

FEDERAL COURT OF APPEAL

B E T W E E N:

DONALD BEST

Appellant

and

THE ATTORNEY GENERAL OF CANADA

and

THE HONOURABLE MR. JUSTICE J. BRYAN SHAUGHNESSY

Respondents

**AFFIDAVIT OF ERIC COLE**

I, Eric Cole, of Ashburn, Virginia, MAKE OATH and SAY:

1. I am a court-acknowledged expert in information technology, with a focus on cyber security, secure network design, perimeter defense, penetration testing, vulnerability discovery and intrusion detection systems. My education includes a doctorate degree in information technology from Pace University and master's and bachelor's degrees in computer science from the New York Institute of Technology.
2. I served as a Commissioner on Cyber Security for President Obama and have served on several other executive advisory boards. I am the author of many books about computer network design and cyber security including Online Danger, Advanced Persistent Threat, Hackers Beware, Hiding in Plain Site, Network Security Bible, and Insider Threat. At SANS Technology Institute I am a faculty fellow and course author.
3. My past employment included positions of Chief Technology Officer of McAfee, Chief Scientist for Lockheed Martin and ten years with the Central Intelligence Agency.
4. I have previously testified or provided sworn written evidence to many courts and have been accepted as an expert witness.
5. As an expert witness, I am aware that I serve only the truth and the court no matter how I am compensated. I jealously guard my independence and integrity.
6. My complete CV is attached to my affidavit as EXHIBIT A.

**7. Retainer and Task**

8. I was retained by lawyer Paul Slansky to examine certain records, exhibits and other evidence having to do with apparent internet investigations and activities by persons using the computer network of the Federal Court of Canada to visit the DonaldBest.CA website.
9. Mr. Slansky asked me to verify the accuracy of the 'StatCounter' activity records of visits to his client's website, DonaldBest.CA, and to offer an expert opinion on the events and issues raised in a series of communications between Mr. Slansky, the Federal Court of Canada ('FCC') and the Courts Administration Service ('CAS').

## **10. Observations**

11. After examining various logs, records and documents which are attached as exhibits to this affidavit, my observations and conclusions are as follows:
12. The computer network used by the Federal Court of Canada, as maintained by the Courts Administration Service ('CAS'), is a sophisticated Canada-wide computer network that is professionally engineered, managed and maintained by a team of managers, engineers and technicians across Canada. Publicly-available lists of Canadian federal employees include CAS employees grouped under 'Network Services and Infrastructure' with titles such as 'Accounts Administrator', 'Network Technician', 'Network Architecture Engineer' and 'Manager - Infrastructure & Operations'. (EXHIBIT B List of CAS IT Employees) (EXHIBIT C – List of FCC / CAS offices nationwide) Published CAS Audit Reports provide further indications of the size, sophistication and professional management of the CAS Information Technology section and networks. (EXHIBIT D - CAS Internal audit of Program Integrity.), (EXHIBIT E - CAS Audit of Integrated Risk Management.)
13. As with any such professional network, and especially a network used by the justice system and courts of a sovereign nation, I expect that certain industry-standard protocols will be in place, including managed access to the network and the maintaining of network logs and records for various operational, technical and security purposes. It is also expected that there are appropriate security policies in place governing proper use of the network.
14. Managed access to the network ensures that only authorized persons are able to use the network and that their network activities are restricted according to their duties and needs. At a minimum, I expect that all authorized users of the FCC network including judges and court staff would have individual user accounts and passwords rather than group accounts and passwords. Further, each connected device (computer, tablet, phone, copier) carries its own unique identifiers, including a device serial number and MAC number etc, which I expect is logged for various purposes.
15. I am confident that Courts Administration Service's 'Network Services and Infrastructure' employees could have or already used their network logs and records to know which individual FCC network access accounts were used to visit the DonaldBest.CA website during the dates and times indicated in Mr. Slansky's letters to the FCC and CAS. The network employees also know the serial number and MAC address of each FCC-issued

computer, who the computer was assigned to and which person / account was using the computer at the time of each visit to DonaldBest.CA

16. I believe that the CAS would have already performed internal assessments to know which user accounts were involved as it would be a natural first step upon receiving Mr. Slansky's first letter. As well, the reply letters from Deputy Chief Administrator Chantal Carbonneau indicate knowledge that at least one of the visits to DonaldBest.CA was made by the CAS Security Department. This revelation itself confirms that an investigation was performed by CAS in response to Mr. Slansky's initial January 8, 2018 letter as anyone would expect. (EXHIBIT F – January 8, 2018 letter Paul Slansky to FCC) (EXHIBITS L, O, P – Letters from CAS Chantal Carbonneau to Slansky)
17. I note that Mr. Slansky instructed in his January 8, 2018, January 31, 2018 and April 1, 2018 letters to the court, that all data and records were to be fully and properly preserved by the court. I presume that this has been done as is standard industry practice when such notifications are received, especially in the midst of an ongoing legal action. (EXHIBITS F, K, Q – Slansky letters to FCC, CAS)
18. Even if such data and records were not preserved (and I can only speculate why they would not be preserved), there exists in any large network, locations and devices where secondary records are routinely maintained that can also be used to track access to the network. Further, each computer or other device accessing the network maintains records and has 'hidden' data – the professional examination of which can reveal the history of use, including websites visited. In the current case, I do not doubt that the computers or other devices used by FCC judges, staff and/or other personnel to visit DonaldBest.CA would contain records and evidence of such visits unless such information was deliberately erased or the staff was negligent in maintaining the systems.
19. In short, it is my professional and considered expert opinion that the Courts Administration Service knows the individual network user accounts and the devices used by FCC personnel to visit DonaldBest.CA – and that the CAS knows the identities of the individuals who used the FCC network to visit DonaldBest.CA website on the dates and times in question.

## **20. Visits to DonaldBest.CA website from the FCC Network**

21. As indicated in Mr. Slansky's letters, I confirm that persons with access to the computer network of the Federal Court of Canada, did make numerous online visits to the DonaldBest.ca website between July 15, 2016 and March 15, 2018. (I explain the supporting evidence and process that I used to come to this expert conclusion in a later section of my affidavit titled "DonaldBest.CA 'StatCounter' visitor logs".)
22. All of these known FCC visitors arrived at the DonaldBest.CA website after searching 'Google' or 'Bing' search engines with terms and/or words that led them to articles on the website dealing specifically with the legal case and people before the Federal Court of

Canada in the case 'Donald Best and Attorney General of Canada and The Honourable Mr. Justice J. Bryan Shaughnessy', FCC Case T-604-16.

23. After arrival at the DonaldBest.CA website, the FCC visitors primarily read articles dealing with the FCC legal case and involved persons, rather than other articles on the website devoted to other subjects.
24. In comparing the dates of FCC visits with the FCC-provided list of 'Proceedings Queries' for the case (EXHIBIT R - FCC Proceedings Queries for T-604-16, Donald Best v. AGC et al), I note that many of the FCC visits happened on or near dates that are listed concerning the case before the court. (EXHIBITS I, J – StatCounter Visits Logs for IP 198.103.145.50)
25. For instance, the FCC 'Proceedings Queries' list shows that November 20, 2017 was a hearing day before The Honourable Mr. Justice Boswell, with Frank Kurina as Court Senior Usher. On that day, the DonaldBest.CA logs show FCC visits at 8:59am, 9:01am, 9:33am, 9:52am, 1:35pm and 1:36pm (Eastern) using Windows 7 computers and Internet Explorer and Chrome browsers. I note that Mr. Slansky's January 31, 2018 letter to the CAS (EXHIBIT K) details how both he and his client observed the judge (Justice Boswell) operating his computer from the bench during the November 20, 2017 hearing. Mr. Slansky asks if it might be possible that the judge's computer was accessing the internet during the hearing.
26. My answer to Mr. Slansky's question is that yes, FCC personnel accessed the DonaldBest.CA website during the November 20, 2017 hearing and it is possible that Justice Boswell did so from the bench. The Courts Administration Service, however, has the logs and electronic evidence to know the truth about whether any of the November 20, 2017 FCC visits came from Justice Boswell's computer, just as they know the FCC user accounts that visited the DonaldBest.CA website on each of the logged dates and times from July 15, 2016 to the present day.
27. As well as the November 20, 2017 FCC visits to DonaldBest.CA there are other notable visits listed, such as:
28. The 'Proceedings Queries' list shows that Prothonotary Mandy Aylen rendered an order on July 15, 2016. The visitor logs indicate that early in the day at 7:42am and 8:34am, someone used the FCC network to visit DonaldBest.CA and read the article 'Judge J. Bryan Shaughnessy under investigation by Canadian Judicial Council'
29. Similarly, I see in the 'Proceedings Queries' that on August 19, 2016, Chief Justice Crampton Matter considered the case, but two days previously many FCC visits were made to DonaldBest.CA – again reading articles pertaining to the case before the FCC and also downloading evidence posted online.
30. Similarly, I see in the 'Proceedings Queries' that on October 11, 2016 from 12pm to 12:30pm, there was a Case Management Conference before Prothonotary Mandy Aylen.



About an hour before the conference at 11:04am, someone from the FCC visited DonaldBest.CA and read about lawyer Paul Slansky and other relevant articles.

31. Similarly, I see in the 'Proceedings Queries' that on December 20, 2016, a hearing was held before Prothonotary Mandy Aylen. In the five days before the hearing, four incidents happened where FCC network users visited DonaldBest.CA, searched for and read materials about the case before the FCC.
32. Similarly, I see in the 'Proceedings Queries' that on May 8, 2017, lawyer Paul Slansky requested a hearing. On that date, person(s) used the FCC network in the late afternoon to visit DonaldBest.CA where they searched for and read articles dealing with the case.
33. Similarly, I see in the 'Proceedings Queries' that on October 20, 2017, a hearing was held from 9:30am to 1pm before Prothonotary Mandy Aylen to consider a motion by proposed intervenor Julian Fantino. On October 16, 2017 for about an hour, FCC visitors reviewed articles about the case at DonaldBest.CA.
34. Similarly, I see in the 'Proceedings Queries' that on November 6, 2017, Julian Fantino filed a Notice of Motion for an Appeal of the previous decision by Prothonotary Mandy Aylen. On the same day, November 6, 2017, person(s) from the FCC visited DonaldBest.CA website and researched/read articles about the case before the FCC including 'Court denies former Ontario Provincial Police Commissioner Julian Fantino intervention in Judicial Review of CJC – DonaldBest.CA'
35. Similarly, I see in the 'Proceedings Queries' that on November 16, 2017, The Honourable Mr. Justice Boswell directed about proposed intervenor Julian Fantino: "The proposed intervenor's Notice of Motion for an appeal in respect of the order of Case Management Judge Aylen issued on October 25, 2017, should be scheduled for General Sittings and will not be heard at the hearing of the Applicant's Application for Judicial Review scheduled to commence next Monday, November 20, 2017." On the same day, November 16, 2017, person(s) from the FCC visited DonaldBest.CA website and researched/read articles about the case before the FCC including an article titled 'Comparing two Canadian Judges: 'Knees Together Robin Camp' vs 'Backroom Bryan Shaughnessy'
36. With each of the above examples, and with every FCC visit to the DonaldBest.CA website, the CAS/FCC knows the identities of the person(s) using the FCC network to visit DonaldBest.CA.

### **37. DonaldBest.CA 'StatCounter' visitor logs**

38. The DonaldBest.CA website is hosted at GoDaddy.com and uses the WordPress Content Management system to enable Mr. Best to post articles, photos and videos on the web. GoDaddy is a larger reputable hosting providing and would maintain accurate logs for the sites they host.

39. The DonaldBest.CA website uses the 'StatCounter' service to track, log and preserve detailed information about visits and visitors to the website. Mr. Best uses the paid upgrade version which allows for larger log sizes to be preserved by the StatCounter company.
40. It is important to note that StatCounter clients/users like Mr. Best cannot change any of the online visitor information stored and maintained by StatCounter. Users can access and download copies of their website's StatCounter data, but if they changed any of the downloaded data, for instance by adding visits that never happened or removing visits – this would be instantly detectable upon comparison with the original data held by StatCounter.
41. I have personally examined the online original DonaldBest.CA visitor data collected and preserved by StatCounter and compared it to the DonaldBest.CA website 'StatCounter' visitor logs as included in Mr. Slansky's communications with the court and attached as exhibits to my affidavit. I attest that the DonaldBest.CA visitor logs in Mr. Slansky's letters are accurate presentations of original data still held and preserved by StatCounter.
42. The StatCounter visitor logs collect and show an array of information for each visit, including:
- Date and Time of visit
  - IP Address of visitor
  - Browser used (Chrome, iPhone, Internet Explorer, Safari, FireFox etc)
  - Browser Version
  - Operating System (Windows, iOS, Linux, Mac etc)
  - Screen Resolution
  - Country
  - Region
  - City
  - Postal Code
  - ISP (Internet Service Provider)
  - URL arrived upon
  - Page Title (Article title)
  - Came from (Visitor arrived from)
  - Search Engine Name (Google, Bing etc)
  - Search Engine Host
43. In the case of IP (Internet Protocol Number) 198.103.145.50, shown in EXHIBIT G (WhoIS search IP results for 198.103.145.50), as attached to Paul Slansky's January 8, 2018 letter, the IP number was assigned to the Canadian Government Telecommunications and Informatics Services – Federal Court of Canada.
44. I note that the January 17, 2018 letter from Chantal Carbonneau to Paul Slansky indicates that, as a result of Mr. Slansky's January 8, 2018 letter, the Courts Administration Service intended to change the IP address information to reflect a new policy where the IP number can be used by any of four courts, including the Federal Court of Canada.

45. This change simply doesn't matter, as the CAS knows from its records and logs exactly who used the network on the dates and times in question to access DonaldBest.CA.

**46. Observation re IP #198.103.245.2**

47. I note that Paul Slansky's January 31, 2018 letter to the CAS states that visits to DonaldBest.CA from IP: 198.103.245.2 took place on October 19, 2017 and January 10, 2018. I confirm that the StatCounter records show these visits taking place as stated by Mr. Slansky and that the IP number resolves to an assignment to 'Shared Services Canada' with a resolve host of 'mail.judicom.gc.ca'. 'Judicom' seems to indicate a judicial email server, but once again, the CAS likely knows the entire story in detail, based upon their records and resources. (EXHIBIT S StatCounter Visitor Summary for 198.103.245.2) (EXHIBIT T WhoIS record for IP 198.103.245.2)

48. I also note that the visitors used the Google search engine to arrive at DonaldBest.CA, and once at the website viewed articles and downloaded exhibits having to do exclusively with the case before the FCC.

**49. Observation re Durham Regional Police Investigation and IP #66.163.5.113**

50. I note that in his January 31, 2018 letter, lawyer Paul Slansky refers to the Canadian Judicial Council judicial review case having a history of secret and improper investigations by police.

51. Attached to my affidavit are the following Exhibits:

52. EXHIBIT U is a June 15, 2016 letter from lawyer Paul Slansky to Chief Paul Martin of the Durham Regional Police Service, including attachments showing StatCounter visitor logs to DonaldBest.CA website from IP 66.163.5.113.

53. EXHIBIT V is an Excel Spreadsheet of StatCounter-sourced list of visits to DonaldBest.CA from IP 66.163.5.113 (On data CD)

54. EXHIBIT W is StatCounter summary of visits to DonaldBest.CA from IP 66.163.5.113

55. EXHIBIT X is a 'WhoIs' report for IP 66.163.5.11, showing assignment to the Durham Regional Police.

56. EXHIBIT Y is a June 30, 2016 response letter from Inspector Mark Morissette of the Durham Regional Police Service.

57. As with the visits to DonaldBest.CA by FCC personnel, I have personally examined the online original DonaldBest.CA visitor data collected and preserved by StatCounter and compared it to the DonaldBest.CA website 'StatCounter' visitor logs as included in Mr. Slansky's communications with the Durham Regional Police and attached as exhibits to my affidavit. I attest that the DonaldBest.CA visitor logs in Mr. Slansky's letter to the





This is Exhibit "\_\_\_\_\_" of the Affidavit of Eric Cole

Sworn before me this 8<sup>th</sup> day of May, 2018

[REDACTED]

A Notary

NEVEIN EDWAR MORKOS  
NOTARY PUBLIC  
REGISTRATION # 7658514  
COMMONWEALTH OF VIRGINIA

Exp.  
11-30-19

## Exhibits List to the Affidavit of Dr. Eric Cole

Exhibit	Description
---------	-------------

A	CV of Dr. Eric Cole
B	List of Courts Administration Service employees under Information and Technology Services Division, including Network Services and Infrastructure, Information and Technology Security Services, Project Management Office and other CAS IT personnel.
C	List of Courts Administration and Federal Court of Canada offices – Canada wide.
D	CAS Internal audit of Program Integrity.
E	CAS Audit of Integrated Risk Management.
F	January 8, 2018 letter, Paul Slansky to Manon Pitre, Chief Administrator, Registry, Federal Court of Canada
G	Attached to F – IP results for 198.103.145.50
H	Attached to F – StatCounter summary for IP 198.103.145.50
I	Attached to F – StatCounter Visits List for IP 198.103.145.50
J	Attached to F – StatCounter Visits Details for IP 198.103.145.50
K	January 31, 2018 letter, Paul Slansky to Chantal Carbonneau, Courts Administration Service
L	Attached to K – January 17, 2018 letter Chantal Carbonneau, Courts Administration Service to Paul Slansky.
M	Attached to K – StatCounter summary for visitors from IP 198.103.245.2
N	Attached to K - Attached to F – IP results for 198.103.145.50
O	February 14, 2018 letter Chantal Carbonneau, Courts Administration Service to Paul Slansky.
P	March 29, 2018 letter Chantal Carbonneau, Courts Administration Service to Paul Slansky.
Q	April 1, 2018 letter, Paul Slansky to Chantal Carbonneau, Courts Administration Service
R	FCC Proceedings Queries for T-604-16, Donald Best v. AGC et al
S	StatCounter Visitor Summary for 198.103.245.2
T	WhoIS record for IP 198.103.245.2 ('mail.judicom.gc.ca')
U	June 15, 2016 letter Paul Slansky to Durham Police Chief Paul Martin
V	Attached to U - Excel Spreadsheet of StatCounter-sourced list of visits to DonaldBest.CA from IP 66.163.5.113 (On data CD)
W	Attached to U - StatCounter visitor summary for IP 66.163.5.113 printed June 7, 2016

X	Attached to U – IP Whois for IP 66.163.5.113 printed June 7, 2016 and showing assignment to the Durham Regional Police.
Y	June 30, 2016 response letter from Inspector Mark Morissette of the Durham Regional Police Service.