lying and/or misleading the Court abused their office as Officers of the Court and abused process. Other lawyers, in remaining silent in the face of knowledge that statements were false and/or misleading also abused their office as Officers of the Court and abused process.

43. An order was issued on December 2, 2009 requiring the production of documents on January 8, 2010 and examination before Justice on January 15th, 2010. Failure to comply would result in a contempt hearing that day if the Plaintiff did not appear.

44. The December 2, 2009 order was sent to the Plaintiff by mail. The Plaintiff had no knowledge of any requirement to provide documents or attend to be examined in January 2010. He had no knowledge of any application to find him in contempt on January 15, 2010. The Plaintiff did not receive the December 2, 2009 order until June 2010.

45. There was no personal service of any order prior to any obligation arising and no evidence of knowledge of such an obligation until, in respect of November 17 and 25, 2009, the day prior to the obligation arising and otherwise, no knowledge of any obligation until after the deadline. The Supreme Court of Canada, in *Bhatnager*, [1990] S.C.J. No. 62 has made it clear that service that is not personal service may, in some circumstances be adequate for the conduct

of civil litigation, but is legally inadequate to found civil contempt. Personal service or knowledge is a precondition for a finding of civil contempt.

46. The lawyers misled Shaughnessy, J. with respect to the facts and law regarding the adequacy of service, knowledge and notice. Contrary to the law they falsely urged the Court to act upon substituted service. They falsely asserted prior knowledge of the November 2, 2009 order in the "Statement for the Record". They relied upon misleading and/or false evidence and/or opinions in the Van Allen affidavit suggesting that the Plaintiff was attempting to evade service. They unreasonably asserted that notice the day before (when the person claimed to be outside of the country) was adequate (in respect of November 17 and November 25, 2009). The contempt order made on January 15, 2010 was a product of the misleading of the Court by the lawyers, law firms and clients and the Van Allen defendants, with the police and the TPA.

47. The Plaintiff did not attend on January 15, 2010.

48. On January 15, 2010 (as reflected in Reasons on January 25, 2010), the Court found the Plaintiff in contempt of court (civilly) for failure to comply with the November 2, 2009 order (production and examination), the Notice of Examination for November 25, 2009 and the December 2, 2009 order (production and examination). Based on:

1. the orders for substituted service;
2. the November 16, 2009 letter (taken out of context; without mentioning denial of prior knowledge);
3. the November call (taken out of context: without mentioning denial of knowledge prior to November 16, 2009);
4. the Statement for the Record;

5. The affidavit of Van Allen; and

6. the submissions of Messrs. Silver and Ranking that the Statement for the Record was true and the December 1, 2009 letters of the Plaintiff were false,

the Court found that the Plaintiff had "notice". Based on the denials by the lawyers as Officers of the Court and the lack of sworn evidence, there was no consideration of safety issues. The Court found that the Plaintiff had not complied with the orders in that he did not produce the documents and did not attend for examination. Based on the lie in the Statement for the Record, the Court was misled into implicitly finding that the alleged offer to be examined on November 17 did not happen or was not compliance with the November 2, 2009 order. The Court ordered that the Plaintiff be jailed for 3 months, imposed a fine in the amount of \$7,500 and ordered costs in the favour of four sets of the clients (represented by Faskens, Cassels, Miller and Stikeman Elliot LLP) in the aggregate sum of approximately \$80,000.

49. In fact, had the true facts been known to the Court, there were no reasonable grounds to allege contempt, let alone constitute proof beyond a reasonable doubt. The prosecution initiated against the Plaintiff by the lawyers, law firms and clients should have been (and hopefully will be) concluded favourably for the Plaintiff. Even if it is not, the Plaintiff asserts that where this did not occur as a result of fraud by the lawyers, law firms and clients, precluding an appeal on the merits for administrative reasons, malicious prosecution and false imprisonment should still be available. There was no honest belief in guilt and there was a further improper purpose of seeking to pressure discovery and otherwise pressure the termination of litigation in other jurisdictions involving other persons and entities, not the Plaintiff or NBGL.

50. The actions, and inactions in the face of duties to act, of the lawyers, law firms, clients and other defendants resulted in the contempt order and resulting warrant of committal. The execution of the warrant resulted in the wrongful imprisonment of the Plaintiff in May 2013 after he returned to Canada to challenge the contempt finding, until bail pending appeal was granted in June 2013. The Plaintiff was again wrongfully imprisoned in April 2014 when his appeal was dismissed for procedural reasons (inability to pay costs) triggered by continuation of the intentional abuse of process and lying to the Court of Appeal on and before February 27, 2014.

51. In June 2010, costs of the NBGL action were settled in full. Thereafter, the only outstanding issue or costs order was the contempt and costs order of January 15, 2010. The production and examination of the Plaintiff in furtherance of costs on the action served no useful or legitimate purpose after this point in time. In fact, the lawyers, law firms and defendants had earlier access to the NBGL legal files that satisfied any legitimate purpose they might have had to examine the Plaintiff. The issues were moot. Justice Feldman later found abuse of process, based on this fact, to be an arguable ground of appeal. This and other viable grounds of appeal were never argued due to the order flowing from the February 27, 2014 decision of the Court of Appeal to dismiss the appeal as a result of the Plaintiff's inability to pay costs.

52. Before and after the June 2010 settlement, to which the Plaintiff was not a party, private and confidential information, including Identity Information as defined in the Criminal Code, about the Plaintiff was received by the defendants, including through the discovery process related to the NBGL action. Prior to use and filing in Court and contrary to the implied undertaking rule, some of this confidential information was published on the internet. This was done by and/or knowingly assisted by the clients, lawyers and law firms. The settlement included the public filing of an affidavit by Zagar which contained much of this private and

confidential information regarding the Plaintiff. The Plaintiff did not consent to this public filing. In light of the earlier stay of the action and the settlement of the costs, this filing served no legitimate purpose. The predominant purpose of the conspiring defendants in filing was to harm the Plaintiff. It was known by the defendants that the dissemination or publishing of private and confidential information described herein would likely cause physical harm or death and/or significant mental suffering and trauma to the Plaintiff, as well as other harms including but not limited to economic and career harm. The Plaintiff has repeatedly requested that steps be taken by defendants to remedy this situation. The defendants had a legal duty to remedy the situation. The defendants to this day have failed to take any remedial action.

53. In 2012, an application was brought by the Plaintiff to set aside or vary the January 15, 2010 contempt order on a number of grounds, including the fact that the Plaintiff did not have timely knowledge of the November 2, 2009 order or the Notice of Examination and that he did not receive the December 2 materials or order or know of the January 15, 2010 hearing until June 2010. The evidence demonstrates that delay between January 15, 2010 and the application in August, 2012 was not the fault of the Plaintiff. Initially, a stay of the warrant was sought and granted to allow the Plaintiff to return to Canada to challenge the contempt order.

54. The Plaintiff in his affidavits asserted that Messrs. Ranking and Silver were material witnesses and had conflicts of interest. He asserted that they should not be acting on the application. They did not recuse themselves and the Superior Court of Justice ("SCJ") never dealt with this issue.

55. Messrs. Ranking and Silver and their firms and other defendants opposed the application in the Superior Court of Justice. Pendrith assisted them during the appeal process and provided evidence that was misleading.

56. Ultimately, the Plaintiff was forced to be self-represented because he could not find a lawyer who would represent him. The Plaintiff repeatedly sought time to retain new counsel. He approached over 70 different lawyers. However, civil lawyers claimed that their lack of criminal law knowledge rendered them unsuitable and the criminal lawyers claimed the converse. The reality was that nobody wanted to get involved in a case in which it was alleged and proved that Messrs. Silver and Ranking and their firms had obstructed justice by lying to the Court, and where the Plaintiff possessed credible and strong evidence including his voice recordings of the November 17, 2009 phone conversation with the lawyers. The Plaintiff was able to have some funds to hire a lawyer by borrowing from friends. The Faskens and Cassels defendants opposed the Plaintiff's requests for more time to find counsel.

57. Unbeknownst to Messrs Ranking and Silver, the Plaintiff had audio-recorded the November 17, 2009 phone conversation with them. The evidence on the application included an authenticated transcript of this audio recording and the recording itself. This recording demonstrates that the "Statement for the Record" relied upon the defendants and used by Justice Shaughnessy was false insofar as it indicated that the Plaintiff 'admitted' during the November 17, 2009 conversation to having the November order and had knowledge of the order before November 16, 2009. The recording supports the truth of the Plaintiff's December 1, 2009 letters. This meant that:

1. the Statement for the Record filed before Justice Shaughnessy contained lies that:

- (a) the Plaintiff had admitted to having received the November order;
 - (b) the Plaintiff had admitted to knowledge of the order before November 16, 2009;
 - (c) the Plaintiff had refused to answer questions over the phone;
2. the submissions of Messrs. Silver and Ranking to the Court on December 2, 2009, that the Statement for the Record was true and the December 1 letters were false, were false submissions. In other words, they lied to the Court in asserting the truth of the Statement for the Record;
3. The assertion on December 2, 2009, that the Plaintiff had only contested receipt of the signed order, but had admitted to receipt of the draft order, was a lie.

58. In addition, the affidavit evidence filed by Plaintiff was presented regarding the failure to receive the materials at all or in time, the safety concerns of the Plaintiff for himself and his family and his willingness to answer the questions addressed in the order dated November 2, 2009.

59. The Plaintiff answered questions regarding these affidavits and in relation to the November 2, 2009 and December 2, 2009 orders on January 11 and 23, 2013. During this examination, the Plaintiff made it clear that he was willing to answer all questions addressed by the November 2, 2009 order. He asked that any other questions that remained be asked. He indicated a willingness to make himself available for this purpose. The Faskens and Cassels defendants refused to indicate what other questions, if any, remained unanswered.

60. On January 25, 2013, the Plaintiff provided a memory stick, with some 100,000 documents on it, to the Faskens and Cassels defendants.

61. On March 14, 2013 the Plaintiff produced a document (119 pages long plus attachments) called "Answers to Undertakings, Under Advisements, Refusals" ("March 14 Answers") stemming from the January 11 and 23, 2013 examinations. In addition to answering questions in relation to the affidavits, the examinations addressed the issues for examination covered in the November 2, 2009 order. That order required examination regarding:

- a. Unanswered Questions in relation to the examination of an affiant, John Knox, on November 4, 2008;
- b. unanswered questions from examination of the Plaintiff on March 20, 2009;
- c. unanswered questions directed to be answered on April 8, 2009;
- d. Questions relating to the Plaintiff's involvement with the Plaintiff corporation NBGL; his relationship to the matters pleaded in the lawsuit and his non-privileged association with his former counsel, William McKenzie and his law firm; and
- e. questions in relation to shares in KEL, to which the lawsuit was related.

62. Many of these kinds questions were asked and answered on January 11, and 23, 2013. In relation to the January 11, 2013 examination, in the March 14 Answers, the Plaintiff answered questions that covered items (d) (Under Advisement questions number 4-6, 7-9, 17-19, 27-31, 34-35, 38-39, 44-45, 48-49, 51-52, 62) and (e) (Under Advisement questions numbers 13-15) above. In relation to the January 23, 2013 examination there were questions that were answered in the March 14 Answers in relation to items (d) (Undertaking question 12), (b) (Under Advisement questions 1-16) and (a) (Knox Questions 1-18). Accordingly, in January and March

2013, many, if not all, of the questions ordered to be answered on November 2, 2009 were asked and answered to the best of the Plaintiff's ability.

63. After receipt of the factum of the Faskens and Cassels defendants, in which it was asserted that questions had not been answered, the Plaintiff sent a letter dated April 22, 2013, asking that the Faskens and Cassels defendants identify what questions remained unanswered. In a letter dated April 26, 2013, Mr. Ranking refused to identify what further questions remained unanswered.

64. Notwithstanding the Plaintiff's offer to be further examined, between January 25 and April 30, 2013, the Faskens and Cassels defendants never moved to ask further questions on the issues identified in the November 2, 2009 and December 2, 2009 orders or regarding these documents or any other issues addressed by the November 2 and December 2 orders.

65. Notwithstanding evidence of good faith and *bona fide* efforts to find counsel, Ranking and Silver falsely asserted urgency and opposed the Plaintiff's requests for additional time to obtain counsel. In light of the subsequent discovery of a lawyer (Slansky) to conduct the appeal, in May 2013, additional time would have made a difference. As a direct result of actions by Faskens and Cassels defendants the Plaintiff was forced to proceed without the assistance of counsel. No pressing reasons or urgency were expressed to justify this decision.

66. At the outset of the hearing on April 30, 2013, the Plaintiff sought an adjournment to obtain counsel. This was opposed and refused. The Plaintiff was unrepresented at the hearing.

67. Near the outset of the hearing the Plaintiff presented information that he had discovered the day before in the form of an affidavit. In the affidavit, he indicated that he had been told by a Durham Regional Police officer, defendant Rushbrook, that the police and Court police had been

asked to conduct an investigation of the Plaintiff prior to January 15, 2010 in anticipation of the conviction of the Plaintiff on that day. That investigation had happened approximately one month prior to January 15, 2010. The Faskens and Cassels defendants falsely denied any knowledge of this investigation. The hearing proceeded without any opportunity to gather further information regarding this investigation which was, *prima facie* an abuse of process.

68. The Plaintiff asked to present evidence in relation to his safety and security to explain why it would have been very difficult for him to come to Toronto or Whitby in 2009 or 2010. The Faskens and Cassels defendants falsely denied the legitimacy of this evidence and misled the Court into refusing to allow this issue to be explored or to allow the Plaintiff to present this evidence. Evidence of security concerns arising in November 2009 were addressed in the Plaintiff's affidavits and in his submissions to the Court. The Court failed to address this because the Court was mistakenly led to believe that such matters had already been addressed by the Court. In fact, the only safety and security concerns dealt with by the Court were those of the Plaintiff's former counsel, McKenzie in the February 8, 2008 judgment of the Court. The Faskens and Cassels defendants misled Justice Shaughnessy into mistakenly believing that this issue had already been brought to his attention and had been dismissed it.

69. Faskens and Cassels defendants having misled the Court regarding the November 17, 2009 conversation, on April 30, 2013 and previously, caused the Court to decline to listen to the recording.

70. The Plaintiff asked that the Court deal with the fact that Messrs. Ranking and Silver were material witnesses and asked that the Court order that the Plaintiff be allowed to examine them. Messrs. Ranking and Silver refused to be examined, and this did not take place.

71. The Plaintiff asked that the audio recordings of the January 11 and 23, 2013 examinations be produced and played to the Court because it would demonstrate the abusive conduct of Messrs Ranking and Silver during the examination. Based on the denials of misconduct by Messrs. Ranking and Silver, this did not take place.

72. The Plaintiff alleged other misconduct by counsel and asked the Court to stay the contempt order as an abuse of process, citing the recent decision in *R. v. Salmon*, 2013 ONCA 203. Based on the misrepresentations of Messrs Ranking and Silver, this was not considered or was considered without regard to any of the evidence filed by the Plaintiff. Based on these misrepresentations, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application.

73. During the hearing on April 30, 2013, the Plaintiff was offered the opportunity to continue the stay and answer questions as a part of a draft order that also required him to accept a costs order that was disputed by the Plaintiff. The Plaintiff repeated more than once that he was not prepared to agree to such a draft order but that he was willing to cooperate with the Court and answer questions. The Faskens and Cassels defendants did not seek to take the Plaintiff up on this offer by questioning him before Justice Shaughnessy on April 30 or May 3, 2013.

74. On April 30, 2013, the Faskens and Cassels defendants agreed that, subject to further exploration in examinations that they refused to conduct, they were prepared to accept that a memory stick provided on January 25, 2013 containing approximately 100,000 documents fulfilled the November 2, 2009 and December 2, 2009 orders to produce documents. Yet, they still pursued contempt on this basis.

75. The Court accepted the Faskens and Cassels defendants false submission that no new evidence had been presented on the application. The Court agreed and said that there was no new evidence since January 15, 2010. This was false. Since January 15, 2010 there was the following new evidence:

- a) There was evidence of the settlement of costs on the action, rendering the November 2 and December 2, 2009 orders moot;
- b) new and conclusive proof that the Plaintiff stated on November 17, 2009 that he did NOT receive the November 2 order prior to November 17, 2009 and that he did not know of the order until the day before contrary to the Victory Verbatim 'Statement for the Record' created by Ranking and Silver and relied upon by the Court on December 2, 2009 and January 15, 2010;
- c) that the Plaintiff was in the Western Pacific on November 16 when he received knowledge of the Nov. 17 examination and materials (but not the materials themselves);
- d) there was evidence (recording and affidavit under oath) pursuant to 16.07 of the Rules of Civil Procedure that established that the documents did not come to his attention or only came to his attention at a later time;
- e) There was proof of a legitimate offer to comply with the order by telephone on November 17, 2009 which had been falsely disputed in the Statement for the Record;
- f) there was evidence that the documents ordered had been provided by memory stick on January 25, 2013 and that, subject to further answers to questions that may cast doubt upon the completeness of the documentation, the Faskens and

Cassels defendants accepted on April 30, 2013 that this constituted compliance with the November 2 and December 2, 2009 orders;

- g) there was evidence that the lawyers, law firms and defendants had received full access to and copies of tens of thousands pages of privileged documents from the NBGL law firm's files in 2010, which constituted substantial or complete compliance with the November 2 and December 2, 2009 orders;
- h) there was evidence of the answers of questions addressed in the November 2, 2009 and December 2, 2009 orders in the examination of the Plaintiff in January 2013 and the March 20103 written Answers. There were offers to be examined further;
- i) there was sworn evidence regarding the safety and security concerns of the Plaintiff.

Based on the misrepresentations by the Faskens and Cassels defendants, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application.

76. In dismissing the application to set aside the finding of contempt, on the issue of knowledge, based on the misrepresentations by the Faskens and Cassels defendants, Justice Shaughnessy ruled that any allegations of misconduct by counsel was a matter for the Court of Appeal on a fresh evidence application. Accordingly, the Court was left to rely on:

- a) the misleading affidavit of Van Allen
- b) the false purported compliance with orders for substituted service;
- c) the November 16, 2009 letter (taken out of context by the Faskens and Cassels defendants, without mentioning denial of prior knowledge);

- d) the November call (taken out of context the Faskens and Cassels defendants, without mentioning denial of knowledge prior to November 16, 2009);
- e) the false Statement for the Record;
- f) the false submissions of Messrs. Silver and Ranking that the Statement for the Record was true and the December 1, 2009 letters of the Plaintiff were false; and
- g) the false assertion by Mr. Ranking that the Plaintiff was only disputing receipt of the signed order, but that there was no dispute about receipt of the draft order.

Accordingly, the dismissal of the motion to set aside the finding of contempt was a direct result of the recent actions of the Faskens and Cassels defendants and the earlier actions of all defendants.

77. Based on the misrepresentations by the defendants, the Court failed to conduct a trial of any disputed factual issues on *viva voce* evidence.

78. The Plaintiff, as a self-represented litigant did not raise and the Faskens and Cassels defendants did not raise the fact that the purpose of the orders upon which the contempt order was made was now moot. Faskens and Cassels defendants had an obligation to alert the Court to this fact. Accordingly, the Court did not deal with this issue.

79. The Faskens and Cassels defendants continued to assert non-compliance with the orders notwithstanding their knowledge that there had been compliance. As a result of them misleading the Court, aside from the offer to now examine on condition that the Plaintiff accept a contested costs order (\$80,000), no opportunity to purge was offered to the Plaintiff.

80. The Court was misled into refusing to decide whether the PWCECF was a legal entity. The Faskens and Cassels defendants made the misleading submission to the Court that since

PWCECF was the entity that NBGL had sued, the Plaintiff could not complain that it did not exist. This ignored the fact that NBGL had originally sued another non-entity, PricewaterhouseCoopers (Barbados), based upon earlier affidavit evidence by Atkinson, but Mr. Ranking and Hatch had advised NBGL and the Court that this was the incorrect name and had asserted that the correct name was PWCECF. As a result of this misleading submission, none of the evidence proving the non-existence of PWCECF was considered.

81. Notwithstanding the later suggestion by Faskens and Cassels defendants, the contempt order on January 15, 2010 did not include the failure to pay costs as a part of the contempt. This was appropriate since to do otherwise would be to turn our correctional system into a debtor's prison. The May 3, 2013 order did not purport to be a new contempt order. Rather, the May 3 order dismissed the Plaintiff's application to set aside the contempt order and removed the stay of the warrant of committal thereby allowing the January 15, 2010 order to take effect. However, the May 3, 2013 order was tied to the costs of the January 15, 2010 contempt order by requiring payment of costs as a condition precedent to purging contempt.

82. The May 3, 2013 warrant of committal specifies that there is to be "no remission" on the period of incarceration. The January 2010 order did not specify that remission did not apply to the order of imprisonment. There is no mention of remission in the May 3, 2013 order, endorsement or reasons. No mention of remission was made during the hearing on April 30 and May 3, 2013. There was no opportunity for the Plaintiff to address this issue, which he discovered only after arriving at jail on May 3, 2013. Since the May 3, 2013 decision did not result in a new contempt order, there was no jurisdiction to vary the January 15, 2010 order. This "no remission" term was inserted maliciously in the warrant by the Faskens and Cassels

defendants and adopted by the Judge who relied on Senior Counsel to be candid and forthright in their dealings with the Court, which they were not.

83. The manner of the investigation and prosecution of the Plaintiff in respect of and/or for purposes of obtaining substituted service orders, contempt proceedings and to harm the Plaintiff caused harm to the Plaintiff. The Plaintiff was significantly harmed physically, emotionally, mentally, economically and with respect to his reputation.

84. This harm was caused by the manner of the investigation and prosecution including harm from the abusive and otherwise tortious manner of his prosecution described in this Statement of Claim, including, *inter alia*, improper motivations, misrepresentations and lies to the Courts, improper use of police resources, improper violations respecting private information and improper sheltering from liability (re non-entity Respondent, PWCECF) and cover up in respect of these actions.

85. This harm results from, *inter alia*, the need for him to bring an application to set aside the contempt order, the appeal therefrom, the damage to his him in respect to his safety, physical and mental health and reputation, arrest, prosecution and incarceration in May 2013 and again in April 2014. This harm has been cumulative and continues to this day.

B. FURTHER PARTICULARS REGARDING EACH CAUSE OF ACTION

(1) CONTEMPT:

(a) Abuse of process (common law and s. 7 of the *Charter*):

86. There are several instances of abuse of process in respect of the contempt proceedings initiated against the Plaintiff:

- (i) seeking costs against the Plaintiff re NBGL suit as ruse to get discovery and to pressure discontinuance re other jurisdictions;
- (ii) seeking discovery against the Plaintiff as means to obtain advantage in litigation in other jurisdictions;
- (iii) seeking contempt against the Plaintiff: ulterior motive re pressure to discontinue and punish for exposing professional misconduct;
- (iv) contempt by defendants (implied undertaking rule/failure to correct);
- (v) lies and misleading court re receipt of documents;

87. The defendants initiated and/or assisted in costs proceedings, discovery proceedings in respect of costs and contempt proceedings against the Plaintiff. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the continuation of litigation in other jurisdictions by other persons and entities, not the Plaintiff or NBGL. This was a common law abuse of process. The defendants commenced the proceedings to this end by proceeding *ex parte*, unlawfully gathering facts regarding the Plaintiff, dissemination and

publishing of private facts, including by violating the implied undertaking rule, presenting misleading facts regarding the Plaintiff and outright lying to secure a finding of contempt in the face of real issues of timely notice.

88. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. In proceeding for improper purposes and the use of misleading, unlawfully obtained and knowingly false evidence the lawyers and law firms breached their Barrister's Oath and the actions of the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(b) Negligent investigation

89. The investigation by the defendants directly and through agents, including the Van Allen defendants, the police and the TPA caused false and misleading facts to be presented in the motions for substituted service, examination motions and contempt application, which led to the prosecution and incarceration of the Plaintiff which caused him significant harm.

90. The investigation by the defendants directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information by a serving

police officer and the other defendants that otherwise could not have been lawfully obtained and otherwise led to the discovery and dissemination and publishing of such information which caused the Plaintiff significant harm.

91. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing their agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

92. The actions of the lawyers, law firms and clients described in this Statement of Claim violation constitute a breach of the standard of care in respect of the ethical duties of lawyers, as set out in Rules of Professional Conduct.

93. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

94. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies, all of which preclude a serving police officer acting as or being hired as a private investigator.

95. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

96. The Van Allen defendants, the police and the TPA and the other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

97. The Van Allen defendants, the police and the TPA and the other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

98. The actions of the Van Allen defendants, the police and the TPA and the other defendants described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

99. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme (the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting or being hired as a private investigator. This largely informs the standard of care.

100. The Van Allen defendants, the police and the TPA knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(c) False imprisonment

101. The Plaintiff was imprisoned for 63 days as a result of the finding of contempt, the dismissal of the motion to set aside the contempt and the administrative dismissal of the appeal

as a result of the inability to pay costs. He was jailed in solitary confinement because he is a former police officer.

102. The Plaintiff was falsely arrested and detained by the police for a half day while on bail pending appeal.

103. The Plaintiff did not agree to be arrested, detained or incarcerated.

104. The defendants caused the Plaintiff to be arrested, detained or incarcerated by commencing contempt proceedings against him and/or by pursuing contempt proceedings in an abusive or misleading manner and by assisting in the investigation leading to the contempt order and warrant of committal and also by mistakenly arresting him due to their failures to use proper administrative procedures respecting arrest warrants and bail records.

105. There were not reasonable and probable grounds to believe that the Plaintiff was in contempt or that he had violated his bail.

106. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. In proceeding for improper purposes and the use of misleading, unlawfully obtained and knowingly false evidence the lawyers and law firms breached their Barrister's Oath and the actions of the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). Since there were no reasonable and probable grounds to believe that the Plaintiff was in contempt or

that he had violated his bail, his arrest, detention and incarceration were arbitrary (contrary to s. 9 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(d) Intentional and/or Negligent Infliction of Harm and/or Mental Suffering

107. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in respect of the conduct of contempt proceedings were flagrant and outrageous. They were calculated to harm the Plaintiff (intentional or willfully blind) or reckless regarding harm. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

108. In the alternative in respect of any defendant who did not intend harm as set out in the previous paragraph, such defendants were negligent in causing compensable actual, visible and provable injury (physical and mental harm and suffering).

109. The actions and/or inactions of the defendants, directly and through agents, including but not limited to the Van Allen defendants, the police and the TPA caused false and misleading facts to be presented in the motions for substituted service, examination motions and contempt application, which led to the prosecution and incarceration of the Plaintiff which caused him significant harm.

110. The actions and/or inactions of the defendants, directly and through agents, including but not limited to the Van Allen defendants, the police and the TPA allowed the improper access to information as a serving police officer that he otherwise could not have lawfully obtained and

otherwise led to the discovery and dissemination and publishing of such information which caused him significant harm.

111. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

112. The actions of the lawyers, law firms and clients described in this Statement of Claim constitute a breach of the standard of care in respect of the ethical duties of lawyers, as set out in Rules of Professional Conduct.

113. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

114. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies, all of which preclude a serving police officer acting as or being hired as a private investigator.

115. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

116. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

117. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

118. The actions of the Van Allen defendants, the police and the TPA and the other defendants described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

119. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C., 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator. This largely informs the standard of care.

120. The Van Allen defendants, the police and the TPA and the other defendants knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C., 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(e) Misfeasance of public office/Abuse of Authority

121. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were

acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions.

122. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in respect of the contempt proceedings were performed in bad faith and were deliberately unlawful or outside the scope of their authority in the exercise of the public functions of (a) a prosecutor or Officer of the Court; (b) a peace officer; (c) a labour official of the TPA; and (d) a probation and parole officer. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

(f) Malicious Prosecution

123. The defendant lawyers, law firms and clients initiated criminal or quasi criminal proceedings against the Plaintiff, to wit, an application to have him found in civil contempt.

124. The Proceedings are not complete. The Plaintiff is awaiting a response from the Supreme Court of Canada on an application for leave to appeal the dismissal of his appeal, found to be arguable, due to the inability to pay costs orders in the Court of Appeal. If leave is granted and the appeal succeeds, the civil contempt finding should be set aside.

125. In the alternative, it will be argued that where a conviction was obtained by fraud or fresh evidence exists, and where an appeal was unavailable due to lack of financial resources, the lack of a favourable result should not be a bar to sue for malicious prosecution.

126. There were not reasonable and probable grounds to believe that the Plaintiff was in contempt or that he had violated his bail.

127. For the reasons otherwise described in this Statement of Claim, the prosecution of the Plaintiff by the lawyers, law firms and clients, assisted by the other defendants, was performed maliciously and/or exercised for an improper purpose. The defendants did not have an honest belief that the Plaintiff was guilty. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the continuation of litigation in other jurisdictions.

(g) Conspiracy to injure

128. As detailed otherwise described in this Statement of Claim, two or more of the defendants made an agreement the predominant purpose of which was to injure the Plaintiff through lawful and/or unlawful means. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering), incarceration, damage to reputation, loss of future income and loss of time and money required to litigate these issues and the costs orders made against him.

(2) PRIVACY

(a) Invasion of privacy /intrusion on secrecy

129. The defendants invaded the Plaintiff's privacy and intruded on his secrecy by accessing, disseminating and publishing his private and confidential information. They did so by:

- (i) discovering private information and then distributing it, including by publishing it and/or by other means, without its filing in Court contrary to the implied undertaking rule;
- (ii) filing such material in an affidavit sworn by Zagar after the settlement of the case for the improper purpose of damaging the plaintiff and for no legitimate purpose;
- (iii) accessing private information in the possession of Government for limited regulatory purposes and including the information to prepare affidavits and filing the information;
- (iv) disseminating the information referred to in (i)-(iii) and other private information on the internet and by other means.

130. These acts were done directly and/or indirectly by the defendants. They were done intentionally, maliciously and/or recklessly. The accessing, filing and dissemination/publishing of this private information intruded upon the informational seclusion of the plaintiff and/or his private affairs and/or concerns.

131. These invasions would be highly offensive to a reasonable person because, *inter alia*, the accessing and publishing served no useful and/or proper purpose; it was known by the defendants that as a former undercover police officer and undercover private investigator, the

Plaintiff had many enemies who would want to kill or harm him or otherwise seek revenge, some of whom were involved in organized crime; the dissemination and publishing took place in such a way as to encourage harm to the Plaintiff; to the extent any of the information was relevant, the details, including addresses, driver's license information, etc. need not have been included or could easily have been edited or redacted. There was and is a great risk of identity theft from the release of the information. The release of the information in fact resulted in criminal activity being directed at the Plaintiff, directly and through his family, to wit, criminal harassment, assault; death threats; identity theft and other criminal activities. This was the intent. It caused the Plaintiff to flee Canada. Similar criminal acts were inflicted by some of the defendants during the litigation of the NBGL case leading up to these events. The timing was such as cause the Plaintiff to flee around the time of the attempts to attack the Plaintiff in Court (through direct costs applications; discovery; and contempt). The timing was intentional to facilitate this attack on the Plaintiff using the legal system for ulterior motives. Further, the Plaintiff raised concerns about this issue several times and was mocked and dismissed and was told by Mr. Silver on November 17, 2009 (recorded) that he would not help the Plaintiff if he could. The defendants had and have a duty to correct the situation and have failed to do so to this day. In fact, the defendants continue to distribute and publish the Plaintiff's private information, including his Identity Information as defined in the Criminal Code.

132. The following legislation reinforces the fact that this would be seen to be highly offensive to a reasonable person: *Criminal Code*, R.S.C., 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of

Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(b) ss. 7 and/or 8 of the Charter (re Gov. actors/agents)

133. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. In accessing, disseminating and publishing the Plaintiff's private and confidential information as described in the previous section (III. B. 2. (a)), the defendants invaded the Plaintiff's reasonable expectation of privacy in his personal electronic (or other) information (see *R. v. Spencer*, [2014] S.C.J. No. 43). In particular, the SCC has just made it clear that personal information given to the police for one purpose cannot be used in for a different purpose or in a different case (*R. v. Quesnelle*, [2014] S.C.J. No. 46).

134. The use of such information for a purpose different than it was originally obtained constitutes a new seizure or a conversion of a lawful seizure into an unreasonable one seizure and publishing of this information (see *Colarusso* (SCC); *Dyment* (SCC) and *Quesnelle* (SCC)). Accordingly, the misuse and dissemination constituted a search and seizure.

135. The search and seizure was not lawful according to the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and*

Protection of Privacy Act, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

136. As detailed in this Statement of Claim, the seizure by conversion for another purpose and its dissemination significantly damaged the Plaintiff, physically, emotionally, mentally, economically and with respect to the plaintiff's reputation. It also contributed to the Plaintiff being found in contempt. There are no public policy reasons to deny remedies including damages.

(c) Misfeasance of Public Office/Abuse of Authority/

137. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions.

138. For the reasons otherwise described in this Statement of Claim, the actions of the defendants invading the privacy of the Plaintiff were performed in bad faith and were deliberately unlawful or outside the scope of their authority in the exercise of the public functions of (a) a prosecutor or Officer of the Court; (b) a peace officer; (c) a labour official of the TPA; and (d) a probation and parole officer. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

(d) Abuse of process (common law and s. 7 of the Charter)

139. The defendants initiated and/or assisted in costs proceedings, discovery proceedings in respect of costs and contempt proceedings against the Plaintiff. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the continuation of litigation in other jurisdictions. This was a common law abuse of process. The defendants abused process by unlawfully gathering facts regarding the Plaintiff and by dissemination and publishing of private facts, including by violating the implied undertaking rule.

140. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully accessing and disseminating private information, the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(e) Intentional or Reckless Endangerment (Infliction of Harm/Mental suffering)/Negligent Endangerment

141. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in accessing, filing and disseminating the private information were flagrant and outrageous. They were calculated to harm the Plaintiff (intentional or willfully blind) or reckless regarding harm. These actions caused actual, visible and provable injury (physical and mental harm and suffering). In addition to intending and causing harm (physical and mental suffering), defendants intended or were reckless in seeking to endanger the Plaintiff's life by releasing his private information.

142. In the alternative in respect of any defendant who did not intend to harm or endanger as set out in the previous paragraph, such defendants were negligent in causing compensable actual, visible and provable injury (physical and mental harm and suffering).

143. The actions and/or inactions of the defendants, directly and through agents, including the Van Allen defendants, the police and the TPA allowed improper access to information that otherwise could not have lawfully obtained and led to the discovery and dissemination and publishing of confidential information which caused the Plaintiff significant harm.

144. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of

that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

145. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

146. In respect of retaining a private investigator, the standard of care is informed largely by the the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies, which preclude a serving police officer acting as or being hired as a private investigator.

147. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

148. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him and other defendants. The legislative scheme created a private duty of care. The legislative scheme contemplated that the

harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

149. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

150. The actions of the Van Allen defendants, the police and the TPA described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

151. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator. This largely informs the standard of care.

152. The Van Allen defendants, the police and the TPA knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff would not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-

15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(f) Negligent Investigation re Privacy

153. The investigation by the defendants directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information by a serving police officer that otherwise could not have lawfully obtained and otherwise led to the discovery and dissemination and publishing of such information which caused the Plaintiff significant harm.

154. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

155. The actions of the lawyers, law firms and clients and other defendants described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

156. In respect of retaining a private investigator, the standard of care is informed largely by the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator.

157. In respect of instruction private investigators and the use to be made of the fruits of the investigation, the standard of care is informed largely by the *Criminal Code*, R.S.C. 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

158. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him or the other defendants. The legislative scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

159. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme created a

private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

160. The actions of the Van Allen defendants, the police and the TPA and other defendants as described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the use of the fruits of such investigations.

161. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which as a serving police officer acting or being hired as a private investigator. This largely informs the standard of care.

162. The Van Allen defendants, the police and the TPA and the other defendants knew or were negligent in failing to ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56.

(g) Negligence re Regulation and/or Negligent performance of Statutory duty and/or s. 7 of the Charter

163. The actions and/or inactions of the defendants, directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information as a serving police officer that he otherwise could not have lawfully obtained and otherwise led to the discovery and dissemination and publishing of such information which caused him significant harm.

164. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing its agents and in the instructions given or that should have been given.

165. The legislative scheme in respect of whether a serving police officer can act as a private investigator is set out in the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator. This scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill (SCC)* and *Taylor (OCA)*).

166. The legislative scheme in respect of privacy is set out in the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *The Personal Information Protection and Electronic Documents Act*, S.C., C-5 ("PIPEDA"); *The Police Services Act*, R.S.O. 1990, c. P-15.; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31; *The Highway Traffic Act*, R.S.O. 1990, cH-8, as amended; Ministry of Transportation policies and Standard Contracts; *The Personal Health Information Protection Act*, S.O. 2004, C-3, Schedule A; *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. M-56. This scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons whose private information was improperly accessed and disseminated. This is especially so when the facts of the case involve such accessing and dissemination in the context of the Plaintiff being targeted in investigations (see *Hill* (SCC) and *Taylor* (OCA)).

167. The actions of the lawyers, law firms and clients and other defendants described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining and instruction private investigators and the use of the fruits of such investigations.

168. In respect of retaining a private investigator, the standard of care is informed largely by the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator.

169. In respect of invasion of privacy, the standard of care is informed largely by the legislative scheme referred to above (*Criminal Code*; PIPEDA; etc.) which seeks to preclude access to and dissemination of private information.

170. The Van Allen defendants, the police and the TPA and other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him and other defendants. The legislative scheme referred to above (the *Criminal Code*, R.S.C., 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

171. The Van Allen defendants, the police and the TPA and other defendants had a duty to investigate lawfully. It was reasonably foreseeable that the filing, dissemination or publication of private information of the Plaintiff would cause significant harm to the Plaintiff. The legislative scheme referred to above (*Criminal Code*; PIPEDA; etc.) which seeks to preclude access to and dissemination of private information created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

172. The actions of the Van Allen defendants, the police and the TPA and other defendants described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators and the violation of privacy rights.

173. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting or being hired as a private investigator.

174. The Van Allen defendants, the police and the TPA and the other defendants knew or were negligent in failing to protect the Plaintiff's statutory privacy rights ensure that the fruits of the investigation of the Plaintiff not be publicly disclosed. To allow such disclosure would violate the standard of care, which is largely informed by the legislative scheme referred to above (*Criminal Code*; *PIPEDA*; etc.) which seeks to preclude access to and dissemination of private information.

175. The OPP was also negligent in failing to create a regulatory and/or record keeping and/or compliance scheme to ensure that secondary employment by OPP police officers, like Van Allen, was being conducted in accordance with the law.

176. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the

prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully accessing and disseminating private information, the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(h) Breach of fiduciary duty/Negligence in Respect of Fiduciary duty

177. The TPA had a fiduciary duty towards the Plaintiff as a member or former member of that Association. Like any labour organization, the TPA has a fiduciary duty to protect the private information of its members. By voluntarily releasing that information to Van Allen, the TPA breached that fiduciary duty. This was done dishonestly or fraudulently. The TPA and its administrators knew that they could not release such information except through court order or warrant or with the permission of the Plaintiff; none of which they possessed.

178. The lawyers, law firms and clients who saw and used information from TPA in Van Allen's affidavit, although not parties to the fiduciary relationship, were aware of the fiduciary duty, the dishonest or fraudulent breach of that duty and by retaining and instructing Van Allen and using and filing that information, assisted in the breach.

179. The Van Allen defendants also knew of the fiduciary duty and knew of and were parties to the dishonest or fraudulent breach of that duty.

180. The police knew or willfully blind to the existence of the fiduciary duty, the dishonest or fraudulent breach of that duty and, by assisting Van Allen, assisted in the breach.

(i) **Conspiracy to Injure/Conspiracy to do Unlawful Act/ Causing Loss by unlawful means**

181. As detailed otherwise in this Statement of Claim, two or more of the defendants made an agreement the predominant purpose of which was to injure the Plaintiff through lawful and/or unlawful means. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment through the release of private information.

182. As detailed otherwise in this Statement of Claim, two or more of the defendants made an agreement to act unlawfully knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff. The unlawful means was the violation of the Plaintiff's common law, Charter and Statutory privacy rights, as described above. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment through the release of private information.

183. One or more of the defendants also caused loss to the Plaintiff by unlawful means through a third party, to wit, the violation of the Plaintiff's common law, Charter and Statutory privacy rights, as described above. The lawyers, law firms and clients caused loss to the Plaintiff through the unlawful acts of Van Allen and the police. The Van Allen defendants, other than Van Allen himself, and the police caused loss to the Plaintiff through the unlawful acts of Van

Allen. All of the Van Allen defendants caused loss to the Plaintiff through the unlawful acts of the police. The TPA caused loss to the Plaintiff through the unlawful acts of Van Allen and visa versa.

(3) PRIVATE INVESTIGATION

(a) Misfeasance and/or Nonfeasance of Public Office/Abuse of Authority

184. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions.

185. For the reasons otherwise described in this Statement of Claim, the actions of the defendants in retaining, instructing and assisting Van Allen in acting as a private investigator when he was a serving police officer were performed in bad faith and were deliberately unlawful or outside the scope of their authority in the exercise of the public functions of (a) a prosecutor or Officer of the Court; (b) a peace officer; (c) a labour official of the TPA; and (d) a probation and parole officer. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering).

(b) **Abuse of Process (mislead Court) common law and/or ss. 7 and 8 of the Charter**

186. The defendants initiated and/or assisted in costs proceedings, discovery proceedings in respect of costs and contempt proceedings against the Plaintiff. This was done for an improper and collateral purpose, to wit, *inter alia*, to gain an advantage in or prevent the initiation or continuation of litigation in other jurisdictions. This was a common law abuse of process. The defendants abused process by unlawfully gathering facts regarding the Plaintiff and by dissemination and publishing of private facts and misleading the Court regarding the background of Van Allen. Van Allen was presented as an experienced and neutral private investigator. Had the Court known that he was acting unlawfully as a private investigator while also serving as a police officer and thereby obtaining information he should not have been able to access this would likely have affected the Court's acceptance of this evidence.

187. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully accessing and private information and presenting that information before the Court, the defendants violated principles of fundamental justice (contrary to s. 7 of the Charter). By unlawfully acting as a private investigator, when Van Allen was a serving police officer, the gathering of information was an unlawful (see *Colarusso* (SCC)) seizure and therefore unreasonable contrary to section 8 of the *Charter*. These actions damaged the Plaintiff by

finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(c) Negligent Regulation/Negligent Performance of Statutory duty and/or ss. 7 and/or 8 of the Charter

188. The actions and/or inactions of the defendants, directly and through agents, including the Van Allen defendants, the police and the TPA allowed the improper access to information as a serving police officer that he otherwise could not have lawfully obtained.

189. The lawyers and the law firms, acting on behalf of their clients, had recognized legal and ethical duties to the public and the Court to ensure that their actions and the actions of their agents did not cause foreseeable harm to the Plaintiff. The harm described above was reasonably foreseeable. The harm was directly a result of the breach of their duties in choosing their agents.

190. The legislative scheme in respect of whether a serving police officer can act as a private investigator is set out in the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator. This scheme created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

191. The actions of the lawyers, law firms and clients described in this Statement of Claim violation was a breach of the standard of care in respect of the legal duties in respect of retaining private investigators.

192. In respect of retaining a private investigator, the standard of care is informed largely by the legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator.

193. The Van Allen defendants, the police and the TPA had a duty to investigate lawfully. It was reasonably foreseeable that the use of Van Allen's status as a police officer would enable him to access information that would otherwise be unavailable to him. The legislative scheme referred to above (the *Criminal Code*, R.S.C, 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting as or being hired as a private investigator created a private duty of care. The legislative scheme contemplated that the harm from the violation of that scheme would be the proximate cause of damage to persons who were targets of such investigations (see *Hill* (SCC) and *Taylor* (OCA)).

194. The actions of the Van Allen defendants, the police and the TPA described in this Statement of Claim constitute a breach of the standard of care in respect of who can act as a private investigators.

195. The Van Allen defendants, the police, the TPA and the other defendants were complicit in Van Allen illegally acting as a private investigator. The private investigation by Van Allen, as a serving police officer, was unlawful contrary to the legislative scheme referred to above (the

Criminal Code, R.S.C, 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, etc.) which preclude a serving police officer acting or being hired as a private investigator.

196. The OPP was also negligent in failing to create a regulatory and/or record keeping and/or compliance scheme to ensure that secondary employment by OPP police officers, like Van Allen, was being conducted in accordance with the law.

197. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. By unlawfully using a serving police officer as a private investigator, the independence of the police services is fundamental compromised and increased access to private information is made available contrary to the public function of the police. These violations of the police process violated principles of fundamental justice (contrary to s. 7 of the Charter). The unlawful gathering of private information by a public official is unlawful and a violation of s. 8 of the Charter. These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(d) Negligent Investigation and/or s. 7 of the Charter

198. The Plaintiff suspected that something was not right in respect of the gathering of information through Van Allen and the police in this case. The plaintiff made inquiries of the police. In April 2013, he learned that there had been secret police investigation by at least the DRPS in contemplation of him being convicted at his hearing on January 15, 2010. He also initially learned in late 2013 (and later confirmed in 2014) that Van Allen was a serving police officer when he swore his affidavit as a private investigator in October, 2009.

199. When the secret investigation came to light, Detective Rushbrook revealed that she could not or would not reveal who conducted it and at whose behest, except that an unnamed Durham Police Court Officer was one of the persons involved. It was brought to the attention of the SCJ and the Faskens and Cassels defendants in Court and on the record on April 30, 2013. Messrs. Ranking and Silver denied knowledge of it.

200. As prosecutors, this was a serious allegation, based on reliable information from the DRPS itself that warranted investigation. The failure of the Faskens and Cassels defendants to request time to investigate this situation was negligent. As prosecutors and Officers of the Court in a criminal or quasi-criminal case of a self-represented person, it was foreseeable that this secret investigation could impact on the issues being litigated on April 30, 2013. They owed a duty to stop and cause an inquiry or investigation to be conducted. The failure to do so breached the standard of care expected of prosecutors.

201. The secret investigation itself, that was premised on the Plaintiff being convicted, before he had been found guilty, was itself a negligent investigation. If the court itself was involved

(not Justice Shaughnessy who denied knowledge of it, but court administration), this suggested a possible institutional bias. If initiated by the lawyers, law firms and/or clients, this suggested that the police were involved in the civil contempt proceeding, which would be extraordinary and suggested bias or corruption by the police. If initiated by Van Allen defendants, this suggested further abuse of power by a serving police officer as a private investigator on behalf of private interests. One way or the other, this secret investigation was illegal and corrupt. The fact that a police and Court police investigation is premised on a person being found guilty before he is found guilty is offensive. The fact that it is being done in secret suggests that there is something to hide. Such an investigation is inherently negligent. As is clear from *Hill* (SCC) and *Taylor* (OCA), the duty of care in relation to criminal investigations inherently create a duty of care because of the targeting of the suspect. The DRPS owed a duty to the Plaintiff having targeted him. The conduct of a secret investigation with a presumption of conviction creates an unreasonable risk of substantial harm and does not meet the standard of care. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5.

202. In late 2012 the Plaintiff still believed that Van Allen was at the time of his October, 2009 affidavit, a civilian, a retired OPP police officer operating as private investigator, who had improperly accessed confidential police information about the Plaintiff through Van Allen's friends still serving with the police. The Plaintiff therefore requested that the professional standards units of the OPP and the DRPS investigate the 'secret police investigation' to determine *inter alia* which serving police personnel had in 2009 supplied 'retired' Van Allen with confidential police information.

203. During their investigations in January through April, 2013, the OPP and Kearns and Vibert and the DRPS and Dmytruk and Rushbrook discovered that at the time Van Allen swore

his October 2009 affidavit and investigated the Plaintiff, Van Allen was in fact a serving police officer, a Detective Sergeant with the OPP, and remained so until he retired in about October of 2010. The OPP and Kearns and Vibert and the DRPS and Dmytruk and Rushbrook also knew that as a serving police officer acting as a private investigator, Van Allen had broken various laws including the *Criminal Code*, R.S.C., 1985, c. C-46, as amended; *Police Services Act*; *Private Security and Investigative Services Act*, and other laws and regulations.

204. The OPP, Kearns, Vibert, the DRPS, Dmytruk and Rushbrook had copies of Van Allen's October 2009 affidavit, his invoices to Ranking and Faskens, and other court documents and information regarding the Plaintiff's January 15, 2010 conviction *in absentia* for Contempt of Court. They knew that the Plaintiff was facing 3 months in jail, and was in hearings before Justice Shaughnessy in January through May, 2013. They knew that Van Allen's affidavit was illegal and deceptive, and that the court had used the Van Allen evidence to convict the Plaintiff. They knew that neither the court nor the Plaintiff was aware that Van Allen had been a serving police officer at the time he investigated the Plaintiff and swore the affidavit. They knew that the court had been deceived.

205. The OPP, Kearns, Vibert, the DRPS, Dmytruk and Rushbrook knew that as a serving police officer Van Allen had illegally performed an investigation of the Plaintiff, for the corrupt purpose of benefiting one side's private interests in a civil case costs hearing. They knew that Van Allen had done this for money and employment.

206. They knew or should have known that the truth about Van Allen was vital evidence to the Court in considering a just outcome in the Plaintiff's contempt of court hearing. They knew, or should have known that had the Court been aware of the truth about Van Allen, his deceptive

affidavit and improper secret police investigation of the Plaintiff, that the Court might not have convicted the Plaintiff in 2010, and might set him free in 2013. The police deliberately withheld this important evidence from both the Plaintiff and the Court.

207. The Plaintiff was lied to by the OPP and specifically, Kearns and Vibert and the DRPS, specifically Dmytruk and Rushbrook. The police falsely told the Plaintiff that Van Allen had retired in 2008, instead of the truth that he retired in October 2010. Instead of investigating Van Allen, who committed criminal and quasi-criminal offences while a serving Detective Sergeant with the Ontario Provincial Police, the police covered it up. This was a negligent investigation. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5.

208. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding.

209. By failing to investigate the secret investigation, the police acted negligently. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5. These actions damaged the Plaintiff by contributing to finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

210. By failing to investigate the Van Allen issue when it was brought to their attention by the Plaintiff, the police acted negligently. This is similar to *R. v. Beaudry*, [2007] S.C.J. No. 5. These actions damaged the Plaintiff by contributing to finding him in contempt, ruining his

professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(e) Invasion of privacy (intrusion on secrecy)

211. The defendants invaded the Plaintiff's privacy and intruded on his secrecy by accessing, disseminating, filing and publishing his private and confidential information. They did so by unlawfully utilizing a serving police officer, who had greater access to information, as a private investigator.

212. These acts were done directly and/or indirectly by the defendants. They were done intentionally and/or recklessly. The use of a serving police officer to access otherwise inaccessible private information intruded upon the informational seclusion of the plaintiff and/or his private affairs and/or concerns.

213. These invasions would be highly offensive to a reasonable person because, *inter alia*, the accessing and publishing served no useful purpose; it was known by the defendants that as a former undercover police officer and undercover private investigator, the Plaintiff had many enemies who would want to kill or harm him or otherwise seek revenge, some of whom were involved in organized crime; the dissemination and publishing took place in such a way as to encourage harm to the Plaintiff; to the extent any of the information was relevant, the details, including addresses, driver's license information, etc. need not have been included or could easily have been edited or redacted. There was and is a great risk of identity theft from the release of the information, and that risk continues to this day. The release of the information in fact resulted in criminal activity being directed at the Plaintiff, directly and through his family, to

wit, criminal harassment, assault; death threats and other criminal activities. This was the intent. It caused the Plaintiff to flee Canada. Similar criminal acts were inflicted by some of the defendants during the litigation of the NBGL case leading up to these events. The timing was such as cause the Plaintiff to flee around the time of the attempts to attack the Plaintiff in Court (through direct costs applications; discovery; and contempt). The timing was intentional to facilitate this attack on the Plaintiff using the legal system for ulterior motives. Further, the Plaintiff raised concerns about this issue several times and was mocked and dismissed and was told by Mr. Silver on November 17, 2009 (recorded) that he would not help the Plaintiff if he could. The defendants had and have a duty to correct the situation and have failed to do so to this day.

214. The following legislation which precludes a serving police officer from acting as a private investigator reinforces the fact that this would be seen to be highly offensive to a reasonable person: *Criminal Code*, R.S.C., 1985, c. C-46, as amended; *Police Services Act*, R.S.O. 1990, c. P-15.; *Private Security and Investigative Services Act*, S.O. 2005 c.34; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F-31 and OPP policies which preclude a serving police officer acting as or being hired as a private investigator.

(f) Conspiracy to do unlawful act (cover up re Van Allen)

215. As detailed otherwise in this Statement of Claim, two or more of the defendants made an agreement to act unlawfully knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff. The unlawful means was the

violation of the Plaintiffs common law, *Charter* and Statutory privacy rights, as described above. As detailed otherwise described in this Statement of Claim, the defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment through the release of private information.

216. Further, as detailed in respect of Negligent Investigation, when this was brought to the attention of the OPP and the DRPS, the police failed to investigate the criminal or quasi-criminal acts of Van Allen and lied to the Plaintiff. The Plaintiff was lied to by the OPP and specifically, Kearns and Vibert and the DRPS, specifically Dmytruk and Rushbrook about Van Allen.

(4) FRAUD ON COURT RE PWCECF

(a) Abuse of Process (Common law and s. 7 of the Charter)

217. The continued active representation of a client that does not exist and the false assertion to the Court that the client does exist is the perpetration of a fraud on the Court. This is contempt of court. Contempt of court is a form of abuse of process. The improper and collateral purpose was to hide the true identity of the auditor and to prevent costs being ordered against his real client. By representing a non-entity, a costs order against that "entity" could never be effective. It also raises a real concern about where funds payable to the 'client' were going. It also allowed for the Faskens defendants to act with the need for constraints of acting in accordance with instruction. The Plaintiff was harmed by the unrestrained conduct of the Faskens defendants, in

particular Ranking, who could and did act abusively in respect of contempt proceedings (see Causes of Actions, III., B., 1.)

218. PWCECF was put forward by the Faskens defendants as the auditor of KEL in respect of the NBGL case. KEL had to know the true identity of the auditor. Their lawyers and law firms must have known as well. In light of the close and interactive manner in which the Cassels defendants worked on the NBGL case and the contempt proceedings, it is reasonable to infer knowledge by the Cassels defendants.

219. As prosecutors, the lawyers, the law firms and the clients were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors. The TPA, police and Van Allen defendants were government actors fulfilling public functions. They were parties to the prosecution. The liberty and security of the person interests of the Plaintiff were at stake from the possibility of a finding of contempt, a criminal or quasi-criminal proceeding. In proceeding on behalf of a client that did not exist and thereby perpetrating a fraud on the Court, the violated principles of fundamental justice (contrary to s. 7 of the Charter). These actions damaged the Plaintiff by finding him in contempt, ruining his professional reputation and life and imprisoning him. There are no public policy reasons to deny remedies including damages.

(b) Breach of fiduciary Duty to the Court

220. Ranking, Silver, Kwydzinski, Pendrith and their law firms, Cassels and Faskens owed a fiduciary duty to the SCJ, as Officers of the Court, to not lie to the Court. This duty was breached by asserting that PWCECF existed. This was dishonest and fraudulent. This breach

damaged the Plaintiff by freeing Ranking and Kydzinski and Faskens from the constraints of adverse costs consequence and the need for instructions from clients. This facilitated his abusive conduct of the contempt proceedings.

221. The Cassels defendants had their own fiduciary duty to report on the fraud by Ranking, Kwydzinski and Faskens. In the alternative, the Cassels defendants were aware of the fiduciary duty, its breach and the dishonesty and/or fraud. By acquiescing in this lie they assisted it and are liable.

(c) Misfeasance of Public Office/Abuse of Authority

222. As prosecutors, the Faskens and Cassels defendants were exercising a public function pursuant to statutory and common law authority and the lawyers and law firms were acting as officers of the Court. They were state actors.

223. The actions of the the Faskens and Cassels defendants lying to the Court about PWCECF was in bad faith and was deliberately unlawful or outside the scope of their authority in the exercise of the public functions of a prosecutor and/or an Officer of the Court. They were aware that their conduct was unlawful and that it would likely injure the Plaintiff. These actions caused actual, visible and provable injury (physical and mental harm and suffering) as a result of the contempt proceedings.

224. Two or more of the Faskens and/or Cassels defendants made an agreement to act unlawfully knowing that their acts were aimed at the Plaintiff and knowing or constructively knowing that their acts would injure the Plaintiff. The unlawful means was the lie to the Court about PWCECF existing. As detailed otherwise described in this Statement of Claim, these defendants acted in furtherance of this agreement. These actions caused actual, visible and provable harm to the Plaintiff: injury (physical and mental harm and suffering) and endangerment through the contempt proceedings.

IV. SERVICE OUTSIDE OF ONTARIO PER 17.02 (G)(H)(O);

225. Kingsland Estates Limited is a company operating in Barbados. As one of the main prosecutors in respect of contempt, KEL is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

226. Richard Ivan Cox resides in Barbados. As one of the directing mind of the main prosecutors in respect of contempt, Cox is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

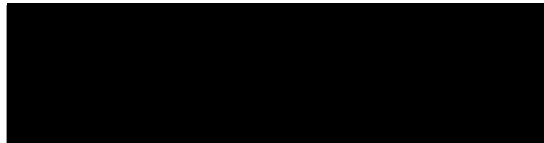
227. Eric Iain Stewart Deane resides in the United Kingdom. As one of the directing minds of one of prosecutors in respect of contempt, Deane is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.

228. Marcus Andrew Hatch resides in Barbados. Since PWCECF was supposed to be one the main prosecutors in respect of contempt, but it does not exist, Hatch, one of the auditors is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.
229. Philip St. Eval Atkinson resides in Barbados. Since PWCECF was supposed to be one the main prosecutors in respect of contempt, but it does not exist, Atkinson, one of the auditors is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.
230. PricewaterhouseCoopers East Caribbean (formerly 'PricewaterhouseCoopers') is a partnership operating in Barbados. Since PWCECF was supposed to be one the main prosecutors in respect of contempt, but it does not exist, PWCEC, asserted to be the client by counsel for "PWCECF", is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.
231. James Arthur Van Allen resides in British Columbia. Van Allen resided and worked in Ontario at the time and is one of the central defendants in the case. He is a necessary or proper party. Therefore, pursuant to Rule 17.02(o) leave is not required for service on this person.
232. The torts are all torts committed in Ontario. Therefore, pursuant to Rule 17.02(g) leave is not required for service on these persons.

233. The damage was for tort was sustained in Ontario. Therefore, pursuant to Rule 17.02(h) leave is not required for service on these persons.

234. Such further grounds and/or claims as may become apparent from discovery or otherwise.

July 18, 2014



Paul Slansky
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1062 College Street, Lower Level
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Tel: (416) 536-1220;
Fax (416) 536-8842
LSUC #25998I

Counsel for the Plaintiff

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. **14-0815**

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

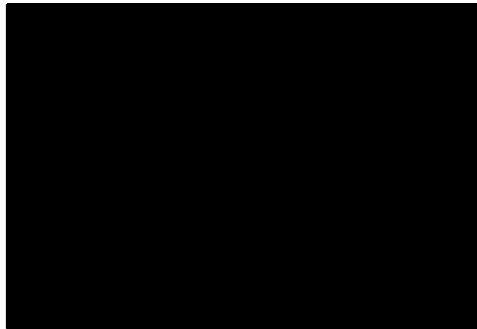
STATEMENT OF CLAIM

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

**Tel: (416) 536-1220
Fax (416) 536-8842
LSUC #259981**

Counsel for the Plaintiff

This is Exhibit 'B'
to the Affidavit of Oliver David Moon
sworn September 22nd, 2014



Noel D Chapman
Notary Public
England and Wales

EXHIBIT B

154

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and -


GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICEWATERHOUSECOOPERS EAST CARIBBEAN (FORMERLY
'PRICEWATERHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE;
MARTY KEARNS; JEFFERY R. VIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5

Defendants

JURY NOTICE
(Form 47A)

THE Plaintiff REQUIRES that this action be tried by a jury.

JULY 23, 2014


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Barrister and Solicitor
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AND TO: Miller Thomson LLP
Scotia Plaza
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Toronto, ON
M5H 3S1
Tel: (416) 595-8500
Fax: (416) 595-8695

AND TO: Kingsland Estates Limited
c/o Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Richard Ivan Cox
No. 29 Atlantic Shores,
Enterprise,
Christ Church,
Barbados, West Indies

AND TO: Eric Iain Stewart Deane
6 Augustines Way,
Haywards Heath,
West Sussex
R1-1163111, England

AND TO: Marcus Andrew Hatch
'West Shore Lodge'
Greenidge Drive
Paynes Bay, St. James,
Barbados, West Indies

AND TO: Philip St. Eval Atkinson
'Random'
Waterford, St. Michael
Barbados, West Indies

AND TO: PricewaterhouseCoopers East Caribbean
(Formerly 'PricewaterhouseCoopers', prior to June 23, 2011)
The Financial Services Centre
Bishop's Court Hill
St. Michael
BB 14004
Barbados, West Indies
Tel: (246) 626-6700
Faxes: (246) 436-1275 and (246) 429-3747

AND TO: Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: Peel Regional Police Service a.k.a. Peel Regional Police
General Headquarters
7750 Hurontario Street.
Brampton, ON, L6V 3W6
Tel: (905) 453-3311

AND TO: Durham Regional Police Service
General Headquarters
605 Rossland Rd. E.
Whitby, ON, L1N 0B8
Tel: (905) 579-1520

AND TO: Marty Kearns
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
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Tel: (705) 329-6111

AND TO: Jeffery R. Vibert
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
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Orillia, ON L3V 7V3
Tel: (705) 329-6111

AND TO: George Dmytruk
Central East Division
Durham Regional Police Service
77 Centre St. N.
Oshawa, ON L1G 4B7
Tel: (905) 579-1520

AND TO: Laurie Rushbrook
Durham Regional Police Service
General Headquarters
605 Rossland Rd. E.
Whitby, ON, L1N 0B8
Tel: (905) 579-1520

AND TO: James (Jim) Arthur Van Allen
6450 199 Street
Suite 15
Langley, British Columbia
V2Y 2X1

AND TO: Behavioural Science Solutions Group Inc.
26 Jordon Crescent
Orillia, Ontario
L3V 8A9
Tel: (604) 626-9572
Fax: (604) 371-1649

AND TO: Tamara Jean Williamson
Probation and Parole Services.
Cottage C,
700 Memorial Avenue.
2nd floor.
Orillia, Ontario L3V 6H1
Tel: (705) 329-6010

AND TO: Investigative Solutions Network Inc.
1099 Kingston Road, Suite 237
Pickering, Ontario L1V 1B5
Tel: (905) 421-0046
Fax: (905) 421-0048

AND TO: Toronto Police Association
200-2075 Kennedy Rd
Toronto, ON M1T 3V3
Tel: (416) 491-4301
Fax: (416) 494-4948

AND TO: John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, and Jane Doe #1.
Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

JURY NOTICE

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

**Tel: (416) 536-1220
Fax (416) 536-8842
LSUC #259981**

Counsel for the Plaintiff

This is Exhibit 'C'
to the Affidavit of Oliver David Moon
sworn September 22nd, 2014



Noel D Chapman
Notary Public
England and Wales

EXHIBIT C

162

Title number WSX23999

This is a copy of the register of the title number set out immediately below, showing the entries in the register on 21 AUG 2014 at 05:18:08. This copy does not take account of any application made after that time even if still pending in the Land Registry when this copy was issued.

This copy is not an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he or she suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the Land Registry web site explains how to do this.

A: Property Register

This register describes the land and estate comprised in the title.

WEST SUSSEX : MID SUSSEX

- 1 (02.12.1975) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 6 Augustines Way, Haywards Heath (RH16 3JH).
- 2 The land has the benefit of the rights granted by but is subject to the rights reserved by the Transfer dated 30 May 1978 referred to in the Charges Register.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (10.01.2007) PROPRIETOR: ERIC IAIN STEWART DEANE of 6 Augustines Way, Haywards Heath, West Sussex RH16 3JH.
- 2 (10.01.2007) The price stated to have been paid on 13 December 2006 was £215,000.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 A Transfer of the land in this title dated 30 May 1978 made between (1) Unit Construction Southern Limited and (2) Richard Antony James Dexter and Chandralakha Ramjeet contains restrictive covenants.

NOTE: Original filed.

End of register

Donald Best (Plaintiff) v. Gerald Ranking et al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

CENTRAL EAST REGION

PROCEEDING COMMENCED IN BARRE

AFFIDAVIT OF SERVICE
(UPON FRUIC LAIN STEWART DEANE)

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

Tel: (416) 593-1220
Fax: (416) 593-4842
T.S.M. #259981

Counsel for the Plaintiff

THIS IS EXHIBIT "B"
REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS
15th DAY
OF December, 2014

A Commissioner etc.

EXHIBIT B

Court File No. 14-0815

**SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)****DONALD BEST**

Plaintiff

- and -

**GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
 LORNE STEPHEN SILVER; COLIN DAVID PENDRITH; PAUL BARKER SCHARAS;
 ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
 FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
 BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
 KINGSLAND ESTATES LIMITED; RICHARD IVAN COX; ERIC IAIN STEWART DEANE;
 MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON; PRICEWATERHOUSECOOPERS
 EAST CARIBBEAN (FORMERLY 'PRICEWATERHOUSECOOPERS');
 ONTARIO PROVINCIAL POLICE;
 PEEL REGIONAL POLICE SERVICE a.k.a. PEEL REGIONAL POLICE;
 DURHAM REGIONAL POLICE SERVICE; MARTY KEARNS; JEFFERY R. VIBERT;
 GEORGE DMYTRUK; LAURIE RUSHBROOK; JAMES (JIM) ARTHUR VAN ALLEN;
 BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.; TAMARA JEAN WILLIAMSON;
 INVESTIGATIVE SOLUTIONS NETWORK INC.; TORONTO POLICE ASSOCIATION;
 JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
 JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5**

Defendants

REQUISITION FOR DEFAULT

TO THE LOCAL REGISTRAR AT BARRIE, ONTARIO

I REQUIRE you to note the Defendant Eric Iain Stewart Deane in default in this action on the grounds that he has failed to file a defence to the Claim within the period required by the Rules of Practice.

Dated November 5, 2014


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

Tel: (416) 536-1220;
 Fax (416) 536-8842
 LSUC #259981
 Counsel for the Plaintiff

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

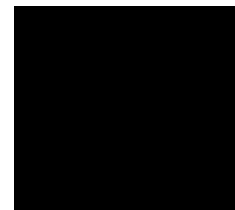
PROCEEDING COMMENCED IN BARRIE

REQUISITION FOR DEFAULT

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

**Tel: (416) 536-1220
Fax (416) 536-8842
LSUC #259981**

Counsel for the Plaintiff



07 2016

THIS IS EXHIBIT "C"
REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS
15th DAY
OF December, 2014

A Commissioner etc.

EXHIBIT C

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION: BARRIE)

DONALD BEST

Plaintiff

- and -

GERALD LANCASTER REX RANKING; SEBASTIEN JEAN KWIDZINSKI;
LORNE STEPHEN SILVER; COLIN DAVID PENDRITH;
PAUL BARKER SCHABAS; ANDREW JOHN ROMAN; MA'ANIT TZIPORA ZEMEL;
FASKEN MARTINEAU DUMOULIN LLP; CASSELS BROCK & BLACKWELL LLP;
BLAKE, CASSELS & GRAYDON LLP; MILLER THOMSON LLP;
KINGSLAND ESTATES LIMITED; RICHARD IVAN COX;
ERIC IAIN STEWART DEANE;
MARCUS ANDREW HATCH; PHILIP ST. EVAL ATKINSON;
PRICewaterHOUSECOOPERS EAST CARIBBEAN (FORMERLY 'PRICewaterHOUSECOOPERS');
ONTARIO PROVINCIAL POLICE;
PEEL REGIONAL POLICE SERVICE ~~s.s.~~ PEEL REGIONAL POLICE;
DURHAM REGIONAL POLICE SERVICE;
MARTY KEARNS; JEFFERY R. VIBERT;
GEORGE DMYTRUK; LAURIE RUSHBROOK;
JAMES (JIM) ARTHUR VAN ALLEN;
BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.;
TAMARA JEAN WILLIAMSON;
INVESTIGATIVE SOLUTIONS NETWORK INC.;
TORONTO POLICE ASSOCIATION;
JANE DOE #1; JANE DOE #2; JANE DOE #3; JANE DOE #4; JANE DOE #5
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3; JOHN DOE #4; JOHN DOE #5

Defendants

REQUISITION FOR DEFAULT

TO THE LOCAL REGISTRAR AT BARRIE, ONTARIO:

I REQUIRE YOU TO NOTE THE DEFENDANTS PRICewaterHOUSECOOPERS EAST CARIBBEAN
(FORMERLY 'PRICewaterHOUSECOOPERS'), MARCUS ANDREW HATCH, PHILIP ST. EVAL ATKINSON,
KINGSLAND ESTATES LIMITED and RICHARD IVAN COX in default in this action on the grounds that they have failed
to file a defence to the Claim within the period required by the Rules of Practice.

Dated: December 3, 2014


Paul Slansky
Barrister and Solicitor
1062 College Street, lower level
Toronto, Ontario M6H 1A9

Tel: (416) 538-1220
Fax (416) 538-8842
LSUC #259981
Counsel for the Plaintiff

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

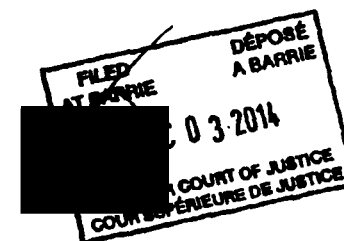
PROCEEDING COMMENCED IN BARRIE

REQUISITION FOR DEFAULT

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Counsel for the Plaintiff



Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

AFFIDAVIT OF DONALD BEST

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Counsel for the Plaintiff

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE
(CENTRAL EAST REGION)

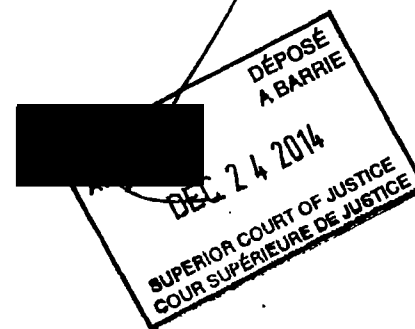
PROCEEDING COMMENCED IN BARRIE

MOTION RECORD

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Counsel for the Plaintiff



THIS IS **EXHIBIT "J"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015

A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**

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 IAN 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

AMENDED NOTICE OF MOTION
(Motion Returnable November 2, 3 and 4, 2009)

- 2 -

The defendant, PricewaterhouseCoopers East Caribbean Firm, and all other similarly situated defendants who were served with a Notice of Discontinuance on March 23, 2009, as listed in Schedule "A" hereto, and all other defendants (collectively the "Defendants") will make a motion to the Honourable Mr. Justice Shaughnessy on Monday, November 2, Tuesday, November 3, and Wednesday, November 4, 2009 at 10:00 a.m., or as soon after that time as the motion can be heard, at the Courthouse in Whitby, Ontario.

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

THE MOTION IS FOR an order:

1. awarding costs of this action to the Defendants on a full indemnity scale, or in the alternative, on a substantial indemnity scale (as set forth in the Bills of Costs to be delivered) fixed, and payable forthwith by the plaintiff, the plaintiff's officer Donald Best, K. William McKenzie ("Mr. McKenzie") and Mr. McKenzie's law firm, Crawford, McKenzie, McLean, Anderson & Duncan LLP, on a joint and several basis;
2. in furtherance of the relief sought in paragraph 1 above, an order setting aside the two cost orders listed below, and supplementing those orders by awarding costs to the Defendants on full indemnity scale. The orders to be set aside, and supplemented, are:
 - (a) the order of Justice Shaughnessy dated April 16, 2008 dealing with the costs of the various motions (principally the issue of security) on January 14, 15, 17 and 18, 2008 which awarded costs to the defendants on a partial indemnity scale;
 - (b) the order of Justice Howden dated August 8, 2008 dealing with the costs of the plaintiff's appeal of Justice Shaughnessy's rulings on the motions heard on

January 14, 15 and 17 which awarded costs to the responding parties represented by Cassels, Brock & Blackwell on a partial indemnity scale; and

- (c) the order of Justice Ferguson dated May 5, 2009 dealing with the costs of the plaintiff's motion for leave to appeal (the order of Justice Shaughnessy dated December 3, 2008) which awarded costs to the defendants on a substantial indemnity scale;

3. in addition, and also in furtherance of the relief sought in paragraph 1 above, an order awarding costs to the Defendants of the following motions, attendances or conference calls for which costs have not yet been awarded by this Honourable Court:

- (a) the order dated December 3, 2007 dealing with the timing for the delivery of Peter Simmons' affidavit, Dr. Sharon Smith's expert report and the delivery of the defendants' materials to respond to plaintiff's motion regarding alleged threats/security concerns;
- (b) the order dated April 4, 2008 dealing with the plaintiff's motion for clarification, reconsideration or review of certain issues in the reasons of the Honourable Justice Shaughnessy dated February 8, 2008;
- (c) the costs thrown away for the defendants having to prepare motions to secure payment of the cost awards of Justice Shaughnessy (issued pursuant to Justice Shaughnessy's cost award dated April 16, 2008);
- (d) the order dated August 7, 2008 dealing with Mr. McKenzie's issues regarding the calculation of GST on the defendants' bills of costs;
- (e) the order dated October 24, 2008 dealing with the motion by PricewaterhouseCoopers East Caribbean Firm, and other defendants, for directions regarding the cross-examinations in Barbados;
- (f) the order dated December 3, 2008 dealing with the plaintiff's motion seeking the release of the videotapes of the cross-examinations held in Barbados (from

- 4 -

October 27, 2008 to November 1, 2008) and the release of the videotapes of the cross-examinations held in Toronto (on November 3 and 4, 2008);

- (g) the attendance and the subsequent order dated December 8, 2008 dealing with Mr. McKenzie's request to adjourn all jurisdiction motions and the adjournment thereof; and
 - (h) the order dated January 5, 2009 (following a conference call on that date) dealing with Mr. McKenzie's request to view the videotapes and to set a date for hearing of the jurisdiction motions.
4. an order validating service of all motion materials (relating to the within motion) upon Donald Best and providing that service of all such materials was effective ten (10) days after such materials were served upon Nelson Barbados Group Ltd. by virtue of having been delivered to the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP;
5. an order for substituted service of any and all further materials (including motions, court orders and notices of examination) upon Donald Best and providing that service of all such materials will be effective ten (10) days after mailing same to Donald Best c/o the address at 427 Princess Street, Suite 200, Kingston, Ontario;
6. an order compelling Donald Best to appear at an examination (on a date to be fixed by this Honourable Court) at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario M5K 1H6 at his own expense, to answer:
- (a) all questions refused or taken under advisement at the cross-examination of John Knox held on November 4, 2008 and all questions reasonably arising therefrom;

- (b) all questions refused or taken under advisement at the Rule 39.03 examination of Donald Best held on March 20, 2009 and all questions reasonably arising therefrom;
- (c) all questions which Justice Shaughnessy directed be answered on April 8, 2009 and all questions reasonably arising therefrom;
- (d) all questions relating to his appointment, and subsequent duties/responsibilities as an officer of Nelson Barbados ("Nelson Barbados"); his relationship, if any, to the matters pleaded in the within action (and the related actions in Barbados), and his association and/or relationship with K. William McKenzie and/or the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP; and
- (e) all questions concerning the shares of Kingsland Estates Limited ("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.

7. with respect to the examination referred to in paragraph 7 above, an order compelling Donald Best to deliver to Gerald L.R. Ranking, or in the alternative, to the Registrar of this Honourable Court, at least two (2) weeks prior to the examination, all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland, all trust documents (referred to in the cross-examination of John Knox), the minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements), and all books of account, ledgers and financial statements from the date of incorporation of Nelson Barbados through to the present;

8. an order awarding costs of this motion to the Defendants on a full indemnity scale, or in the alternative, on a substantial indemnity scale, fixed, and payable forthwith by the

plaintiff, the plaintiff's officer Donald Best, Mr. McKenzie and Crawford, McKenzie, McLean, Anderson & Duncan LLP, on a joint and several basis;

9. an order that Justice Shaughnessy remained seized of this action and permitting counsel to bring such further motions to, or seek such further directions from, His Honour, as may be necessary; and

10. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. having discontinued the action, the Defendants are *prima facie* entitled to the costs of this action;

2. in this case, the usual order of partial indemnity costs is neither fair nor appropriate. All of the Defendants were forced to incur extraordinary legal fees to respond to unmeritorious claims and obstructionist tactics of the plaintiff and Mr. McKenzie. Throughout, and by reason of the fact that Mr. McKenzie and his firm asserted a claim that was devoid of merit, and thereafter took steps to intentionally complicate, delay and thwart the timely and efficient hearing of the jurisdiction motions brought by certain of the defendants, the Defendants seek costs on a full indemnity, or in the alternative substantial indemnity, scale for the following reasons:

- (a) Mr. McKenzie and his firm commenced and pursued an action in the Ontario Superior Court of Justice for the improper purpose of, amongst other things, re-litigating issues uniquely connected to Barbados and which were, or continue to be, the subject of civil proceedings in that country. Mr. McKenzie knew, from the outset, that the action had no real or substantial connection with Ontario;

- (b) the action, brought by a shell corporation registered to Mr. McKenzie's law firm, was devoid of merit and was brought against numerous parties (including high profile individuals) such as the former Prime Minister and Chief Justice of Barbados to embarrass individual defendants, the country of Barbados and its judicial system;
- (c) having commenced the action for an improper purpose, in a jurisdiction which had no connection to the parties or the matters in issue, Mr. McKenzie carefully set out to litigate the case in a fashion that would embarrass the defendants, run-up costs and delay the timely adjudication of the jurisdiction motions. Without being exhaustive, the Moving Defendants rely upon:
- (i) the fact that the amended statement of claim makes bald allegations of conspiracy, without any factual foundation, and does not plead a sustainable cause of action;
 - (ii) the fact that the amended statement of claim fails to plead evidence, or justify any connection, between the failed acquisition of the Kingsland shares and a real connection with Ontario;
 - (iii) the fact that Mr. McKenzie and his firm commenced the action in the name of one entity (Nelson Barbados Investments Inc.) which he then discontinued and re-asserted through a different entity (Nelson Barbados Group Ltd.), without amending the pleading to explain how the "new" plaintiff actually acquired "security" in the shares of Kingsland;
 - (iv) Mr. McKenzie's decision not to tender evidence from the plaintiff's only officer, Donald Best, and his decision only to file evidence from John Knox;
 - (v) Mr. McKenzie's steadfast, and on-going, refusal to answer any questions or disclose information with respect to the plaintiff, whether in response to questions from the defence, or this Honourable Court, through Justice Shaughnessy on April 7 and 8, 2009;
 - (vi) Mr. McKenzie's inflammatory, and often offensive, allegations to the effect that the Barbados Justice system was inadequate or even corrupt - - allegations which Mr. McKenzie continued to pursue even after they had clearly been refuted by the current Chief Justice, Sir David Simmons;
 - (vii) Mr. McKenzie's decision to sue 25 "John Does" and to subsequently add 15 more defendants to the action in August, 2007;

- (viii) Mr. McKenzie's decision to rely upon the surreptitious tape recording of two telephone calls (between Stuart Heaslet and Peter Simmons) to secure allegedly incriminating evidence of "serious and specific threats";
- (ix) Mr. McKenzie's decision not to disclose the tape recordings in a timely fashion, but rather, to use the evidence for purely strategic reasons, whether to secure cross-examinations in Ontario or in a feigned attempt to suggest that Barbados was simply too dangerous or too corrupt for the adjudication of the matters in Barbados;
- (x) Mr. McKenzie's refusal to respond to the reasonable requests of the defence for particulars of the alleged "threats" and his decision not to candidly disclose information, notwithstanding the seriousness of the allegations;
- (xi) Mr. McKenzie's decision to retain "experts" supposedly skilled in "threat analysis" and to deliver voluminous motion materials to obtain an order requiring the cross-examinations to be held in Ontario and requiring the defendants to post \$500,000 to cover security costs for Mr. McKenzie and his legal team;
- (xii) Mr. McKenzie's decision to persist with allegations of continuing security concerns even though Mr. McKenzie knew that such allegations were baseless and utterly unfounded;
- (xiii) Mr. McKenzie's repeated efforts to secure and/or introduce irrelevant evidence into the proceeding including the transcript evidence of Nitin Amersey, the data and electronically stored information (and other evidence) of Cable & Wireless (as described in Mr. McKenzie's letter dated January 2, 2008), and the numerous postings on the Keltruth blog and other websites;
- (xiv) Mr. McKenzie's persistent refusal to answer reasonable questions of the defence (whether on matters of scheduling, the place of cross-examinations, the order of cross-examinations, etc.) necessitating numerous motions for directions;
- (xv) Mr. McKenzie's decision to conduct the cross-examinations of the Barbadian witnesses contrary to the integrity and fairness of the process by, amongst other things, examining upon topics that were completely irrelevant, examining upon incomplete and/or redacted documents, and improperly marking exhibits, presumably for the Keltruth blog;
- (xvi) Mr. McKenzie's decision not to properly prepare John Knox to be cross-examined by, amongst other things, not ensuring that all relevant documents were brought to his cross-examination;

- (xvii) Mr. McKenzie's decision to carefully orchestrate the documents produced by John Knox (all of which Mr. Knox admitted originated from Mr. McKenzie) on a memory stick containing some 4,000 documents and Mr. McKenzie's subsequent refusal to identify the documents upon which he intended to rely, contrary to his undertaking to do so;
- (xviii) Mr. McKenzie's repeated, and intentional, refusal to permit Mr. Knox to answer any questions with respect to the plaintiff, its business, records, and related documents;
- (xix) Mr. McKenzie's utter lack of professionalism by walking out of the examining room on November 4, 2008, even though defence counsel were still on the record;
- (xx) Mr. McKenzie's claims as to the critical importance of the videotapes of all the cross-examinations, notwithstanding the fact that Mr. McKenzie attended all cross-examinations (with his articling student, Marc Lemieux, who took notes) and where Mr. McKenzie himself admitted that the transcripts were recorded by Victory Verbatim, a court reporting service, who Mr. McKenzie described as "professional and reliable"
- (xxi) Mr. McKenzie's failure to view the videotapes in a timely manner, or at all, after having claimed the alleged importance of the videotapes in his factum and in his submissions to both Justice Shaughnessy and to Justice Ferguson;
- (xxii) Mr. McKenzie's decision to repeatedly seek leave to appeal this Court's decisions;
- (xxiii) overall, Mr. McKenzie's lack of common courtesy, respect and civility to defence and to witnesses throughout;
- (xxiv) Mr. McKenzie's decision to appeal the order of Justice Shaughnessy dated May 4, 2009 and his subsequent failure to take steps to perfect the appeal; and
- (xxv) the fact that the appeal of Justice Shaughnessy's order dated May 4, 2009 was dismissed by the Court of Appeal for delay on October 8, 2009 such that, all Defendants are now entitled to recover their costs.

3. the Defendants therefore require the highest scale of costs to compensate them for the hundreds of thousands of dollars of legal fees thrown away. The order must extend to Mr. McKenzie personally, and to his law firm, Crawford, McKenzie, McLean, Anderson & Duncan LLP, so as to sanction the improper conduct and to ensure the costs are in fact paid.

4. the Defendants are entitled to set aside the cost awards referred to in paragraph 2 (page 2 above) and to have those costs awards supplemented by orders granting costs on a full indemnity scale on the basis that Justice Shaughnessy, Howden and Ferguson would have granted costs on that scale had they known the facts arising after the orders were made, as set forth in the affidavit of Lawrence Hansen sworn June 18, 2009 and Ivo Entchev sworn June 3, 2009;

5. further, and for the same reasons, the Defendants are also entitled to costs of the motions, attendances and conference calls enumerated in paragraph 3 (page 3 above) on a full indemnity, or in the alternative, substantial indemnity scale;

6. Rules 1.04, 23.05, 37, 57.01, 57.03, 57.07 and 59.06(2) of the *Rules of Civil Procedure*;

7. Rule 4.01 of the *Rules of Professional Conduct* of the Law Society of Upper Canada, and the commentaries thereunder;

8. section 131 of the *Courts of Justice Act*; and

9. such further and other grounds as counsel may advise and this Honourable Court permit.

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

- (a) the affidavit of Jeannine Ouellette sworn December 8, 2008;
- (b) the affidavit of Lawrence Hansen sworn June 18, 2009;

- (c) the affidavit of Ivo Entchev sworn June 3, 2009;
- (d) the Joint Compendium;
- (e) the affidavit of Jim Van Allen sworn October 21, 2009;
- (f) the affidavit of Sébastien Kwidzinski, sworn October 27, 2009;
- (g) if necessary, or as required, the numerous motion records, affidavits, factums and other materials filed by the plaintiff in the course of this action; and
- (h) such further and other material as counsel may advise and this Honourable Court may permit.

October 27, 2009

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Prepared for, and on behalf of, all Defendants

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Owen Seymour Arthur, Mark Cummins, Kingsland Estates Limited,
Classic Investments Limited, The Barbados Agricultural Credit Trust,
Attorney General of Barbados, the Country of Barbados, Elneth Kentish,
Malcolm Deane, Eric Ashby Bentham Deane, Owen Basil Keith Deane,
Estate of Vivian Gordon Lee Deane, David Thompson, Owen Gordon Finlay Deane,
Life of Barbados Holdings, Life of Barbados Limited and Leonard Nurse

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Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

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

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

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

THE MOTION IS FOR an order:

1. awarding costs of this action to the Defendants on a full indemnity scale, or in the alternative, on a substantial indemnity scale (as set forth in the Bills of Costs to be delivered) fixed, and payable forthwith by the plaintiff, the plaintiff's officer Donald Best, K. William McKenzie ("Mr. McKenzie") and Mr. McKenzie's law firm, Crawford, McKenzie, McLean, Anderson & Duncan LLP, on a joint and several basis;
2. in furtherance of the relief sought in paragraph 1 above, an order setting aside the two cost orders listed below, and supplementing those orders by awarding costs to the Defendants on full indemnity scale. The orders to be set aside, and supplemented, are:
 - (a) the order of Justice Shaughnessy dated April 16, 2008 dealing with the costs of the various motions (principally the issue of security) on January 14, 15, 17 and 18, 2008 which awarded costs to the defendants on a partial indemnity scale;
 - (b) the order of Justice Howden dated August 8, 2008 dealing with the costs of the plaintiff's appeal of Justice Shaughnessy's rulings on the motions heard on

January 14, 15 and 17 which awarded costs to the responding parties represented by Cassels, Brock & Blackwell on a partial indemnity scale; and

- (c) the order of Justice Ferguson dated May 5, 2009 dealing with the costs of the plaintiff's motion for leave to appeal (the order of Justice Shaughnessy dated December 3, 2008) which awarded costs to the defendants on a substantial indemnity scale;
3. in addition, and also in furtherance of the relief sought in paragraph 1 above, an order awarding costs to the Defendants of the following motions, attendances or conference calls for which costs have not yet been awarded by this Honourable Court:
- (a) the order dated December 3, 2007 dealing with the timing for the delivery of Peter Simmons' affidavit, Dr. Sharon Smith's expert report and the delivery of the defendants' materials to respond to plaintiff's motion regarding alleged threats/security concerns;
 - (b) the order dated April 4, 2008 dealing with the plaintiff's motion for clarification, reconsideration or review of certain issues in the reasons of the Honourable Justice Shaughnessy dated February 8, 2008;
 - (c) the costs thrown away for the defendants having to prepare motions to secure payment of the cost awards of Justice Shaughnessy (issued pursuant to Justice Shaughnessy's cost award dated April 16, 2008;
 - (d) the order dated August 7, 2008 dealing with Mr. McKenzie's issues regarding the calculation of GST on the defendants' bills of costs;
 - (e) the order dated October 24, 2008 dealing with the motion by PricewaterhouseCoopers East Caribbean Firm, and other defendants, for directions regarding the cross-examinations in Barbados;
 - (f) the order dated December 3, 2008 dealing with the plaintiff's motion seeking the release of the videotapes of the cross-examinations held in Barbados (from

October 27, 2008 to November 1, 2008) and the release of the videotapes of the cross-examinations held in Toronto (on November 3 and 4, 2008);

- (g) the attendance and the subsequent order dated December 8, 2008 dealing with Mr. McKenzie's request to adjourn all jurisdiction motions and the adjournment thereof;
 - (h) the order dated January 5, 2009 (following a conference call on that date) dealing with Mr. McKenzie's request to view the videotapes and to set a date for hearing of the jurisdiction motions; and
 - (i) the costs thrown away for the defendants having to prepare for the October 28, 2009 examination of Mr. McKenzie, and the subsequent preparations of the Further Amended Notice of Motion, supplementary affidavit material and factum to address the blanket refusal of Mr. McKenzie to answer any questions relating to Mr. Donald Best and Nelson Barbados Group Ltd. ("Nelson Barbados").
4. an order validating service of all motion materials (relating to the within motion) upon Donald Best and providing that service of all such materials was effective ten (10) days after such materials were served upon Nelson Barbados by virtue of having been delivered to the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP;
5. an order for substituted service of any and all further materials (including motions, court orders and notices of examination) upon Donald Best and providing that service of all such materials will be effective ten (10) days after mailing same to Donald Best c/o the address at 427 Princess Street, Suite 200, Kingston, Ontario;
6. an order compelling Donald Best to appear at an examination (on a date to be fixed by this Honourable Court) at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario M5K 1H6 at his own expense, to answer:

- (a) all questions refused or taken under advisement at the cross-examination of John Knox held on November 4, 2008 and all questions reasonably arising therefrom;
 - (b) all questions refused or taken under advisement at the Rule 39.03 examination of Donald Best held on March 20, 2009 and all questions reasonably arising therefrom;
 - (c) all questions which Justice Shaughnessy directed be answered on April 8, 2009 and all questions reasonably arising therefrom;
 - (d) all questions relating to his appointment, and subsequent duties/responsibilities as an officer of Nelson Barbados; his relationship, if any, to the matters pleaded in the within action (and the related actions in Barbados), and his association and/or relationship with K. William McKenzie and/or the law firm of Crawford, McKenzie, McLean, Anderson & Duncan LLP;
 - (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; and
7. with respect to the examination referred to in paragraph 6, above, an order compelling Donald Best to deliver to Gerald L.R. Ranking, or in the alternative, to the Registrar of this Honourable Court, at least two (2) weeks prior to the examination, all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland, all trust documents (referred to in the cross-examination of John Knox), the minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements), and all books of account, ledgers and financial statements from the date of incorporation of Nelson Barbados through to the present;

8. an order compelling Mr. McKenzie to attend to be cross-examined upon his affidavit, sworn October 2, 2009 (the "Affidavit") (on a date to be fixed by this Honourable Court) at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario M5K 1H6 at his own expense, to:

(a) answer all questions that are related to matters in the Affidavit, including questions relating to the subject areas identified in Mr. Ranking's letter dated October 27, 2009, all of which were refused by a blanket refusal by Mr. McKenzie, including questions relating to:

- (i) the appointment of Mr. Best as the director of Nelson Barbados;
- (ii) the status of Mr. Best with respect to Nelson Barbados and Mr. Best's association with all of the matters in issue in the action, including, but not limited to, the security and/or ownership which Nelson Barbados has, or allegedly has, in the shares of Nelson Barbados;
- (iii) any and all details of the reason for the incorporation of Nelson Barbados;
- (iv) any and all details of the security over and ownership rights held by Nelson Barbados in the common shares of Kingsland and all questions reasonably arising therefrom;
- (v) the terms of Mr. McKenzie's retainer, or his firm's retainer, with Nelson Barbados;
- (vi) any and all details of the rendering of professional accounts, by Mr. McKenzie or his firm, to Nelson Barbados; and
- (vii) any and all details regarding the individual who retained and paid Mr. McKenzie and/or his firm with respect to this action;

-- (b) produce within 5 business days of this motion all books, contracts, letters, statements, records and copies of same of Nelson Barbados in the custody, possession or power of Mr. McKenzie or his firm, including:

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

- (ii) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;
- (iii) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland;
- (iv) all trust documents (referred to in the cross-examination of John Knox);
- (v) the retainer agreement between Nelson Barbados and Mr. McKenzie and/or his firm; and
- (vi) all professional accounts for services provided by Mr. McKenzie with respect to the action.

9. in the alternative, an order striking paragraphs 6, 7, 8, 9, 16, 17, 20, and 152 from the affidavit of Mr. McKenzie, sworn October 2, 2008;

10. an order requiring The UPS Store Canada, a non-party to this motion, to deliver to the defendants copies of the original contract for rental/use, and any billing records that exist from the date the mail box was opened until present, for the following mail boxes at the following The USP Store Canada locations:

- (a) Box 200, at 427 Princess Street, Kingston, Ontario;
- (b) Box 1225, at 250 The East Mall, Toronto Ontario, Store 122 (Cloverdale Mall);
and
- (c) Box 1715, at 250 The East Mall, Toronto, Ontario, Store 122;

11. the order for production by The UPS Store Canada will not come into effect until 10 days after the date the order is mailed to Mr. Best and Nelson Barbados, thereby providing sufficient time for Mr. Best and Nelson Barbados or a duly authorized representative to bring a motion before the Superior Court objecting to the production of the above noted non-party documents.

12. an order awarding costs of this motion to the Defendants on a full indemnity scale, or in the alternative, on a substantial indemnity scale, fixed, and payable forthwith by the plaintiff, the plaintiff's officer Donald Best, Mr. McKenzie and Crawford, McKenzie, McLean, Anderson & Duncan LLP, on a joint and several basis;

13. an order that Justice Shaughnessy remained seized of this action and permitting counsel to bring such further motions to, or seek such further directions from, His Honour, as may be necessary; and

14. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

15. having discontinued the action, the Defendants are *prima facie* entitled to the costs of this action;

16. in this case, the usual order of partial indemnity costs is neither fair nor appropriate. All of the Defendants were forced to incur extraordinary legal fees to respond to unmeritorious claims and obstructionist tactics of the plaintiff and Mr. McKenzie. Throughout, and by reason of the fact that Mr. McKenzie and his firm asserted a claim that was devoid of merit, and thereafter took steps to intentionally complicate, delay and thwart the timely and efficient hearing of the jurisdiction motions brought by certain of the defendants, the Defendants seek costs on a full indemnity, or in the alternative substantial indemnity, scale for the following reasons:

- (a) Mr. McKenzie and his firm commenced and pursued an action in the Ontario Superior Court of Justice for the improper purpose of, amongst other things, re-litigating issues uniquely connected to Barbados and which were, or continue to

be, the subject of civil proceedings in that country. Mr. McKenzie knew, from the outset, that the action had no real or substantial connection with Ontario;

- (b) the action, brought by a shell corporation registered to Mr. McKenzie's law firm, was devoid of merit and was brought against numerous parties (including high profile individuals) such as the former Prime Minister and Chief Justice of Barbados to embarrass individual defendants, the country of Barbados and its judicial system;
- (c) having commenced the action for an improper purpose, in a jurisdiction which had no connection to the parties or the matters in issue, Mr. McKenzie carefully set out to litigate the case in a fashion that would embarrass the defendants, run-up costs and delay the timely adjudication of the jurisdiction motions. Without being exhaustive, the Moving Defendants rely upon:
 - (i) the fact that the amended statement of claim makes bald allegations of conspiracy, without any factual foundation, and does not plead a sustainable cause of action;
 - (ii) the fact that the amended statement of claim fails to plead evidence, or justify any connection, between the failed acquisition of the Kingsland shares and a real connection with Ontario;
 - (iii) the fact that Mr. McKenzie and his firm commenced the action in the name of one entity (Nelson Barbados Investments Inc.) which he then discontinued and re-asserted through a different entity (Nelson Barbados Group Ltd.), without amending the pleading to explain how the "new" plaintiff actually acquired "security" in the shares of Kingsland;
 - (iv) Mr. McKenzie's decision not to tender evidence from the plaintiff's only officer, Donald Best, and his decision only to file evidence from John Knox;
 - (v) Mr. McKenzie's steadfast, and on-going, refusal to answer any questions or disclose information with respect to the plaintiff, whether in response to questions from the defence, or this Honourable Court, through Justice Shaughnessy on April 7 and 8, 2009;
 - (vi) Mr. McKenzie's inflammatory, and often offensive, allegations to the effect that the Barbados Justice system was inadequate or even corrupt - - allegations which Mr. McKenzie continued to pursue even after they had clearly been refuted by the current Chief Justice, Sir David Simmons;

- (vii) Mr. McKenzie's decision to sue 25 "John Does" and to subsequently add 15 more defendants to the action in August, 2007;
- (viii) Mr. McKenzie's decision to rely upon the surreptitious tape recording of two telephone calls (between Stuart Heaslet and Peter Simmons) to secure allegedly incriminating evidence of "serious and specific threats";
- (ix) Mr. McKenzie's decision not to disclose the tape recordings in a timely fashion, but rather, to use the evidence for purely strategic reasons, whether to secure cross-examinations in Ontario or in a feigned attempt to suggest that Barbados was simply too dangerous or too corrupt for the adjudication of the matters in Barbados;
- (x) Mr. McKenzie's refusal to respond to the reasonable requests of the defence for particulars of the alleged "threats" and his decision not to candidly disclose information, notwithstanding the seriousness of the allegations;
- (xi) Mr. McKenzie's decision to retain "experts" supposedly skilled in "threat analysis" and to deliver voluminous motion materials to obtain an order requiring the cross-examinations to be held in Ontario and requiring the defendants to post \$500,000 to cover security costs for Mr. McKenzie and his legal team;
- (xii) Mr. McKenzie's decision to persist with allegations of continuing security concerns even though Mr. McKenzie knew that such allegations were baseless and utterly unfounded;
- (xiii) Mr. McKenzie's repeated efforts to secure and/or introduce irrelevant evidence into the proceeding including the transcript evidence of Nitin Amersey, the data and electronically stored information (and other evidence) of Cable & Wireless (as described in Mr. McKenzie's letter dated January 2, 2008), and the numerous postings on the Keltruth blog and other websites;
- (xiv) Mr. McKenzie's persistent refusal to answer reasonable questions of the defence (whether on matters of scheduling, the place of cross-examinations, the order of cross-examinations, etc.) necessitating numerous motions for directions;
- (xv) Mr. McKenzie's decision to conduct the cross-examinations of the Barbadian witnesses contrary to the integrity and fairness of the process by, amongst other things, examining upon topics that were completely irrelevant, examining upon incomplete and/or redacted documents, and improperly marking exhibits, presumably for the Keltruth blog;

McKenzie personally, and to his law firm, Crawford, McKenzie, McLean, Anderson & Duncan LLP, so as to sanction the improper conduct and to ensure the costs are in fact paid.

18. the Defendants are entitled to set aside the cost awards referred to in paragraph 2 (page 2 above) and to have those costs awards supplemented by orders granting costs on a full indemnity scale on the basis that Justice Shaughnessy, Howden and Ferguson would have granted costs on that scale had they known the facts arising after the orders were made, as set forth in the affidavit of Lawrence Hansen sworn June 18, 2009 and Ivo Entchev sworn June 3, 2009;

19. further, and for the same reasons, the Defendants are also entitled to costs of the motions, attendances and conference calls enumerated in paragraph 3 (page 3 above) on a full indemnity, or in the alternative, substantial indemnity scale;

20. the defendants sought to cross-examine Mr. McKenzie on the Affidavit, which was filed in support of the within motion. The defendants were candid and forthright. Mr. Ranking informed Mr. McKenzie's counsel (by letter dated October 27, 2009), *inter alia*, that the defence intended to ask questions relating to:

- (a) the appointment of Mr. Best as the director of Nelson Barbados;
- (b) the status of Mr. Best with respect to Nelson Barbados and Mr. Best's association with all of the matters in issue in the action, including, but not limited to, the security and/or ownership which Nelson Barbados has, or allegedly has, in the shares of Nelson Barbados;
- (c) any and all details of the reason for the incorporation of Nelson Barbados;

- (d) the terms of Mr. McKenzie's retainer, or his firm's retainer, with Nelson Barbados;
- (e) any and all details of the rendering of professional accounts, by Mr. McKenzie or his firm, to Nelson Barbados; and
- (f) any and all details regarding the individual who retained and paid Mr. McKenzie and/or his firm with respect to this action;

21. the defendants informed Mr. McKenzie's counsel (by letter dated October 27, 2009, and by Notice of Examination), *inter alia*, that they required production of documents, including:

- (a) all incorporation documents for Nelson Barbados, including minute books, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements);
- (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;
- (d) all trust documents (referred to in the cross-examination of John Knox);
- (e) the retainer agreement between Nelson Barbados and Mr. McKenzie and/or his firm; and
- (f) all professional accounts for services provided by Mr. McKenzie with respect to the action.

22. Mr. McKenzie, through his counsel, provided the defendants with a "blanket refusal" to answer any question relating to the issues identified in paragraph 8a, above, or to

produce any documents relating to the issues identified in paragraph 8b7, above, in the absence of an order requiring Mr. McKenzie to answer the questions and/or produce the documents:

23. Nelson Barbados the plaintiff in this action and its corporate status and actions are directly relevant to the matters in issue. Despite Aside from its status as a party to the action, Mr. McKenzie has, through the Affidavit, brought into issue, *inter alia*, his beneficial interest, if any, in Nelson Barbados; the reasons for the incorporation of Nelson Barbados; whether Mr. McKenzie had any direct or indirect interest or involvement in Nelson Barbados; the content of his professional retainer with Nelson Barbados and the manner and form of his professional fees;

24. having put these matters in issue, Mr. McKenzie cannot rely on inferences drawn from the Affidavit and the materials referred to therein, but then refuse to disclose the materials to the defendants on the basis of privilege or confidentiality;

25. the Order of Justice Eberhard, dated September 18, 2009, identified the address for service for Nelson Barbados, as Suite 200, at 427 Princess Street, Kingston, Ontario, which is a The UPS Store Canada location;

26. Corporate profiles for [REDACTED] (Mr. Best's corporations) are or have the following addresses, both of which are The UPS Store Canada locations:

(a) Suite 1225, at 250 The East Mall, Toronto Ontario, Store 122; and

(b) Suite 1715, at 250 The East Mall, Toronto, Ontario, Store 122.

27. Mr. Best's listed residential address on his driver's license is Apt. 1225, at 250 The East Mall, Toronto, Ontario, Store 122, which is also a The UPS Store Canada location;

28. the defendants have requested that The UPS Store Canada voluntarily produce the documents that are sought on this motion;

29. the documents are relevant to a material issue in the action;

30. it would be unfair to require the defendants to proceed to the hearing of this motion without having obtained copies of the above noted documents;

31. Rules 1.04, 23.05, 25.11, 30.10, 37, 39, 57.01, 57.03, 57.07 and 59.06(2) of the *Rules of Civil Procedure*;

32. Rule 4.01 of the *Rules of Professional Conduct* of the Law Society of Upper Canada, and the commentaries thereunder;

33. section 131 of the *Courts of Justice Act*; and

34. such further and other grounds as counsel may advise and this Honourable Court permit.

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

- (a) the affidavit of Jeannine Ouellette sworn December 8, 2008;
- (b) the affidavit of Lawrence Hansen sworn June 18, 2009;
- (c) the affidavit of Ivo Entchev sworn June 3, 2009;
- (d) the Joint Compendium;
- (e) the affidavit of Jim Van Allen sworn October 21, 2009;

- (f) the affidavit of Sébastien Kwidzinski, sworn October 27, 2009;
- (g) the affidavit of Sébastien Kwidzinski, sworn October 29, 2009;
- (h) if necessary, or as required, the numerous motion records, affidavits, factums and other materials filed by the plaintiff in the course of this action; and
- (i) such further and other material as counsel may advise and this Honourable Court may permit.

October 29, 2009

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Solicitors for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of, all Defendants

TO:

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David C. Shorey and Company, David Carmichael Shorey
and S.B.G. Development Corporation

- 18 -

AND TO: CASSELS BROCK & BLACKWELL LLP

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Owen Seymour Arthur, Mark Cummins, Kingsland Estates Limited,
Classic Investments Limited, The Barbados Agricultural Credit Trust,
Attorney General of Barbados, the Country of Barbados, Elneth Kentish,
Malcolm Deane, Eric Ashby Bentham Deane, Owen Basil Keith Deane,
Estate of Vivian Gordon Lee Deane, David Thompson, Owen Gordon Finlay Deane,
Life of Barbados Holdings, Life of Barbados Limited and Leonard Nurse

AND TO: TEAM RESOLUTION

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AND TO: MILLER THOMSON LLP

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Solicitors for the Defendants,
Eric Iain Stewart Deane and the Estate of Colin Ian Estwick Deane

к

THIS IS **EXHIBIT "K"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015



A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**

FILED JUN 08 2010

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

-and-

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GRAVES, 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 DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS, G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and LIFE OF BARBADOS LIMITED c.o.b. as LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY, PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD. AND COMMONWEALTH CONSTRUCTION, INC.

Defendants

MINUTES OF SETTLEMENT

(Executed June 7, 2010)

BETWEEN**PriceWaterhouseCoopers East Caribbean Firm ("PwC")**

- and -

Richard Ivan Cox, Gerard Cox, Alan Cox, Gittens Clyde Turney, R.G. Mandeville & Co., Keble Worrell Ltd., Lionel Nurse, Owen Seymour Arthur, Mark Cummins, Kingsland Estates Limited, Classic Investments Limited, The Barbados Agricultural Credit Trust, Attorney General of Barbados, the Country of Barbados, Elneth Kentish, Malcolm Deane, Eric Ashby Bentham Deane (also known as "Errie Deane" and "Eric Deane"), Owen Basil Keith Deane (also known as "Keith Deane"), Estate of Vivian Gordon Lee Deane, David Thompson, Owen Gordon Finlay Deane, Life of Barbados Holdings, Life of Barbados Limited and Leonard Nurse (collectively, the "Cox Defendants")

- and -

K. William McKenzie ("McKenzie")

- and -

Crawford, McLean, Anderson & Duncan LLP ("Crawford")

- and -

Peter Allard ("Allard")

WHEREAS defendants in this Action brought a motion seeking costs of this Action from all respondents named in paragraph 1 of the Further Further Amended Notice of Motion dated April 22, 2010 (attached hereto as Schedule A), returnable June 7-11, 2010 (the "Costs Motion");

AND WHEREAS McKenzie, Crawford and Allard (all three, collectively, the "Respondent Group"), and PwC and the Cox Defendants, desire to resolve all matters pertaining to the Costs Motion (McKenzie, Crawford, Allard, PwC and the Cox Defendants, individually, "Party", collectively, the "Parties");

AND WHEREAS the Parties are represented by the following counsel in respect of the Costs Motion, which counsel are authorized to execute these Minutes of Settlement on behalf of their clients:

McKenzie:	Kramer Henderson Sidlofsky LLP
Crawford:	Blaney McMurtry LLP
Allard:	Paliare Roland Rosenberg Rothstein LLP ("Paliare Roland")
PwC:	Fasken Martineau DuMoulin LLP ("Faskens")
Cox Defendants:	Cassels Brock & Blackwell LLP ("Cassels")

NOW THEREFORE the Parties agree as follows:

1. The Respondent Group will pay the following amounts in respect of costs (fees, disbursements and GST) of the Action, including of the Costs Motion, within 30 days, by certified cheque or bank draft:
 - a. To PwC, the amount of \$927,981.50, payable to Fasken Martineau DuMoulin LLP, in trust.
 - b. To the Cox Defendants, the amount of \$775,000, payable to Cassels Brock & Blackwell LLP, in trust.
2. Paliare Roland confirms that Allard's portion of the above amounts is in Paliare Roland's trust account as of the signing of these Minutes of Settlement.
3. PwC and the Cox Defendants confirm that payment of the above amounts satisfies all claims for costs in respect of the Action, against all respondents listed in paragraph 1 of the Further Further Amended Notice of Motion dated April 22, 2010, including of the Costs Motion, except that PwC and the Cox Defendants do not release Mr. Donald Best (and shall be at liberty to pursue him) for the costs (respectively of \$50,632.90 and \$13,230.00) and contempt reflected in the order made by Justice Shaughnessy dated January 15, 2010 (attached hereto as Schedule B).
4. Faskens and Cassels confirm that they do not currently have instructions to pursue Donald Best for the costs and contempt reflected in the order made by Justice Shaughnessy dated January 15, 2010, and do not currently expect to obtain such instructions in the immediate future, but such instructions may be forthcoming in the future depending on the circumstances.
5. Allard agrees not to fund any proceedings or claims against and/or involving PwC, its partners or related entities (collectively "PwC") in any jurisdiction other than the state of Florida concerning or related to Kingsland Estates Ltd. If any proceedings or claims funded by Allard proceed in Florida against and/or involving PwC, Allard and PwC hereby agree, as a matter of contract, that the losing party shall indemnify and pay the reasonable attorney fees and disbursements of the prevailing party (to be agreed upon, or failing agreement, to be determined by the judge in Florida, following submissions by counsel for the parties). For greater certainty, the scale of costs that should be applied shall be akin to an Ontario award of costs on a substantial indemnity scale.

6. Notwithstanding paragraph 5 above, Allard and the Responding Group acknowledge that nothing in this agreement constitutes attornment, and that PwC expressly contests the jurisdiction of the state of Florida for the adjudication of any matters concerning or related to Kingsland Estates Ltd.
7. The documentation produced in consequence of the cross examinations and answers to undertakings in the Costs Motion, and any further documentation to be obtained, if any, in consequence of subparagraph 7(b), below, will be filed by Cassels or treated as filed by Cassels with the court. Cassels will ensure that the Responding Group is provided with a copy of all such documents. In addition:
 - a. The original legal files maintained by McKenzie or at his direction, as inspected by Faskens and Cassels on and following May 13, 2010, will be preserved and maintained by Crawford in their current state and access will not be given to any Party without prior notice to the other Parties;
 - b. Subject to paragraph 7(a), above, the Parties will be entitled to access for the purpose of comparing the discs attached to Jessica Zagar's affidavit (and thus to be filed with the court) and to request additional copies as and if required;
 - c. In the event that formal proof of the authenticity of the records is required (for example, in respect of proceedings in Florida), a member of Crawford will co-operate in providing same; and
 - d. Any reasonable costs (time and disbursements) incurred by Crawford with regard to its obligations under this paragraph 7 will be borne by the Party so requesting Crawford's co-operation.
8. McKenzie will not be involved, either directly or indirectly, in prosecuting, or advising Allard or anyone else, with respect to potential claims against PwC. However nothing herein shall prevent Mr. McKenzie from appearing as a witness in any subsequent proceeding in the event he is subpoenaed or served with other similar court process for such purpose.
9. Allard confirms he has not given any party to the Action other than PwC an assurance not to fund litigation against it.
10. The settlement between the Parties, these Minutes of Settlement, and its terms, are not confidential. However, PwC and the Cox Defendants agree they will not take active steps to publicize this settlement, these Minutes of Settlement and its terms in such a manner that would impugn Crawford or its partners.


11. This agreement may be signed in counterparts and by fax or email.

ALL OF WHICH IS AGREED TO THIS 7TH DAY OF JUNE, 2010.


PriceWaterhouseCoopers East Caribbean Firm
by: Fasken Martineau DuMoulin LLP


The Cox Defendants
by: Cassels Brock & Blackwell LLP


K. William McKenzie
by: Kramer Henderson Sidlofsky LLP


Crawford, McLean, Anderson & Duncan LLP
by: Blaney McMurtry LLP


Peter Allard
by: Paliare Roland Rosenberg Rothstein LLP

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ALL OF WHICH IS AGREED TO THIS 7TH DAY OF JUNE, 2010.

PriceWaterhouseCoopers East Caribbean Firm
by: Fasken Martineau DuMoulin LLP

The Cox Defendants
by: Cassels Brock & Blackwell LLP

K. William McKenzie
by: Kramer Henderson Sidlofsky LLP

Crawford, McLean, Anderson & Duncan LLP
by: Blaney McMurtry LLP

Peter Allard
by: Palfire Roland Rosenberg Rothstein LLP

11. This agreement may be signed in counterparts and by fax or email.

ALL OF WHICH IS AGREED TO THIS 7TH DAY OF JUNE, 2010.

PriceWaterhouseCoopers East Caribbean Firm
by: Faaken Martineau DuMoulin LLP

The Cox Defendants
by: Cassels Brock & Blackwell LLP

K. William McKenzie
by: Kramer Henderson Didlofaky LLP

Crawford, McLean, Anderson & Duncan LLP
by: Blaney McMurtry LLP

Peter Allard
by: Pallares Roland Rosenberg Rothstein LLP

SCHEDULE "A"

Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

FURTHER FURTHER AMENDED NOTICE OF MOTION
(Motion returnable Monday, June 7,8,9,10,11, 2010)

The defendant, PricewaterhouseCoopers East Caribbean Firm, and all other similarly situated defendants who were served with a Notice of Discontinuance on March 23,

2009, as listed in Schedule "A" hereto, and all other defendants (collectively the "Defendants") will make a motion to the Honourable Mr. Justice Shaughnessy on Monday, June 7, 2010, at 10:00 a.m., or as soon after that time as the motion can be heard, at the Courthouse at 150 Bond Street in Oshawa, Ontario.

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

THE MOTION IS FOR an order:

1. awarding costs of this action to the Defendants on a full indemnity scale, or in the alternative, on a substantial indemnity scale (as set forth in the Bills of Costs, delivered and to be delivered) fixed, and payable forthwith by the plaintiff, the plaintiff's officer Donald Best, K. William McKenzie ("Mr. McKenzie") and Mr. McKenzie's apparently former law firm, Crawford, McKenzie, McLean, Anderson & Duncan LLP (now named Crawford, McLean, Anderson, and Duncan, LLP) (collectively referred to as "Crawford McLean"). Peter Allard ("Mr. Allard"), and each of John Knox, Jane Goddard, Marjorie Ilma Knox, and Kathleen Davis (collectively, the "Knox Family") on a joint and several basis;
2. in furtherance of the relief sought in paragraph 1 above, an order setting aside the cost orders listed below, and supplementing those orders by awarding costs to the Defendants on full indemnity scale. The orders to be set aside, and supplemented, are:
 - (a) the order of Justice Shaughnessy dated April 16, 2008 dealing with the costs of the various motions (principally the issue of security) on January 14, 15, 17 and 18, 2008 which awarded costs to the defendants on a partial indemnity scale;
 - (b) the order of Justice Howden dated August 8, 2008 dealing with the costs of the plaintiff's appeal of Justice Shaughnessy's rulings on the motions heard on January 14, 15 and 17 which awarded costs to the responding parties represented by Cassels, Brock & Blackwell on a partial indemnity scale;

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- (c) the order of Justice Ferguson dated May 5, 2009 dealing with the costs of the plaintiff's motion for leave to appeal (the order of Justice Shaughnessy dated December 3, 2008) which awarded costs to the Defendants on a substantial indemnity scale; and
- (d) the order of Justice Shaughnessy dated January 15, 2010 dealing with the costs of the motion to find Donald Best in contempt;

3. in addition, and also in furtherance of the relief sought in paragraph 1 above, an order awarding costs to the Defendants of the following motions, attendances or conference calls for which costs have not yet been awarded by this Honourable Court:

- (a) the order dated December 3, 2007 dealing with the timing for the delivery of Peter Simmons' affidavit, Dr. Sharon Smith's expert report and the delivery of the defendants' materials to respond to plaintiff's motion regarding alleged threats/security concerns;
- (b) the order dated April 4, 2008 dealing with the plaintiff's motion for clarification, reconsideration or review of certain issues in the reasons of the Honourable Justice Shaughnessy dated February 8, 2008;
- (c) the costs thrown away for the defendants having to prepare motions to secure payment of the cost awards of Justice Shaughnessy (issued pursuant to Justice Shaughnessy's cost award dated April 16, 2008);
- (d) the order dated August 7, 2008 dealing with Mr. McKenzie's issues regarding the calculation of GST on the Defendants' bills of costs;
- (e) the order dated October 24, 2008 dealing with the motion by PricewaterhouseCoopers East Caribbean Firm, and other defendants, for directions regarding the cross-examinations in Barbados;
- (f) the order dated December 3, 2008 dealing with the plaintiff's motion seeking the release of the videotapes of the cross-examinations held in Barbados (from

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October 27, 2008 to November 1, 2008) and the release of the videotapes of the cross-examinations held in Toronto (on November 3 and 4, 2008);

- (g) the attendance and the subsequent order dated December 8, 2008 dealing with Mr. McKenzie's request to adjourn all jurisdiction motions and the adjournment thereof;
- (h) the order dated January 5, 2009 (following a conference call on that date) dealing with Mr. McKenzie's request to view the videotapes and to set a date for hearing of the jurisdiction motions;
- (i) the costs thrown away for the defendants having to prepare for the October 28, 2009 examination of Mr. McKenzie, and the subsequent preparations of the Further Amended Notice of Motion, supplementary affidavit material and factum to address the blanket refusal of Mr. McKenzie to answer any questions relating to Mr. Donald Best and Nelson Barbados Group Ltd. ("Nelson Barbados");
- (j) the order dated November 2, 2010 dealing with the production of documents and the attendance of Donald Best and Mr. McKenzie for cross-examination;
- (k) the costs of preparing for, and attending at the costs motion on February 22, 23, and 24, 2010, and the subsequent preparations required as a result of the Respondent's delay of this proceeding; and
- (l) the order dated April 12, 2010 dealing with the production of insurance policies and further answers to undertakings;

4. an order awarding costs of this motion to the Defendants, including all costs incurred in pursuing this motion, on a full indemnity scale, or in the alternative, on a substantial indemnity scale, fixed, and payable forthwith by the plaintiff, the plaintiff's officer Donald Best, Mr. McKenzie, Crawford McLean, Mr. Allard and the Knox Family on a joint and several basis;

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5. an order that Justice Shaughnessy remained seized of this action and permitting counsel to bring such further motions to, or seek such further directions from, His Honour, as may be necessary;
6. if necessary, an order validating service and abridging the time for service; and
7. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. having discontinued the action, the Defendants are *prima facie* entitled to the costs of this action;
2. in this case, the usual order of partial indemnity costs is neither fair nor appropriate. All of the Defendants were forced to incur extraordinary legal fees to respond to unmeritorious claims and obstructionist tactics of the plaintiff and Mr. McKenzie. Throughout, and by reason of the fact that Mr. McKenzie and his firm asserted a claim that was devoid of merit, and thereafter took steps to intentionally complicate, delay and thwart the timely and efficient hearing of the jurisdiction motions brought by certain of the defendants, the Defendants seek costs on a full indemnity, or in the alternative substantial indemnity, scale for the following reasons:
 - (a) Mr. McKenzie and his firm commenced and pursued an action in the Ontario Superior Court of Justice for the improper purpose of, amongst other things, re-litigating issues uniquely connected to Barbados and which were, or continue to be, the subject of civil proceedings in that country. Mr. McKenzie knew, from the outset, that the action had no real or substantial connection with Ontario;

- (b) the action, brought by a shell corporation registered to Mr. McKenzie's law firm, was devoid of merit and was brought against numerous parties (including high profile individuals) such as the former Prime Minister and Chief Justice of Barbados to embarrass individual defendants, the country of Barbados and its judicial system;
- (c) having commenced the action for an improper purpose, in a jurisdiction which had no connection to the parties or the matters in issue, Mr. McKenzie carefully set out to litigate the case in a fashion that would embarrass the defendants, run-up costs and delay the timely adjudication of the jurisdiction motions. Without being exhaustive, the Moving Defendants rely upon:
 - (i) the fact that the amended statement of claim makes bald allegations of conspiracy, without any factual foundation, and does not plead a sustainable cause of action;
 - (ii) the fact that the amended statement of claim fails to plead evidence, or justify any connection, between the failed acquisition of the Kingsland shares and a real connection with Ontario;
 - (iii) the fact that Mr. McKenzie and his firm commenced the action in the name of one entity (Nelson Barbados Investments Inc.) which he then discontinued and re-asserted through a different entity (Nelson Barbados Group Ltd.), without amending the pleading to explain how the "new" plaintiff actually acquired "security" in the shares of Kingsland;
 - (iv) Mr. McKenzie's decision not to tender evidence from the plaintiff's only officer, Donald Best, and his decision only to file evidence from John Knox;
 - (v) Mr. McKenzie's steadfast, and on-going, refusal to answer any questions or disclose information with respect to the plaintiff, whether in response to questions from the defence, or this Honourable Court, through Justice Shaughnessy on April 7 and 8, 2009;
 - (vi) Mr. McKenzie's inflammatory, and often offensive, allegations to the effect that the Barbados Justice system was inadequate or even corrupt - allegations which Mr. McKenzie continued to pursue even after they had clearly been refuted by the current Chief Justice, Sir David Simmons;
 - (vii) Mr. McKenzie's decision to sue 25 "John Does" and to subsequently add 15 more defendants to the action in August, 2007;

- (viii) Mr. McKenzie's decision to rely upon the surreptitious tape recording of two telephone calls (between Stuart Heaslet and Peter Simmons) to secure allegedly incriminating evidence of "serious and specific threats";
- (ix) Mr. McKenzie's decision not to disclose the tape recordings in a timely fashion, but rather, to use the evidence for purely strategic reasons, whether to secure cross-examinations in Ontario or in a feigned attempt to suggest that Barbados was simply too dangerous or too corrupt for the adjudication of the matters in Barbados;
- (x) Mr. McKenzie's refusal to respond to the reasonable requests of the defence for particulars of the alleged "threats" and his decision not to candidly disclose information, notwithstanding the seriousness of the allegations;
- (xi) Mr. McKenzie's decision to retain "experts" supposedly skilled in "threat analysis" and to deliver voluminous motion materials to obtain an order requiring the cross-examinations to be held in Ontario and requiring the defendants to post \$500,000 to cover security costs for Mr. McKenzie and his legal team;
- (xii) Mr. McKenzie's decision to persist with allegations of continuing security concerns even though Mr. McKenzie knew that such allegations were baseless and utterly unfounded;
- (xiii) Mr. McKenzie's repeated efforts to secure and/or introduce irrelevant evidence into the proceeding including the transcript evidence of Nitin Amersey, the data and electronically stored information (and other evidence) of Cable & Wireless (as described in Mr. McKenzie's letter dated January 2, 2008), and the numerous postings on the Keltruth blog and other websites;
- (xiv) Mr. McKenzie's persistent refusal to answer reasonable questions of the defence (whether on matters of scheduling, the place of cross-examinations, the order of cross-examinations, etc.) necessitating numerous motions for directions;
- (xv) Mr. McKenzie's decision to conduct the cross-examinations of the Barbadian witnesses contrary to the integrity and fairness of the process by, amongst other things, examining upon topics that were completely irrelevant, examining upon incomplete and/or redacted documents, and improperly marking exhibits, presumably for the Keltruth blog;
- (xvi) Mr. McKenzie's decision not to properly prepare John Knox to be cross-examined by, amongst other things, not ensuring that all relevant documents were brought to his cross-examination;

- (xvii) Mr. McKenzie's decision to carefully orchestrate the documents produced by John Knox (all of which Mr. Knox admitted originated from Mr. McKenzie) on a memory stick containing some 4,000 documents and Mr. McKenzie's subsequent refusal to identify the documents upon which he intended to rely, contrary to his undertaking to do so;
 - (xviii) Mr. McKenzie's repeated, and intentional, refusal to permit Mr. Knox to answer any questions with respect to the plaintiff, its business, records, and related documents;
 - (xix) Mr. McKenzie's utter lack of professionalism by walking out of the examining room on November 4, 2008, even though defence counsel were still on the record;
 - (xx) Mr. McKenzie's claims as to the critical importance of the videotapes of all the cross-examinations, notwithstanding the fact that Mr. McKenzie attended all cross-examinations (with his articling student, Marc Lemieux, who took notes) and where Mr. McKenzie himself admitted that the transcripts were recorded by Victory Verbatim, a court reporting service, who Mr. McKenzie described as "professional and reliable"
 - (xxi) Mr. McKenzie's failure to view the videotapes in a timely manner, or at all, after having claimed the alleged importance of the videotapes in his factum and in his submissions to both Justice Shaughnessy and to Justice Ferguson;
 - (xxii) Mr. McKenzie's decision to repeatedly seek leave to appeal this Court's decisions;
 - (xxiii) overall, Mr. McKenzie's lack of common courtesy, respect and civility to defence and to witnesses throughout;
 - (xxiv) Mr. McKenzie's decision to appeal the order of Justice Shaughnessy dated May 4, 2009 and his subsequent failure to take steps to perfect the appeal; and
 - (xxv) the fact that the appeal of Justice Shaughnessy's order dated May 4, 2009 was dismissed by the Court of Appeal for delay on October 8, 2009 such that, all Defendants are now entitled to recover their costs.
- (d) leading up to the hearing of the cost motion, Mr. McKenzie, Crawford McLean, the plaintiff and Donald Best continued in their course of egregious conduct. Without being exhaustive, the Defendants rely on the following:

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- (i) Donald Best was found in contempt of two orders of this Honourable Court, and to this date has failed to attend to purge his contempt and attend for cross-examination;
- (ii) Mr. McKenzie initially refused to appear for cross-examination on his affidavit sworn October 2, 2009, and refused to produce relevant documents, including insurance policies setting out the extent of his insurance coverage;
- (iii) during his cross-examination on February 3 and 8, 2010, Mr. McKenzie was clearly evasive. It is now clear that Mr. McKenzie lied repeatedly during his cross-examination;
- (iv) thereafter, Mr. McKenzie failed to deliver answers to his undertakings in a timely manner, only delivering cryptic answers on the eve of the costs hearing;
- (v) despite being served with the Notice of Motion dated July 15, 2009 (seeking costs against the firm) on July 23, 2009, Crawford McLean did not take any or, in the alternative, adequate steps to investigate the conduct of Mr. McKenzie, thereby unnecessarily increasing the costs of this motion; and
- (vi) after the costs motion (which commenced on February 22, 2010) was adjourned, the Defendants were given, for the first time, documents that implicate Mr. Allard and the Knox Family;

3. it is now clear that Mr. Allard and/or the Knox Family funded this action. The Defendants rely on the following:

- (a) as early as September 2005, Mr. Allard was a client of Crawford McLean. The file with respect to Mr. Allard is referenced as "Knox & Kingsland Estate action";
- (b) Crawford McLean's Client Ledgers, which begin in September 2005, clearly show that Mr. Allard was funding all of the preliminary work (conducted by Mr. McKenzie and others) prior to the commencement of this action from as early as September 2005;
- (c) the Knox Family entered into an agreement whereby they pledged shares in Kingsland Estates Limited to fund litigation related to Kingsland Estate Limited;

- (d) the plaintiff corporation (Nelson Barbados Group Ltd) was simply a nominal plaintiff put forward by Mr. McKenzie, Crawford McLean, Mr. Allard and the Knox Family for the purposes of this action. Donald Best and the plaintiff corporation do not have any real interest in the action. Mr. Allard and the Knox Family are the true plaintiff in this action, and are the parties who stood to truly benefit from and are responsible for the action;
- (e) Mr. Allard and the Knox Family, with the knowledge of Mr. McKenzie and Crawford McLean, used the plaintiff corporation as a "straw man" to shield themselves from liability for costs;
- (f) Mr. Allard and the Knox Family conducted the action, and instructed Mr. McKenzie and Crawford McLean;
- (g) Mr. Allard and the Knox Family, with the knowledge of Mr. McKenzie and Crawford McLean, improperly maintained this action for their own benefit with the intention of sharing the anticipated profits; and
- (h) Mr. Allard and the Knox Family are necessary and proper parties to the costs motion.

4. the Defendants therefore require the highest scale of costs to compensate them for the hundreds of thousands of dollars of legal fees thrown away. The order must extend to Mr. McKenzie personally, to his law firm, Crawford McLean, to Donald Best, to Mr. Allard and to the Knox Family, to sanction the above noted parties' egregious conduct and abuse of this court and the administration of justice, as they are collectively and individually responsible for the Defendants' costs of the action;

5. the Defendants are entitled to set aside the cost awards referred to in paragraph 2 (page 2 above) and to have those costs awards supplemented by orders granting costs on a full indemnity scale on the basis that Justice Shaughnessy, Howden and Ferguson would have

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granted costs on that scale had they known the facts arising after the orders were made, as set forth in the affidavit of Lawrence Hansen sworn June 18, 2009, Ivo Entchev sworn June 3, 2009, and Jessica Duncan, sworn April 22, 2010;

6. further, and for the same reasons, the Defendants are also entitled to costs of the motions, attendances and conference calls enumerated in paragraph 3 (page 3 above) on a full indemnity, or in the alternative, substantial indemnity scale;

7. Rules 1.04, 2.03, 3.02, 16.04(1), 17, 23.05, 25.11, 30.10, 37, 39, 57.01, 57.03, 57.07, 59 and 59.06(2) of the *Rules of Civil Procedure*;

8. Rule 4.01 of the *Rules of Professional Conduct* of the Law Society of Upper Canada, and the commentaries thereunder;

9. section 131 of the *Courts of Justice Act*; and

10. such further and other grounds as counsel may advise and this Honourable Court permit.

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

- (a) the affidavit of Jeannine Ouellette sworn December 8, 2008;
- (b) the affidavit of Lawrence Hansen sworn June 18, 2009;
- (c) the affidavit of Ivo Entchev sworn June 3, 2009;
- (d) the Joint Compendium;
- (e) the affidavit of Jim Van Allen sworn October 21, 2009;
- (f) the affidavit of Sébastien Kwidzinski, sworn October 27, 2009;

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- (g) the affidavit of Sébastien Kwidzinski, sworn October 29, 2009;
- (h) the affidavit of Jessica Duncan, sworn April 22, 2010;
- (i) if necessary, or as required, the numerous motion records, affidavits, factums and other materials filed by the plaintiff in the course of this action; and
- (j) such further and other material as counsel may advise and this Honourable Court may permit.

April 22, 2010

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NELSON BARBADOS GROUP LTD.

- and -

RICHARD IVAN COX ET AL.

Plaintiff

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

**FURTHER FURTHER AMENDED NOTICE OF
MOTION
(Motion returnable Monday, June 7.8.9.10.11, 2010)**

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SCHEDULE "B"

Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

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

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

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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

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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* ✓

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

6. *DOWN* **BEST MAY BRING AN APPLICATION BEFORE JUSTICE SHAUGHNESSY ON OR BEFORE FEBRUARY 22 2010 TO PURGE HIS CONFESSION**

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

- (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;

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

with respect to the action.

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

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.

- 5 -

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

10.9.

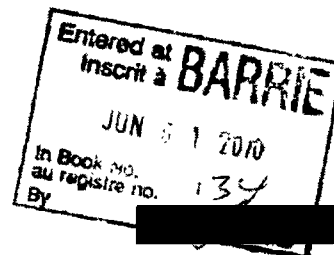
THIS COURT FURTHER ORDERS that the costs of this motion be paid by

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. CLARKE'S CLIENTS \$ 3,500.00

Justice Shaugnessy

JUSTICE SHAUGHNESSY / J



Schedule "A"

Court File No 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

WARRANT OF COMMITTAL

- 2 -

TO ALL POLICE OFFICERS in Ontario

AND TO THE OFFICERS OF provincial correctional institutions in Ontario

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

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

Justice Shaughnessy

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

O R D E R

FASKEN MARTINEAU DuMOULIN LLP

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

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

Emmeline Morse [LSUC#56879M]

Phone: 416 366 8381

Fax: 416 364 7813


Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of,
all Defendants

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THIS IS **EXHIBIT "L"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February 2015


A Commissioner etc.

**Merry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**

Court File No. 141-07

SUPERIOR COURT OF JUSTICE

B E T W E E N:

NELSON BARBADOS GROUP LIMITED

Plaintiff

- and -

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

Defendants

M O T I O N

BEFORE THE HONOURABLE JUSTICE J. B. SHAUGHNESSY

on December 2, 2009 at Whitby, Ontario

APPEARANCES:

H. Rubin

Counsel for the Plaintiff

L. Silver

Counsel for the Defendants

A. Roman

Counsel for the Defendants

G. Ranking

Counsel for the Defendants

E. Morse

Counsel for the Defendants

S. Clarke

Counsel for the Defendants

Schedule A

Nelson Barbados Group Limited Plaintiff

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

-and-

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Richard Ivan Cox
Gerard Cox
Alan Cox
Philip Vernon Nicholls
Eric Ashby Bentham Deane
Owen Basil Keith Deane
10 Marjorie Ilma Knox
David Simmons
Elneth Kentish
Glyne Bannister
Glyne B. Bannister
Philip Greaves a.k.a. Philip Greaves
Gittens Clyde Turney

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R.G. Mandeville & Co.
Cottle, Catford & Co.
Keble Worrell Ltd.
Eric Iain Stewart Deane
Estate of Colin Deane
Lee Deane

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Errie Deane
Keith Deane
Malcolm Deane
Lionel Nurse
Leonard Nurse
Edward Bayley
Francis Deher
David Shorey
Owen Seymour Arthur

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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.

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Thornbrook International Inc.
S.B.G. Development Corporation
The Barbados Agricultural Credit Trust
Phoenix Artists Management Limited

Schedule A

David C. Shorey and Company
C. Shorey and Company Ltd.
First Caribbean International Bank (Barbados) Ltd.
Price Waterhouse Coopers (Barbados)
Attorney General of Barbados
The Country of Barbados
John Does 1-25

Philip Greaves
Estate of Vivian Gordon Lee Deane
David Thompson
Edmund Bayley
Peter Simmons

G.S. Brown and Associates Ltd.
GBI Golf (Barbados) Inc.

Owen Gordon Finlay Deane
Classic Investments Limited and Life of Barbados
Limited c.o.b. as Life of Barbados Holdings
Life of Barbados Limited
David Carmichael Shorey
Price Waterhouse Coopers East Caribbean Firm
Veco Corporation

Commonwealth Construction Canada Ltd. and
Commonwealth Construction Inc.

Defendants

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

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

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

Sarah Clarke; for the Defendant First Caribbean International Bank

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

WEDNESDAY, DECEMBER 2, 2009

5 THE COURT: Right. The matter of Nelson Barbados. Mr. Ranking, I think the message got out here that I received your material, I took it home yesterday, read it, and then I was greeted with this batch of material this morning. It apparently came from Mr. Best. Fortunately the trial coordinator got a version as well, because mine just seems to come off the press in any order, where her copy was in an ordered form so that I read all of the materials - I shouldn't say - I read the letters, correspondence and the transcript as sent by Mr. Best, but I did not - other than give a cursory glance, at all of the web material, the Barbados underground, I gave it a cursory view, I don't think it merits a close review by me other than it - I suppose it's corroborative of the letter of Mr. Best in terms of what his concerns are. Having said that I take it Mr. Best is not here and he's not represented by anyone?

10 MR. RANKING: That's correct, Your Honour. Although Ms. Rubin is here, she's confronted me this morning but she's not acting, neither is her firm, acting for Mr. Best.

15 THE COURT: I'm sorry, Ms. Rubin?

20 MR. RANKING: Is here, but she has confirmed to me this morning that neither she nor her firm are acting for Mr. Best.

25 THE COURT: Just so I get things, I'm getting old, so you're from Mr. Duarte's firm?

30 MS. RUBIN: Correct.

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

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THE COURT: Got it. Well, I guess when I received your material yesterday I thought, well, this isn't anything terribly different than what I do see from day-to-day and week-to-week, and then I get this other batch of material today and I understand you fished out with the trial coordinator - sorry, with the court clerk the amended notice of motion and reply motion record of the defendant's for some reason, I did not see to go through that, I thought if there's a reason you'll send me there.

MR. RANKING: Yes.

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THE COURT: And before I forget, just before I forget, we're moving. As you know we're leaving this courthouse and we should be moving about, oh you can get the exact date, but I'm just going to say ball parking around the 20th of February. I have segregated - if you go back into the boardroom and I'm going to invite you to go back into the boardroom, I segregated what I think are the cost measures as well as those tapes and recordings from the Barbados of the examinations. I've segregated them. I'm at a point though where I got a nice shiny new office and I don't have a boardroom anymore that is adjacent to my chambers. I looked at it Friday. So, I think a lot of those boxes, which I will - I believe should be sent back, I'm going to let you look at them before you leave today, I want to send them back to Barrie. It looks like about three cases of materials has to go with me

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to the new courthouse, but I'm getting into the position where we've got to start thinking about where files are going to rest, and as I say, I don't have this - the luxury of this extensive boardroom where I could - I've sort of stacked boxes for some time. So, before you leave today, please, take a look at that and I'll mention it to the registrar and she can point out to you what I think should be sent back to Barrie. All right. So, with no Mr. Best here and it's now twenty minutes to eleven, what are we going to do today? I'm anticipating you're going to ask to arrange an appointment for a motion for contempt.

MR. RANKING: Your Honour, I have prepared a draft order which I've shared, obviously, with all counsel and although counsel for Mr. McKenzie did not represent Mr. Best, she has no difficulty with the terms of this order. Let me just take you through it in terms of what I am endeavoring to accomplish today.

THE COURT: And just before I forget, we do see contempt, frankly, more often than I'd like up here particularly because we do family cases, but on contempt there has to be proof of personal service.

MR. RANKING: Yes, I understand and what I'd like to do, and in some respects I actually had planned to spend about half an hour going through the history of this matter before speaking to the order, but I think that given the fact that Mr. Best isn't here and I would

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

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 17th 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 25th of November and Mr. Best then failed to attend on the 25th. 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

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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 16th 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

seen this from the notice of motion is that I am not asking Your Honour to give us a date for the contempt motion as the next date. Rather, and again because of the very peculiar, if I could call it that, circumstances of this case I'm asking for an order that Mr. Best appear in this court before you to answer all proper questions which I or Mr. Silver would put to him and this is set forth in paragraph 3 of the order, Your Honour, and if he shows up - and so what I've done is I've set this forth in terms of these are all the standard questions that we've asked and tried to have answered on any number of occasions previously, but what I'm essentially endeavouring to do is to have you order today that Mr. Best attend here on a date convenient to Your Honour to answer questions, and I shouldn't think that our questions will take more than - even with objections, should Mr. Best see fit to retain counsel, it wouldn't take more than an hour. Either the questions are relevant or they're not relevant. Either they're privileged or they're not privileged. By coming back to this court Mr. Best can purge his contempt, he can answer the questions and we can move on with it. The benefit of that is that it moves matters forward in an expeditious manner. It allows rulings to be made. It allows you to make an assessment of credibility and we can get on with it. Any option other than that, in my respectful submission, just puts us back to the position that we were

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

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already in where Mr. Best has demonstrated he doesn't want to attend, but what we then do is I then have fashioned the order to say that if Mr. Best doesn't attend and he will now have notice, assuming this order were to go in the form that I've provided, or in essentially the same form, that I have attached a Schedule A, a warrant, for his committal. So that we've had the failure to attend on the November 17th, we then have an order validating service of this motion record. This motion, if successful, would then afford an order that could be served by an alternate to personal service requiring him to come back on a date convenient to Your Honour and if attends then I can say without a doubt the contempt motion will not proceed. Mr. Best can answer the questions, we can get the evidence, we can have production of the books and records and we can move on. If he fails to attend it's at that point in time that a warrant should issue and what I say is the elegance of this process is that Mr. Best knows four-square by reason of this order that a warrant will issue on whatever date this court might determine to be appropriate for the return of the motion.

MR. SILVER: If he doesn't attend.

MR. RANKING: If he doesn't attend, yeah. So, that is how I fashioned it and I've obviously spoken to my co-counsel and Ms. Rubin and Ms. Rubin's concern, as she's expressed it to me, is as long as there is sufficient time between

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today and the date of any attendance that she has no difficulty with it.

MS. RUBIN: Sorry. If - Your Honour, if I may make one quick submission at the end of Mr. Rankings submissions...

MR. RANKING: All right.

MS. RUBIN: ...I'll express my concern.

THE COURT: Yes.

MS. RUBIN: Thank you.

MR. RANKING: So, that's the overview of the order, Your Honour. So, with that by way of the overview if I could go back and deal with the facts and why I respectfully submit that the order I've just taken you through is indeed the appropriate order.

THE COURT: I believe this is an appropriate time for me just to raise a point that you or Mr. Silver want to argue. I have some difficulty with paragraph 4. I think that what should happen is that a hearing then takes place with respect to the issue of contempt. In other words, there has to be a specific finding and the fallback position, if that hearing is convened, it's not - there's no representation by Mr. Best, then the court may be in a position to issue a warrant, but I mean, to issue a person's warrant for arrest almost as a fallback, I don't feel comfortable with. What I would be comfortable with is if he fails to attend at the hearing of the contempt motion and after the hearing has been conducted then this court will be in a position to entertain a

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warrant for arrest of Donald Best in the form -
if you even want to attach Schedule A, that's
fine, but I want to - for the purposes of an
appellant review to indicate clearly that a
hearing was conducted, because the very fact
that he may potentially be in contempt, there's
got to be a finding, and based on the finding
then there's certain ramifications that take
place.

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MR. RANKING: The way - and I hear Your Honour,
the way in which we fashioned it was intended
that the warrant would be - would not require
him to go to jail. I mean, he may have to be
held in custody, but we were intending the
warrant to require him to come give his evidence
in court. My - the end....

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THE COURT: Well, he's going to be arrested and
then he's going to be brought before the court
and then - hopefully on an expedited manner, and
then at that time the court will determine
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whether his incarceration has to continue. I
must also tell you that in the contempt process
generally what has happened is they're brought
before a justice of the peace and effectively
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there's a determination whether they should then
be released on their own recognizance or
released on a recognizance, et cetera, et
cetera. I don't want to get into all the
technical details, I'm just thinking I wanted
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the appearance of justice to be seen in this
case, notwithstanding what may be the heartaches
of the various defendants and their counsel in

relation to this matter. I still want the process to appear to be fair to Mr. Best in all respects.

MR. RANKING: I appreciate that, and take no issue with it. So just - so that I understand, you would prefer to see paragraph 4 drafted that there would be - if he fails to attend there would then be a contempt motion that would....

THE COURT: There will be a contempt hearing.

MR. RANKING: A contempt hearing.

THE COURT: And the court after...

MR. RANKING: After the - submit....

THE COURT: ...may - the court may after hearing the issue...

MR. RANKING: Right. Yes.

THE COURT: ...issue a warrant for the arrest. I mean, I almost don't like the nomenclature that I'm - it's a foregone conclusion I'm going to order his arrest.

MR. RANKING: Right.

THE COURT: If I had my druthers, to be quite candid with you, I'd prefer that the court will conduct a contempt hearing, period, and the pieces fall where they May.

MR. RANKING: And in what - just....

THE COURT: You - and don't attach Schedule A, but you can send Schedule A onto Mr. Best. It seems to me that he has at least an address that he's getting - he says he's getting information, or letters forwarded to wherever his present location is. Of which - I don't know what to make, if any, of that because none of it's in an

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

5 affidavit form, so if Mr. Best was here and the record will reflect that without it being in an affidavit form I don't see the - how I can possibly deal with anything that he says in this - in his correspondence, quite frankly, and I'm less than pleased, and I'm sure the court staff is, just to have our fax machine cluttered with blog entries.

MR. RANKING: Okay.

10 THE COURT: I mean, I've expressed my view about blogs before several times in the course of these proceedings and frankly everyone - well, some individuals seem to think they're all about truth and they - they're the strangest things that I've ever seen. I mean, there's comments by people called "Anon" and "Pat", the only Pat I know is my wife, Pat, and apart from that I'm really interested in the rest of the blogs. I'm speaking to the converted, but I think I should state again and again, these are nonsensical items to be sending to the court, and it must be over 60 pages of material was sent, not happy about it, but he's not here. But I've expressed on the record about - my views on the blogs. Go ahead.

25 MR. RANKING: Your Honour, I haven't conferred with my co-counsel, but I - we will re-fashion the order.

THE COURT: I think it would be better.

30 MR. RANKING: Yes.

THE COURT: The fact - I don't even - I frankly don't even like the Schedule A, I just tell you

why because you can send it to him as to what you're seeking, whether I'm going to grant it remains to be seen after a contempt hearing.

MR. RANKING: All right. Can I - can we deal with the form of the order after I had a chance to confer with my co-counsel...

THE COURT: Sure. Sure.

MR. RANKING: ...and go back and just deal with, really, the history of the matter and I think it is important to go through the history, but I think before I do that I hope that the court clerk put before you the November 2nd, 3rd, and 4th?

THE COURT: Yes.

MR. RANKING: And the other one that you'll need, Your Honour, just so that you have it before you is, as well, the motion record for today, and the December 2nd. Those are the two motion records I'll be referring to.

THE COURT: Got it.

MR. RANKING: But - and again, so this is without a doubt, and Your Honour has lived this case as long as we have, but you probably don't needs this, but I'm going to provide it to you to say...

THE COURT: No, I think it's important. I think it's important.

MR. RANKING: ...why I also think that Mr. Best is so important, all right? Because I don't want you to think that we're off on a frolic, we're not, and the defence think that the evidence that we may get from Mr. Best will be

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

exceedingly relevant and both in terms of the documents and his oral evidence, and the reason is as we see it Mr. Best can either go down one of two paths depending on his evidence. The first path is that this entire action was a sham. We know as a matter of fact that Nelson Barbados was incorporated by Mr. McKenzie's firm. We know that it's one of the few connections to Ontario, and we suspect that it's a company without assets. What we don't know, and we also know that despite repeated attempts we have been stymied at every turn when seeking to obtain information with respect to Nelson Barbados, its business, and the nature of its operations, books and records, anything and anything. And if, in fact, it is a sham that thing goes directly to one of the paragraphs in the statement of claim wherein it was pleaded that Nelson Barbados acquired an interest in the shares of Kingsland and we have reason to believe that shares in Kingsland actually do have value. So, either this was a sham and it was merely set up for the purposes of the litigation, or on the other hand, depending on what the books and records disclose, and the evidence of Mr. Best, we may in fact find security and information with respect to the shares. And we may then be able to determine the whereabouts of the shares, how they are held and make inquiries with respect to those shares on the basis that, in fact, they have value and they will be shares which can be attached and

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

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 4th 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

the question on a cross-examination, Mr. McKenzie refused to say whether or not Mr. Knox's questions, or his answers, would bind the company. Highly, highly suspicious. In any event, the concerns that we have - and just to really deal with it, is we're seeking costs against Mr. McKenzie personally under Rule 57.07, but the investigation that we have of Mr. Best and Mr. McKenzie's participation, if any, with respect to asserting the claim as he did, depending on the facts Your Honour may well expose him to a cost award completely aside from the provisions of Rule 57. So, that is why, in our respectful submission, Mr. Best is an integral part of the scenario that is currently unfolding.

With that by way of a brief introduction, if I could then turn you to the amended notice of motion and reply motion record of the defence and I'm going to ask you to turn to Tab 3 which is the affidavit of one of our students, Sebastien Kwidzinski, and I have not taken you through any of this material, and I'm not going to take you through all of it, Your Honour, but I do need to take you through some of it to demonstrate some of the difficulties that we've encountered and the steps that we've taken, which is in fact, got us here today. I don't know that you need to reference it in particular, but I did ask Mr. Kwidzinski, for the purposes of convenience more than anything

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

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else, to set forth at the bottom of page -
sorry, the top of page 3 in paragraphs 5 through
13 the various attempts that we have made both
personally and then through the court to obtain
information. So, that is just a helpful
summary. I think Your Honour is aware of that,
I'm not taking you through it, but that is where
we were attempting to obtain information. In
addition though, I would ask you - and this is
just by way of example and it's more to
exemplify, and I speak to Ms. Rubin about this
earlier in terms of the frustration that counsel
for the defence, but to exemplify how that
frustration arises. If I could ask you to turn
to Tab C; Tab B are all the questions refused.
You're aware of those. You may not have had
brought to your attention the examination that
Mr. Roman conducted when Mr. Best, in fact,
appeared and that appears under Tab C, and you
will see at the top of page 2 under that tab....

THE COURT: Just one second here. What - I'm
sorry, what page are you at now?

MR. RANKING: Tab C.

THE COURT: Yeah, I got that.

MR. RANKING: Page 2.

THE COURT: Page 2.

MR. RANKING: And it's just to direct your
attention to the fact that this is an
examination of Donald Best at the top of the
page...

THE COURT: Yes.

MR. RANKING: ...taken on March the 20th, 2009.

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THE COURT: Yes.

MR. RANKING: So, this is where Mr. Best, in fact, attended in Barrie and if you then turn to page 5 you'll then see the difficulties that Mr. Roman faces with the very first question. In Question 1, "Just for the record could you state your full name and address, please?" And then Mr. McKenzie doesn't even allow Mr. Best to answer that. "His name's Don Best, we all know that." "Do that in two parts." "Full name?" "Don Best." "Do you go by Don or Donald?" "Don Best." "Okay, and your address?" Answer, "Now sir" - sorry, "Sir, your client Ian Deane is the B-W-W-R person." "That's not my question." "Threatened the stock, threatened the witnesses." "You're not giving me your address, sir." "Let him finish his answer." What happened here was Mr. Best was coming to give a speech and if we turn to the beginning of the middle of next page, he says he can't possibly give him the address, he can't. And it goes on. The entire examination, Your Honour....

THE COURT: I mean, I had a look at this before, I guess in preparation on the last occasion when I thought I was going to hear this. It looked familiar and then I see my markings in the materials, but go ahead. Yes.

MR. RANKING: All to say impossible to get information with respect to Mr. Best, and so, that is where - we examine him, or Mr. Roman examined him and I haven't taken you to the earlier cross-examinations of John Knox where

Mr. Silver and I have tried to obtain that information, you're aware of that. I then write to Mr. McKenzie, my letter appears - one of my letters appears under Tab B where I'm basically saying, you know, "Could you please confirm that all my materials are being served on Mr. Best, and in the alternative please give me Mr. Best's contact details including address, fax, email", and the response I obtained is under Tab E where Mr. McKenzie simply says, "I note that normal practices is to send documents to the director of a company at his listed mailing address and you've apparently failed to do so. I take it that you're not intending to reach the director of the corporation, but rather to frame things as if they make me responsible for your failure and require me to do things which I'm not required to do." And then, Your Honour, my letter - my response goes back saying, "Please give me the details", and that is also under Tab E. If I then go back to Mr. Kwidzinski's affidavit I've now reached the point where we do not know where he is and as a consequence I ask Mr. Kwidzinski to begin taking steps to try to locate him, and Mr. Kwidzinski is not terribly successful and you will see that at the end of the day we have to retain a private investigator, and the affidavit of the private investigator appears under Tab 4, which is the very last tab of the brief. I'm going to ask you to turn that up. This is the affidavit of Jim Van Allen and he sets out his background and

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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

prevent him from being located by conventional methods. And concludes, and this is somebody with considerable experience, "that few people demonstrate the strenuous efforts over a number of years to create and convey false address history as reflected by the repeated use of false address, and/or post office box numbers used by Donald Best." He's among very few individuals to go to this length to conceal his address, and I just pause to observe that that very same comment has been confirmed in the letters to the court. We see a post office box, we do not see a fax number, email, phone number, nothing. So, those are the steps that we took, and we then get to the stage where we can't find him, we can't serve him with a summons, so we then say, "All right. What's happening with respect to Nelson Barbados generally?" And that's where we get to the order of Justice Eberhard, and Justice Eberhard issues her order and that order indicates that service should be made at 427 Princess Street, Suite 200, Kingston, Ontario. And for your bench brief, Your Honour, that appears under Tab N, as in Nancy, of the bigger brief and you'll see paragraph 2 of that order. Now, I also pause to make this statement and perhaps again it's stating the obvious, one should have thought, and again this will be another badge of fraud, Your Honour, one should have thought that someone responding to requests of the defence for costs in excess of well over a million

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dollars would have appointed counsel. We're seeking - this supposedly is Mr. Best's company, Nelson Barbados, and we're seeking costs against Nelson Barbados and he's on notice costs against him, but rather than appointing new counsel, he doesn't do that. He, again, does not come forward and Mr. McKenzie is required to get an order removing his firm as the solicitors of record and for the first time we see this address in Kingston. Now, when I got that address what I did was I went back to Mr. Kwidzinski and I said, "Would you please find out what's going on?" And my student sets forth what he did in paragraph 21. He indicates that shortly after his discussion with me I asked Mr. Andrius Pulutz (ph) an acquaintance of mine in Kingston - I'm sorry, Your Honour, I'm at paragraph 21 of Mr. Kwidzinski's affidavit under Tab 3.

THE COURT: Yes.

MR. RANKING: And what he says is he asked his friend to go to 427 Princess Street to determine if Nelson Barbados was, in fact, operating from Suite 200, and he's informed by his friend and believed that he went there on September the 26th and made the following observations; that the building is a UPS store and attached as Exhibit O is a copy of a photograph that was taken, and if you just turn up Exhibit O it's a picture of a UPS store. There is no business that is operated from that store and, in fact, when he made inquiries all of the so called suites are,

in fact, just post office boxes. So, let me pause there and then take you to - I'll come back to this motion record momentarily, but to finish the chronology dealing with the UPS post office boxes if I could ask you to pick up the December 2nd motion record, because what we then determine is what I suggest and respectfully submit to be incredible, and the reason I say that is that Mr. Butler, an associate at our firm, I then asked, "Okay, would you please" - and you'll recall that Mr. Butler filed an affidavit because we sought production of the non-parties and you ordered such production. He goes through that at the beginning of his affidavit, to say that he got in touch with the UPS stores and served the orders, but I ask you to turn to paragraph 6 on page 13 of the record, and I'm going to read to you paragraph 6 and 7. He states, "On November 12th Mr. Butler received a fax from Darren which included documents relating to Box 200 of the UPS store. The customer's name for that box is Nelson Barbados Group L-T-D. I called and spoke to Darren immediately after receiving a facsimile, Darren confirmed that the owner of the Toronto UPS store, Dave Delizer (ph) was responsible for activating Box 200 at the Kingston UPS store on September 3rd. So - and I'm going to take you to the documents momentarily, Your Honour, but what happens here is there's inordinate delay on the part of Nelson Barbados to appoint counsel and finally Mr. McKenzie has to move for an order

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5 removing his firm as solicitor of record, and I find it more than coincidental that the order is issued by Justice Eberhard on September 15th only two weeks after the very post office box had been opened on September 3rd. One of the questions I'd be asking of Mr. Best is, "Mr. Best, why did you open a post office box?" And, "Why was it opened on September 3rd?" And, "Why was it opened in Kingston?" And, "Who was it you were trying to avoid?" But it gets better, if we learned in paragraph 7; Darren also confirmed that pursuant to the instructions provided at the time, Box 200 of the Kingston UPS store was activated, the Kingston UPS store automatically forwards all mail received at Kingston UPS to the Toronto UPS and bills the credit card number provided in the file. A complete ruse. Just so that I don't pass over it, I also go back to the last sentence of paragraph 6 to confirm that it was Dave Delizer (ph), the owner of the Toronto UPS store that, in fact, opened the Kingston UPS box. Not even Mr. Best himself. If I then turn to the top of page 4 you'll see that information as attached as Exhibit B, and if I could just take you there momentarily, that's the information we received and I just want to highlight a number of things for your brief, Your Honour, the cover page from Darren to Mr. Butler obviously comes from the top left hand corner of the Princess Street address in Kingston, but if you look to the top of page 42, the mailbox service agreement, you

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will see just beside the numbering of the page at the very top beside Number 42 you'll see Suite 200, which is clearly the box, or the contract for the box, for which substituted service that was provided in Justice Eberhard's order. But if I then ask you to drop to the bottom of the page you will see the customer's initials are "DD." You'll see type there, and again that is confirmatory of what Mr. Butler was told, that is was Dave Delizer (ph), and that's in paragraph 6 of Mr. Butler's affidavit and the address for service is - for Nelson Barbados is on the right hand side. And then if you turn the page, again you see at 43 dropping just about a quarter of the way down the page, the customer, again Nelson Barbados Group, and the signature Dave Delizer (ph) and there the date is September 3rd, 2009, and I note in passing that if you look at the middle of the page the UPS store, in fact, has a telephone number and, in fact, does have an email, but none of that information was apparently used by Mr. Best, or provided for the purpose of Justice Eberhard being able to serve by way of an email address to the UPS store. And then I also observe in passing the last paragraph above the two virtual boxes which indicate two forms of identification are required, one of which must be a photo ID, and clearly because Mr. Best had Mr. Delizer (ph) from the Toronto office open the box, there is no information with respect to Mr. Best. He had no identification provided

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whatsoever. And then really the same information is provided on the following page, that just deals with the courier address. You'll see again, Dave Delizer (ph), in this case it's September 2nd as opposed to September 3rd for the Nelson Barbados Group and there's a credit card number to the left, which provides some credit card for the purposes of billing. And the final point is to take your attention, Your Honour, to the - page 45 where it's been - and that is titled the mail forwarding worksheet, and you will see the suite number which is 200, which is confirmatory of the mailbox we're talking about. The customer name, Nelson Barbados Group Limited, and the forwarding address is 1225-250 The East Mall. So that what happens here is anything that goes to Kingston is immediately re-directed to the UPS store at - it turns out to be Cloverdale Mall, and if you go back to paragraph 9, Your Honour.

THE COURT: Of whose?

MR. RANKING: Of Mr. Kwidzinski's - excuse me, Mr. Butler's affidavit at page 14 of the motion record. We're here talking about the Toronto UPS store, Mr. Butler got in touch with Mr. Delizer (ph) and he confirmed that he activated the mailbox at the Kingston UPS store at the request of the registered owner customer for Box 1225.

THE COURT: To what paragraph are you referring to?

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MR. RANKING: Paragraph 9, Your Honour.

THE COURT: 9.

MR. RANKING: And then just to finish off the chronology to tie Box 1225 back to Mr. Best to show the intricate, or elaborate, scheme that he's put together, if you look to paragraph 12 Mr. Butler then contacted Mr. Delizer (ph) who sent him an email which attached the documents regarding the 1225 at the Toronto UPS store. Although the documents contained - excuse me, although the information contained in the document states the box number is 225, Mr. Delizer (ph) confirmed to me by phone that there's no box 1225. The box was activated by Donald Best on behalf of the Nelson Barbados Group - excuse me, Nelson Barbados Group Limited, I apologize, Your Honour. This is a second company, which is Mr. Best's company which does not have the word "Barbados" in it in 2007. In that email - and I'm going to ask you just to - again for your bench brief to circle, or to note, the similarity in names between the Nelson Group, that is Mr. Best's company that opened this mailbox in 2007, and the Nelson Barbados Group, we're going to come back to that, but that is then under Exhibit G and Your Honour if you turn up Exhibit G the emails appear at a pages 63 and 64, but the actual agreement itself appears at page 65 through 67, and you'll see that at the top of page 65 there's the suite number, 225, and on page 66 you will see that there is a signature under

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which the name, "Donald Best", has been printed.

MALE VOICE: He doesn't sign it himself.

MR. RANKING: Right, and you will note that even that document was not signed by Mr. Best, it was signed per T-N-G-L-T-D.

FEMALE VOICE: That's in 1997.

MR. RANKING: Right. That's in 1997, and I think that....

THE COURT: You're saying the signature - there's initials and then there's per "T-N-G-L-T-D"?

MR. RANKING: Yes.

THE COURT: And do we know what that means?

MR. RANKING: I can only surmise - if you turn the next page you'll see under other authorized names under this agreement there's the Nelson Group Limited. So, I'm assuming that it's the Nelson Group is the full name for T-N-G-L-T-D, but that's my assumption and Ms. Rubin points out correctly that this box was opened in 1997 and as a consequence, I think, that Mr. Butler's statement in paragraph 12 of his affidavit that it was opened in 2007 is likely inaccurate. So, just to summarize then....

THE COURT: Has anyone ever searched the Nelson Group?

MR. RANKING: Yes.

THE COURT: And what did that turn up?

MR. RANKING: It's Mr. Best's company.

THE COURT: All right.

MR. RANKING: And I can take you to that, Your Honour. Let me just finish the....

THE COURT: Yeah, go ahead.

MR. RANKING: The point that's been made is - and I know it's not lost on you is two weeks before Justice Eberhard has to make an order removing Mr. McKenzie's firm there is a post office box opened by someone other than Mr. Best, but clearly on his direction, because it came from Dave Delizer (ph) who was the individual at Toronto who had opened the Cloverdale Mall post office box. It's opened and all the mail that goes there is immediately re-directed back to Cloverdale Mall, and I pause to make this observation; Mr. Best clearly doesn't know, hasn't come to court, to see all the materials, but he's complaining and goes on at great length at how he hasn't received materials, and I have affidavits of service for everything that was served. And he hasn't received the materials in a timely manner, because they go to Kingston and then they go from Kingston back to Toronto, and he's not in Kingston to pick them up. And it's for that very reason, Your Honour, that you will see when I get to the actual service of some of the other materials, that I began mailing information directed at Cloverdale, even though that wasn't required by the terms of the order, I started mailing it to him at Cloverdale. It may not - let me just see if I can find - I have searched, and I can tell you as an officer of the court, Your Honour, that the Nelson Group is a company of Mr. Best's, yes.

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THE COURT: I take it from you. If you tell me that, I'm satisfied.

MR. RANKING: It - I found it. It appears under Tab P, as in Peter, in the larger volume, Your Honour, and it's worth turning it up, because again this confirms the....

THE COURT: The East Mall address.

MR. RANKING: Beg your pardon?

THE COURT: It has as the registered office an address, 122, dash...

MR. RANKING: Correct.

THE COURT: ...250 The East Mall.

MR. RANKING: Correct, and if you look to the second page you'll see that here we have his middle name for the first time, Donald Robert Best. That previously had not been provided. And I think that the - to be fair to Mister - date of incorporation was 1993.

THE COURT: What is that address on Dunlop Street in Barrie? Is that a residential address?

MR. RANKING: Which address are you looking to....

THE COURT: I'm looking at the corporation profile report under "P", page 2, the administrator Donald Robert Best, the address 113 Dunlop Street, Barrie, Ontario, Suite 1928.

MR. RANKING: That address we searched and if you turn to Mr. Kwidzinski's affidavit at paragraph 36, Your Honour...

THE COURT: Yes.

MR. RANKING: ...Mr. Kwidzinski goes through the

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- first of all he identifies the Nelson Group Limited...

THE COURT: Right.

MR. RANKING: ...then he talks about the addresses at 113 and 122-250 The East Mall, and he states in paragraph 37 he conducted web searches of 113, he placed a call to the number provided for the business and based on his inquiries determined that the salon business did, in fact, operate from that address, but there was no other active business carried on from the premises. The individual further stated that their landlord resided in the upstairs apartment, and the upstairs apartment was also used - also used the address of 113. We weren't able to find any current information that that address was related to Mr. Best...

THE COURT: All right.

MR. RANKING: ...and again, paragraph 38 just deals with the Cloverdale Mall address for the UPS post office box in Toronto.

THE COURT: Right.

MR. RANKING: The only - the other point that I did want to just take you to before I turn to the association between Mr. Best and Mr. McKenzie is at page 14, paragraph 40, of Mr. Kwidzinski's affidavit. We deal with the motor vehicle search, and again not to state the obvious, but the reason we're going through all of this, Your Honour, is to demonstrate the lengths to which we've taken to try to find addresses where we might be able to serve this

individual, and so, what would customarily disclose Mr. Best is we did the search and it revealed the address of 122-250 The East Mall, apartment 1225, and if you turn that up at Exhibit S, which is the search, you can see again Don Best and the only address we have for him was at the East Mall. We were able to determine, however, from that search his date of birth and his driver's licence number, and I pause to observe Mr. Best seems to be all perturbed by the fact that this information - and I have no idea, Your Honour, how the information got posted on whatever blog it's posted on, but this is information that our clerks were able to find. So, I'm not exactly sure why he is raising such a concern with respect to that matter, which, as I say, had no idea how it was posted, but that then concludes what Mr. Kwidzinski was able to locate and it was a consequence of when hit a brick wall, and I took you to it earlier, that we retained Mr. Van Allen and then Mr. Van Allen was not able to find Mr. Best either. Now, the only other thing I want to do before putting down this motion record is again - and this goes back to factors, and it's only a factor, but it's something which I think is important, and that is the association between Mr. McKenzie and Mr. Best, and that association is set forth at paragraphs 22 through 35 and I'd like to take you through those paragraphs and this is simply information, Your Honour, that Mr. Kwidzinski was able to

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obtain by doing various searches electronically on cases that had been reported. You'll see that Mister - starting at paragraph 22 on page 8, Mr. Kwidzinski was able to determine that the association between Mr. Best and Mr. McKenzie dates back some 13 years, and he then sets out his legal research and he goes from the earliest case to the most recent, and if I could just highlight a few points as we go through; in the ExpressVu case v. Norsat International and I've tried to highlight and bold this for Your Honour.

THE COURT: Right.

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MR. RANKING: Mr. Best was one of the affiants on behalf of the plaintiffs in that case and Mr. McKenzie represented the plaintiffs in that case. In WIC, paragraph 26, Mr. McKenzie sought to introduce fresh evidence in the appeal and part of the fresh evidence was evidence of Mr. Best. A different case at the top of page 10, but one for Bell ExpressVu involved in appeal at the Supreme Court of Canada. Again Mr. McKenzie was counsel and he presented affidavit evidence of Mr. Best and cited him in his factum. And I have no doubt that Mr. Best was doing some work, whether investigative work dealing with piracy and satellite dishes and things of that nature, but what this goes to is an association. Now, this is where I pause when I go to Kudelski (ph), because here we see Mr. McKenzie represented the plaintiff as well as Mr. Best, and the Nelson Group Limited, and interestingly

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this was a case where the defendants were able to make out a case for substituted service on Mr. Best and the Nelson Group. So, something with which Mr. Best has had, certainly, some association of substituted service and knowledge of not being too easy to find, and at paragraph 29, "the defendants could not locate Mr. Best." And surprisingly I look at paragraph 29; when Mr. McKenzie, not unlike the questions that Your Honour asked him with respect to "Please produce the documents", the court states at paragraph 26, "Mr. McKenzie when asked by me whether he knew Mr. Best was, indicated he believed that Mr. Best was now in Thailand." And then paragraph 30 we talk about the corporate profile. There is another case where Mr. McKenzie was counsel, this is in paragraph 31 the Kudelski (ph) case reference to Mr. Best, sought an order striking out - or staying an amended third party notice. The bottom of page 33 in the Kam-T Speed (ph) case, the bottom of the page, Mr. McKenzie represented the plaintiff again and Mr. Best was involved in an accounting investigation on behalf of the plaintiff. And finally in the Love and News DataCom case (ph) and appeal and Mr. McKenzie acted as a representative to third parties which included Donald Best and the Nelson Group, and I said based on what we've been able to determine in paragraph 35 Mr. Best was an investigator hired by the defendants, Bell ExpressVu, and used DataCom regarding some Anton Piller orders. So

again, information which I say is not coincidental and then we find well after much of this litigation and the association between these individuals that Mr. Best finds himself as an officer, and is a sole officer of Nelson Barbados Group, which is the plaintiff as you well know, Your Honour, in this action.

So, we then come - that's the history, Your Honour, but again, I trust that my submissions have given more colour, or flavour, to why it is we say finding Mr. Best is important and I then turn to the contempt motion and what I propose to do is to go through the first series of paragraphs and exhibits until we get to my November 18th letter and then we did it all again, and I'm not going to take your time to go through the difficulties we had on the 25th, other than to state the obvious that he did not attend. So first off for the purposes of this motion, Mr. Butler's affidavit appears under Tab 2 and is sworn November 27th, and the operative order is your order dated November 2nd, which appears under Tab A and I refer Your Honour to paragraph 3. And paragraph 3 is where you ordered Mr. Best to attend on November the 17th, paragraph 3 are the questions he's to answer and paragraph 4 are the documents he was required to deliver which he did not do.

If I then jump over the next tabs deal with the UPS store that I've dealt with, Your Honour, and

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if I turn to Tab H, this is the letter that I wrote following our attendance before you a month ago to Mr. Best, and I indicate that he's required to attend. You'll see in the - I indicate in the second full paragraph our attendance before Your Honour on November 2nd and I then state in the third paragraph that you ordered Mr. Best to attend on November 17th. The order - and this is important, the order became valid and enforceable on November 2nd, 2009. I make that observation because in the letter that we've got today Mr. Best seems to be under a misapprehension with respect to the legal effect of your order. So, I told him that and then I said, "You must attend the examination. You must also bring with you the documents." I enclosed a draft order and as Your Honour had requested I also sent him the various transcripts and cross-examinations. That is my letter of November the 6th. The notice of examination then - is attached as Exhibit I and just so there's no issue my assistants' affidavit of service appears under Exhibit J. What we then get, and this is in my....

THE COURT: Am I wrong in reading the materials, was there not some confusion that there was a reference to January 17th is the day of the examination? I came across that this morning. I wish I'd made a note. There was a typo in something.

MR. RANKING: At the second....

MR. SILVER: Mr. Best's letter apparently at the

second page.

THE COURT: He makes reference to it, but I also saw it, I thought, in your materials. That there was reference to January 17th, I think it was clearly a typographical error, but....

MR. SILVER: I'm not aware of that reference, but I am aware of this....

MR. RANKING: Which page?

MR. SILVER: In his letter at the bottom of page 2 he says "January's evidence", which I think is just a typo.

MR. RANKING: Your Honour, I'm not aware of it but if I find it I'll obviously let you know.

Ms. Rubin has found it, Your Honour, and you're absolutely right, there is a - it's - my November 18th letter at Tab N. So, after the fact - if you turn to Tab N, as in Nancy...

THE COURT: Got it.

MR. RANKING: ...and I - even Mr. Best I don't think could have been mistaken from that.

THE COURT: He appeared January 17th to be examined, yeah.

MR. RANKING: Right.

THE COURT: Yeah, okay.

MR. RANKING: Right.

THE COURT: I think he also copied that letter, I think, and put it into his materials and I think that's maybe where I saw it.

MR. RANKING: Okay. All right.

THE COURT: I'm sorry, I interrupted you. Go ahead.

MR. RANKING: No, no. That's fine, and I was

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not aware of that error. I appreciate you bringing it to my attention. Thankfully, and I say this quite genuinely, thankfully it was not dealing with the attendance for the 17th of November. Importantly I now take you to Tab K, because in Tab K - this is the letter we get from Mr. Best following his discussion with Ms. Traviss, and the important issue, or the important aspect of this letter, and the reason why I rely upon it for the purposes of substituted service, is this demonstrates quite clearly that despite the fact that Mr. Best is decrying the fact that he is not getting materials in a timely manner, he is clearly getting notice. And Mr. Silver simply makes the point that when we attended at Victory Verbatim, when we attended at Victory Verbatim we did not have this letter. So, I got this - and in my subsequent letter Mr. Best confirms that fact, but he clearly is aware when you read the first paragraph at the top of page 80, which is page 2 of his letter that....

THE COURT: Page 2.

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MR. RANKING: This is very relevant, in my respectful submission, because he says that Ms. Traviss read that portion that service is four days after the documents were served on Nelson Barbados when mailed to Kingston. He then says you then read a part to the effect that in future all service to Donald Best was valid only four days after the documents are mailed to Kingston. So, Mr. Best knows the terms of the

order and let me also make this observation with respect to his concern about the order, the draft order was sent to him to the extent there was an issue. The signed - when he was to be examined I had not sent the signed order to him and the reason for that was the delay that took to get everybody's approval as to form and content, and I in fact was intending to give him the fine order when you showed up. So, I don't want there to be any suggestion that I provided - I didn't provide him with a signed order, and I want Your Honour to know that, but the reason for that because, as I say, there was delay getting approvals to form and content and rearranging it and finally getting it done, and then I don't think - you know - so, to the extent that Mr. Best says he didn't have a copy of the order, that's not fair, I gave a draft copy of the order, as I've indicated, but he did not have a copy of the signed order. But then he says irrespective of the fact that he did not have a copy of the signed order Ms. Traviss, in the third paragraph, said, "that the judge ordered me to appear tomorrow, Tuesday, the 17th." So, there is no doubt in anyone's mind that he knew he had to attend, and then there goes on in terms of, "the judge says I am to be questioned by lawyers tomorrow, 17th, I will make myself available", and that appears at the last phrase of the fifth full paragraph. And then if you turn the page - and notably Ms. Traviss invites Mr. Best to call me, and I never

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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 17th." 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.

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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:

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THE COURT: Yes, Mr. Ranking?

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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

we have taken into consideration the concerns which you expressed concerning the form of your - the draft order that we handed up...

THE COURT: Great.

MR. RANKING: ...and I have with Mr. Silver re-drafted it and - oh, and my colleagues are phoning my secretary now to have the order re-typed, so I'm hoping to have that faxed to Ms. Traviss in the next five to ten minutes.

THE COURT: Good.

MR. RANKING: So, we can then pass up to you. I've not yet had an opportunity to review the wording with Ms. Rubin, but we've talked to her about it in theory and I think that we may be there.

THE COURT: Great. Wonderful.

MR. RANKING: So, that's just where we are on that. So, it may be that after you heard our submissions if my colleagues aren't back in courtroom I'll ask for a short recess just to get you the draft order.

THE COURT: That's fine.

MR. RANKING: So, then turning back to the contempt motion record and given the fact that you have read the transcript of what happened on the 17th of November, I'm not going to take you through it. We obtained the certificate of non-attendance, that appears under Tab O, excuse me, M, and then what I did was - we decided rather than trying to get another date before Your Honour to deal with the contempt that we would afford Mr. Best a second opportunity to attend

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and my letter of November 18th 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 16th, 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 17th, not November 17th. 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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"Okay, that's" - and he asked where the minute book was and he said, "Okay, I have that question what's your next question?" And we made it very clear to him that we weren't going to be doing that, and I also pause to observe that Mr. Best had the written questions in his possession, because I'd served him on November 6 with the various questions that Your Honour had ordered be answered. So, it was although this would have been an exercise in futility, because he wasn't answering the questions after Mr. Silver put the question to him. He simply said, "What's the next question?"

So, what I then did was I set forth at the bottom of page 100 that he was in contempt and confirmed that his own letter - by his own letter he knew that he was to attend, and we then afforded him an opportunity to appear on November the 25th, and again, we indicated that we would be bringing a motion today for contempt if he failed to attend and that's at the top of page 3, and I then went on to tell him it was a very serious matter and I urged him to retain counsel, and I then said that either Mr. Silver or I would be prepared to speak with him, but I said, "Well, let there be no misunderstanding we expect you to appear to be examined on Wednesday, November 25th and we will move forthwith for a contempt order if you do not appear." I don't think I could have been any plainer. Now - and you will have seen that I

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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 25th. 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 30th, and we got the first letter from Mr. Best November 16th when we got his second letter and December the 1st. 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

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line is if there were ever a case for substituted service I respectfully submit that this is it, and I respectfully submit that the appropriate course of action and the way in which we fashion the order is to require, as an order of this court, that he come back - much as we have in paragraph 3, that he comes to a hearing before you on a date to be set. What should then happen is, assuming Your Honour permits substituted service, I will then serve the order today, or tomorrow, upon Mr. Best at the address in Kingston and I'm happy to mail it to the Cloverdale Mall as well. I'm also happy to send it by email to the UPS store. I'm happy to do any and all of those things. We then will have a date for....

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THE COURT: I'm sorry, you mentioned Kingston, Coverdale Mall and what was the third alternative?

MR. RANKING: I was saying I was happy to email it to the Kingston UPS store. You'll recall, Your Honour...

THE COURT: Yeah.

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MR. RANKING: ...that - I found that last night when I was looking through that they've actually got an email. So, I'm happy to do that and I'll do that - undertake to do whatever it is you want me to do, I'll do. But just dealing with the theory of how this is going to play out; what I then think ought to occur is he ought to attend on whatever date and he should then be examined in your presence by me and Mr. Silver

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and other defence if they have relevant questions that - that they wish to put that are within the bounds of your order, and if Mr. Best does not attend then the way we have fashioned the order is that we should then proceed to have the contempt motion heard. What we've done by proceeding in that fashion is the contempt motion will then have been - the service of it will have been validated, we'll then have him here, he can answer his questions. If he refuses to answer questions or we don't know what he's going to do, but one way or the other we think that the motion should proceed. If he doesn't attend, the motion should proceed in his absence and if he does attend, and we examine him, the motion may or may not proceed depending on what happens that day, but I think he should be told, in no uncertain terms, that the motion will proceed. Now, the only other observation I make is when I drafted the original order is I had asked for a warrant for his arrest to actually bring him here as opposed to a committal order, but I'm leaving all that aside. So, that's how we've now fashioned it. Okay. So, it's going to be emailed. So, subject to any comments that Mr. Silver may have, those are my submissions with respect to....

THE COURT: Thank you. Mr. Silver?

MR. SILVER: I really don't have any submissions. Obviously my client's want to get to the bottom of this and we need help of the court, because of the opposition that's being

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

THE COURT: Ms....

MS. CLARKE: Ms. Clarke, Your Honour.

THE COURT: Ms. Clarke, yes.

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

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

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

MR. SILVER: You want me to answer?

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

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

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

MR. SILVER: Subject....

THE COURT: To the assessment.

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

THE COURT: Sorry.

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

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

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

MR. RANKING: Yes.

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

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

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

MS. RUBIN: Your Honour....

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

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

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THE COURT: Well, I understand.

MS. RUBIN: I don't act for Don Best, and that's - we've made that clear from the outset. We act only for Bill McKenzie and his firm and in respect of Your Honour's question about the possibility of the company, the plaintiff, posting amounts for costs and Mr. Ranking's submission that he would only accept that option if there were released. I'll say two things; firstly, it would serve my client very well if the company, the plaintiff, would post security for costs or would pay the costs now if there was an amount set. Of course that would take a lot of the risk away from my client and I believe there would be nothing that would please him more. However, I don't - I can't - I don't come from a place where I'm able to make any sort of submissions or take any position with
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respect to that, because it's my client's former client, I have no knowledge of its capacity to do that, or its ability to do that, but should Your Honour choose after argument to make some kind of order that would give it the option to do that, I would take no position.

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THE COURT: Well, the reason I raised it is it can't come as a surprise to your firm, because Mr. Bristol, I think, copied everyone with that letter. He sent that message out and he sent me a letter which was copied to all the counsel and I just - and he followed up with a phone call saying, "Did Justice Shaughnessy read my letter?" And I - sort of annoyed by it, I read all the letters, but because I don't respond one should not - one should take from that that I won't be responding, but I guess what I'm saying it was an interesting - it was an interesting comment, and your firm is certainly aware of it and I'm not deciding anything, I'm just sort of looking at it and I really thought, yes, from your perspective it would make life a whole lot easier.

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MS. RUBIN: From our perspective it would be the best possible outcome, I think, to - for everybody, but as I said it - Mr. Ranking's submissions and that suggestion, and the suggestion that my firm has knowledge of it, therefore it should happen, presupposes that - that we somehow have a connection or act for, or are acting in the interest of the company and Mr. Best, and that's absolutely not true and

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unfortunately - perhaps it would good to
communicate that option to Mr. Best, but as I
said, because there is such a delicate situation
here between my principle and his former client
I can't really take a position on...

THE COURT: No, I...

MS. RUBIN: ...that.

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THE COURT: ...didn't expect you - I think what
I'm really trying to do is I'm just planting a
seed, and I'm sure that either Mr. Silver or Mr.
Ranking will get back to Mr. Bristol and tell
him that I heard the message, but frankly, it's
not anything that I can control, it's not my
hands. It might be a good idea that this
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message was conveyed to Mr. Best if he didn't
receive a copy of Mr. Bristol's letter, he might
be copied with that letter and who knows what
will happen thereafter. I'm also saying to you
that - I don't want to appear aloof, but I do
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want to stand distant from this, because there
are serious allegations that deal with the
administration of justice, which is a whole
other component here that require me to remain
neutral and as uninvolved in any discussions
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that may take place with Mr. Best, or any other
parties for that matter. In any event, enough
of that.

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MS. RUBIN: I think I should advise Your Honour
while we're on the subject, I believe my friends
will tell me if I'm wrong, but Shawn
orchestrated this part of it. Mr. Bristol's
client has settled - like, I believe that

matters have been settled with Mr. Bristol's client, so I don't believe he will be appearing again on this motion.

MR. SILVER: I never heard that.

MS. RUBIN: I had thought....

MR. SILVER: And I wonder whether you're confusing Mr. Bristol with Mr. Conklin...

MS. RUBIN: Oh.

MR. SILVER: ...who Mr. Duart had indicated in the letter he might have struck a deal, although that hasn't...

MS. RUBIN: Your Honour...

MR. SILVER: ...been confirmed.

MS. RUBIN: ...I'll confirm if there is a settlement with one of....

MR. SILVER: I think it might be Mr. Conklin...

MS. RUBIN: Okay.

MR. SILVER: ...but....

MS. RUBIN: In any event, I take Your Honour's point. On the issue of a release, again, the parties who Mr. Ranking seeks a release from are not - I mean, there was never a disposition on the merits of the action. I don't think we can ask for that.

MR. SILVER: Okay.

MS. RUBIN: As officers of the court, I'm not speaking for any party here, it's a very unusual....

THE COURT: No, no. I think it you get it, take it for what it's worth, I drifted something out there and I'm going to leave it and I don't expect you to respond any further on that

matter.

MS. RUBIN: All right, and just then to respond quickly to the motion today, again, I don't act for Mr. Best. I'm not here to make submissions on his behalf or on behalf of the plaintiff, but as counsel for Mr. McKenzie we are involved in the action and my submissions should be taken as submissions on behalf of an officer of the court, and my only - my concern, first of all, with the first draft order was slightly the same as Your Honour's concern and that is that Mr. Best should be afforded the procedural protections and the rules, and be provided with adequate notice of a motion which seeks to curtail his liberty, the most serious motion in the rules - under the rules, and I believe it sounds as if my friends have drafted the order in a form that seems to provide that protection. Again my only concern would be that if Mr. Best does not receive the materials with sufficient time to - if he decides to retain and instruct counsel then as officers of the court I think we would be failing in our - in all of our duties to ensure that the contempt motion proceeds in a proper fashion, and so, my only submission on that issue is that he be afforded an adequate time, and I take no position on the merits of the - the substance of the order, only that he be afforded the time that he requires should he decides to retain and instruct counsel to appear for him either on any cross-examination for Your Honour, or on a contempt motion. And so - for

example, if he is, in fact, out of the country as he says, that he have sufficient time to arrange his affairs so that he can appear on the date set by the court, or that he has the flexibility to contact counsel to arrange an alternative date if he's not available on that date if he decides to appear, and if the contempt motion is to go ahead on the date that the court have set for the cross-examination viva voce before Your Honour. So, I just - more as an observation and I put it out there to Your Honour that there should be some - in my submission, flexibility built in if Mr. Best, on the serious matter, where - there is a possibility that he could be arrested and imprisoned seeks to finally, hopefully, seek counsel and retain counsel to act for him. That's my position on the order. As far as the submissions of my friend, there were several submissions that did involve Mr. McKenzie, I was tempted to answer them today, but I think I'm going to save those submissions for the actual cost motion, should it proceed. There were several issues that my friend went into which, in my submission, went beyond what the evidence that was required in support of the motion against Mr. Best today, but I'm going to sit down and save my submissions for the hearing on costs.

THE COURT: Keep your powder dry.

MS. RUBIN: That's right. Thank you, Your Honour.

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THE COURT: All right.

MR. RANKING: We have a draft order

THE COURT: Can I look at that, please? Madam Registrar, would you - destroy that one so we don't mix them up.

MADAM REGISTRAR: Yes.

THE COURT: You have a copy, Ms. Rubin?

MR. RANKING: We only - Ms. Traviss only brought us one copy. That's the only copy we have in the court.

THE COURT: Well, I'm going to let you look at it before I do anything. I guess we need Jackie Traviss on the line in any event. What kind of time are we talking about for the return at paragraph 3?

MR. RANKING: We were thinking the week of December the 14th, Your Honour.

THE COURT: That's pretty short notice though, isn't it?

MR. RANKING: Well, we can - the problem is that we've got - we can go into January, I mean, I don't think it's being realistic to do it the week before Christmas, which is the only reason....

THE COURT: I don't either, I won't be here.

MR. RANKING: Yeah. So, then it would be January. We were hoping that we could do it before Christmas, that was all.

MR. SILVER: The concern is the February 22nd return date on the costs submissions, and as weeks slip by we - I predict we come closer to not being able to conclude the matter on

February 22nd, and so, and of course I don't know your availability at all, but I was hoping that, you know, two weeks from today, for example, is December 16th, which would get it done and I know you know this, but Mr. McKenzie's cross-examination has been postponed on two occasions because everybody agrees that it makes sense to conduct that after Mr. Best. And so, there are other steps that are required to be taken after - if and when Mr. Best shows up, and so, the earlier we do those the more time we have to do the other steps without having to change the February 22nd date. So, that's the only rush. And yet, we're still - I'm proposing two weeks notice, which is certainly more than enough under the terms of the substituted service, and quite franking and, you know, I think it's reasonable to conclude that if he's going to attend it won't matter to him whether it's before Christmas or after, and more importantly if he's not going to attend it won't matter if it's before Christmas or after. That's why I'm pushing for an earlier than later date.

MS. RUBIN: Your Honour, again, the only thing I would say is I believe the process should be fair to Mr. Best. I believe that Mr. Best should have ample notice, assuming he's not in the country, as he says he's not, that he have ample notice to return to arrange his affairs, to retain counsel. In my submission this motion was to be heard in November and Mr. Duarte asked me to make it clear today, as he repeated so

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many times when he was here, it was not to be moved, it was not to be adjourned, it was to go ahead and there is nothing urgent about this matter, it's a matter for costs, and we would all have liked it to be heard in November and we would all like it to be heard in February, but if a man is to be arrested and imprisoned possibly following a motion on December 15th, which would have him sitting in prison over - possibly over Christmas, I believe that we should all step back and look at this with some perspective and provide him with the time that he needs, or requires, or at least to know that we've done it properly so that he has the opportunity to do what he wants to do to defend whatever proceedings are brought against him. Those are my submissions.

THE COURT: Is Jackie Traviss there, or no?

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COURTROOM REGISTRAR: She is, Your Honour. I just have her on the line.

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...SCHEDULE DISCUSSED BETWEEN COURTROOM REGISTRAR, JACKIE TRAVISS (ON PHONE) AND CONVEYED TO JUDGE.

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COURTROOM REGISTRAR: Friday of the second week would be better.

THE COURT: That would be the 15th?

MR. RANKING: The 15th.

THE COURT: Counsel?

MR. RANKING: That's fine.

MR. SILVER: Clear in my diary.

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THE COURT: All right. Would you mark that in? That'll be a nine-thirty start, January 15th.
COURTROOM REGISTRAR: Okay. Thank you.

...CALL WITH JACKIE TRAVISS TERMINATED.

THE COURT: Do you want to have a look at this order - what about the cost provision in paragraph 5? We had no submissions on that.

MR. RANKING: Well, I didn't - I hadn't been so presumptuous as to make submissions on costs.

Look, I'm happy to put costs over again. I'll be very candid; the reason that I wanted the cost order today is that if he then doesn't pay the cost and he then fails to appear, it's another bow in my quiver, but....

THE COURT: Well, let's put it over to the date.

MR. RANKING: I'm happy to do that. Happy to do that, Your Honour.

THE COURT: Why don't you look at this, Ms. Rubin.

MS. RUBIN: All right, Your Honour. Just in paragraph 3....

THE COURT: Yup, I haven't put that in yet.

MS. RUBIN: And the only other issue that I can think of is if there are going to be supplementary materials served on Mr. Best that they be filed with - not on short notice, and....

THE COURT: Oh, I think the materials are ready to fire here. I think we've got the materials that are necessary to proceed. I don't think I

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have to add anything in that regard.

THE COURT: Have you had a chance to see this, I'm sorry. You have seen this?

MS. RUBIN: Yes, Your Honour. It's fine.

...JUDGE GETS CONFIRMATION OF THE COURT ADDRESS FROM THE REGISTRAR.

...JUDGE WRITES ENDORSEMENT.

THE COURT: I've made the following endorsement, back of the motion record, "In the usual course a motion to hold a person in contempt should be served personally. However the circumstances of the present case are most unusual. Mr. Donald Best, the present director and shareholder of the plaintiff corporation, has set up a somewhat elaborate procedure for mailings and other communications. He has a UPS post box address in Kingston which in turn forwards all correspondence to yet another UPS post box at the Cloverdale Mall in Toronto. Further, it is apparent from correspondence sent by Mr. Best, including conversations he states he had with the trial coordinator at Whitby that Mr. Best is aware of all aspects of these proceedings including my order of November 2nd, 2009. Mr. Best called the Verbatim office on the day of the scheduled examinations and attempted to conduct the examinations over the telephone. Mr. Best has sent material to the trial coordinator, and me, which is not in affidavit form. Mr. Best refuses to provide any address

where he resides, but suggests he is out of the country. Extensive investigations have not resulted in 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 15th, 2010 at nine-thirty at Whitby, Ontario. Costs of today's attendance and costs thrown away are reserved to the January 15th, 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

Justice Shaughnessy to give evidence at a hearing in Whitby on January 15th, 2010 at 9:30 a.m. at the courthouse, 601 Rossland Road East, Whitby, Ontario", I added. I put in a date under paragraph 4 of January 15th, 2010 and I changed paragraph 5 to say, "The court further orders the cost of this motion are reserved to the hearing of January 15th, 2010." All right.
MR. RANKING: Thank you, Your Honour.

MR. SILVER: Thank you.

MS. RUBIN: Thank you.

THE COURT: Oh right, and I just wanted you - before you duck out of here, I know it's late, but to take a look at the boxes that I've now told the CSO that I want to ship, but I want you to take a look at them before they go back to Barrie, because they go back there you never know what's going to happen.

MR. RANKING: To be fair to Ms. Rubin it may be that what - we'll do that now, but it may also be that Ms. Rubin doesn't know what Mister - so we may have to come back again before - just to double check it, but we're going to do it now, but I just - in fairness to Ms. Rubin.

THE COURT: All right. I guess that what I should do just for the purposes of the record, I'm going to file the - what Mr. Best sent to the trial coordinator, Jackie Traviss, really twice, but I guess one was meant for me, because it's addressed to me, and one to Jackie Traviss, as I say one got assembled, they didn't assemble the second set of materials. I'm just going to

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Certification

simply put them in the court file to remain
there. Here's the other one.

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

FORM 2

Certificate of Transcript
Evidence Act, subsection 5 (2)

I, Brenda Wakelin, certify that this document is a true and
accurate transcript in the recording of Nelson Barbados Group
Limited and Richard Ivan Cox, et al., in the Superior Court of
Justice, held at 601 Rossland Road, Whitby, Ontario taken from
Recording No. 2812-3-0216/2009 and No. 2812-3-0217/2009, which
has been certified in the Form 1 by L. Buchanan.

May 9, 2012
(Date)

Brenda Wakelin
(Signature of authorized person(s))
Brenda Wakelin, B.Sc., B.Ed., OCT, CCR, ICDR
Certified Court Reporter, CRAO
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Thank you.

M

THIS IS **EXHIBIT "M"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015

A Commissioner etc.

Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.

Court File No. C57123

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

DONALD BEST

Moving Party (Appellant)

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX,
PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE,
OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX,
DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER,
GLYNE B. BANNISTER, PHILIP GREAVES A.K.A. PHILIP
GREAVES, GITTENS CLYDE TURNEY, R.G. MANDEVILLE &
CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD.,
ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE,
LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE,
LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY,
FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR,
MARK CUMMINS, GRAHAM BROWN, BRIAN EDWARD TURNER,
G.S. BROWN ASSOCIATES LIMITED, GOLF BARBADOS INC.,
KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS
LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS INC.,
THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT
CORPORATION, THE BARBADOS AGRICULTURAL CREDIT
TRUST, PHOENIX ARTISTS MANAGEMENT LIMITED,
DAVID C. SHOREY AND COMPANY, C. SHOREY AND COMPANY

1 LTD., FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS)
2 LTD., PRICE WATERHOUSE COOPERS (BARBADOS), ATTORNEY
3 GENERAL OF BARBADOS, THE COUNTRY OF BARBADOS, AND
4 JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF VIVIAN
5 GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY,
6 PETER SIMMONS, G.S. BROWN AND ASSOCIATES LTD.,
7 GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE,
8 CLASSIC INVESTMENTS LIMITED AND LIFE OF BARBADOS
9 LIMITED C.O.B. AS LIFE OF BARBADOS HOLDINGS, LIFE
10 OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY,
11 PRICE WATERHOUSECOOPERS EAST CARIBBEAN FIRM,
12 VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA
13 LTD., AND COMMONWEALTH CONSTRUCTION INC.

14 Respondents

15 -----
16
17 -- CONFIDENTIAL --
18
19 -----

20 --- This is the Cross-Examination of COLIN PENDRITH
21 on his Affidavit sworn September 26, 2013, taken at
22 the offices of Regus, Yonge & Richmond, 151 Yonge
23 Street, 11th Floor, Toronto, Ontario, M5C 2W7, on
24 Tuesday, the 22nd day of October, 2013.
25 -----

1 things.

2 And what you're asking for here is, it
3 goes back to what Mr. Silver has been saying the
4 whole time, which is that this is argument.

5 MR. RANKING: Well, I can add to that.

6 There's litigation in other
7 jurisdictions. The reality is that there are
8 positions being taken with respect to Nelson
9 Barbados having a security interest over the shares
10 of Kingsland. That is disputed.

11 It's an issue which we were entitled to
12 examine upon, amongst other things. And just
13 because Mr. Best left the jurisdiction does not
14 mean that that examination is now moot.

15 MR. SLANSKY: So your position is,
16 you're seeking to do it for a purpose, other than
17 the stated purpose in the notice.
18 The notice was for the purposes of costs in the
19 action, but you want it for other purposes, so
20 you're doing indirectly what you can't do directly.

21 MR. RANKING: I don't accept that
22 characterization.

23 MR. SILVER: Nor do I.

24 BY MR. SLANSKY:

25 286 Q. There was repeated insistence or

THIS IS **EXHIBIT "N"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015



A Commissioner etc.

*Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.*

COURT OF APPEAL FOR ONTARIO

CITATION: Best v. Cox, 2013 ONCA 695

DATE: 20131114

DOCKET: M42922 & M42935 (C57123)

Feldman J.A. (In Chambers)

BETWEEN

Donald Best

Applicant (Appellant)

and

Richard Ivan Cox, Gerard Cox, Alan Cox, Philip Vernon Nicholls, Eric Ashby Bentham Deane, Owen Basil Keith Deane, Marjorie Ilma Knox, David Simmons, Elneth Kentish, Glyne Bannister, Glyne B. Bannister, Philip Greaves a.k.a. Philip Greaves, Giffens Clyde Turney, R.G. Mandeville & Co., Cottle, Catford & Co., Keble Worrell Ltd., Eric Iain Stewart Deane, Estate of Colin Deane, Lee Deane, Errie Deane, Keith Deane, Malcolm Deane, Lionel Nurse, Leonard Nurse, Edward Bayley, Francis Deher, David Shorey, Owen Seymour Arthur, Mark Cummins, Graham Brown, Brian Edward Turner, G.S. Brown Associates Limited, Golf Barbados Inc., Kingsland Estates Limited, Classic Investments Limited, Thornbrook International Consultants Inc., Thornbrook International Inc., S.B.G. Development Corporation, The Barbados Agricultural Credit Trust, Phoenix Artists Management Limited, David C. Shorey and Company, C. Shorey and Company Ltd., First Caribbean International Bank (Barbados) Ltd., Price Waterhouse Coopers (Barbados), Attorney General of Barbados, the Country of Barbados, and John Does 1-25, Philip Greaves, Estate of Vivian Gordon Lee Deane, David Thompson, Edmund Bayley, Peter Simmons, G.S. Brown and Associates Ltd., GBI Golf (Barbados) Inc., Owen Gordon Finlay Deane, Classic Investments Limited and Life of Barbados Limited c.o.b. as Life of Barbados Holdings, Life of Barbados Limited, David Carmichael Shorey, PricewaterhouseCoopers East Caribbean Firm, Veco Corporation, Commonwealth Construction Canada Ltd., and Commonwealth Construction Inc.

Respondents (Respondents)

Paul Slansky, for the appellant

Robert Harrison and Gerald Ranking, for the respondent,
PricewaterhouseCoopers East Caribbean Firm

William Burden and Lorne Silver, for the respondent, Kingsland Estates Limited

Heard: October 29, 2013

On appeal from the orders of Justice J. Bryan Shaughnessy of the Superior Court of Justice, dated January 15, 2009, and May 3, 2013.

Feldman J.A.:

[1] Two motions were heard in the context of an appeal by Mr. Best from: a) a finding of civil contempt made against him by Shaughnessy J. on January 15, 2009, the imposition of a fine of \$7,500, and an order that he be incarcerated for three months unless he purges the contempt; and b) an order of May 3, 2013, where Shaughnessy J. dismissed an application to set aside the finding of contempt.

[2] One motion was brought by Mr. Best for an order that counsel for each of the two respondents, PricewaterhouseCoopers East Caribbean Firm and Kingsland Estates Limited, be removed and prevented from arguing the appeal based on allegations of misconduct in the proceedings appealed from. Mr. Harrison and Mr. Burden argued this motion as the conduct of the other two counsel was being impugned. The second motion was brought by the two respondents for security for the costs of the appeal.

(1) The Removal Motion

[3] The appellant seeks to have the court remove counsel and their law firms from the record for alleged misconduct in the contempt proceedings and in the proceeding to set aside the contempt order. The allegations against the lawyers that are raised on this motion were raised and rejected by Shaughnessy J. in his May 3, 2013 ruling where he refused to withdraw the contempt order. All of the allegations and submissions made on this motion are also grounds of appeal on the main appeal.

[4] The allegations relate primarily to the events surrounding the appellant's failure to attend for examination as ordered and what he knew about the order requiring him to attend and when he knew about it. He alleges that counsel for the respondents deliberately misled the motion judge on what occurred. This was not only rejected by the motion judge, but he made it clear that his findings were based on the appellant's own letters, recorded words and actions. The appellant also argues that the lawyers now have a conflict of interest as they now have an interest in protecting their own reputations which conflicts with their clients' interest on the appeal. He also says that he intends to bring a fresh evidence motion where the respondents' lawyers will be witnesses.

[5] The appellant is effectively asking the court on the motion to make a preliminary determination that Shaughnessy J. erred in rejecting the allegations

of misconduct, or that he may have erred or that it is arguable that he erred, and on that basis, to remove counsel at this stage.

[6] Clearly that cannot be done. The record as it stands is that there was no misconduct. Shaughnessy J. stated repeatedly that the allegations were spurious and baseless. He was the case management judge over a period of several years. Considerable deference is owed to his findings. To the extent that the misconduct issue is relevant to the finding of contempt, it will be determined on the appeal. The conflict of interest allegation arises directly from and depends on the misconduct allegations.

[7] No motion to introduce fresh evidence or to examine the respondents' lawyers has been brought. I will therefore not comment on the likely outcome of such a motion.

[8] This court has recently re-iterated the principle that a court will only in the rarest of cases grant a removal motion: see *Kaiser (Re)*, 2011 ONCA 713, 205 O.A.C. 275 (Cronk J.A. in Chambers); *Manftoun v. Banitaba*, 2012 ONCA 786, [2012] O.J. No.5376 (Weiler J.A. in Chambers). As Cronk J.A. stated in *Kaiser (Re)*, at para. 21:

As the motion judge properly noted, "A litigant should not be deprived of counsel of its choice without good cause..." For this reason, Canadian courts exercise the highest level of restraint before interfering with a party's choice of counsel. Where such discretionary, equitable relief is invoked, there must be a possibility of real

mischief should a removal order be refused. The test is whether a fair-minded and reasonably informed member of the public would conclude that counsel's removal is necessary for the proper administration of justice ... [Citations omitted.]

[9] I am satisfied that a fair-minded and reasonably informed member of the public would not conclude that removal of respondents' counsel is necessary for the proper administration of justice. The motion is therefore dismissed.

[10] The appellant, through his counsel, has made serious allegations of deliberate misconduct against the two counsel for the respondents both in writing and in open court in the face of a finding to the contrary. In my view, that tactic requires the court to express its condemnation by awarding costs on the full indemnity scale. Costs are fixed in the amount of \$24,000 for PricewaterhouseCoopers and \$48,000 for Kingsland, all inclusive.

(2) The Security for Costs Motion

[11] The respondents move for security for costs of the appeal. In light of what they and the motion judge say is the egregious conduct of the appellant during this proceeding, all of which is discussed in detail by the motion judge, the respondents seek security for costs at the substantial indemnity level.

[12] They rely on rules 61.06(1)(a) and (c), which provide:

In an appeal where it appears that,

(a) there is good reason to believe that the appeal is frivolous and vexatious and that the appellant has insufficient assets in Ontario to pay the costs of the appeal; ... [or]

(c) for other good reason, security for costs should be ordered, a judge of the appellate court, on motion by the respondent, may make such order for security for costs of the proceeding and of the appeal as is just.

[13] Under subrule (a), the respondents say that the appeal is frivolous and vexatious. They point to the record and the careful findings of the motion judge that the appellant knew of the order requiring him to appear and did not do so, either on the ordered day or on a number of days thereafter when he was given further opportunities to do so. They also point to the detailed findings of the motion judge on the motion to set aside the contempt finding, that the appellant did not purge his contempt as he said he did, but lied to the court, and to the motion judge's failure to accept the appellant's apology because he found that it was not genuine.

[14] The appellant says he is impecunious. That is sufficient for the second part of subrule (a). However, the respondents' counsel submit that the appellant has been able to fund this litigation, indicating that he has access to funds and will be able to pay if costs are ordered as a condition of proceeding with the appeal.

[15] In my view, there is a legal issue that arises on the facts of this case which is not frivolous. The issue relates to the penalty imposed for the contempt and the appellant's ability at this stage to purge his contempt.

[16] The appellant is the principal of the plaintiff in the action, Nelson Barbados Group Ltd. The action was dismissed in 2009 for lack of jurisdiction in Ontario. Prior to the dismissal, the plaintiff withdrew against several defendants including PricewaterhouseCoopers. The order of November 2, 2009, ordered the appellant to appear on November 17, 2009, at Victory Verbatim to answer questions the answers to which would be used by the court to determine and award the costs of the action. Some defendants were seeking costs against the appellant personally. The appellant did not appear and was found in contempt of the November 2, 2009 order.

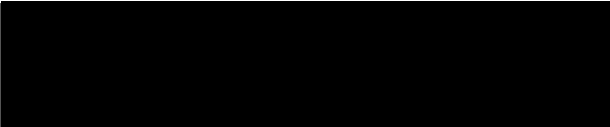
[17] Following the contempt finding against the appellant, the entire action and costs were settled with all defendants and the agreed costs were paid. Apparently it is not known who provided the funds to pay the costs, but the Minutes of Settlement provide that the costs agreed to are for the entire action. As a result, the action is over and the costs of the action have been paid.

[18] In those circumstances, it is unclear to me on what basis the appellant could be required to now appear and answer questions in accordance with the original order. Counsel for the respondents advised this court, as they did Shaughnessy J., that they still need to find out information about the relationship between the appellant and the Barbados assets that were the subject of the action. They need the information for other litigation that was or is still being

pursued against the defendants in other jurisdictions. It is not clear on what basis they can now obtain that information in the context of this contempt proceeding.

[19] If there is an issue with the ability of the appellant to now purge his contempt, this may also raise an issue with respect to the enforceability of the penalty of incarceration at this stage.

[20] As I have concluded that the appeal raises a legal issue that is not frivolous, and in addition involves the liberty of the subject, this is not a case where security would be ordered under either subrule (a) or (c). There should be no order for security for costs. The motion is therefore dismissed with costs of \$25,000 inclusive, payable in the cause.



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THIS IS **EXHIBIT "O"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015

A Commissioner etc.

Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.

Court File No.: 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

NOTICE OF MOTION

THE DEFENDANT, PricewaterhouseCoopers East Caribbean Firm ("PWC"),
and all other defendants, will make a motion before the Honourable Justice Shaughnessy on

Wednesday December 2, 2009, at 9:30 a.m. or as soon after that time as the motion can be heard, at the Courthouse in Whitby, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

- (a) an order declaring Donald Best to be 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, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario M5K 1H6 ("Victory Verbatim") in breach of paragraph 3 of the November 2, 2009 order of the Honourable Justice Shaughnessy (the "November 2, 2009 Order");
- (b) an order declaring Donald Best to be 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;
- (c) an order issuing a warrant to arrest Donald Best and requiring him to attend at the hearing of this contempt motion to answer all proper questions by defence counsel in court (*viva voce* before the Honourable Justice Shaughnessy), and specifically:
 - (i) 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;

- (ii) 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;
 - (iii) all questions which Justice Shaughnessy directed to be answered on April 8, 2009 and all questions reasonably arising therefrom;
 - (iv) all questions relating to Donald Best's appointment, and subsequent duties/responsibilities 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 of Crawford, McKenzie, McLean, Anderson & Duncan LLP; and
 - (v) 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;
- (d) in the alternative, an order that Donald Best must attend at Victory Verbatim on a date to be determined by the Honourable Court for examination as required in the November 2, 2009 Order;
- (e) an order that Donald Best pay a fine in the amount of \$7,500.00;

- (f) an order that Donald Best pay to PWC its substantial indemnity costs of the contempt motion, the attendance at Victory Verbatim on November 17, 2009, and the attendance at Victory Verbatim on November 25, 2009, forthwith;
- (g) an order allowing service of this notice of motion and any other motion materials relating to this motion upon Donald Best by an alternative to personal service, by mailing the documents to 427 Princess Street, Suite 200, Kingston, Ontario, K7L 5S9;
- (h) an order validating service and abridging the time for service of this motion, if necessary;
- (i) an order granting leave to hear *viva voce* evidence; and
- (j) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) on November 2, 2009 the Honourable Justice Shaughnessy ordered that Donald Best attend to be examined on Tuesday, November 17, 2009 at 10:00 a.m. at Victory Verbatim, and that he deliver relevant documents to Mr. Ranking, counsel for PWC, at least one (1) week prior to examination;
- (b) Mr. Best has never delivered the documentation he was ordered to deliver and he is therefore in breach of the November 2, 2009 Order;
- (c) on November 17, 2009, Mr. Ranking, and other counsel, attended at Victory Verbatim to examine Mr. Best. Mr. Best was aware of his required attendance on

- 5 -

that day, because he called Victory Verbatim at 9:50 a.m. that morning and spoke with counsel, and ultimately stated his intention not to attend, as required;

- (d) during the phone conversation with Mr. Best at Victory Verbatim on November 17, 2009, Mr. Ranking and Lorne Silver told Mr. Best that he would be in contempt of the November 2, 2009 Order if he did not attend. Despite repeated requests, Mr. Best refused to disclose his location, refused to attend later in the afternoon on November 17, 2009, refused to attend on other dates suggested by counsel, and refused to suggest another day he could attend;
- (e) Mr. Best did not attend at Victory Verbatim in Toronto on November 17, 2009;
- (f) on November 18, 2009, Mr. Ranking wrote to Mr. Best, to confirm that he was in contempt of the November 2, 2009 Order. In an effort to resolve the matter without further involving this Honourable Court, Mr. Ranking proposed an alternative examination date of Wednesday, November 25, 2009;
- (g) Mr. Ranking served a second Notice of Examination in accordance with the November 2, 2009 Order;
- (h) Mr. Best did not appear on November 25, 2009, nor did he call or provide any explanation. In fact, the defence received absolutely no communication from Mr. Best;
- (i) Mr. Best therefore breached of the November 2, 2009 Order a second time;

- (j) it is in the interest of justice that Mr. Best be required to attend and give evidence at the hearing of the contempt motion. Given the history of this matter, he is not likely to attend voluntarily.
- (k) Mr. Best has not attended to be examined on two separate occasions. The defence requires Mr. Best's evidence (and the production of documents) for the costs motion to be heard on February 22, 23 and 24, 2010. The defence are concerned that a further order requiring Mr. Best to attend will be disregarded by him, or alternatively, that Mr. Best will attend and refuse to produce documents or answer relevant questions. As such, PWC seeks an order requiring Mr. Best to attend to purge his contempt and to answer all relevant questions in Court *viva voce* before the Honourable Justice Shaughnessy at a date and time convenient to His Honour. Such a procedure will obviate the delay and necessity of further court attendances (to deal with refusals) and permit the Court to hear the evidence, and rule on refusals;
- (l) Rules 3.02, 39.03(4) and 60.11 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;

THE FOLLOWING EVIDENCE will be relied upon on this motion:

- (a) The affidavit of Richard Butler sworn November 27, 2009.
- (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 27, 2009

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2228

- 8 -

8

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Classic Investments Limited, The Barbados Agricultural Credit Trust,
Attorney General of Barbados, the Country of Barbados, Elneth Kentish,
Malcolm Deane, Eric Ashby Bentham Deane, Owen Basil Keith Deane,
Estate of Vivian Gordon Lee Deane, David Thompson, Owen Gordon Finlay Deane,
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Solicitors for the Defendant, Glyne Bannister

NELSON BARBADOS GROUP LTD.

- and -

RICHARD IVAN COX ET AL.

Plaintiff

Defendants

Court File No. 07-0141

2230

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

NOTICE OF MOTION

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PricewaterhouseCoopers East Caribbean Firm

10

377

Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC
ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE,
MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH,
GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES
a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY,
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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
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WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL
OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25
PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANS,
DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS,
G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC.,
OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and
LIFE OF BARBADOS LIMITED c.o.b. as LIFE OF BARBADOS HOLDINGS,
LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY,
PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM,
VECO CORPORATION, COMMONWEALTH CONSTRUCTION
CANADA LTD and COMMONWEALTH CONSTRUCTION, INC.

Defendants

AFFIDAVIT OF RICHARD D. BUTLER
Sworn November 27, 2009

I, RICHARD BUTLER, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am an Associate at Fasken Martineau DuMoulin LLP, the solicitors for PricewaterhouseCoopers East Caribbean Firm ("PwC"). I have assisted with this case, and as such, I have knowledge of the matters hereinafter deposed, unless I state that my information is based on the information of others. In such case, I verily believe the information to be true.

A. Information Obtained from The UPS Store Canada Franchises

2. In my affidavit of November 2, 2009, I described the process by which I sent The UPS Store Canada head office, and two The UPS Store Canada franchises (collectively, the "Non-Parties") the Further Amended Notice of Motion of the defendants, dated October 29, 2009, in which the defendants sought disclosure of documents from the Non-Parties. In my affidavit of November 2, 2009 I confirmed that the Non-Parties did not object to the relief sought in the Further Amended Notice of Motion (i.e. the production of documents).

3. On Monday, November 2, 2009, the Honourable Justice Shaughnessy ordered The UPS Store Canada located at 427 Princess Street, Kingston, ON, ("Kingston UPS Store") to deliver to the defendants copies of the original contract for rental/use, and any billing records that exist for Box 200 from the date the mail box was opened until present. Justice Shaughnessy also ordered that The UPS Store Canada located at 250 The East Mall, Toronto, Ontario ("Toronto UPS Store") deliver to the defendants copies of the original contract for rental/use, and any billing records that exist for mail boxes 1225 and 1715 from the date the mail boxes were opened until present. A copy of Justice Shaughnessy's order, dated November 2, 2009, ("November 2, 2009 Order") is attached hereto as Exhibit "A".

4. On November 10, 2009, I sent an email to Ron Boratto, Executive Vice President & Corporate Counsel of MBEC Communications L.P., which is the franchisor to

The UPS Store Canada stores. I advised Mr. Boratto that the motion on November 2, 2009 went ahead and that the presiding judge ordered production of documents from two The UPS Store Canada franchises. I attached an unsigned copy of the November 2, 2009 Order to the email. A copy of that email is attached hereto as Exhibit "B".

(a) Kingston UPS Store

5. On November 12, 2009 I left a voicemail for the acting manager (who I knew, from previous correspondence, was named Darren) of the Kingston UPS Store identifying myself and the purpose of my call, being the production of documents required by the November 2, 2009 Order. I follow-up my voicemail with an email to the acting manager. I attached an unsigned copy of the November 2, 2009 Order to the email. A copy of that email is attached hereto as Exhibit "C".

6. On November 12, 2009 I received a facsimile from Darren which included documents relating to Box 200 at the Kingston UPS Store. The customer's name for that box is "Nelson Barbados Group Ltd." I called and spoke to Darren immediately after receiving the facsimile. Darren confirmed that the owner of the Toronto UPS Store (Dave DeLyzzer) was responsible for activating Box 200, at the Kingston UPS Store, on September 3, 2009.

7. Darren also confirmed that pursuant to the instructions provided at the time Box 200 at the Kingston UPS Store was activated, the Kingston UPS Store automatically forwards back all mail received at the Kingston UPS Store to the Toronto UPS Store, and bills the credit card number provided in the file. Darren confirmed that the two most recent transactions (when the contents from Box 200 at the Kingston UPS Store), were sent to the

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Toronto UPS Store, were November 3, 2009 and November 12, 2009. A copy of that facsimile is attached hereto as Exhibit "D".

(b) Toronto UPS Store

8. On November 12, 2009 I spoke to the owner of the Toronto UPS Store, Dave DeLyzer. Mr. DeLyzer advised me that one of the two mail boxes included in the November 2, 2009 Order (Box 1715) was closed a couple years ago. Mr. DeLyzer also told me that The UPS Store Canada franchises are required to destroy records for the box on closure of the account and that he had no documents for Box 1715. Mr. DeLyzer confirmed that he would provide the information for Box 1225.

9. Mr. DeLyzer also noted that he activated the mailbox at the Kingston UPS Store at the request of the registered customer for Box 1225.

10. Mr. DeLyzer requested a copy of the November 2, 2009 Order. I sent Mr. DeLyzer an email on November 12, 2009, and attached an unsigned copy of the November 2, 2009 Order to the email. A copy of that email is attached hereto as Exhibit "E".

11. On November 13, 2009 I sent an email to Mr. DeLyzer attaching a copy of the signed November 2, 2009 Order. A copy of that email is attached hereto as Exhibit "F". In my email, I stated that in addition to the production of any documents relating to Box 1225 at the Toronto UPS Store, the Order also required that if Mr. DeLyzer had documents relating to Box 200, at the Kingston UPS Store, those must also be produced.

12. On November 13, 2009, Mr. DeLyzer sent me an email to which he attached documents regarding Box 1225 at the Toronto UPS Store. Although the information

contained in the documents states that the box number is 225, Mr. DeLyzer confirmed to me by phone that there is no box 1225 at the Toronto UPS Store. The box was activated by Donald Best on behalf of The "Nelson Group Limited" in 2007. A copy of that email and attachment is attached hereto as Exhibit "G".

(c) Summary

13. From the documents sent by the two The UPS Store locations, and from my discussion with Darren and David I understood that any mail that arrives in Box 200 at the Kingston UPS Store, being mail intended for Nelson Barbados Group Ltd., is automatically forwarded to Box 225 at the Toronto UPS Store, which box is in the name of The Nelson Group Limited. Mr. Best activated Box 225 at the Toronto UPS Store and requested that the owner of the Toronto UPS Store activate Box 200 at the Kingston UPS Store.

B. Mr. Best Fails to Attend at the Scheduled Examination and Provide Documents

14. In the November 2, 2009 Order, the Honourable Justice Shaughnessy ordered Donald Best to appear at an examination on Tuesday, November 17, 2009 at 10:00 a.m. at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario, M5K 1H6, ("Victory Verbatim") at his own expense. Mr. Best was also ordered to provide to Mr. Ranking all documentation touching on the issues at least one week prior to examination. See Exhibit "A" above.

15. I am informed by Mr. Ranking, and believe, that Mr. Best never provided any documentation as required by the November 2, 2009 Order.

16. I have reviewed the November 6, 2009 correspondence from Gerry Ranking to Mr. Best, in which Mr. Ranking informs Mr. Best that he is required to attend for examination

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on November 17, 2009 at Victory Verbatim. A Notice of Examination was included with the letter. A copy of that letter is attached hereto as Exhibit "H", and a copy of the Notice of Examination is attached hereto as Exhibit "I". The Affidavit of Jeannine Ouellette, sworn November 17, 2009, states that Mr. Best was served with the November 6, 2009 correspondence and the Notice of Examination on November 6, 2009. The November 17, 2009 Affidavit of Jeannine Ouellette is attached hereto as Exhibit "J".

17. I have reviewed the November 16, 2009 correspondence from Mr. Best to the Trial Coordinator's office, a copy of which is attached hereto as Exhibit "K". In that letter, Mr. Best confirms that he is aware of the November 17, 2009 examination date.

18. I am informed by Mr. Ranking, and believe, that Mr. Best did not attend at Victory Verbatim on November 17, 2009. I am also informed that Mr. Ranking, in the presence of other counsel, made a statement for the record (the "Statement") describing the events that morning. Mr. Ranking tells me, and I believe, that his Statement is a true and accurate description of the events of that morning. I have reviewed the Statement of Mr. Ranking, copy of which is attached hereto as Exhibit "L". Mr. Ranking marked the following as Exhibits: the November 2, 2009 Order, the November 17, 2009 Affidavit of Jeannine Ouellette, and the November 6, 2009 letter from Mr. Ranking to Mr. Best.

19. In his Statement, Mr. Ranking outlines the events that transpired on the morning of November 17, 2009. At page 4 of the transcript, Mr. Ranking states that Mr. Best phoned the offices of Victory Verbatim on the morning of November 17, 2009, and informed Mr. Ranking and others that he would not be appearing to be examined in person. At page 6 of the transcript, Mr. Ranking states that he made it clear to Mr. Best that if he did not attend,

he would be in contempt of the November 2, 2009 Order. The November 17, 2009 Certificate of Non-Attendance of Mr. Best on November 17, 2009 is attached hereto as Exhibit "M".

20. I am further informed by Mr. Ranking, and believe, that he wrote to Mr. Best the following day. I have reviewed the November 18, 2009 letter from Mr. Ranking to Mr. Best, a copy of the which is attached hereto as Exhibit "N".

21. In his correspondence, Mr. Ranking again informed Mr. Best that he was in contempt of the November 2, 2009 Order. Mr. Ranking also wrote that "rather than moving for a contempt order now, we are prepared to give you one, and only one, opportunity to purge your contempt." Mr. Ranking provided a further Notice of Examination, requiring attendance of Mr. Best at Victory Verbatim on November 25, 2009. A copy of the Notice of Examination is attached hereto as Exhibit "O".

22. The Affidavit of Jeannine Ouellette, sworn November 24, 2009, states that Mr. Best was served with the November 18, 2009 correspondence and the Notice of Examination on November 18, 2009. The November 24, 2009 Affidavit of Jeannine Ouellette is attached hereto as Exhibit "P".

23. I am informed by Mr. Ranking, and believe, that Mr. Best did not attend to be examined on November 25, 2009 and that a Certificate of Non-Attendance was issued by Victory Verbatim, a copy of which is attached hereto as Exhibit "Q".

24. I am further informed, and believe, that Mr. Ranking made another statement for the record describing the events of the morning of November 25, 2009. I have reviewed the transcript of the statement of Mr. Ranking on November 25, 2009, a copy of which is

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attached hereto as Exhibit "R". Mr. Ranking informs me, and I do believe, that his statement is an accurate and true description of the events of the morning of November 25, 2009. In his statement, Mr. Ranking marked the following as Exhibits: Mr. Ranking's letter to Mr. Best on November 18, 2009, the November 18, 2009 Notice of Examination, the November 17, 2009 transcript and enclosed Exhibits, the November 17, 2009 Certificate of Non-Attendance, the November 25, 2009 Certificate of Non-Attendance, and the Affidavit of Janine Ouellette sworn November 24, 2009.

SWORN BEFORE ME
at the City of Toronto, in the
Province of Ontario,
on November 27, 2009

)
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)
)
)
)

RICHARD D. BUTLER

A COMMISSIONER FOR TAKING AFFIDAVITS

Emmette Morse

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

**AFFIDAVIT OF RICHARD BUTLER,
SWORN NOVEMBER 27, 2009**

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

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

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of,
all Defendants

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ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

)

MONDAY, THE 2ND DAY

)

MR. JUSTICE SHAUGHNESSY

)

OF NOVEMBER, 2009

BETWEEN:

NELSON BARBADOS GROUP LTD.

This is Exhibit "A" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November, 2009

- and -

COMMISSIONER FOR TAKING AFFIDAVITS

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

Defendants

ORDER

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

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

1. **THIS COURT ORDERS** that the service of all motion materials (relating to the costs motion) upon Donald Best is hereby validated, and the service of all such materials was effective four (4) days after such materials were served upon Nelson Barbados Group Ltd. ("Nelson Barbados") by virtue of having been mailed to 427 Princess Street, Suite 200, Kingston, Ontario.
2. **THIS COURT FURTHER ORDERS** that service of any and all further materials (including motions, court orders and notices of examination) upon Donald Best will be effective four (4) days after mailing or couriering same to Donald Best c/o the address at 427 Princess Street, Suite 200, Kingston, Ontario, and this order shall supersede paragraph 2 of the order of Eberhard J., dated September 15, 2009.
3. **THIS COURT FURTHER ORDERS** that Donald Best shall appear at an examination on Tuesday, November 17, 2009 at 10:00 a.m. at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario M5K 1H6 at his own expense, to answer:

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

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

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

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

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

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

- (a) the incorporation documents for Nelson Barbados, minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements);
- (a) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;
- (b) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland; and
- (c) all trust documents (referred to in the cross-examination of John Knox);

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

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

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

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

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

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

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

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

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

Justice Shaughnessy

Butler_Richard

From: Butler_Richard
Sent: Tuesday, November 10, 2009 4:24 PM
To: 'Ron Boratto'
Subject: RE: Disclosure of documents from The UPS Store Canada franchises
Attachments: DM_TOR-#3345589-v4-Order_re_production.pdf

Ron,
As a follow-up to my voicemail, the motion on November 2, 2009 went ahead and the judge has ordered production of copies of the original contract for rental/use, and any billing records that exist from the date the mail boxes were opened until present, for the following The USP Store Canada locations:

- (a) Box 200, at 427 Princess Street, Kingston, Ontario;
- (b) Box 1225, at 250 The East Mall, Toronto Ontario, Store 122 (Cloverdale Mall); and
- (c) Box 1715, at 250 The East Mall, Toronto, Ontario, Store 122.

The order is effective as of the date was made, so I would greatly appreciate if you could contact the individual franchisors as soon as possible and ask them to prepare copies of the documents and to fax them to me at the fax number, below. I will also contact the franchisors tomorrow, but the Etobicoke location mentioned that he wanted to speak to you before disclosing any documents. I have attached a draft copy of the written order to this email. It has not yet been signed by the court, but we expect that it will be approved by opposing counsel today in substantially the same form. The portions relating to the UPS stores were unopposed so those provisions will remain unchanged.

Please don't hesitate to call me if you have any questions.

Regards,
Rich

Richard D. Butler
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

Tel: 416 868 3351
Fax: 416 364 7813
www.fasken.com

66 Wellington St W
Suite 4200 Toronto Dominion Bank Tower
Box 20 Toronto-Dominion Centre
Toronto ON M5K 1N6
Canada

This is Exhibit "B" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009.

COMMISSIONER FOR TAKING AFFIDAVITS

E. Morse

From: Ron Boratto [mailto:rboratto@theupsstore.ca]

11/26/2009

Sent: Friday, October 30, 2009 12:04 PM
To: Butler_Richard
Subject: RE: Disclosure of documents from The UPS Store Canada franchises

Richard

As we discussed MBEC Communications L.P., the master franchisor for The UPS STORE in Canada, has no intention of opposing your motion.

As discussed, our position is non-binding upon our respective franchisees..

Regards,

Ron Boratto
Executive Vice President & Corporate Counsel
MBEC Communications L.P.
505 Iroquois Shore Road, Unit 4
Oakville Ontario,
L6H 2R3
(905) 338-9754 (286)
(905) 338 -7492

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From: Butler_Richard [mailto:RButler@fasken.com]
Sent: October 30, 2009 11:40 AM
To: Rboratto@theupsstore.ca
Subject: Disclosure of documents from The UPS Store Canada franchises

Ron,

As a follow-up to our conversation this morning, we are counsel to a defendant in a civil action in Ontario. In the course of the action, we have become aware that parties are using The UPS Store Canada mail boxes.

As I noted on the phone, we require access to the original contracts for for rental/use, and any billing records that exist from the date the mail box was opened until present, for the following mail boxes at the following The UPS Store Canada locations:

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

11/26/2009

- (b) Box 1225, at 250 The East Mall, Toronto Ontario, Store 122 (Cloverdale Mall); and
- (c) Box 1715, at 250 The East Mall, Toronto, Ontario, Store 122.

We have served a Notice of Motion on the opposing parties which details our request for production of the above noted documents from The UPS Store Canada, a non-party to the action. I have attached a .pdf copy of that Notice of Motion to this email, for your information.

Could you please confirm that The UPS Store Canada does not oppose the within motion.

Regards,

Rich Butler

Richard D. Butler
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

Tel: 416 868 3351
Fax: 416 364 7813
www.fasken.com

66 Wellington St W
Suite 4200 Toronto Dominion Bank Tower
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Toronto ON M5K 1N6
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11/26/2009

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Court File No.: 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

ORDER

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

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

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

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

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

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

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

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

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

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

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

- (a) the incorporation documents for Nelson Barbados, minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements);
- (a) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;
- (b) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland; and
- (c) all trust documents (referred to in the cross-examination of John Knox);

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

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

2252

32

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

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

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

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

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

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

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

November , 2009

Justice Shaughnessy

Butler_Richard

From: Butler_Richard
Sent: Thursday, November 12, 2009 2:49 PM
To: 'store191@theupsstore.ca'
Subject: FW: Follow-up to telephone conversation re: court motion
Attachments: DM_TOR-#3345589-v4-Order_re_production.pdf

Darren,

As a follow-up to my voicemail, the motion on November 2, 2009 went ahead and the judge has ordered production of **copies of the original contract for rental/use, and any billing records or information that exists from the date the mail boxes were opened until present, for Box 200** at your The USP Store Canada location (at 427 Princess Street, Kingston, Ontario).

The order is effective as of the date was made by the judge, so I would greatly appreciate if you could prepare copies of the documents and to fax them to me at the fax number, below. I have attached a draft copy of the written order to this email; the relevant paragraphs for your store is paragraph 8. It has not yet been signed by the court, but we expect that it will be approved by opposing counsel today in substantially the same form. The portions relating to the UPE stores were unopposed so those provisions will remain unchanged.

Please don't hesitate to call me if you have any questions.

Regards,
Rich Butler

Richard D. Butler
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

Tel: 416 868 3351
Fax: 416 364 7813
www.fasken.com

66 Wellington St W
Suite 4200 Toronto Dominion Bank Tower
Box 20 Toronto-Dominion Centre
Toronto ON M5K 1N6
Canada

This is Exhibit "C" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

A COMMISSIONER FOR TAKING AFFIDAVITS
E. Marx

From: Butler_Richard
Sent: Friday, October 30, 2009 2:05 PM
To: 'store191@theupsstore.ca'
Subject: Follow-up to telephone conversation re: court motion

Darren,

Following up on our phone call this afternoon, we are currently involved in litigation and are going to be seeking a court order on Monday, November 2, 2009 to obtain information relating to a post office box

11/26/2009

2254

34

located at your UPS Store location (Store # 191 at 427 Princess Street, Kingston, Ontario). The relevant information we are seeking includes original contracts relating to the individual(s) renting the box as well as any billing information (including addresses and names on that billing information) you may have relating to the box. I have attached the Notice of Motion to this email, identifying the relief we are seeking.

As you will see from the email below, we have discussed this matter with Ron Boratto, who is Corporate Counsel to MBEC Communications L.P. Ron has stated that he has no intention of opposing our motion. He has also asked us to contact you, the franchise.

Please confirm by reply email back to me today that you do not oppose the relief being sought at the November 2nd motion.

I will be in touch with you once we have obtained the court order.

Regards,

Rich

Richard D. Butler
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

Tel: 416 868 3351
Fax: 416 364 7813
www.fasken.com

66 Wellington St W
Suite 4200 Toronto Dominion Bank Tower
Box 20 Toronto-Dominion Centre
Toronto ON M5K 1N6
Canada

From: Ron Boratto [mailto:rboratto@theupsstore.ca]
Sent: Friday, October 30, 2009 12:04 PM
To: Butler_Richard
Subject: RE: Disclosure of documents from The UPS Store Canada franchises

Richard

As we discussed MBEC Communications L.P., the master franchisor for The UPS STORE in Canada, has no intention of opposing your motion.

As discussed, our position is non-binding upon our respective franchisees..

Regards,

Ron Boratto
Executive Vice President & Corporate Counsel
MBEC Communications L.P.
505 Iroquois Shore Road, Unit 4

11/26/2009

Oakville Ontario,
L6H 2R3
(905) 338-9754 (286)
(905) 338 -7492

CONFIDENTIALITY NOTICE

This information contained in this communication is intended only for use by the addressee and contains information that is private and may be confidential or privileged, and the sender does not waive any rights related thereto. If you are not the intended recipient, please notify the sender immediately by reply email and permanently delete the original message, your reply and destroy any copy or print out of this email. Any distribution, use or copying of this email or the information contained in it by any person other than the intended recipient is unauthorized. Thank you for your cooperation.

AVIS DE CONFIDENTIALITÉ

Ce courrier électronique est prévu seulement à l'usage du destinataire et contient d'information qui est privée et peut être confidentielle ou privilégiée. L'expéditeur n'écarter aucun droit relatif ci-dessus. Si vous n'êtes pas le destinataire prévu, informez l'expéditeur en répondant immédiatement à ce courrier électronique et supprimez de manière permanente ce message. Toute distribution, utilisation ou duplication de ce courrier électronique ou de l'information qui s'y trouve par toute personne autre que le destinataire prévu n'est pas autorisée. Votre coopération est appréciée.

Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

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

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC
ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE,
MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH,
GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES
a.k.a. 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 Defendant, Pricewaterhouse East Caribbean Firm, and the other defendants, for, among other things, an order compelling K. William McKenzie ("Mr. McKenzie") to attend to be cross-examined upon his affidavit, sworn October 2, 2009, (the "McKenzie Affidavit") and to answer all questions that are related to matters raised on the motion for which it was sworn was heard this day in Whitby, Ontario.

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

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

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

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

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

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

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

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

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

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

- (a) the incorporation documents for Nelson Barbados, minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements);
- (a) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;
- (b) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland; and
- (c) all trust documents (referred to in the cross-examination of John Knox);

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

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

2260

40

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

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

- (a) Box 1225, at 250 The East Mall, Toronto Ontario (Cloverdale Mall); and
(b) Box 1715, at 250 The East Mall, Toronto, Ontario (Cloverdale Mall).

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

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

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

November 2, 2009

Justice Shaughnessy

The UPS Store®
427 Princess Street
Kingston, Ontario
K7L 5S9
T 613-549-4224
F 613-549-4894
store191@theupsstore.ca

This is Exhibit "D" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

E. Morse

FAX

To Richard Butler From Daren
Company _____ Phone number 613 549 4224
Fax number 613 549 4894
Date November 12th Total pages 5 plus cover
Job number _____

Message:

To my knowledge, this is all the
paperwork that exists. I can't
seem to find a receipt for what
they paid for the mailbox when
they signed up, but the Owner,
Horace, handled the mailbox
contract / transactions, so I
will speak to him when he is in
town this Friday. - Daren

Digital printing, copying, document finishing, faxing services, mailbox rentals, courier services,
packaging supplies and services

The UPS Store®

Received Nov-12-09 03:40pm

From-

To-Fasken Martineau

Page 001

Mailbox Service Agreement

Suite # 200

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The UPS Store® is a nationwide chain of office support and business service centres operated by licensed franchisees of MBEC Communications Inc. The Mailbox Service Agreement is entered into between the Parties herein identified as the Customer and the The UPS Store® identified on page two of this Agreement, (the Store). The Customer has entered into this Agreement for the purpose of utilizing the private suite address printed below for receiving mail and parcel deliveries from Canada Post and Private Courier Companies such as UPS, DHL or FedEx. The Customer understands that the Store's facilities may not be used for any illegal or illegitimate purposes prohibited by the Canada Post Corporation Act or the regulations hereunder. The Customer agrees that the Store, acting as agent for the receipt of mail and parcels only, is authorized to sign for all shipments addressed to the Customer, or any Joint Holder included in this Agreement. The Customer acknowledges that the Store may not accept any mail or parcel deliveries on behalf of addressees not specifically listed on this Agreement. Additional names may be added to this Agreement at any time following the date of execution. The Customer acknowledges that delivery of items to names not previously provided to the Store on this Agreement may be returned to sender and listed as "Unknown at this Address".

The Customer further acknowledges that its use of the mailbox assigned under this Agreement shall be in conformity with all applicable Federal, Provincial, and local laws. The Store agrees that all information provided by the Customer is strictly confidential, and may not be disclosed, except when legally compelled or required. The Store will upon receipt of valid identification and a written order, or other authorization (where required) provide a copy of this Agreement to law enforcement or governmental officials. The Store must also comply with any Court Orders requiring information, or access to mail or parcels being held on behalf of the Customer.

Possession of a mailbox key is considered by the Store to be valid evidence that the possessor is duly authorized to remove any contents from any mailbox rented under this Agreement. The Customer acknowledges that for security purposes, the Store may require identification in cases where the Customer has requested access to the contents of their mailbox without their mailbox key.

Mailbox service fees are all due and payable at least quarterly in advance. There will be no prorations or refunds for cancellation of any service. Accounts are delinquent after the due date and mail will be held pending payment. A late fee of \$10.00 will be charged if payment is not received within five (5) days of the due date. Services may be terminated at the option of the Store thirty (30) days after the due date. If necessary arrangements are not made for the forwarding of mail when the relationship has expired, is cancelled, or is terminated, the Customer's mail will be returned to sender. Upon voluntary termination of service, the Store will forward the Customer's mail for 30 days, provided the Customer pays the postage, packing materials, and service fees in advance. A deposit is required for this service. Thereafter, if the Customer requires forwarding of mail, additional fees will be required and charged for this service. The Customer acknowledges that Canada Post regulations prohibit the execution of a Change of Address Order to facilitate the forwarding of mail from Commercial Mail Receiving Agencies such as The UPS Store®. Therefore, it is the responsibility of the Customer to advise people sending mail and parcels of a new address in the event the Customer cancels this Agreement at a future date.

The customer further agrees that the Store may terminate or cancel this Agreement for cause at any time by providing seven (7) days written notice. Cause shall include, but is not limited to: 1) abandonment; 2) use for criminal, illegal, or illegitimate activity; 3) failure to pay monies owed the Store; 4) use of mailbox inconsistent with this Agreement, including receipt of unreasonable volume of mail. Renewal of this Agreement for additional terms shall be at the Store's sole discretion.

C.O.D. items will be accepted only if prior arrangements have been made and payment in advance is left with the Store. The Customer further agrees to protect, indemnify, and save harmless the Store from and against any and all claims, demands, and causes of personal injury or property damage arising from such use or possession; for failure of Canada Post to deliver on time or otherwise any items including mail and parcels, for damage to or loss of mailbox contents by any cause whatsoever; and for any violation by the customer of applicable Federal, Provincial, or local laws.

The Customer herein agrees that the total liability of the Store for any and all claims is limited to \$50.00 regardless of the nature of the claim. (Customer's initials DD)

Your address for postal
and courier deliveries is:

Nelson Barbados Group Limited
427 Princess Street
Suite # 200
Kingston, ON K7L 6B6

The UPS Store® operates in full compliance with the Personal Information and Electronic Documents Act (PIPEDA) and all applicable Provincial legislation with respect to all personal information. For a free copy of our Privacy Protection Policy Schedule, please contact us.

Received Nov-12-08 03:48pm

From-

To-Parker Martineau

Page 002

2263₄₃

Individuals or businesses herein referred to as Joint Holders may receive mail and parcels under the terms of this Agreement in addition to the Customer. Each Joint Holder must be listed in space provided below. In the event the Joint Holder is not a family member of the Customer, sharing the same family surname, the Joint Holder must complete a separate Mailbox Service Agreement and present identification. All mail or parcels received for individuals or businesses not listed under the terms of this agreement will be refused for delivery and returned to sender.

1. Nelson Barbados Group Limited

I hereby agree to the terms and conditions set forth by this Agreement.

The Customer: Nelson Barbados Group Limited (Please Print)

Signature: per Dave De Lyzer Date: Sept 2/09

The UPS Store® locations in Canada are independently owned and operated by licensed franchisees of MSECC Communications Inc., an Ontario corporation and master licensee of Mail Boxes Etc., Inc., a subsidiary of United Parcel Service of America, Inc. The UPS Store® and other UPS® trademarks are owned by United Parcel Service of America, Inc. and used under license.

For the Store Use Only

Customer's daytime telephone number: 416-838-8333 E-mail: store175@theupsstore.ca
1225 - 250 The East Mall Etobicoke M9B 5L3

Store number: 200 Contract term: _____ Yearly ☒ _____

Renewal date: Dec 1st 2010 Virtual

Personal: ☒ _____

Personal Plus: _____

Business: _____

Corporate: _____

Rental fee: \$ _____

Initiation fee: \$ _____ N/A _____

or

Refundable key deposit: \$ N/A

The UPS Store® Associate: Horace

The UPS Store® #191

427 Princess Street, Kingston ON K7L5S9
613.549.4224 Tel 613.549.4894 Fax
store191@theupsstore.ca www.theupsstore.ca/191

Two forms of identification are required, one of which must be a Photo ID. A photocopy of the two forms of identification will be made by the Store in the spaces below. Acceptable forms of identification include a valid Driver's License or Passport with photo I.D., and a Major Credit Card or a Bank Client Card. The UPS Store® operates in full compliance with the Personal Information and Electronics Documents Act (PIPEDA) and all applicable Provincial legislation with respect to all personal information. For a free copy of our Privacy Protection Policy Schedule, please contact us.

Virtual Box

Virtual Box

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Courier Receiving Agreement

The UPS Store[®] is a nationwide chain of office support and business service centres operated by licensed franchisees of MBEC Communications Inc. The Courier Receiving Agreement is entered into between the Parties herein identified as the Customer and the The UPS Store[®] identified below, (the Store). The Customer has entered into this Agreement for the purpose of utilizing the address printed below for receiving shipments (the Parcel) from private courier companies such as UPS, DHL or FedEx. The Customer understands that the Store's facilities may not be used for any illegal or illegitimate purposes prohibited by federal or provincial legislation. The Customer agrees that the Store, acting as agent for the receipt of courier shipments only, is authorized to sign for all shipments addressed to the Customer.

A service fee is payable by the Customer to the Store for each parcel delivered. The service fee is based on the weight of the Parcel and will be charged as follows: Express Envelopes/Paks, \$3.00; Small Parcels, 1-25 lbs. \$5.00; Large Parcels, 26-75 lbs. \$10.00; and Heavy Weight Parcels (76 lbs. and greater), \$25.00. These charges include holding of the Parcel for two business days, and a courtesy call and/or e-mail message to the Customer to advise of the delivery. Storage fees will be assessed for each business day the Parcel is held in the Store for pick up. The storage fees are as follows: Express Envelopes/Paks, \$1.00; Small Parcels, \$2.00; Large Parcels, \$5.00; and Heavy Weight Parcels, \$10.00.

The Parcel will be recorded in the Parcel Receiving Log and the Customer will be asked to sign as acknowledgement that they have taken possession. The Customer will be required to provide some form of government issued Photo Identification in order to pick up the Parcel.

C.O.D. items will be accepted only if prior arrangements have been made and payment in advance is left with the Store.

Shipments imported into Canada from the US and other countries may require the payment of duties, taxes, and brokerage charges. These charges can not be pre-determined by the Store. It is the Customer's responsibility to investigate the cost of importing goods prior to making arrangements with the Store to receive the Parcel. Such charges are typically invoiced by the courier several weeks following the date of delivery. The Customer agrees to pay all applicable charges associated with the delivery of their goods to the Store and authorizes payment of the balance due by credit card. A receipt of payment will be issued to you by the Store.

5268 0104 0052 5457
Credit Card Number

12/09
Expiry Date

Card Holder Signature

The Customer herein agrees that the total liability of the Store for any and all claims is limited to \$50.00 regardless of the nature of the claim. (Customer's Initials DD)

Your address for
courier deliveries is:

Nelson Barbados Group Limited
427 Princess Street
Suite# 200
Kingston ON, K7L 6S8

I hereby agree to the terms and conditions set forth by this Agreement.

The Customer: Nelson Barbados Group Limited

Signature: per Dave De Lyzer Date: Sept 2/09

For the Store Use Only

Customer's daytime telephone number: 616-558-6392

E-mail: store176@theupsstore.ca

The UPS Store[®] Associate: Horace

The UPS Store[®] locations in Canada are independently owned and operated by licensed franchisees of MBEC Communications Inc., an Ontario corporation and master licensee of United Parcel Service of America, Inc. The UPS Store[®] and other UPS[®] trademarks are owned by United Parcel Service of America, Inc. and used under license. The UPS Store[®] operates in full compliance with the Personal Information and Electronic Documents Act (PIPEDA) and all applicable Provincial legislation with respect to all personal information. For a free copy of our Privacy Protection Policy Schedule, please contact us.

Received Nov-12-09 02:45pm

From-

To-Pauline Martineau

Page 004

Instructions

Customer Information

Suite Number: 200	Start Date: 11	End Date: 11
Customer Name: Nelson Barbados Group Ltd		
Forwarding Address: 1225 - 250 The East Mall Etobicoke M9B 6L3		
City: Etobicoke	Province: ON	
Frequency of Mail Forwarding: upon receipt		
Special Instructions: \$20 dollar deposit received Sep 2nd, 1999		

Log

[illegible]

46

THE 100/1000 100
 100 PRINCE ST.
 KENNESAW, ON
 M4A 1A4/15

NOV 12-12-09 16:06
 CLEAR 1 19:56

100 CANADA \$13.12
 SET TXL WRT \$15.12
 SET -80.16
 E-CARD \$12.88

BUSINESS
 AND
 COMMUNICATION SERVICE

DATE 2009-11-12
 TIME 16:06
 REPT 7000000-100-1000

REPT 7000000-100-1000

Butler_Richard

From: Butler_Richard
Sent: Thursday, November 12, 2009 1:26 PM
To: 'store176@theupsstore.ca'
Subject: FW: Disclosure of documents from The UPS Store Canada franchises
Attachments: DM_TOR-#3345589-v4-Order_re_production.pdf

David,
 Attached is a copy of the order. Many thanks for your help.

Regards,

Rich

Richard D. Butler
 Fasken Martineau DuMoulin LLP
 Barristers & Solicitors
 Patent & Trade-mark Agents

Tel: 416 868 3351
 Fax: 416 364 7813
www.fasken.com

66 Wellington St W
 Suite 4200 Toronto Dominion Bank Tower
 Box 20 Toronto-Dominion Centre
 Toronto ON M5K 1N6
 Canada

This is Exhibit "E" referred to in the
 affidavit of Richard D. Butler
 sworn before me, this 27
 day of November 2009

COMMISSIONER FOR TAKING AFFIDAVITS

E. Morse

From: Butler_Richard
Sent: Tuesday, November 10, 2009 4:24 PM
To: 'Ron Boratto'
Subject: RE: Disclosure of documents from The UPS Store Canada franchises

Ron,
 As a follow-up to my voicemail, the motion on November 2, 2009 went ahead and the judge has ordered production of copies of the original contract for rental/use, and any billing records that exist from the date the mail boxes were opened until present, for the following The USP Store Canada locations:

- (a) Box 200, at 427 Princess Street, Kingston, Ontario;
- (b) Box 1225, at 250 The East Mall, Toronto Ontario, Store 122 (Cloverdale Mall); and
- (c) Box 1715, at 250 The East Mall, Toronto, Ontario, Store 122.

The order is effective as of the date was made, so I would greatly appreciate if you could contact the individual franchisors as soon as possible and ask them to prepare copies of the documents and to fax them to me at the fax number, below. I will also contact the franchisors tomorrow, but the Etobicoke

11/26/2009

location mentioned that he wanted to speak to you before disclosing any documents. I have attached a draft copy of the written order to this email. It has not yet been signed by the court, but we expect that it will be approved by opposing counsel today in substantially the same form. The portions relating to the UPS stores were unopposed so those provisions will remain unchanged.

Please don't hesitate to call me if you have any questions.

Regards,
Rich

Richard D. Butler
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

Tel: 416 868 3351
Fax: 416 364 7813
www.fasken.com

66 Wellington St W
Suite 4200 Toronto Dominion Bank Tower
Box 20 Toronto-Dominion Centre
Toronto ON M5K 1N6
Canada

From: Ron Boratto [mailto:rboratto@theupsstore.ca]
Sent: Friday, October 30, 2009 12:04 PM
To: Butler_Richard
Subject: RE: Disclosure of documents from The UPS Store Canada franchises

Richard

As we discussed MBEC Communications L.P., the master franchisor for The UPS STORE in Canada, has no intention of opposing your motion.

As discussed, our position is non-binding upon our respective franchisees..

Regards,

Ron Boratto
Executive Vice President & Corporate Counsel
MBEC Communications L.P.
505 Iroquois Shore Road, Unit 4
Oakville Ontario,
L6H 2R3
(905) 338-9754 (286)
(905) 338 -7492

11/26/2009

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From: Butler_Richard [mailto:RButler@fasken.com]
Sent: October 30, 2009 11:40 AM
To: Rboratto@theupsstore.ca
Subject: Disclosure of documents from The UPS Store Canada franchises

Ron,

As a follow-up to our conversation this morning, we are counsel to a defendant in a civil action in Ontario. In the course of the action, we have become aware that parties are using The UPS Store Canada mail boxes.

As I noted on the phone, we require access to the original contracts for for rental/use, and any billing records that exist from the date the mail box was opened until present, for the following mail boxes at the following The USP Store Canada locations:

- (a) Box 200, at 427 Princess Street, Kingston, Ontario;
- (b) Box 1225, at 250 The East Mall, Toronto Ontario, Store 122 (Cloverdale Mall); and
- (c) Box 1715, at 250 The East Mall, Toronto, Ontario, Store 122.

We have served a Notice of Motion on the opposing parties which details our request for production of the above noted documents from The UPS Store Canada, a non-party to the action. I have attached a .pdf copy of that Notice of Motion to this email, for your information.

Could you please confirm that The UPS Store Canada does not oppose the within motion.

Regards,

Rich Butler

Richard D. Butler
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

11/26/2009

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Tel: 416 868 3351
Fax: 416 364 7813
www.fasken.com

66 Wellington St W
Suite 4200 Toronto Dominion Bank Tower
Box 20 Toronto-Dominion Centre
Toronto ON M5K 1N6
Canada

Vancouver Calgary Toronto Ottawa Montréal Québec London (UK) Paris Johannesburg

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11/26/2009

Court File No.: 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

Defendants

ORDER

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

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

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

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

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

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

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

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

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

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

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

- (a) the incorporation documents for Nelson Barbados, minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements);
- (a) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;
- (b) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland; and
- (c) all trust documents (referred to in the cross-examination of John Knox);

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

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

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

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

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

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

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

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

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

November 2, 2009

Justice Shaughnessy

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Butler_Richard

From: Butler_Richard
Sent: Friday, November 13, 2009 11:22 AM
To: 'store176@theupsstore.ca'
Subject: Disclosure of documents from UPS Store
Attachments: Nelson Barbados Document.doc.rtf

David,
 Please find attached, to update your records, a copy of the order with the judge's signature. I note that you advised me that one of the boxes listed in the order (1715) was close and the records destroyed pursuant to your privacy law obligations.

In addition to any documents regarding the boxes at the 250 The East Mall location, the order requires that if you have any documents regarding Box 200, at 427 Princess Street, Kingston, those must also be produced. We received a copy of the agreement and information from Store 191, which notes that you opened the Kingston box. If you have any documentation regarding that box, please include with any information regarding the box at your location.

Could you please send that information this afternoon. The order is effective immediately.

Regards,
 Rich Butler

Richard D. Butler
 Fasken Martineau DuMoulin LLP
 Barristers & Solicitors
 Patent & Trade-mark Agents

Tel: 416 868 3351
 Fax: 416 364 7813
www.fasken.com

66 Wellington St W
 Suite 4200 Toronto Dominion Bank Tower
 Box 20 Toronto-Dominion Centre
 Toronto ON M5K 1N6
 Canada

This is Exhibit "F" referred to in the
 affidavit of Richard D. Butler
 sworn before me, this 27
 November 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

E. Morse

11/26/2009

Court File No. 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

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

BETWEEN

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC
ASHBY BENJAMIN DEANE, OWEN BASIL KEITH DEANE,
MARJORIE ILMA KNOX, DAVID SIMMONS, ELEANOR KENTISH,
GLYNNE BANNISTER, GLYNNE B. BANNISTER, PHILIP GREAVES
and PHILIP GREAVES, GITTENS CLYDE TURNEY,
R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO.,
KEBLE WORRELL LTD., ERIC JAIN STEWART DEANE,
ESTATE OF COLIN DEANE, LEE DEANE, ERIC DEANE, KEITH DEANE, MALCOLM
DEANE, LIONEL NURSE, LEONARD NURSE,
EDWARD BAYLEY, FRANCIS DEHEN, 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 GOVERNMENT OF BARBADOS, and JOHN DOES 1-25
PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANE,
DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS,
G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC.,
OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and
LIFE OF BARBADOS LIMITED c.o.b. as LIFE OF BARBADOS HOLDINGS,
LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY,
PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM,
VECO CORPORATION, COMMONWEALTH CONSTRUCTION
CANADA LTD and COMMONWEALTH CONSTRUCTION, INC.

Defendants

ORDER

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

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

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

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

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

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

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

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

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

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

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

- (a) the incorporation documents for Nelson Barbados, minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements);
- (a) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;
- (b) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland, and
- (c) all trust documents (referred to in the cross-examination of John Knox);

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

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

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

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

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

- (a) the incorporation documents for Nelson Barbados, minute book, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements);
- (a) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;
- (b) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland, and
- (c) all trust documents (referred to in the cross-examination of John Knox);

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

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

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

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

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

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

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

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

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


Justice Shaughnessy

Butler_Richard

From: UPS Store 176 [store176@theupsstore.ca]
Sent: Friday, November 13, 2009 11:57 AM
To: Butler_Richard
Subject: Re: Disclosure of documents from UPS Store
Attachments: 1225.pdf

3 pg pdf attached

Dave

— Original Message —

From: Butler_Richard
To: store176@theupsstore.ca
Sent: Friday, November 13, 2009 11:21 AM
Subject: Disclosure of documents from UPS Store

David,

Please find attached, to update your records, a copy of the order with the judge's signature. I note that you advised me that one of the boxes listed in the order (1715) was close and the records destroyed pursuant to your privacy law obligations.

In addition to any documents regarding the boxes at the 250 The East Mall location, the order requires that if you have any documents regarding Box 200, at 427 Princess Street, Kingston, those must also be produced. We received a copy of the agreement and information from Store 191, which notes that you opened the Kingston box. If you have any documentation regarding that box, please include with any information regarding the box at your location.

Could you please send that information this afternoon. The order is effective immediately.

Regards,
Rich Butler

Richard D. Butler
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

Tel: 416 868 3351
Fax: 416 364 7813
www.fasken.com

66 Wellington St W
Suite 4200 Toronto Dominion Bank Tower
Box 20 Toronto-Dominion Centre
Toronto ON M5K 1N6
Canada

This is Exhibit "G" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009
[Redacted Signature]
COMMISSIONER FOR TAKING AFFIDAVITS
E. M. REX

Vancouver Calgary Toronto Ottawa Montréal Québec London Paris Johannesburg

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MAIL BOXES ETC.

SUITE # 225

MAILBOX SERVICE AGREEMENT

This Mailbox Service Agreement is to provide mailbox service to the customer at the Mail Boxes Etc. (MBE) Centre identified below. The customer understands that the MBE facilities and services may not be used for any illegal or illegitimate purposes prohibited by the Canada Post Corporation Act or the regulations thereunder. MBE shall act as agent on behalf of the customer only for the receipt of mail and parcels delivered to the mailing address listed below by Canada Post and other courier companies.

The customer further agrees to use the mailbox service in conformity with all applicable Federal, Provincial, and local laws. *All information provided by the customer is confidential and will not be disclosed except when legally compelled or required.*

Possession of a mailbox key is considered by MBE to be valid evidence that the possessor is duly authorized to remove any contents from any mailbox rented under this agreement.

Mailbox service fees are all due and payable at least quarterly in advance. There will be no prorations or refunds for cancellation of any service. *Accounts are delinquent after the due date and mail will be held pending payment.* A late fee of \$ 5.00 will be charged if payment is not received within five (5) days of the due date. Services may be terminated at the option of MBE thirty (30) days after the due date. *If necessary arrangements are not made for the forwarding of mail when the relationship has expired, is cancelled, or is terminated, the customer's mail will be returned to sender, or destroyed.* Upon voluntary termination of service, MBE will forward the customer's mail for 30 days, provided the customer pays the postage, packaging materials, and service fees in advance. A deposit is required for this service. Thereafter, if the customer requires forwarding of mail, additional fees will be required and charged for this service.

The customer further agrees that MBE may terminate or cancel this Agreement for good cause at any time by providing thirty (30) days written notice. Good cause shall include, but is not limited to: 1) abandonment; 2) use for criminal, illegal, or illegitimate activity; 3) failure to pay monies owed MBE; 4) use of mailbox inconsistent with this Agreement, including receipt of unreasonable volume of mail; and 5) non-performance of terms of this Agreement. Renewal of this Agreement for additional terms shall be at MBE's sole discretion.

C.O.D. items will be accepted *only* if prior arrangements have been made and payment in advance is left with MBE. The customer further agrees to protect, indemnify, and save harmless MBE from and against any and all claims, demands, and causes of personal injury or property damage arising from such use or possession; for failure of Canada Post to deliver on time or otherwise any items including mail and parcels, for damage to or loss of mailbox contents by any cause whatsoever; and for any violation by the customer of applicable Federal, Provincial, or local laws.

THE CUSTOMER HEREIN AGREES THAT THE TOTAL LIABILITY OF MAIL BOXES ETC. FOR ANY AND ALL CLAIMS IS LIMITED TO \$50.00 REGARDLESS OF THE NATURE OF THE CLAIM. (CUSTOMER'S INITIALS _____)

The Mailing address for mailbox service shall be:

Suite No. 225

~~124~~ 250 The East Mall~~124~~ 250 The East Mall, Ontario

M9B 6L3

Toronto

2286

66



MAIL BOXES ETC.

AUTHORIZATION TO ACCEPT REGISTERED MAIL

I, the undersigned, hereby agree that Mail Boxes Etc., who is acting as my agent, only for the receipt of mail, registered documents, and parcels from Canada Post and other couriers, may sign for registered mail on my behalf. In the event I refuse to accept any such mail, I shall pay postage and all other fees associated with refusal and return.

Customer's Signature

Date:

Aug. 9/97

Name:

DONALD BEST

(Please Print)

IDENTIFICATION:

Two (2) types of identification are required. A copy of each must be kept on file by MBE.

1. _____

2. _____

Acceptable forms of identification include: A valid Driver's Licence with photo I.D., Major Credit Card or a Bank Client Card (debit card or ATM.)

OTHER AUTHORIZED NAMES UNDER THIS AGREEMENT:

1. THE NELSON GROUP LTD

3. _____

2. DONALD BEST

4. _____

Additional users not sharing the same family surname of the primary applicant must complete a separate agreement and present identification. Personal boxes are limited to N/A additional names, Business and Corporate boxes are limited to N/A additional names.

A monthly service fee of \$ _____ will be assessed for each name in excess of the above limitations.

Customer's Signature: [Signature] THE NELSON GROUP LTD.Date: Aug. 19/97Name: DONALD BEST

Address: _____

Home Phone: _____

Work Phone: for/voice 416 410 7123

MBE Representative: _____

MBE Centre: 176How did you hear about us? HUGH NICOLSContract Term: 12

Renewal Date: _____

Suite Number: 1225 (225)Key Deposit: 10Total Paid: 185.00/10

on
Aug 12/99
renewed
for
12 mths

2288

68

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

www.fasken.com

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

416 366 8381 Telephone
416 364 7813 Facsimile

**FASKEN
MARTINEAU** 

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

November 6, 2009
File No: 211200.00002

BY COURIER AND REGULAR MAIL

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

This is Exhibit "H" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009.

A COMMISSIONER FOR TAKING AFFIDAVITS

E. Morse

Dear Mr. Best:

Re: McKenzie et al ats Nelson Barbados Group Ltd.

We are the solicitors for PricewaterhouseCoopers East Caribbean Firm in the above-noted action.

On Monday, November 2, 2009, we attended before the Honourable Justice Shaughnessy seeking, among other things, an order that you attend in Toronto to be examined as a witness to the pending cost motion. //

His Honour ordered you to attend on Tuesday, November 17, 2009 at 10:00 a.m. at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario, to be examined. That order became valid and enforceable on November 2, 2009, the day it was made by His Honour. You must attend this examination. You must also bring with you the documents set out in the Notice of Examination for Donald Best, which is enclosed. //

We also enclose a copy of a draft order. We expect to have the draft order approved in substantially the same form. Also enclosed are a number of court records, which will help you identify which documents you must bring with you:


- a copy of the Transcript from the cross-examination of John Knox dated November 4, 2008;
- a copy of the affidavit of John Knox sworn November 12, 2007;

**FASKEN
MARTINEAU** 
Page 2

- a copy of the affidavit of John Knox sworn January 11, 2008; and
- a copy of the Transcript of the proceedings on motion before the Honourable Justice Shaughnessy dated April 7 and April 8, 2009.

If you have any questions, please call me. Otherwise, I look forward to your attendance on November 17, 2009.

Yours very truly,


Gerald L. R. Ranking

GLRR/jo

Encls.

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

2290

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Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

This is Exhibit 11 referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

- and -

A COMMISSIONER FOR TAKING AFFIDAVITS

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

NOTICE OF EXAMINATION

TO: DONALD BEST

YOU ARE REQUIRED TO ATTEND, on Tuesday, November 17, 2009, at
10:00 a.m., at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900.

Toronto, Ontario M5K 1H6, for an examination (as a witness before the hearing of a pending motion pursuant to the provisions of Rule 39.03(1) of the Rules of Civil Procedure.

YOU ARE REQUIRED TO BRING WITH YOU and to produce at the examination the documents referred to in the Order of Justice Shaughnessy dated November 2, 2009, a copy of which is enclosed, and the following specific documents and things:

All books, contracts, letters, statements, records and copies of same in your custody, possession or power in any way relating to the matters which are within the scope of this proceeding or have any reference thereto, including: the incorporation documents, minute book, directors' register, shareholders' register, correspondence (particularly letters, emails, faxes) relating to the matters in issue in this proceeding and/or the shares of Kingsland Estates Limited ("Kingsland") banking documents (including bank account opening documents, operating agreements and bank statements), all books of account, ledgers and financial statements of Nelson Barbados Group Ltd. ("Nelson Barbados") from the date of incorporation through to the present, all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland, and trust documents (referred to in the cross-examination of John Knox and paragraphs 22 and 25 in the affidavit of John Knox sworn November 12, 2007).

November 6, 2009

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors

Toronto Dominion Bank Tower

66 Wellington Street West

P.O. Box 20

Toronto-Dominion Centre

Toronto, Ontario M5K 1N6

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

Tel: 416-865-4419

Fax: 416-364-7813

Solicitors for the Defendant,

PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of, all Defendants

2292

72

TO: SACK GOLDBLATT MITCHELL LLP

Barristers and Solicitors
20 Dundas Street West
Suite 1100
Toronto, Ontario
M5G 2G8

Sean Dewart
Tel: 416-979-6970
Fax: 416-591-7333

Solicitors for the K. William McKenzie
and Crawford, McKenzie, McLean, Anderson & Duncan LLP

AND TO: GOODMAN'S LLP

250 Yonge Street, Suite 2400
Toronto, Ontario
M5B 2M6

David D. Conklin
Tel: 416-979-2211
Fax: 416-979-1234

Solicitors for the Defendants,
Commonwealth Construction Canada Ltd. and Commonwealth Construction Inc.

AND TO: BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors
Box 25, Commerce Court West
Toronto, Ontario
M5L 1A9

Paul Schabas [LSUC #26355A]
Tel: 416-863-4274
Fax: 416-863-2653

Ryder Gilliland [LSUC #45662C]
Tel: 416-863-5849
Fax: 416-863-2653

Solicitors for the Defendants,
David Simmons, Peter Simmons, Philip Greaves, David Shorey,
David C. Shorey and Company, David Carmichael Shorey
and S.B.G. Development Corporation

AND TO: CASSELS BROCK & BLACKWELL LLP

Lawyers
2100 Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3C2

Lorne S. Silver [LSUC #24238L]
Tel: 416-869-5490
Fax: 416-640-3018

Solicitors for the Defendants,
Richard Ivan Cox, Gerard Cox, Alan Cox, Gittens Clyde Turney,
R.G. Manderville & Co., Keble Worrell Ltd., Lionel Nurse,
Owen Seymour Arthur, Mark Cummins, Kingsland Estates Limited,
Classic Investments Limited, The Barbados Agricultural Credit Trust,
Attorney General of Barbados, the Country of Barbados, Elneth Kentish,
Malcolm Deane, Eric Ashby Bentham Deane, Owen Basil Keith Deane,
Estate of Vivian Gordon Lee Deane, David Thompson, Owen Gordon Finlay Deane,
Life of Barbados Holdings, Life of Barbados Limited and Leonard Nurse

AND TO: TEAM RESOLUTION

480 University Avenue
Suite 1600
Toronto, Ontario
M5G 1V6

David Bristow
Tel: 416-597-3395
Fax: 416-597-3370

Solicitors for the Defendants,
Philip Vernon Nicholls and Cottle, Catford & Co.

AND TO: DEVRY, SMITH & FRANK LLP

100 Barber Greene Road
Suite 100
Toronto, Ontario
M3C 3E9

Lawrence Hansen
Tel: 416-449-1400
Fax: 416-449-7071

Solicitors for the Defendant, Glyne Bannister

2294

74

AND TO: STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Adrian Lang
Tel: 416-869-5500
Fax: 416-947-0866

Solicitor for the Defendant,
First Caribbean International Bank

AND TO: MILLER THOMSON LLP
40 King Street West
Suite 5800, P.O. Box 1011
Toronto, Ontario
M5H 3S1

Andrew Roman
Tel: 416-595-8604
Fax: 416-595-8695

Solicitors for the Defendants,
Eric Iain Stewart Deane and the Estate of Colin Ian Estwick Deane

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

NOTICE OF EXAMINATION**FASKEN MARTINEAU DuMOULIN LLP**

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

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

Phone: 416 865 4419

Fax: 416 364 7813

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of,
all Defendants

75

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Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD.

This is Exhibit "J" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009.

- and -

A COMMISSIONER FOR TAKING AFFIDAVITS

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC E. Morse
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 17, 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 6, 2009;
 - b) the Notice of Examination dated November 6, 2009;

- c) the draft order of Justice Shaughnessy dated November 2, 2009;
- d) the transcript from the cross-examination of John Knox dated November 4, 2008;
- e) the affidavit of John Knox sworn November 12, 2007;
- f) the affidavit of John Knox sworn January 11, 2008; and
- g) the transcript of the proceedings on motion before the Honourable Justice Shaughnessy dated April 7 and April 8, 2009.

by sending true copies of such documents by Purolator, a courier, to Donald Best at 427 Princess Street, Suite 200, Kingston, Ontario, K7L 5S9.

2. The copy was given to the courier on November 6, 2009.

SWORN BEFORE ME
at the City of Toronto, in the
Province of Ontario,
on November 17, 2009

)
)
)
)
)

JEANNINE OUELLETTE

A COMMISSIONER FOR TAKING AFFIDAVITS

DAVID A. GOURLAY
Barrister and Solicitor

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-014

2298

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

AFFIDAVIT OF SERVICE

FASKEN MARTINEAU DuMOULIN LLP

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

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

Phone: 416 865 4419

Fax: 416 364 7813

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of,
all Defendants

78

Fax To: Jackie Travis (905-430-5804)

11/17/09 12:04pm Pg 02-04

2299

79

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

November 18, 2009

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

This is Exhibit "K" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

E. Morse

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.

2300
 Town For To-Backle Travls (19064306804)

Received Nov-17-00 12:04pm
 From-086 498 5822
 18:08 11/17/2000 T-08 Pg 08-04

80

2.

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

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

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

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

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

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

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

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

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

925 430 5822 P. 04/05

JUDGES CHAMBERS WHITBY

NOV-17-2000 12:32

TOTAL P.05

81

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

President

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Court File No. 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

This is Exhibit "L" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

GL/lms

B E T W E E N:

NELSON BARBADOS GROUP LTD.

Plaintiff

E. Mura

- and -

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

Defendants



This is a Statement for the Record in the above-noted matter, taken at the offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario, on the 17th day of November, 2009.

APPEARANCES:

GERALD L.R. RANKING
SEBASTIEN KWIDZINSKI
(Student-at-Law)

-- for the Defendant,
PricewaterhouseCoopers
East Caribbean firm

SARAH CLARKE

-- for the Defendant,
First Caribbean
International Bank

LORNE S. SILVER

-- for the Defendants, Richard
Ivan Cox, Gerard Cox, Alan
Cox, Gittens Clyde Turney,
R.G. Mandeville & Co., Keble
Worrell Ltd., Lionel Nurse,
Owen Seymour Arthur, Mark
Cummins, Kingsland Estates
Limited, Classic Investments
Limited, The Barbados
Agricultural Credit Trust
(more properly, Barbados
Agricultural Credit Trust
Limited), the Attorney
General of Barbados, the
Country of Barbados, Elneth
Kentish, Malcolm Deane, Eric
Ashby, Bentham Deane, Errie
Deane, Owen Basil Keith
Deane, Keith Deane, Leonard
Nurse, Estate of Vivian
Gordon Lee Deane, David
Thompson, Owen Gordon Finlay
Deane, Life of Barbados
Holdings and Life of
Barbados Limited

HEIDI RUBIN

-- for the Responding Parties,
K. William McKenzie and
Crawford McKenzie McLean &
Wilford LLP

MARC LEMIEUX

Statement for the Record - 3

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Statement for the Record - 4

STATEMENT FOR THE RECORD:

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

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

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

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Statement for the Record - 5

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

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

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



Statement for the Record - 6

1 Mr. Best was referring to.

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

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

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

Statement for the Record - 8

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

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

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

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



Statement for the Record - 9

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

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

11
12 --- EXHIBIT NO. 1: Signed order of Justice
13 Shaughnessy, dated November 2, 2009

14
15 2. MR. RANKING: And I would also like to
16 mark the affidavit of Jeannine Ouellette,
17 sworn November 17th, to which is attached
18 the notice of examination, dated November
19 6th, 2009. And for the purposes of
20 brevity, if I could put it that way, I have
21 not attached to Ms. Ouellette's affidavit
22 the rest of the material that was, in fact,
23 served that day because our volumes, being
24 the transcript from the cross-examination
25 of John Knox, dated November 4th, the

Statement for the Record - 10

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

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

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

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

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

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



Statement for the Record - 7

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

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

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

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



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

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

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



Statement for the Record - 12

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

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

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

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

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

13 MR. LEMIEUX: No problem.

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

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

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

Statement for the Record - 13

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

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

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



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<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE NUMBER</u>
1	Signed order of Justice Shaughnessy, dated November 2, 2009	9
2	Affidavit of Jeannine Ouellette, sworn November 17, 2009	10
3	Letter to Donald Best from Gerald Ranking, dated November 6, 2009	10

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

NELSON BARBADOS GROUP LTD.

This is Exhibit "M" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

COMMISSIONER FOR TAKING AFFIDAVITS
Plaintiff E. Marsi

- 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
TURNER, 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

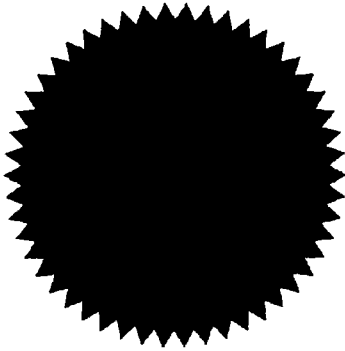
Certificate of Non-Attendance

I, **Robyn Arndt**, Examiner, hereby certify:

That an appointment was issued for the 17th day of November, 2009, at my office, Victory Verbatim Reporting Services, Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario, at the hour of 10:00 a.m. for the examination of Donald Best, as a witness before the hearing of a pending motion pursuant to the provisions of Rule 39.03(1) of the Rules of Civil Procedure.

That at the said last above mentioned time and place, I was attended by Gerald L.R. Ranking, from the offices of Fasken Martineau DuMoulin LLP, appearing as solicitors for the Defendant, PricewaterhouseCoopers East Caribbean Firm, who waited more than fifteen (15) minutes, but the said Donald Best did not appear, nor did anyone on his behalf.

Dated at Toronto this 17th day of November, 2009.



Chris Orr (per)
Robyn Arndt
Examiner

2318 Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

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99

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416 364 7813 Facsimile
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**FASKEN
MARTINEAU** 


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

November 18, 2009
File No: 211200.00002

BY ORDINARY MAIL AND COURIER

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

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

This is Exhibit "N" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

COMMISSIONER FOR TAKING AFFIDAVIT
E. Marx

(by mail only, without enclosures)

Dear Mr. Best:

Re: McKenzie et al ats Nelson Barbados Group Ltd.

A. Your Examination

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

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

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

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

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

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

- (b) you refused to respond to my repeated request to identify your location, even generally. You also refused Mr. Silver's offer to have the examination stood down to 2:00 p.m. and his subsequent offer to conduct the examination today (Wednesday) or tomorrow (Thursday). Despite repeated requests, you refused to tell me where you were or to commit to be examined on any of those days. You also did not provide alternate dates;
- (c) when you claimed that you were concerned for your safety and that certain information had been posted to a "blog" (allegedly posted you said by Mr. Silver or his firm), Mr. Silver categorically rejected that he or his firm had posted anything on any blog. Likewise, when you asked if there would be surveillance, both Mr. Silver and I confirmed there was no surveillance. I also offered, as a further gesture to you, to have the examination conducted at my office. You refused my offer;
- (d) you also claimed that you had not received the Notice of Examination, or other materials, which I sent to you on November 6, 2009. However, you refused to answer my repeated questions as to whether or not you had picked up materials from your post office box. I also note that, while you claim you did not receive my letter dated November 6th, you knew to call Ms. Traviss on the morning of Monday, November 16th (the day prior to your scheduled examination); and
- (e) with respect to the service of documents, you did not provide a residential address or alternate address for us to provide duplicate copies. Likewise, you did not provide us with any email address or telephone numbers.

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

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

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MARTINEAU

Page 3

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

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

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

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

B. Mr. McKenzie's Cross-Examination

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

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

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



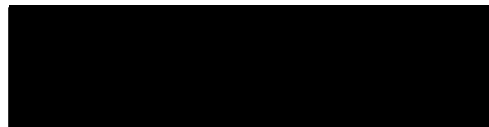
Statement for the Record - 15

REPORTER'S NOTE:

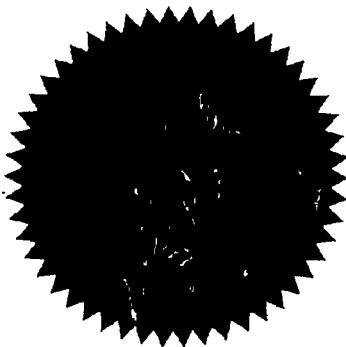
Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

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

Certified Correct:



Gina Lorraine
Verbatim Reporter



2322

02

FASKEN
MARTINEAU

Page 4

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

Yours very truly,


Gerald L. R. Ranking

GLRR/jo

Encls.

c.c.: Lorne Silver/Jessica Zagar
Paul Schabas /Ryder Gililand
Adrian Lang
Lawrence Hansen/Larry Keown
David I. Bristow
Andrew Roman
David D. Conklin
Sean Dewart
Jessica Duncan

(Enclsoures to c.c.'s will be delivered)

O
P
Q
F

Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NELSON BARBADOS GROUP LTD

This is Exhibit "C" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

- and -

A COMMISSIONER FOR TAKING AFFIDAVITS

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC E. Morse
 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

NOTICE OF EXAMINATION

TO: DONALD BEST

YOU ARE REQUIRED TO ATTEND, on Wednesday, November 25, 2009, at
 10:00 a.m., at Victory Verbatim in Toronto, Ernst & Young Tower, 222 Bay Street, Suite 900,

2324

- 04

Toronto, Ontario M5K 1H6, for an examination (as a witness before the hearing of a pending motion pursuant to the provisions of Rule 39.03(1) of the Rules of Civil Procedure.

YOU ARE REQUIRED TO BRING WITH YOU and to produce at the examination the documents referred to in the Order of Justice Shaughnessy dated November 2, 2009, a copy of which is enclosed, and the following specific documents and things:

All books, contracts, letters, statements, records and copies of same in your custody, possession or power in any way relating to the matters which are within the scope of this proceeding or have any reference thereto, including: the incorporation documents, minute book, directors' register, shareholders' register, correspondence (particularly letters, emails, faxes) relating to the matters in issue in this proceeding and/or the shares of Kingsland Estates Limited ("Kingsland") banking documents (including bank account opening documents, operating agreements and bank statements), all books of account, ledgers and financial statements of Nelson Barbados Group Ltd. ("Nelson Barbados") from the date of incorporation through to the present, all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland, and trust documents (referred to in the cross-examination of John Knox and paragraphs 22 and 25 in the affidavit of John Knox sworn November 12, 2007).

November 18, 2009

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors
Toronto Dominion Bank Tower
66 Wellington Street West
P.O. Box 20
Toronto-Dominion Centre
Toronto, Ontario M5K 1N6

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

Tel: 416-865-4419

Fax: 416-364-7813

Solicitors for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of, all Defendants

TO: SACK GOLDBLATT MITCHELL LLP
Barristers and Solicitors
20 Dundas Street West
Suite 1100
Toronto, Ontario
M5G 2G8

Sean Dewart
Tel: 416-979-6970
Fax: 416-591-7333

Solicitors for the K. William McKenzie
and Crawford, McKenzie, McLean, Anderson & Duncan LLP

AND TO: GOODMAN'S LLP
250 Yonge Street, Suite 2400
Toronto, Ontario
M5B 2M6

David D. Conklin
Tel: 416-979-2211
Fax: 416-979-1234

Solicitors for the Defendants,
Commonwealth Construction Canada Ltd. and Commonwealth Construction Inc.

AND TO: BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
Box 25, Commerce Court West
Toronto, Ontario
M5L 1A9

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and S.B.G. Development Corporation

2326

06

AND TO: CASSELS BROCK & BLACKWELL LLP

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Classic Investments Limited, The Barbados Agricultural Credit Trust,
Attorney General of Barbados, the Country of Barbados, Elneth Kentish,
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Eric Iain Stewart Deane and the Estate of Colin Ian Estwick Deane

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

2328

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

NOTICE OF EXAMINATION

FASKEN MARTINEAU DuMOULIN LLP

Barristers & Solicitors
Toronto Dominion Bank Tower
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Gerald L.R. Ranking [1 SUC#23855J]

Phone: 416 865 4419

Fax: 416 364 7813

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of,
all Defendants

08

2329

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Court File No.: 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

This is Exhibit "P" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009.

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

COMMISSIONER FOR TAKING AFFIDAVITS

E. Marsh

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
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

2330

- 2 -

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

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

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

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

SWORN BEFORE ME
at the City of Toronto, in the
Province of Ontario,
on November 24, 2009

)
)
)
)
)

JEANNINE OUELLETTE

A COMMISSIONER FOR TAKING AFFIDAVITS

DAWN K. ROBERTSON
Barrister and Solicitor

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

AFFIDAVIT OF SERVICE

FASKEN MARTINEAU DuMOULIN LLP

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

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

Phone: 416 865 4419

Fax: 416 364 7813

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of,
all Defendants

233111

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

NELSON BARBADOS GROUP LTD.

This is Exhibit "C" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

COMMISSIONER FOR TAKING AFFIDAVITS

Plaintiff 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
TURNER, 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

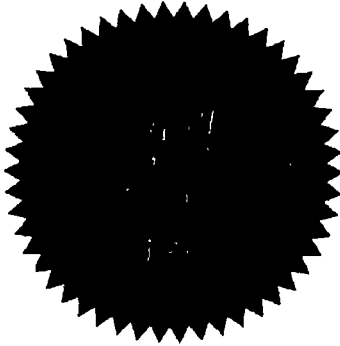
Certificate of Non-Attendance

I, Robyn Arndt, Examiner, hereby certify:

That an appointment was issued for the 25th day of November, 2009, at my office, Victory Verbatim Reporting Services, Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario, at the hour of 10.00 a.m. for the examination of Donald Best, as a witness before the hearing of a pending motion pursuant to the provisions of Rule 39.03(1) of the Rules of Civil Procedure.

That at the said last above mentioned time and place, I was attended by Gerald L.R. Ranking, from the offices of Fasken Martineau DuMoulin LLP, appearing as solicitors for the Defendant, PricewaterhouseCoopers East Caribbean Firm, who waited more than fifteen (15) minutes, but the said Donald Best did not appear, nor did anyone on his behalf.

Dated at Toronto this 25th day of November, 2009.



[Redacted Signature]
Robyn Arndt
Examiner

Court File No. 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

This is Exhibit "R" referred to in the
affidavit of Richard D. Butler
sworn before me, this 27
day of November 2009

m/ln

B E T W E E N:

NELSON BARBADOS GROUP LTD.

COMMISSIONER FOR TAKING AFFIDAVITS

Plaintiff

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 GROWN, BRIAN EDWARD TURNER, G.S.
BROWN ASSOCIATES LIMITED, GOLF BARBADOS INC.,
KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS
LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS
INC., THORNBROOK INTERNATIONAL INC., S.B.G.
DEVELOPMENT CORPORATION, THE BARBADOS
AGRICULTURAL CREDIT TRUST, PHOENIX ARTISTS
MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY,
C. SHOREY AND COMPANY LTD., FIRST CARIBBEAN
INTERNATIONAL BANK (BARBADOS) LTD., PRICE
WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL
OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN
DOES 1-25, PHILIP GREAVES, ESTATE OF VIVIAN GORDON
LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER
SIMMONS, G.S. BROWN & ASSOCIATES LTD., GBI GOLF
(BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC
INVESTMENTS LIMITED and LIFE OF BARBADOS LIMITED
c.o.b. as LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS
LIMITED, DAVID CARMICHAEL SHOREY,
PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM, VECO
CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD.
and COMMONWEALTH CONSTRUCTION, INC.

Defendants



This is the Statement for the Record taken at the offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto-Dominion Centre, Toronto, Ontario, on the 25th day of November, 2009.

A P P E A R A N C E S:

LORNE S. SILVER

-- for the Defendants,
Richard Cox et al.

GERALD L.R. RANKING
SÉBASTIEN J. KWIDZINSKI
(Student-at-law)

}
-- for the Defendant,
PricewaterhouseCoopers
East Caribbean Firm

ANDREW J. ROMAN

-- for the Defendants,
Iain Deane et al.

SARAH CLARKE

-- for the Defendant,
First Caribbean Bank

Statement - 3

INDEX OF PROCEEDINGSPAGE NUMBER

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Statement - 4

STATEMENT FOR THE RECORD BY MR. RANKING:

1. MR. RANKING: The time is now 10:50 a.m.

It is Gerald Ranking, and I am making the statement at Victory Verbatim in a boardroom in the presence of Lorne Silver, Sarah Clarke, Andrew Roman, and my student, Sebastien Kwidzinski. Before...I am marking a number of documents as exhibits. I wish to state for the record that, for the second time, Mr. Donald Best has not attended, despite the fact that we served him with a number of documents insisting that he attend. I would like to mark the documents that were served upon him. The first document that I wish to mark is my letter dated November 18, 2009, which was addressed to Mr. Best, not only at the 427 Princess Street address in Kingston, but also to his address at Cloverdale Mall in post office box 1225 at 250 The East Mall. My letter of November 18, 2009 will be Exhibit 1.

--- EXHIBIT NO. 1: Letter dated November 18, 2009

2. MR. RANKING: In addition, I also wish to mark the Notice of Examination that was returnable today, Wednesday, November 25, that was served upon Mr. Best and included with my letter

Statement - 5

dated November 18. I will mark the Notice of Examination as Exhibit 2.

--- EXHIBIT NO. 2: Attached Notice of Examination

3. MR. RANKING: In addition, a further enclosure to my letter was a bound brief. The bound brief included the statement that I made for the record as transcribed by Victory Verbatim on November 17, 2009. It also included three exhibits, being Exhibit 1, the signed order of Justice Shaughnessy, dated November 2, 2009. As Exhibit 2, the affidavit of my assistant, Janine Ouellette, sworn November 17, 2009. And Exhibit 3, my letter to Mr. Best, which served all of the materials for the first attendance on November 17, being my letter dated November 6, 2009. I will mark that bound brief as the next exhibit, being Exhibit 3.

--- EXHIBIT NO. 3: Bound brief

4. MR. RANKING: I will also mark as Exhibit 4 the Certificate of Non-Attendance from the attendance on November 17, 2009. That will be Exhibit 4.



Statement - 6

1 --- EXHIBIT NO. 4: Certificate of Non-Attendance, dated
2 November 17, 2009

3
4 5. MR. RANKING: And I will mark as Exhibit
5 5 the Certificate of Non-Attendance that was issued
6 by Robyn Arndt today, November 25, 2009, to confirm
7 that Mr. Best did not attend today.

8
9 --- EXHIBIT NO. 5: Certificate of Non-Attendance, dated
10 November 25, 2009

11
12 6. MR. RANKING: And finally, I will mark
13 as Exhibit 6 the original affidavit of my assistant,
14 Janine Ouellette, sworn November 24, 2009, which
15 indicates all of the documents that were, in fact,
16 sent to Mr. Best, both by mail and by courier.

17
18 --- EXHIBIT NO. 6: Affidavit of Documents of Janine
19 Ouellette, sworn November 24, 2009

20
21 7. MR. RANKING: Subject to any other
22 comments that anyone else in attendance may have,
23 those are the submissions and my statement for the
24 record this morning.

Statement - 7

INDEX OF EXHIBITS

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE NUMBER</u>
1	Letter dated November 18, 2009	4
2	Attached Notice of Examination	5
3	Bound brief	5
4	Certificate of Non-Attendance, dated November 17, 2009	6
5	Certificate of Non-Attendance, dated November 25, 2009	6
6	Affidavit of Documents of Janine Ouellette, sworn November 24, 2009	6



Statement - 8

REPORTER'S NOTE:

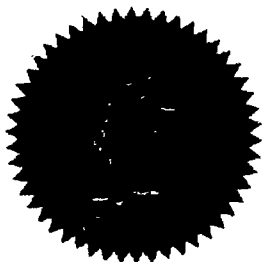
Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the **25th DAY OF NOVEMBER, 2009** and taken to the best of my skill, ability and understanding.

Certified Correct:




Frances McBride
Verbatim Reporter



2342

The ^{case} examination of Mr. McKenzie has been delayed pending this ~~of~~ aspect of the proceeding - Further 3 days for the hearing of case have been reserved for the end of February 2010. It is therefore necessary that all ~~data~~ be dates and families be added to in order that the matter can be completed ⁱⁿ ~~on~~ both a fair and expeditious manner.



2343

Mr. But has sent material to The Trust Corporation
and the material is not in Affidavit form.

Mr. But refuses to provide any address
where he resides ~~and~~ but suggests he is out
of the country. Extensive investigations have
not ~~been~~ recalled in ~~an~~ a location where he
resides

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

In these unusual and unique circumstances

I ~~disagree~~ find that an Order for
substituted service of the contempt application
is appropriate and it is so granted

Mr. Donald But will be substitutedly ~~served~~ served
~~with~~ with the motion for contempt
and my endorsement at

1) the ^{UPS} address in Kingston Ont as
per detailed in the Order of Chambers

2) at the UPS address at the
Clarendon Mall in Toronto

~~Thus~~ The contempt motion is now set
to be heard by me on January 15 2010
at 9:30 AM at Whiting Court.

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

Plaintiff

Defendants

Court File No. 07-0141

Dec 2/09

In the usual course or notion to hold a person in contempt ~~must~~ should be ~~severely~~ personally. However the circumstances in the present case are most unusual.

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

Further it is apparent from correspondence sent by Mr. Best including ~~correspondence~~ conversations he states that he has had with the Trial Coordinator as well as that Mr. Best is aware of all aspects of the proceedings including my Order of Nov 2/09.

1 Mr. Best called the Verbation office on the day of the ~~very~~ scheduled examination and attempted to ~~conduct~~ conduct the examination over the ~~phone~~ telephone.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barric

FILED AT WHITBY DÉPOSÉ A WHITBY

DEC 01 2009

Ex/Par: **MOTION** RECORD
SUPERIOR COURT OF JUSTICE
COURT SUPÉRIEURE DE JUSTICE

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

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

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

2344

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THIS IS **EXHIBIT "P"** REFERRED TO
IN THE AFFIDAVIT OF
Donald Best

SWORN BEFORE ME, THIS 5th DAY
OF February, 2015



A Commissioner etc.

**Kerry Ann Eckstein, a Commissioner, etc.,
Province of Ontario, for the Government of
Ontario, Ministry of the Attorney General.**

SUPERIOR COURT OF JUSTICE

B E T W E E N :

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

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

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

Defendants

M O T I O N P R O C E E D I N G

BEFORE THE HONOURABLE JUSTICE B. SHAUGHNESSY
on December 11, 2012
at OSHAWA, Ontario

APPEARANCES:

N. Lutes
G. Ranking

Counsel for the Plaintiff
Counsel for the Co-defendant

23.
Submissions

was going to pick it up today but I don't....

THE COURT: Well, I don't know if I got into this discussion with counsel but I clearly indicated that you know, I was available, I would make time in October for this hearing. I'd hear it in November. I would hear it in December.

Mr. Greenspan got off the record and now we had a date fixed; no objection was taken for January 11th.

MR. RANKING: January 11th for the cross-examination...

THE COURT: Right.

MR. RANKING: ...and January 25th for the return of the application.

THE COURT: Right.

MR. RANKING: And I don't know about the return date because I thought he had not fixed that, that that was left out. But what I said, I believe I said, I don't know, but to counsel is that I will not be here between somewhere around February 22nd, right out to March 25th. I then come back in and I begin, from March 25th to approximately May 6th, pre-trial motions in a criminal homicide. And that I'd begin the homicide with a jury May 6th, running right through to July. And I think that's where a lot of this information is probably now being understood. And then I said, I need to rest a little this summer and then I've got to get ready for another homicide which will start in September and will run through to December. And then I'm going supernumerary on January 1, 2014. So what I'm - if I didn't outline it and maybe Mr. Best has the transcript, he can tell me. That's what we

24.
Submissions

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

25.
Submissions

5
10
Mr. Ranking and Mr. Silver, and I'm going to say to you, go back and read again, my reasons which were then supported in court and you chose not to attend court when you had notice of the application. But I'm saying to you, I'm not expanding this to a brand new hearing. I'm not re-litigating. You must understand this Mr. Best; I am not the Court of Appeal. I made - I gave a judgment. I made a finding. I am not the Court of Appeal. The Court of Appeal deals with anything that they feel I did wrong. The Court of Appeal is where you make applications for new evidence, not me.

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

15
THE COURT: You're not offending me. I'm trying to...

MR. BEST: And I'm sorry.

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

20
MR. BEST: I didn't mean to anger you.

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

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MR. BEST: I....

THE COURT: Any estimate?

MR. BEST: All weekend, Your Honour.

THE COURT: A weekend?

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

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

Donald Best (Plaintiff) v. Gerald Ranking et.al. (Defendants)

Court File No. 14-0815

SUPERIOR COURT OF JUSTICE

(CENTRAL EAST REGION)

PROCEEDING COMMENCED IN BARRIE

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MOTION RECORD

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