CA46979
CA47391

COURT OF APPEAL

REGINA

V.

PATRICK HENRY FOX

Third Affidavit of Patrick Henry Fox

I, Patrick Henry Fox, presently incarcerated at Fraser Regional Correctional Centre in the province of British Columbia, do solemnly affirm as follows. I am the appellant in these matters. Every statement made herein is true and correct, and I have personal, first hand knowledge of them.

The expression "Para #" preceding a given statement herein denotes the numbered paragraph within the Crown's 2021-06-21 Memorandum of Argument to which the given statement may refer and apply.

1. Para 1: I object to the claim the website was used to criminally harass my former spouse. Crown's adamant refusal to prosecute me for criminal harassment relating to the website they're trying to force me to take down sufficiently proves they do not believe the website amounts to criminal harassment. Their words are completely inconsistent with their actions

2. Para 3: I disagree because Justice Griffin's ruling at the limited 684 hearing was based on the arguments and submissions I had made which were extremely limited because I was arguing for appointment of a lawyer to help me with preparing the 684 application, NOT appointment of a lawyer to help me with the appeal.

   It seems to me, the submissions a party would have to make when applying for a lawyer to conduct an appeal would, necessarily, be much more thorough than the submissions he would have to make when applying for a lawyer to assist in preparing a 684 application. And since the previous application in this matter was only for the limited 684 appointment, I have not yet been afforded the opportunity to make submissions regarding the ACTUAL 684 application.

   Also, if I had been prepared and able to make submissions regarding the full 684 appointment at the previous hearing that would have proven that I didn't actually need a limited appointment - because the arguments I would have been asking for help to prepare would already have been prepared.

3. Para 3: I do not believe a material change in circumstances is necessary because I was never afforded the opportunity to make full 684 submissions. At the previous hearing I was only applying for, and was only prepared to make submissions for the limited 684 appointment. I believe I would only have to establish a material change in circumstances if I had actually had the full 684 hearing.

Regardless of whether Justice Griffin believed, based on the information and submissions presented to her at the 2020-12-17 hearing, that I am "well able to represent [myself] on what is an uncomplicated appeal" the critical fact is that was not the relief I was requesting at that time nor was it the relief she was ruling on at that time. In paragraph 1 of her Reasons for Judgement Justice Griffin stated "The applicant, Patrick Fox, applies for a limited order under s. 684 of the Criminal Code... Under the terms of the order, counsel would be appointed on a limited basis in order to assist him with a full s. 684 application." And in the last paragraph (21) Justice Griffin stated "... in my view it is not in the interests of justice to appoint counsel for the limited purpose of preparing for a full s. 684 application."

4. Para 7: I sternly object to the Crown's continued reliance on the 2017 criminal harassment conviction and on Justice Holmes' 2017 Reasons for Sentence.

The Crown cannot, on the one hand, use Holmes' Reasons for Sentence and the 2017 criminal harassment conviction against me; yet on the other hand adamantly refuse to prosecute me again for brazenly and in open defiance engaging in exactly the same conduct which they and Justice Holmes insist formed the basis of that conviction and sentence! It is not only inconsistent on the part of the Crown, it is unquestionably self-contradictory.

If ANY of what Justice Holmes said in her Reasons for Sentence had any truth or sincerity to it and if the Crown believed ANY of it then the Crown has an absolutely undeniable duty to approve and prosecute me for the charge of criminal harassment based on the current website.

By their own admission in their memorandum the Crown acknowledges I am, and have been since at least March 2019, engaging in exactly the conduct that they and Holmes explicitly declared formed the basis of the 2017 criminal harassment conviction. The Crown is not only acknowledging it - they are sternly accusing me of it. Yet they are simultaneously refusing to prosecute me for it. They are prosecuting me for very petty breach of probation allegations based on the same conduct that would constitute the criminal harassment allegation, but refusing to prosecute me for the very serious charge of criminal harassment. If the Crown is able to get a conviction on these breaches then they MUST have all the evidence they would require to prove I am engaging in the same conduct that formed the basis of the prior criminal harassment conviction. Based on the 2017 conviction and Holmes' Reasons for Sentence it is, literally, impossible that I could be found guilty of these breaches but NOT found guilty of a new charge of criminal harassment. Also, VPD recommended a charge of criminal harassment but the BCPS refused to approve it.

If there were any truth to Holmes' Reasons for Sentence then the Crown's refusal to prosecute me for criminal harassment would amount to such an outrageous miscarriage of justice, such an overwhelming failure on the part of the justice system to protect Capuano from my ongoing, traumatic tormenting.

And, if Capuano was actually being harmed by the website, to even a fraction of the extent that Holmes portrays in her Reasons for Sentence then Capuano would:

- seek another criminal harassment prosecution;
- seek an order from an Arizona court, where she lives and where the website is hosted, for the hosting provider to take down the website;
- move forward with the civil suit she filed here in BC

against me back in 2017, but which since filing she has done absolutely nothing to advance; and/or

- file a complaint with the hosting provider.

However, Capuano has not taken any of these steps since the current website has been online - over two and a half years. This proves, contrary to Holmes' and the Crown's insistence, Capuano is <u>NOT</u> being adversely affected by the website.

5. Para 12: That is patently false. I did not insist on maintaining full control over the appeal. I only insisted, in the event the appointed lawyer refused to pursue the ineffective assistance claim that I be permitted to pursue it myself.

I clearly expressed my concern that an appointed lawyer may try to bury the ineffective assistance, corruption and misconduct claims and I wanted to make sure those claims and the evidence proving them would be put before the court. I believe I pointed out that in the U.S. there is a federal law which provides that if a defendant believes there are additional grounds of appeal which the appointed lawyer does not agree with then the defendant must be permitted to raise those grounds himself. That is to protect the defendant against exactly the situation I expressed concern about.

6. Para 14: The Crown is misrepresenting my position and my statements on this matter and, I presume, they are doing so deliberately, because although I keep correcting them they keep doing it.

For the purposes of any proceeding relating to this probation order it is my firm assertion only that I am <u>NOT</u> a Canadian citizen and have no status in Canada. That assertion is unequivocally supported by IRCC's own records, some of which I presented to Justice Holmes, which clearly state Country of Birth as "United States of America" and that no Canadian citizenship or other status has ever been applied for or issued. Yet Holmes made absolutely no mention of that in her 2019-03-14 ruling. Whether or not I am a citizen of the U.S. has absolutely no relevance and it is not what I am/was asserting, which is only that I am NOT a citizen of Canada. It is the Crown that keeps trying to focus attention on the issue of whether or not I am a U.S. citizen - as if they are saying that since an Arizona court said I am not a U.S. citizen then I must be a Canadian citizen.

7. Para 14: The false claim of U.S. citizenship conviction does not prove that I am not a U.S. citizen or that I am a Canadian citizen. It only proves that I was wrongfully convicted. And even if it did prove that I am not a U.S. citizen, not being a U.S. citizen does not automatically mean a person must be a Canadian citizen.

8. Para 14: What information or evidence? There was nothing but Mylrse's submissions, his claims. He claimed he spoke with someone at IRCC and at CBSA but that they refused to put their statements in writing or to testify. He claimed he had spoken with Steve Riess from Sudbury, ON and that Steve Riess is my father. He claimed Steve Riess offered to do a DNA test to prove he is my father. However, both Mylrse and the court refused to allow Riess to testify, or to proceed with the DNA test - even though I insisted on both.

9. Para 14: There could not possibly be more reliable, credible and definitive evidence of a lack of citizenship status than the FOSS and GCMS records from IRCC. IRCC is the only authority in Canada empowered to declare definitively that someone is, or is not, a Canadian citizen. And they very clearly stated I was <u>not</u> born in Canada and have never applied for or received Canadian citizenship.

Moreover, Holmes was very critical of the recordings of my conversations with IRCC and CBSA yet she refused to allow those recordings to be entered as exhibits so their content would be part of the record and could be independently reviewed.

10. Para 15: This is a gross misrepresentation of the facts and circumstances - it completely ignores the fact that I turned myself in to CBSA at a port of entry which was still within the province of BC, and only after I was denied readmission by CBSA did I proceed to turn myself in to CBP. Also, it ignores that on 2019-03-14 I told Holmes in open court that I intended to do exactly that. And that by doing so I would effectively cause myself to be deported and, thereby, <u>NOT</u> breach the probation order.

That conviction is still on appeal.

11. Para 16: This ignores the fact that I was in custody, had no access to legal resources to prepare or research the appeal, and no financial resources to pay for transcripts or appeal books which must be purchased from JC World Assist at a cost of over $2000.

The appeal was NOT dismissed on it's merits.

12. Para 16: To date it has still not been established and there has not been ANY evidence that I have had ANY involvement in the new/current website while I have been on probation. The Crown, Chris Johnson, and both Judge Phillips and Judge Rideout have all acknowledged that in open court. And any involvement I may have had PRIOR to the commencement of the probation orders has absolutely no relevance to these proceedings because I was not bound by the probation order at that time.

13. Para 16: As discussed above, it is acknowledged by both trial courts as well as the Crown that there is absolutely no evidence my involvement in the current website occurred AFTER the probation order took effect on 2018-12-30, and therefore I did not violate Holmes' probation order; there is absolutely no evidence that any of the material or content on the current website was obtained through the disclosure process in the

prosecutions against me, or that I am the person who published that material on the website and therefore I did not violate a provincial court order or an implied undertaking.

14. Para 17: But I expressly and deliberately did not state WHEN I published the website. Fontana was cross examined on this at trial and admitted she had no knowledge of or evidence of WHEN the website was published.

15. Para 17: Crown's statement is false. I had said "BY doing so" not "SINCE doing so". This is a very significant difference because in saying "BY doing so" I was admitting to having engaged in specific conduct (i.e. that which Holmes declared formed the basis of the criminal harassment conviction) without providing any indication as to when the specified conduct occurred; whereas saying "SINCE doing so" would be admitting to engaging in that same specific conduct at some time subsequent to publishing the new website. The latter would, essentially, be an admission to breaching the condition of the probation order.

16. Para 18: Crown is attempting to mislead the court again. The information in question came into existence after the 2017 trial

but long before the probation order took effect on 2018-12-30. That was established during cross examination, though the court made no reference to that in her Reasons for Judgement.

17. Para 17: In her Reasons for Judgement, Phillips consistently misquotes my letter to Fontana as saying "...since my publishing the new website...", whereas it really said "...since by publishing the new website...".

18. Para 20: There was no dispute because the period covered by the Information/Indictment was only 2019-03-07 through 2019-03-21. What WAS/IS in dispute is whether the alleged conduct (i.e. publishing the website) occurred within those dates.

19. Para 20: Crown seems to be attempting to confuse the issue by now using the term "first published"(s) to mean the act of initially causing something which was not publicly accessible to become publicly accessible. They're doing this so they could then argue that by causing or allowing the website to remain publicly accessible I was perpetually or on an ongoing basis "publishing" the website. But that is contrary to the definition of "publish" which is to cause something which is not publicly available to become publicly available. As long as, or while

something is already otherwise publicly accessible it cannot be published. And failing (or refusing) to take some action to cause something which IS publicly accessible to cease to remain publicly accessible is NOT "publishing".

20. Para 20: Crown is misrepresenting my submissions. I argued that a failure or refusal to take down the website did not breach the condition of the probation order which I was charged with - it breached a different condition, but I was not charged with breaching THAT condition.

21. Para 20: The probation condition I was charged with and convicted of breaching expressly and exclusively states

You must not ... or make publicly available ...

It encompasses ONLY the explicit act of MAKING something publicly available. It says absolutely nothing about anything which is already publicly available. That was explicitly addressed by the next probation condition which required me to remove from public access any such items as I had authority or control over.

Given that condition 13 explicitly required me to remove from public access all information and material which was publicly accessible at the time of my release from custody (ie the start of the probation order) it is only logical and sensible that condition 12 was intended to apply to the publishing or making available of material from that point forward. Otherwise, the two conditions would be redundant.

This point, really, is the crux of the basis of the appeal. The Crown erred by accusing me of violating the wrong condition and in doing so have made themselves appear inept.

22. Para 21: I believe the judge was trying to confuse the issue in order to rationalize the verdict. The clause "in any manner whatsoever, directly or indirectly" has absolutely nothing to do with the issue of "making available" versus "keeping or remaining available".

23. Para 29: I object to the Crown's and the Court's reliance on the "Dear David Eby" blog post. The article was written and posted to the website the day before the probation order took effect and there is nothing in the post pertaining to Capuano. For those reasons it is simply not relevant to the charge or to the issues on appeal.

I believe the Crown is only drawing attention to it because some of the content of the article is very critical of the local justice system. I believe it is an attempt to inflame the current, and the trial court against me. However, there is nothing illegal or improper about expressing an unfavorable opinion of the government or the justice system.

24. Para 29: I object to the Crown's reliance on that quote from the "Dear David Ely" article on the website. It had absolutely no relevance at the trial, nor does it in this appeal. This is just a blatant attempt to provoke and antagonize the court. Even if I were the author of the article, and the Crown has provided no evidence that I was, the opinions and the criticisms that I express about the local justice system, in a public forum, simply have no relevance to this appeal or to the trial in the lower court.

And, even though justice system participants may take offense to the statements, they are, literally, true.

25. Para 31a: Once the probation orders expire there will be nothing illegal about, or otherwise preventing me from returning to maintaining the website and publishing anything, such as the recordings of that interview, on it. There is no indication or reason to believe I was talking about publishing to the website during the period of probation. Moreover, the recording of the interview does not pertain to Capuano and, therefore, it's publication is not prohibited under the probation orders. I

have been completely candid about my intention to leave Canada and return to doing exactly what I was doing before the probation began, once the probation orders expire.

26. Para 316: The information being discussed here is about the prosecutions against me and various justice system participants who were involved in those prosecutions - NOT Capuano. The probation orders do not prohibit me from publishing information or material not pertaining to Capuano. Moreover, the probation orders do not prohibit me from sharing that material with others for them to publish. And the probation orders do not prohibit me from publishing such material to any website which is owned and controlled by another person even if that website also happens to contain information about Capuano, as long as that instance or copy of that information about Capuano was not made public on that website by me.

Therefore, being that the desicapuano.com website is currently owned and controlled by a third party there is nothing in the probation orders which prohibits me from publishing any information to it as long as that information I am publishing does not pertain to Capuano.

And therefore, my statement to Detective Dent is in no way an admission that I violated the probation orders or that I have any ownership, control or influence over the desicapuano.com website.

27. Para 31c: Detective Dent testified, on direct, that he did ask me whether I had taken down the website (TR 2020-11-26 11/40-42, Tab 5 of Crown's Memorandum). However, on cross he testified he did not recall whether he asked me if I had taken down the website, or whether the topic had even come up (TR 20/31-21/13). On cross, Dent had to refer to his notes to refresh his memory on this line of questioning. Even though those were the same notes he referred to when he provided the contradictory testimony on direct earlier that day.

This line of questioning, about whether or not I took down the website following my release from custody is, without question, the most significant and relevant question of the entire trial. And the Crown's only witness provided two contradictory and mutually exclusive responses to the question of whether the topic even came up in our interview. This fact alone should be sufficient to cast doubt on all of Dent's testimony.

28. Para 31e: I openly declare that I will never take down the website because as long as the probation orders are in effect I don't own or control the website. I cannot, nor can I be compelled to, take down a website that I don't own or control. The Crown, Detective Dent, and the court all acknowledge there was absolutely no evidence provided showing that I have any ownership or control over the website during the time in question. And, locking up and prosecuting a third party (me) who has no control over the website is not going to somehow cause the website to cease to exist.

29. Para 32b: Crown is misrepresenting the facts by stating "after August 20, 2020". My questions to Detective Dent were whether he had any knowledge of me transferring ownership and control to another party at <u>ANY</u> time, or ~~that~~ whether I still owned or controlled the website after 2020-08-20.

30. Para 32b: The information being discussed is information relating to the prosecutions against me, <u>NOT</u> information about Capuano. And therefore, it was not prohibited by the probation orders.

There is absolutely nothing in the probation orders which prohibits me from providing information and material relating to the prosecutions against me to the parties who currently have ownership and control of the website for the purpose of that material being published on that website as long as the material I provide is not about Capuano and as long as I do not, personally, upload the material to the website.

31. Para 32c: The statement that I would never take the website down is not at all incriminatory because prior to the period of probation commencing (2018-12-30) I transferred ownership and control to a third party with the agreement that it would be transferred back to me after the relevant probation conditions have expired. Since I lack the authority and the means to remove a website I don't own then it is reasonable for me to say I cannot and will not take down the website while it is not under my ownership. And once the probation period expires and I regain ownership of the website I will no longer be on probation and, therefore, no longer required to take down the website. So my statement is true and not at all incriminating.

32. Para 32c: This directly contradicts Dent's testimony on direct. See item 27 above; para 31a in Crown's memorandum.

33. Para 33: See item 31, para 32c, above.

34. Para 33: Crown is misrepresenting the facts. I had provided a possible explanation for why the website may not have been taken down by who ever may be maintaining it at that time - I did not say it was why I had not taken it down because I had no authority or ability to take it down at that time. I do not have the username and password required to access the hosting provider's account in order to take the website down. This transfer of ownership was done, very deliberately, so that I could not be forced to take down the website.

35. Para 32c: My statement was, in fact, correct. The probation condition required me, within 48 hours of my release, to cause certain specific artefacts to cease to be publicly available. As long as I caused those things to cease to be publicly available within 48 hours of my release then I have fulfilled the condition. There is nothing in the condition which required me to keep the artefacts in the state until the expiration of the order or which prohibited me from subsequently making those artefacts public again at some future time.

The condition could have stated, in relevant part:

... are no longer available <u>and remain no longer available</u> via the internet or by any other means.

but it didn't.

36. Para 37: I did not claim I would be deported after my jail sentence end. I claimed that I was going to leave Canada at the first opportunity - whether as a result of being deported or leaving voluntarily. I stated that once the 2017 probation order expires in December 2021 I will no longer be required to remain in Canada and I intend to leave at that time. That will occur regardless of my citizenship or immigration status. (TR 2021-04-12 5/15-20, Crown's 2021-06-21 Memo, Tab 9).

37. Para 37: I asked for a 24 month sentence so it would end around the same time the 2017 probation order requiring me to remain in BC would end. So that upon my release I could leave Canada and be done with all this stupidity and nonsense. Forcing me to remain in BC and Canada, while not allowing me to work, to support myself, to receive health care, et cetera, puts me in a worse position than being in jail - at least in jail I don't have to worry about where I'll be sleeping or if I'll be able to eat.

The Crown's insistence that they believe I am a Canadian citizen loses all credibility when you consider their refusal to facilitate a DNA paternity test of the person they claim is my father and their refusal to acknowledge the fact that the fingerprints and mugshot of the person they insist I am (Ricky Reiss), on file with the Toronto Police, from his 1992 arrest do not match mine. That fingerprint and mugshot information of Ricky Reiss is publicly accessible on the website.

38. Para 42: See item 2, above (re Para 3).

39. Para 42: See item 3, above (re Para 3).

40. Para 45: See item 2, above.

41. Para 46: The application material Crown is referring to is essentially the three page affidavit prepared for me by the UBC LSLAP. Prior to 2021-07-06 I had no knowledge that I could submit anything more than that affidavit in support of my application. In particular, I had no knowledge of, or way of knowing, that I could prepare and submit a Memorandum of Argument and Materials, similar to what the Crown has submitted, in support ~~(report)~~ of my application. This kind of lack of knowledge and access to such knowledge and information puts me and every other self-represented appellant at a huge disadvantage because it allows the Crown to provide a copious amount of information, much of which may not be accurate or true,

while limiting the appellant to a few core pieces of information.

The only sources of information available to me to aid in preparing my 684 applications are the two page "Apply for a court appointed lawyer" section of the "How to Appeal Your Conviction" booklet provided by LSS; and the "Applications for a Court Appointed Lawyer Under Section 684 of the Criminal Code" Practice Directive, which, for the most part, contains the same information as the LSS booklet.

The very fact that I didn't even know, and that there is no source of information available to me in jail for me to be able to know, that I could have included a Memorandum of Argument with my application should be a strong indicator that a limited 684 or even a full 684 appointment is in the interests of justice. Either that or BC Corrections should be required to make appropriate educational material available to self-represented inmates.

42. Para 49: I disagree with Crown. The literal meaning of the phrase "make publicly available" was not raised or addressed with Justice Griffin. Instead, Justice Griffin focused on the same phrase the trial court did, which was "in any way whatsoever, directly or indirectly."

43. Para 50: There is more to being able to litigate an appeal, or any other matter, than simply being able to articulate arguments and keeping submissions focused and relevant. As demonstrated in item 41, above, not knowing basic procedures such as that I should have submitted a Memorandum of Argument along with my affidavit; or being able to read the transcript and identify other errors which may have occurred; or being able to anticipate what false claims or misrepresentations the Crown is likely to make to the court; or being able to search for case law to refute that which the Crown relies upon; all put me at a severe disadvantage to the Crown. It does not matter how intelligent or capable I might be if the information and knowledge I require in order to litigate my matters is withheld from me as it is while I'm in BC Corrections custody.

44. Para 51: In fact, the law library at FRCC is worse than inadequate. There is, literally, no access to any case law - only the case digests of the BC, AB, SK, and MB provincial courts.

See further comments regarding paras 64-66 below.

45. Para 55: The fact that I have lost or been convicted in each case in which I have represented myself and gone through trial, and that in each instance I have received an exhorbatently high sentence, would suggest that either I'm not as

intelligent as the judges have been claiming, or that there is something grossly inappropriate occurring in my cases, or that competently litigating a matter requires more than just intelligence - it requires specific, specialized knowledge, which I clearly do not have and which I do not have the ability to gain from within FRCC.

46. Para 57: My statements to Detective Dent regarding any intentions to publish any material to the website did not provide or suggest WHEN I intended to do so, and for me to publish anything on the website AFTER the probation order expires cannot possibly violate the probation order. And, Dent also testified that he does not know or have any evidence that I own the website or have any influence or control over the website. He also testified that he does not know whether I had, at any time, transferred ownership of the website to another party.

In order for the trial judge to conclude I had the ability to take down the website he would have had to make many arbitrary inferences which the lack of evidence would seem to contradict.

Significantly, in paragraph nine of his Reasons for Judgement Judge Rideout claims Detective Dent quoted me as follows "Important to have good quality audio-video for my website." However, Detective Dent actually stated I said "... good quality audio and video for him to put on the website later." (TR 2020-11-26 11/18-20, Tab-5 of Crown's Memorandum). That is a very significant difference because in the judge's erroneous version of events I have claimed ownership of the website, but in reality I have not. In addition, in the judge's version I was speaking in the present tense but in Dent's testimony I was speaking of some point in the future - perhaps after the probation orders have expired.

In paragraph nine of the Reasons for Judgement Judge Rideout also claimed "He was asked, as well, whether or not it had been taken down...". However, on this point Detective Dent had directly contradicted himself - first testifying he did ask, then testifying he didn't remember whether he asked, then being evasive and refusing to answer. See items 27 and 32 above.

47. Para 58: The disclosure issue is clearly a matter which will require legal research and supporting case law. The fact that the Crown has included supporting case law with it's memorandum proves that point. And since I do not have access to any case law at FRCC that puts me at an unfair disadvantage. Moreover, I don't believe the issue is as straight forward as the Crown claims because, while the material in question was, technically, disclosed it was done so less than three days before the trial. And since I was self-represented and in custody I would, arguably, require more time to review the material

and prepare a defense than if I was represented and/or out of custody. So there is the question of how much time prior to trial is reasonable for Crown to have to disclose critical evidence to an in-custody, self-represented defendant. And I believe this is a topic which is more complex and involved than I would be competent to argue on appeal.

48. Para 59: I disagree with the Crown's characterization of the events regarding the court's inquiry into disclosure. The court did not ask about the "sufficiency" of disclosure. It only asked if I had full disclosure from the Crown, to which I responded that I had disclosure but did not know if it was "full". Only the Crown would have been able to say whether the disclosure I had received was full or whether anything was being with-held, but the court did not ask the Crown. The court did, however, immediately state:

> Mr. Johnson, as an officer of the court, has an obligation to ensure the trial proceeds in a fair and just manner. The prosecution takes no interest in the result. They remain objective in that regard.

I understood that to mean the court believed the Crown was going to conduct it's case truthfully, honestly, and objectively. I, however, based on my experience with Crown counsel, did not believe that would be the case.

And, after Crown mentioned the recording of the interview with

Detective Dent the court asked me whether I had received disclosure of that interview, to which I responded I had. The court did not ask when I had received it or if I had had sufficient time to review it.

In Crown's memorandum, on this point, they refer to the transcript at Tab 9, however it should be noted that is the transcript of the sentencing which occurred five months after the trial.

49. Para 59: I disagree with the Crown's characterization of events on this point. When I objected to the calling of Detective Dent as a witness, due to the Crown's refusal to provide me their witness list prior to trial and the Crown then admitted they had only provided me disclosure a few days prior the judge seemed to respond in support of the Crown (TR 4/32-45). It seemed to me, based on that and on the court's earlier advisement about Mr. Johnson being fair, just, and objective (TR 1/37-41) that the court was not going to do anything about the disclosure issues.

50. Para 59: I had no idea that I am supposed to identify any prejudice in the Notice of Appeal or application materials. Nothing in any of the information provided by LSS or the court provides any guidance on what information or how

much detail is supposed to be provided other than filling in the blanks on the LSS forms. And the law libraries of NFPC and FRCC do not contain any treatises on preparing or litigating an appeal.

51. Para 58: If disclosure had been made sooner and if Crown had informed me of their intention to call Detective Dent then I could have and would have reviewed the Dent interview and his notes more thoroughly and been better prepared to cross examine him.

It should also be pointed out there was absolutely no legitimate reason for Crown to delay the disclosure. In the two months leading up to the trial I had submitted multiple requests, both in writing and in open court, to Mr. Johnson for the disclosure material and at each court appearance he stated I would receive it shortly.

52. Para 60: I was not afforded the opportunity to specify any prejudice resulting from the Crown's refusal to notify me of their witnesses because the court overruled my objection to the calling of Detective Dent before I could state how it affected me (TR 4/7 - 5/3). Nevertheless, I believe it would be obvious how the Crown's refusal to disclose it's witness list would prejudice the defense - I could not possibly prepare

to cross examine a witness that I did not know or expect would be called.

It should be noted, Crown stated he did disclose to me a copy of the video of my interview with Detective Dent (albeit three days before trial) and that he believed that was all Crown was required to provide (TR 4/18-24). I believe Mr. Johnson's implication was that as long as Dent's name appeared somewhere within the disclosure material then that was sufficient notice of Crown's intention to call him as a witness. That belief is further reinforced by Judge Rideout's statement "if you had disclosure which included the package with the name of Detective-Constable Dent so you knew what was coming" (TR 4/33-36). However it is unreasonable to expect a defendant to be able to prepare a defense based on the assumption that every person who's name appears within the Crown's disclosure material is likely to be called as a witness.

Moreover, Judge Rideout stated "... it should have been brought in advance of the trial date as an objection" (TR 4/38-40). Presumably he is saying my complaint about the Crown ignoring my requests for their witness list should have been brought in advance of the trial. However, since I am in custody, self-represented, and do not have direct access to the Court Registry, historically over the past five years, in all of my proceedings I would submit my requests to schedule an appearance to the Crown and the Crown would contact the Registry on my behalf. Being that Mr. Johnson was ignoring all of my requests - including my requests to schedule a bail hearing, which I had a Charter right to - there is no reason to believe he would have scheduled a case management conference.

53. Para 60: I was prejudiced by the Crown's refusal to timely notify me of their intention to call Detective Dent as a witness in that I was completely unprepared to cross examine the witness, upon who's testimony their entire case was built.

At the time of my arrest the police seized my laptop and mobile phone. Upon searching my laptop and mobile phone they would have found absolutely no evidence I had anything at all to do with the website. Upon contacting the website hosting provider they would have found I am not the registered owner and, in fact, I have nothing to do with the account. Moreover, they would have found that the payments for the hosting plan were made by someone else, not me. And I knew that in my police interview I did not say anything that would prove or suggest I had anything to do with the website which would violate the probation orders.

Based on the foregoing, I believe it was reasonable for me to presume the reason the Crown was ignoring my requests for disclosure and their witness list was because they had no witnesses and because they would have to disclose the results of the investigative steps mentioned above. And based on that I reasonably concluded they were trying to delay the inevitable, which would be having to admit all of the direct, physical evidence proves I am innocent. My belief that the Crown was trying to delay in order to keep me in custody longer was further supported by Mr. Johnson's refusal to schedule a bail hearing despite my requests for such, and by Judge Rideout's statement that failure to disclose the witness list "would just simply cause an adjournment, that's all" (TR 4/44-45).

If I had received timely notice of the Crown's intention to call Detective Dent, and ONLY Detective Dent, then I would have been able to prepare for trial by focusing on the interview with Dent (assuming, of course, Crown also provided timely disclosure of that interview - which they did not). In particular, what exactly was stated in the interview, the context of those statements, and most importantly the demeanor of the participants - that is, whether the statements were made seriously or jokingly - would have been fresh in my mind during my cross examination of Dent.

Also, I knew the Crown could not have the interview with Dent admitted unless Dent testified to it's authenticity, so since the Crown did not notify me of their intention to call

Dent it was reasonable for me to conclude the Crown would not be seeking to admit the recording of the interview, or that they would not BE ABLE to admit the interview if they actually sought to at trial.

And finally, I do believe, though I could be wrong, that in my studies of Canadian criminal law I did read that the Crown is required to provide advance notice of the witnesses it actually INTENDS to call.

54. Para 60: See item 50, above.

55. Para 60: I do not believe the issue of the Crown failing or refusing to provide notice of it's intention to call Detective Dent as a witness is as straight forward as the Crown claims, as is demonstrated in items 52, 53, and 54 above. I believe it will require legal research regarding the Crown's obligations with respect to disclosure or notification of the witnesses the Crown INTENDS to call and, if it is not already well established then it may require arguing the matter before the court which, I believe, will be far beyond my capabilities.

And since I do not have access to any case law at FRCC this puts me at a significant disadvantage.

I do note, however, that the Crown did not cite or refer to any case law on this matter which leads me to suspect that either this issue has not already been addressed by the courts or it has been but it has not been decided in the Crown's favor - which would, again, show that by not having any access to case law I am at a very unfair disadvantage.

56. Para 62a: Crown is lying and very deliberately trying to mislead the court. I have never stated an intention of misusing disclosure in breach of court orders or any implied undertaking. Any copies of any material I have received by any means other than through the disclosure process in the criminal prosecutions against me is NOT subject to any court orders or implied undertakings, even if that material is exactly the same as the material received through the disclosure process. For example, when Crown disclosed email messages between Bernie Wolfe, the RCMP, and CBSA as part of the disclosure in the matter of 244069-5-BC that was part of disclosure and subject to the court order and implied undertaking, however when CBSA provided me copies of the same emails through an ATIP request THOSE copies are NOT subject to the court order or implied undertaking - even though they contain the exact same content.

This false and frivolous allegation has been made by the Crown countless times over the past five years, yet never, not once, has it amounted to anything more than an empty allegation intended merely to defame me in the court room. If there was any truth to the allegation they WOULD prosecute me for it. Therefore, I assert the statement is a lie and the Crown knows it is a lie, but that does not stop them from stating it to the court!

The only reason the Crown could have to oppose me publishing disclosure material is because it proves the corruption and misconduct they are engaging in. But as I've said again and again over the past five years, if they aren't doing anything wrong then they have nothing to hide.

57. Para 62a: That is false. I clearly stated the reason I needed the interview was to show that most of the statements made in the interview, by both myself and Detective Dant were made jokingly (TR 2021-04-12 4/12-34). Whereas the Crown had been using them to portray me as having contempt and a lack of respect for the court and the system - which could be considered aggravating factors in sentencing. I intended to show the court the Crown's portrayal simply was not the case.

I intended to use the audio-video to mitigate the sentence, not to challenge the verdict. If the audio-video evidence is "necessarily precluded" as the Crown suggests, then it would seem my right to present mitigating evidence at my sentencing is being impeded by the actual rules of the justice system itself.

The Crown's position that whether my statements were serious or joking is precluded due to the prior finding of guilt, seems to be an acknowledgement by the Crown of the severe flaw in the Canadian criminal justice system - that truth and reality are secondary to the APPEARANCE of justice. I was convicted based SOLELY on Detective Dent's testimony about my statements to him - the fact that the Crown has in their possession video recordings which unquestionably, irrefutably prove those statements are not at all as Dent and Johnson portrayed them at trial, meaning also that Dent and Johnson deliberately mislead the court, and that the very rules of the justice system explicitly bar that evidence from now being presented to the court, even though it is critical to the sentencing, because it might bring the system into disrepute and harm public confidence in the administration of justice is extremely disturbing.

This same situation occurred in the 2017 criminal harassment case when the guilty verdict precluded me from submitting, at my sentencing, proof the complainant had committed extensive perjury, and Crown Counsel and the 486 appointed counsel colluded to allow that perjurious testimony and to suppress critical evidence.

58 Para 62c: I firmly object to the Crown's reliance on, or any claim that I ever criminally harassed or otherwise harmed Copuano. The reasoning is explained at length in items

3 and 4, above.

59. Para 62d: That is completely false. At the status conference on 2021-02-02, in open court, on the record, Chris Johnson stated in no uncertain terms that the Crown is not seeking another probation order.

60. Para 62d: That is wrong. I did not argue against probation because I would be deported, I argued against probation because I intend to leave Canada at the earliest opportunity regardless of my citizenship or place of birth. Moreover, that it is pointless and a waste of resources to try to rehabilitate and reintegrate into Canadian society a person who is going to leave Canada the moment that probation ends.

61. Para 62d: There can be no "implicit messages" in court! Otherwise anybody could state at any time that they meant something other than what they said. And, more importantly, two months after the discussion the Crown is referring to (on 2021-02-02) Mr. Johnson expressly stated in court that the Crown was not seeking another probation order because there is already one in place which still has a long time before it expires.

62. Para 62e: There is nothing in the transcript of the trial, particularly at the locations specified in footnote 117, that even supports the judge was contemplating a probation order.

63. Para 62e: Crown is mistaken. The judge was not refusing my request for a higher sentence without probation, he was refusing my request to skip the psych assessment and any other formalities and just proceed with the sentencing immediately to get it over with.

64. Para 62e: And so far they have accomplished absolutely nothing. They have proven to be a complete waste of time and resources for all involved. All the more reason for me to believe the court will, or at least should, stop imposing them.

65. Para 62f: Again, I object to the Crown's claim that I committed criminal harassment or that I harmed Capuano in any way. Unless they are willing to prosecute me for criminal harassment based on the current website they cannot claim I committed criminal harassment in 2016/2017.

Crown claims my history of engaging in criminal harassment against Capuano made a probation order imperative however none of the probation orders imposed over the past four years has done a single thing to stop or even discourage the very conduct the Crown insists they need the probation orders in order to stop. It seems all the Crown is accomplishing with the probation orders is to prove how pointless and useless the probation orders actually are.

And for these reasons, it seems ridiculous that the court would continue to impose probation orders.

66. Para 62q: Because I have no access to case law I was not able to perform any legal research in order to prepare any other arguments.

67. Para 62q: This has already been extensively rebutted in items 6, 7, 8, and 9, above.

68. Para 64: I did not say I had "restricted access" to research sources. I said I have <u>NO</u> access to research sources. The law library at FRCC has absolutely no case law at all.

69. Para 64: In fact, Justice Griffin merely acknowledged that I had raised the issue of having "limited ability to conduct

legal research and formulate arguments" and that while incarcerated I have no access to searchable case law. However, she did not express any opinion or make any judgement on those issues.

70. Para ~~[illegible]~~ 65: Having reviewed the cases included with the Crown's Memorandum, it is my belief that the circumstances in R. v. Terezakis, 2010 BCCA 260, where the court granted a limited appointment to assist the appellant due to his lack of access to source material more closely matches my own, current circumstances than does R. v. Parchment, 2011 BCCA 174. Although I have not read Terezakis in it's entirety since it was not included in the Crown's Memorandum - it is merely referenced in Parchment.

This is, however, again a strong argument in favor of granting the 684 appointment. Had I known about Parchment and Terezakis when I went before Justice Griffin I could have made a much more compelling argument.

71. Para 65: My experience with the UBC LSLAP is that they only take cases when referred by the court and they are very limited in the services they will provide - that is, only exactly what the court requests. All of that is fine and I would be happy to work with them if they would accept

my case.

Regarding receiving legal research assitance from the Crown: After my experience receiving such "assistance" from Crown Counsel Bernie Wolfe in the matter of 244069-5-BC I would be very weary of relying on any such search results. Mr. Wolfe had agreed to assist me by running and printing queries on CANLII for me if I provided him the exact query string to search. I then found that Mr. Wolfe was removing information from the search results before sending them to me. I confronted him about it in court so the fact of it happening is on the record.

72. Para 66: However, I emphasize this is just when my current sentence expires. I expect the Crown is either going to make up new charges before that date, or "gate me", in order to delay my release because, after all, the website will still be online at that time.

And even if I do get released from custody on 2021-08-12, the website will still be online so I anticipate they will eventually arrest and charge me with yet another breach for refusing to take it down, which means I will be back in custody shortly.

73. It is my understanding that no transcripts have been ordered in the matter of CA46979, and certainly none have been provided to me. Therefore, LSS's denial of my application was based solely on the judge's Reasons for Judgement, not on what actually occurred at the trial. Moreover, there has been no review of the proceedings to determine whether any other error may have occurred.

74. Crown Counsel has full and unlimited access to all case law for all of Canada and they know I currently have no access to any case law at FRCC. Therefore, Crown can rely on any case it can find to support it's positions even if that case has been overruled or if there is a more analogous controlling case, because I would have no way of discovering that. For this reason, I believe it is impossible for a self-represented person in BC Corrections custody to receive a fair hearing without the assistance of someone who will perform legal research according to their direction.

75. At paragraph 19 of his Reasons for Judgement Judge Rideout stated "Ownership aside, he was inputting the information and from his own mouth himself, essentially convicted himself." However, as discussed in item 26, above, all of the information the Crown and Detective Dent allege was put onto the website while the Judge Phillips probation order was in effect DID NOT pertain

to Capuano so even if I was the person who put that information on the website doing so would not violate the probation order as long as the website itself was not owned or controlled by me.

76. At TR 2021-04-12 3/42-45, Judge Rideout stated "I've got a transcript of Constable Irmalov in front of me...". However, no such transcript or any information about a Constable Irmalov was ever disclosed to me. I am concerned about how it is that the judge would have law enforcement records related to the case which had not also been disclosed to me.

77. Upon reviewing the transcripts of Detective Dent's testimony I became aware of inconsistencies which I was not previously aware of and which I believe are significant to this appeal. It is my understanding that may require an application and/or approval of the court, which I would have no knowledge of how to pursue.

SWORN BEFORE ME at the Municipality of Maple Ridge in the Province of British Columbia, this 21 day of July 2021

Commissioner for taking Affidavits for British Columbia

S. Botrand

Signature of Appellant