

COURT OF APPEAL

ON APPEAL FROM THE PROVINCIAL COURT OF BRITISH COLUMBIA, FROM THE
JUDGMENT AND SENTENCE OF THE HONORABLE JUDGE DENHOFF,
PRONOUNCED ON THE 25TH DAY OF FEBRUARY 2022.

REX

RESPONDENT

v.

PATRICK HENRY FOX

APPELLANT

APPELLANT'S FACTUM

The Appellant:

Patrick Fox, In-Person
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PART 1 - OVERVIEW AND STATEMENT OF FACTS

1. On 2022-02-25 I was convicted, in the Provincial Court of BC, by Judge Denhoff, of one count of breach of probation (CCC s. 733.1). On that same day I was sentenced by Judge Denhoff to 12 months in jail and a 3 year probation order.

Background

2. The allegation in this matter relates only to the claim that I breached a particular probation condition and has no relation to the index offense, therefore I believe the details of the allegations of the index offense are not relevant to this appeal.
3. On 2021-04-12 I was convicted by Judge Rideout in the Provincial Court of BC, of breaching a probation order by, essentially, failing to take all necessary steps within 48 hours of my release from custody to ensure that the website published under the domain www.desicapuano.com (herein referred to as "the website") was no longer available (BCPC file 244069-7-b; BCCA no. CA47391). I was sentenced to 16.5 months in jail and one year of probation. The probation order imposed by Judge Rideout contained two conditions which are relevant to this matter: Condition 5, which essentially prohibited me from publishing information related to Desiree Capuano; and Condition 6, which essentially required me, within 48 hours of my release from custody, to cause any information related to Ms. Capuano which I had published prior to the probation order coming into effect to no longer be available on the internet.
4. In the current matter, I was only charged with and convicted of breaching Condition 6 of the Judge Rideout probation order, not Condition 5.
5. I was released from custody, having completed the sentence imposed by Judge Rideout, on 2021-08-12 at approximately 8:30am. The Judge Rideout probation order came into effect at that time. The 48 hour period stated in Condition 6 expired at approximately 8:30am on 2021-08-14.
6. Subsequent to my release from custody, Catherine Meiklejohn, Crime Data Analyst with the Vancouver Police Department (VPD), accessed the website one time per day for the four days following my release. She did not monitor the website

continuously during that time. Ms. Meiklejohn had no knowledge of whether or not the website had been rendered no longer available at any time, or for any duration, within the 48 hours following my release from custody, other than at the precise moment that she checked it once per day (TR p7I35-40, p92I44-p93I1).

7. At no point prior to or during their investigation in this matter, did the VPD or the Crown make any attempt to determine whether, at the time of my release, and therefore the Judge Rideout order coming into effect, I had any ownership of, control over, or even any involvement with the website (TR p62I47-p64I1, p93I10-27).
8. From the time of my release from custody until the time of my arrest, I did not have ownership of, control over, involvement with, or influence over, the website. I did not have access to the hosting account of the website. Therefore, I did not have the physical or logistical capability to directly cause the website to become no longer available.
9. On 2021-08-17 I was arrested without a warrant, on the allegation that I failed to, within 48 hours of my release from custody, take all necessary steps to ensure the website was no longer available.
10. During the police interrogation, I informed Det. Tanino:
 - 10.1. On 2021-08-13 I had sent an email to editor@desicapuano.com but due to not having access to my email at that time or from within jail, I would be able to forward her a copy of that email once I am released from custody.
 - 10.2. I did not own, control, have any involvement with, or influence over, the website at the time of or subsequent to my release from custody - that is, since the Judge Rideout probation order has been in effect.

Proceedings at Trial

11. At the trial, Crime Data Analyst Catherine Meiklejohn testified for the Crown. In her testimony, she admitted that while she had accessed the website one time per day for the four days following my release from custody, she had no knowledge of whether the website had remained online and publicly accessible, continuously, following my release from custody. She only knew it was accessible at those four precise moments that she had checked it (TR p7I35-40).

12. The Crown called VPD Det. Janine Tanino, who conducted the interview of me. In her testimony, Det. Tanino stated:

- 12.1. I had informed her I had sent an email to the email address stated on the website, requesting they shut down the website (TR p1417-14).
- 12.2. I had informed her I do not have access to email from within jail so I would not be able to forward her a copy of the email until after I am released (TR p28145-p2911)
- 12.3. I had informed her my ultimate objective was to bring the justice system into disrepute by exposing the corruption and misconduct that has been going on in my cases over the past six years (TR p16145-p18110).
- 12.4. I had informed her I had transferred ownership and control of the website to a third party before any of the probation orders came into effect (TR p14145-p15138), and I no longer had any control or influence over it (TR p18122-23).
- 12.5. I had informed her I have no knowledge of who is currently running or maintaining the website, or if anyone even is (TR p1912-12).
- 12.6. That during the interrogation, she and Det. Roberts did not ask me to provide them the email I had sent to editor@desicapuano.com, nor did they ask me to provide them access to the email, they only asked me when I would be able to provide them the email and they asked me to provide them the passwords to my phone and my laptop (TR p27145-p3013).

13. The Crown called Det. Kyle Dent, who was the lead investigator. In his testimony, Det. Dent stated:

- 13.1. He had no knowledge or evidence of whether the website had actually remained online and accessible, continuously, for any duration, following my release from custody (TR p3617-33, p92133-p9411) - even though he consistently insisted it had.
- 13.2. He had no knowledge or evidence of who owns, controls, or has administrative access to the website, or whether I own, control, or have administrative access to the website (TR p62147-p6318). He has not been in contact with the web hosting provider and has made no attempt to determine whether I have any involvement with the website (TR p63114-18). And, no

attempt was made to verify who owns or controls, or whether I own or control, the website (TR p92I27-32).

13.3. It is relevant and critical to the current charge to establish I have the capability of fulfilling the probation condition (TR p63I44-p64I1) - even though he admitted he had no knowledge of, and he made no attempt to determine, whether I had any involvement with the website.

13.4. Much of his belief that I am involved with the website is based on his own assumptions and inferences from vague, indirect, allusions I had made in an unrelated police interview, more than nine months prior - not from any actual evidence or any direct statements I had made (TR p64I35-45).

13.5. He has no knowledge of anyone within the VPD making any attempt to pursue a US court order for the hosting provider to shut down the website (TR p69I34-38).

13.6. The VPD made no attempt to obtain a search warrant or production order for Google, to gain access to my email account to verify the email I sent to editor@desicapuano.com (TR p76I40-44).

13.7. He has not encountered any evidence which would contradict my claim that I relinquished ownership and control of the website prior to any of my probation orders coming into effect on 2018-12-29 (TR p81I18-22).

13.8. No attempt was made to locate, obtain, or verify the email I had sent to editor@desicapuano.com (TR p92I5-12).

13.9. There is no evidence that I have had any involvement with the website from the time of my release from custody on 2021-08-12 through the time of the trial (TR p93I10-27).

14. I then testified in my defense. In my testimony, I stated:

14.1. The website had gone offline in 2018. Shortly thereafter, my friend, Ms. Munoz, arranged for it to be put back online. Lacking the technical knowledge to do that herself, it would have been executed by a third party. That was done without my involvement or knowledge. That occurred while I was still in custody at FRCC, where I did not have access to a computer or to the internet, so I could not possibly have been involved - it would have been physically impossible (TR

p99l46-p101l20, p119l39-p120l1). Moreover, I was not even on probation at the time.

14.2. I told Ms. Munoz, due to my probation conditions, I did not want to know anything about the website or who might be involved with it (TR p101l22-p102l13, p120l42-46).

14.3. At the time of my release from custody on 2021-08-12, and the Judge Rideout probation order coming into effect, I had no involvement with, or control over the website, and my only means of communicating with whoever may be running the website was through the email address stated on the website, that is, editor@desicapuano.com (TR p102l18-28).

14.4. The day after my release from custody, I sent an email to editor@desicapuano.com, requesting they shut down the website until my probation orders expire (TR p102l37-45). I do not believe there is anything more I could have to toward causing the website to be taken down (TR p103l12-18, p123l34-40, p124l5-22).

14.5. Since there is, in fact, nothing illegal about the website, and the only reason I may not currently be involved with the website is because of the probation condition, then there is nothing inappropriate with me saying that once that condition expires I intend to return to engaging in running and maintaining the website. It is no different than any other lawful activity which a person is temporarily prohibited from engaging in due to a probation order. For example, under the Justice Holmes probation order I was prohibited from being within 100 meters of the US border, but since that order has expired I am now entitled to go to the US border any time I want (TR p103l20-p104l1).

14.6. I had stated in my submissions in a previous prosecution, that even if the court imposes a probation condition requiring me to take down the website, the website is not going to come down upon my release from custody (TR p109l21-37). But that the reason for that statement was because I didn't have ownership or control of the website. Ordering me to do something that I have no capability or authority to do isn't going to cause that thing to happen, regardless of any court order or punishment imposed on me (TR p109l37-46).

- 14.7. I had repeatedly made false admissions to the police that I was the person who put the website online, because I was deliberately antagonizing them and the BCPS to provoke them to prosecute me for criminal harassment based on the current website (TR p111I7-15, p111I37-45, p112I6-9, p113I8-19, p113I35-p114I1).
- 14.8. The reason I wanted to be prosecuted for criminal harassment based on the current website was, ultimately, part of my goal to bring the justice system into disrepute by exposing the corruption and misconduct that has been going on in my cases (TR p112I10-25).
- 14.9. There are other cached copies of the website on the internet, maintained by third-party organizations which have nothing to do with me and which I have no influence over (TR p123I40-p124I2).
15. Although I testified that Ms. Munoz had arranged to have the website put back online in 2018, there was no indication made at the trial that her involvement went beyond that.
16. There was no indication at the trial, whether the person who actually performed the actions of putting the website back online in 2018, was a friend of Ms. Munoz, or someone she had hired, or whether the hosting provider itself had done it as part of the hosting plan she had purchased. There was no indication of how long the hosting plan was prepaid for, or if Ms. Munoz was the one that had paid for it. Any assumptions the judge made in these respects were based on absolutely nothing.
17. During Crown's closing submissions, the judge falsely claimed I said I didn't take the steps to ensure the website was no longer available because I didn't feel I was obligated to do so (TR p134I16-19).
18. During my closing submissions, the judge pointed out that I was not required to take the website down, I was only required to ensure it was no longer available to anyone (TR p137I33-38).
19. Following the entry of the verdict, during the sentencing submissions, the judge admitted to have been under the mistaken belief that I had access to the internet and to my email from within jail (TR p143I44-p144I44).

PART 2 - ERRORS IN JUDGMENT

20. Error 01: The trial judge misapprehended the scope and meaning of Condition 6 of the probation order.
21. Error 02: The trial judge significantly misconstrued and/or misrepresented statements I and the other witnesses made while testifying.
22. Error 03: The trial judge erroneously assumed I had access to the internet and to my email while in custody.
23. Error 04: The trial judge erred in making numerous critical inferences and assumptions rather than seeking clarification.
24. Error 05: The trial judge erred in failing to consider the Crown had the burden of establishing I actually have the capability to comply with the probation condition.
25. Error 06: The trial judge misapprehended my testimony about taking back control of the website after the probation order expires.
26. Error 07: The trial judge erred in finding I had sufficient opportunities to present the email I had sent to editor@desicapuano.com.
27. Error 08: Crown failed to disclose critical evidence (letter to Det. Fontana).
28. Error 09: The trial judge erred in allowing Crown to admit evidence while not allowing me to state my objection.
29. Error 10: The trial judge erred in finding that it is "simply absurd" that a third party would be willing to put the effort into keeping the website online.
30. Error 11: The trial judge erred in finding my testimony that a third party put the website online was not credible.
31. Error 12: The trial judge erred in finding my testimony that it was simpler to say I transferred ownership of the website not credible.
32. Error 13: Crown Counsel brought and prosecuted the charges for improper motives (abuse of process).
33. Error 14: Wording of probation condition is vague and ambiguous.

PART 3 - ARGUMENT

34. Due to being in BC Corrections custody and not having access to legal research source material I am unable to search, find, or rely on any such authorities to support my arguments at this time.

35. As a preliminary matter, Condition 6 of the Judge Rideout probation order, did not actually require me to take steps to ensure the website was taken down. It only required me to take steps to ensure the website was no longer available. This point was also emphasized by Judge Denhoff during closing submissions (TR p137132-38).

Error 01: The trial judge misapprehended the scope and meaning of Condition 6 of the probation order.

36. The trial judge erred in her interpretation of the meaning and scope of Condition 6 of the probation order. Although it was not argued by the Crown, the judge assumed the position, that Condition 6 required me to take all necessary steps to ensure the website was no longer available for the entire duration of the probation order. My understanding of the wording of Condition 6, however, is that it required me to take all necessary steps to ensure the website was no longer available, and that once the website was rendered no longer available the condition had been fulfilled (TR p13616-p13816).

37. This point is significant because the witnesses admitted they had no knowledge of whether the website had been taken down for any duration of time in between the very brief, four times they had checked it over a four day period (once per day). Under my interpretation of Condition 6, if the website had been taken down for any duration of time, no matter how brief, then I would have been in compliance with Condition 6.

38. Condition 6 of the Judge Rideout probation order is, literally, a reimposition of Condition 4 of the Judge Phillips probation order which is, literally, a reimposition of Condition 13 of the Justice Holmes probation order. Therefore, the interpretation of each of those conditions must be the same.

- 38.1. At the time Justice Holmes imposed the first probation order, it is clear that her intention was for Condition 12 to prohibit me from publishing material related to Ms. Capuano for the duration of the order, and for Condition 13 to require me to remove any previously published material about Ms. Capuano upon the probation order coming into effect. Given those two conditions, it would be nonsensical to interpret Condition 13 as requiring me, for the entire duration of the probation order, to take all necessary steps to ensure the website is no longer available because once the website is taken down within 24 hours of my release from custody (as required by Condition 13) then Condition 12 would prohibit putting it back online during the entire duration of the order.
- 38.2. That is also supported by Crown Counsel Chris Johnson's submissions and Judge Phillips' statements at that time of sentencing in the matter before Judge Phillips. Crown requested a "short term of probation for six months", with one condition that essentially duplicated Condition 13 from the Justice Holmes' order. Since the Justice Holmes order was still in effect at that time and would remain in effect until long after the six months Mr. Johnson was requesting, Mr. Johnson and the judge must have interpreted Condition 13 of the Justice Holmes order to mean that I was required to engage in the conduct of taking all necessary steps to ensure the website was no longer available ONLY for the specified period of time following my release from custody (i.e. the 24 hours as stated in Condition 13 of the Justice Holmes order). If Mr. Johnson and Judge Phillips had actually interpreted Condition 13 of the Justice Holmes order to mean I was required to take all necessary steps to ensure the website was no longer available for the entire duration of the period of probation then Condition 4 of the Judge Phillips order would serve no purpose because it would merely be requiring me to do exactly what the Justice Holmes condition was already requiring me to do. And since the only condition requested by the Crown and imposed by Judge Phillips was Condition 4, then that would mean the entire six month probation order imposed by Judge Phillips would have been completely unnecessary, redundant, and pointless. The fact that the Crown requested and the judge imposed that condition, and only that condition, and for a duration of time which would expire

long before the Justice Holmes order would expire, proves that the Crown and Judge Phillips understood Condition 13 of the Justice Holmes order to mean I was only required to engage in the specified conduct within the 24 hours following my release from custody.

38.3. Moreover, when requesting the probation order before Judge Phillips, Mr. Johnson phrased the request as follows:

I'm also going to ask your Honor to consider a short term of probation for six months...the only condition I would ask is...it seems Mr. Fox did not get the message that he needs to remove this website, and so I'm going to ask Your Honor to consider a condition very similar to the one that was imposed on his previous order which I believe is number 13. (TR p52113-24, BCPC 244069-6-b / BCCA CA46979)

The preceding shows that Mr. Johnson understood that at the time of sentencing before Judge Phillips (i.e. 2020-08-19), Condition 13 of the Justice Holmes order no longer imposed a requirement on me - even though the Justice Holmes order would remain in effect until 2021-12-29. In other words, Crown acknowledged that Condition 13 of the Justice Holmes order only imposed a requirement on me for the first 24 hours following my release from custody.

38.3. [It should be noted, in the case before Judge Phillips I was accused of breaching Condition 12 of the Justice Holmes order, not Condition 13. The allegation in that case was that I had put the website back online while I was on probation, not that I failed or refused to take the previously published website offline when the probation order came into effect.]

38.4. If Condition 6 of the Judge Rideout order (and therefore, necessarily, Condition 4 of the Judge Phillips order and Condition 13 of the Justice Holmes order) was really intended to mean the website shall remain no longer available for the duration of the order, as Judge Denhoff stated, then that would mean that when Mr. Johnson made his submissions before Judge Phillips, he and Judge Phillips believed the website should only be required to remain unavailable for a "short term" of six months. But even if they believed that, the Justice Holmes order, which contained the same condition, would still be in effect for the next 16 months so, again, the Judge Phillips order would be completely pointless. Unless, of course, Mr. Johnson and Judge Phillips didn't interpret Condition 13 of

the Justice Holmes order to impose the requirement on me for the entire duration of the order.

38.5. In summary, if the same condition, with the exact same wording, is imposed on multiple, subsequent orders, it MUST be interpreted consistently for each of those orders. To allow multiple reimpositions of a single condition, which uses the exact same wording across multiple probation orders, to have opposing interpretations, as the Crown and the judge seem to be doing here, would result in chaos, the so-called "schizophrenic law", and that would surely bring the justice system into disrepute.

39. If Condition 6 were to be interpreted as requiring me to "take all necessary steps to ensure the website is no longer available" for the entire duration of the probation order, then the wording of the condition would literally mean I am required to take those steps perpetually, 24 hours a day, 7 days a week, to ensure that no other versions or copies of the website, whether they were made available by me or by anyone else is available at any moment. Under the Crown's and the judge's interpretation of the condition, if any person made a copy of the website available under any domain name, at any time, I would be required, the instant that copy became available, to cause that copy to instantaneously cease to be available - regardless of the fact that I may have nothing to do with that copy, and no ability or authority to do anything with respect to that copy; and regardless of the fact that I may not even be aware that copy has been made available.

39.1. And, very significantly, under the Crown's and the judge's interpretation of the condition, if someone (for example, Desiree Capuano or any of her friends, family, or supporters) wanted to ensure my indefinite, perpetual imprisonment, all they would have to do is, each time I am released from custody, put a copy of the website online and, as history has proven, I will be promptly arrested, incarcerated, denied bail, convicted of a breach, and given a substantial prison sentence - all with absolutely no evidence that I even had anything at all to do with the website in question.

39.2. While the foregoing may seem an unlikely and even silly scenario, this exact situation appears to have occurred in May 2022, at which time I was promptly

arrested and have since been in custody on that charge - even though there is absolutely no evidence I had anything to do with making the website available, or even any knowledge that it *had* been made available.

- 39.3. Given the Crown's and Judge Denhoff's interpretation of Condition 6, the fact that there is a cached copy of the website on archive.org, which I have nothing to do with, and absolutely no ability to have removed from the internet, means that for the rest of my life I can be arrested, imprisoned, and prosecuted, at any moment, with no notice.
40. Crown may argue, as they have in the past, that my interpretation of Condition 6 would result in an absurdity, because that would mean the website could be made no longer available for as little as one second, then put right back online. But the Crown's argument in that respect would fail because Condition 5 (of the Judge Rideout order, as well as Condition 12 of the Justice Holmes order) prohibits me from publishing any material related to Capuano, which would effectively prohibit putting the website right back online. But, in this case, the Crown only charged me with breaching Condition 6 of the Judge Rideout order, not Condition 5 of the Judge Rideout order nor Condition 12 of the Justice Holmes order.
41. Given that Condition 6 only required me, within 48 hours, to take all necessary steps to ensure the website was no longer available, and did not require me to engage in any conduct to ensure the website remained no longer available for any duration of time, the Crown was required to prove that the website had not been made no longer available at any point within the 48 hours following my release from custody. And by their own admission, they were not able to establish that.
42. This error prejudiced me in that if the judge had interpreted Condition 6 correctly she would have had to have found that there was absolutely no evidence of whether or not the website had been made no longer available for some duration of time within the 48 hours following my release from custody, and for that reason the Crown had failed to prove I had breached Condition 6.

Error 02: The trial judge significantly misconstrued and/or misrepresented statements I and the other witnesses made while testifying.

43. The trial judge made numerous significant misrepresentations about statements made by myself and by the other witnesses in our testimony.
44. In her RFJ, at para 4, the judge claimed the website was "still active and accessible" on 2021-08-15. That is false because still active means that it was active continuously, without interruption, and Miss Meiklejohn testified that she had no knowledge of whether the website remained online at any times other than the four brief moments when she checked it (TR p7135-40). There was no evidence offered at trial to support the claim that the website had remained active and accessible continuously and without interruption from the time of my release on 2021-08-12 through 2021-08-15.
45. In her RFJ, at para 7, the judge claimed when I was asked if I had access to the website, I stated I would not answer the question. However, in fact, I had clearly and directly stated I do not have access to the website (TR p2013-9). Otherwise, Det. Tanino testified about asking me who would have access to the website, to which I responded I'm not going to answer because I can't answer because I don't know (TR p1912-12).
46. In her RFJ, at para 7, the judge claimed I told Det. Tanino I would provide her a copy of the email I sent to editor@desicapuano.com at a later date, but that I did not ever do so. However, although Det. Tanino did testify to that on direct (TR p14122-29), on cross Det. Tanino admitted that what I had actually told her was that I will be able to forward her a copy of the email once I'm released from custody in three years or so, because I don't have access to my email in jail (TR p28145-p2917). At that point, the judge had confirmed with Det. Tanino that she had said three years, which proves the judge had heard and was aware of Det. Tanino's testimony on this point.
47. In her RFJ, at para 7, the judge claimed I said I did not access the email in the courtroom because I did not want the police to have access to all of my computer content in the courtroom. She then went on to state "However, by that time, the police had already searched the laptop." That is false. It was discussed during my cross-examination of Det. Dent and in my testimony, that I only use Linux on the laptop, not Windows; and that the VPD wasn't even aware that the laptop was configured with dual-boot, and that they only searched the Windows partition which I

don't use, not the Linux partition which I do use (TR p74137-p7618, p92113-26, p12818-16). Moreover, accessing the particular email would have nothing to do with the police gaining access to all of the content on my laptop because the email message was not stored on the laptop, it was stored on the server, just as Mr. Johnson had admitted to (TR p77120-26).

48. In her RFJ, at para 7, the judge claimed I could have accessed the email on my laptop myself in order to show it to the court without the police seeing the other content. However, I explicitly addressed this in my testimony and explained that if I had used the laptop in the trial the judge may have ordered me to provide the passwords to the police and Crown which would have given them full access to the Linux partition and all of the data contained therein (TR p128143-p129112). Also, the judge did not present this option to me during the trial. It was not until after the trial, while entering her RFJ that the judge brought up this point.
49. In her RFJ, at para 12, the judge claimed I stated Ms. Munoz was the owner of the website and was responsible for monitoring it. However, I never stated or suggested that Ms. Munoz was the owner of the website or was responsible for monitoring it. I only said she initiated and oversaw it being put back online in 2018 (TR p100144-p101110).
50. In her RFJ, at para 12, the judge claimed I said Ms. Munoz had a friend assist her with putting the website back online. However, I never said or suggested that the party who may have assisted Ms. Munoz was a friend. I only said "somebody else would have had to have done it for her" (TR p10117-10). This is significant because if it were a friend of Ms. Munoz then Ms. Munoz may have known how to get in touch with them.
51. In her RFJ, at para 13, the judge claimed I said I had instructed Ms. Munoz not to tell me anything about the website...so I would not have to take it down. However, what I said was that I told Ms. Munoz I didn't want to know anything about the website because as long as I don't know I can't be compelled to disclose it (TR p101125-29, p10218-13). Additionally, in her testimony on direct, Det. Tanino claimed I told her I had transferred ownership of the website to a third party and that I would not name that party, and that I had done so so that I would not be compelled to take the

website down (TR p13138-45). However, on cross, Det. Tanino admitted that I had actually told her I could not name party who now has administrative access to the website because I don't know, and that that was done so that I could not be compelled to do anything with the website (TR p1912-18, p19135-43, p21130-p2214, p2311-4). And, on cross, Det. Dent also falsely claimed I had transferred control of the website to a party I would not name so they would not be compelled to take it down (TR p65130-32).

51.1. There is a very significant and fundamental difference between the terms "would not" and "could not", and I have consistently and exclusively stated I did things so that I could not be compelled to do something, whereas the police, the Crown, and the judge have consistently misrepresented my statements as being so that I would not have to do something. To say that I "would not have to" do something means that I choose not to do that thing, even though I am capable of doing it; whereas, to say that I "could not be compelled to" do something means that I cannot be forced to do that thing because I do not have the capability. It is not that I am choosing not to do it, it is that I am not capable of doing it.

52. In her RFJ, at para 13, the judge claimed I said there had been updates to the website within the past year and a half, which means that I must have been accessing it during that time. However, it actually means nothing of the sort. All it means is that while I was out of custody, in August 2021, I had the same public access that everyone else in the world had to the website and I was able to see, from the dates on the articles, that there had been updates to the website during the times that I had been in custody and did not have access to the internet (TR p102146-p10313).

53. In her RFJ, at paras 18 and 20, the judge claimed my apparent purpose in encouraging the police to charge me with criminal harassment was to force Ms. Capuano to testify and for me to be able to cross-examine her on what I claimed were her lies in a previous trial. However, during my testimony, on cross, I openly stated the reason I wanted to be prosecuted for criminal harassment again was that would draw attention to all of the corruption and misconduct that occurred at the previous criminal harassment trial, on the parts of the Crown and the 486 appointed

lawyer, and to all of the perjury that Ms. Capuano committed at that trial, regardless of whether she would be cross-examined by me or by another 486 appointed lawyer (TR p112I10-25). And, during Det. Tanino's testimony on direct, she also admitted that I had told her I wanted to be prosecuted for criminal harassment based on the current website in order to bring the justice system into disrepute (TR p17I14-p18I10).

53.1. Moreover, it should be pointed out that in 2017, after testifying at the criminal harassment trial Ms. Capuano filed a civil defamation suit against me, relating to the website. And since there are no 486 appointments in civil proceedings, that proves that Ms. Capuano was willing to be cross-examined by me personally, and did not require the protection of a 486 appointment.

54. In her RFJ, at para 21, the judge claimed I admitted to Det. Fontana in my letter to her that I had engaged in criminal harassment. However, I did not, in that letter or otherwise, state that I had engaged in criminal harassment at any time. What I had stated in that letter was that by publishing the current website I have engaged in the same conduct Justice Holmes declared formed much of the basis of the criminal harassment conviction in 2017, and that if the website constituted criminal harassment at the time of the previous trial then it must still be criminal harassment now. Those statements are clearly premised on: (1) Justice Holmes' declaration being correct, which it was not; and (2) my conduct which was the subject of the 2017 trial and conviction constituting criminal harassment, which it did not.

55. In her RFJ, at para 20, the judge stated I had admitted to Det. Fontana that I had launched, owned and controlled the website. The judge further stated she does not accept my current explanation that the purpose of that admission was to provoke the police to charge me with criminal harassment. And, at para 21, the judge stated I admitted in my letter to Det. Fontana, that I published the new website. However, the fact that I was in custody, at FRCC, at the time the website was published means it, very literally, would have been impossible for me to have had any involvement in publishing it. Any admissions I had made about publishing the current website simply could not have been true.

55.1. And, this is such an obvious point, such a significant flaw in my supposed admissions, that it is unbelievable that none of the police, prosecutors, or judges who have been involved in the prosecutions against me over the past three years have noticed.

56. In her RFJ, at para 21, the judge claimed I said I would take the website back when my probation ended, and that that indicates I have retained control over the website. However, what I had actually said was that when the probation expires I would take back the website if the current owner was willing to relinquish it to me and, if not, then it would be easy enough to just create another copy of it (TR p15l27-36, p125l4-30, p135l12-25). And, these statements do not indicate that I have retained any control over the website during the times relevant to the charge (i.e. 2021-08-12 through 2021-08-17). Namely, if I relinquish ownership and control of something to another party, with the explicit agreement that they are not, under any circumstances, to return the item to me or to allow me to exercise any control or influence over the item until some specified criteria are met (e.g. my probation orders expire), then until those criteria are met I have no ownership, control, or influence over that thing.

57. In her RFJ, at paras 21, 22, 25, and 29, the judge claimed it was established that I "retained control over the website". However, there was absolutely no evidence or testimony establishing, or even suggesting that I had any control over, or even any involvement with, the website during the period of time relevant to the charge (i.e. 2021-08-12 through 2021-08-17). Neither Det. Tanino nor Det. Dent provided any evidence or testimony that I had any involvement with the website subsequent to my release from custody on 2021-08-12.

57.1. And, when I explicitly asked Det. Dent, on cross-examination, whether he was aware of any evidence, at all, that I had any involvement with the website during the times relevant to the charge, he admitted he did not know of any such evidence (TR p93l10-27). When asked if he was aware of any evidence that contradicts my claim that I had relinquished ownership and control of the website to a third party prior to the commencement of my probation orders, Det. Dent admitted he was not aware of any such evidence (TR p81l18-22). And when I

questioned Det. Dent about what steps were taken in the investigation, to determine what, if any, association or involvement I have had with the website, he responded that there was very deliberately, absolutely no attempts made to determine whether I have any ownership of, control over, or association with the website (TR p63l14-65l34).

57.2. When asked whether he had ever found any evidence, at all, that I have ever been dishonest in any of the legal proceedings against me, Det. Dent admitted he had not found any such evidence (TR p81l23-27).

58. In her RFJ, at para 23, the judge claimed I rhetorically asked the Crown what further steps I could have taken. However, there was nothing rhetorical about the question. On cross-examination, Crown tried to get me to admit that I believe there were more steps I could have taken to try to get the website taken down. I told him I did not believe there was anything else I could do other than attempting to communicate with the party that is currently running the website and asking them to shut it down. But Crown persisted, so I, very sincerely, asked him to advise me what additional steps I could have taken (TR p123l34-p124l22). Crown did not respond to my request. And Crown again during the cross-examination, after some time, continued to insist there was more I could have done, so again I asked him to inform me of what additional steps he believes I could have taken. But the judge interjected and precluded me from asking questions while on the witness stand (TR p126l4-45).

59. In her RFJ, at para 23, the judge claimed I refused to produce the email to the police when asked. However, the police never actually asked me to produce the email I sent to editor@desicapuano.com. In her testimony on direct, Det. Tanino stated that during the interrogation she had asked me if I would provide her the email and that I said I would, but at a later date, not at that time. Det. Tanino then testified that I as far as she knows I have never provided the email (TR p14l22-29). But on cross, Det. Tanino admitted she did not ask me to provide a copy of the email, she asked me when I would be able provide her the email and I responded that I would once I am released from custody because I don't have access to email from within jail (TR p27l45-p29l1). And, significantly, when Det. Tanino read in where I had said "...in three years or so...", the judge confirmed that with Det. Tanino which shows that the

judge must have heard at that point, and must have been aware that I didn't have access to email from within NFPC.

60. In her RFJ, at para 27, the judge claimed I argued that I was not obligated to do anything with respect to the website after 48 hours after my release. That is false. In fact, nowhere on the record did I argue anything even remotely similar to that. The only arguments I made with respect to the 48 hours following my release from custody were:

- a. I was required to take certain action within 48 hours of my release and if I took that action, but not within 48 hours of my release then I would not be in compliance (TR p8l5-10); and
- b. if the website had been taken offline for any duration of time within the 48 hours following my release from custody then I would have complied with the condition (TR p136l6-28).

61. During Crown's closing submissions, the judge claimed I said I didn't take steps to ensure the website was not accessible because I didn't "feel" I was obligated to do so (TR p134l16-19). That is false. I did not make any statements even remotely similar to that. What I had said was that because I do not own or control the website I cannot be compelled (i.e. forced), to take it down. Which is to say, I do not have the capability nor the legal authority to do so.

62. I believe this shows that the judge had made her decision about the verdict before she even received the evidence and testimony, and that she then filtered the evidence and testimony to fit that predetermined verdict. And, in doing so, the trial judge caused a miscarriage of justice by rendering the trial fundamentally unfair.

63. This error prejudiced me in that the judge's Reasons for Judgment were based on false or erroneous information which, I believe, amounts to a miscarriage of justice.

Error 03: The trial judge erroneously assumed I had access to the internet and to my email while in custody.

64. The trial judge claimed, *AFTER* entering her guilty verdict, during sentencing submissions, to erroneously believe and assume I had access to the internet and to my email from within NFPC and FRCC (TR p143l44-p144l44).

65. Given the judge's erroneous belief on this point, it was reasonable for her to reject my claim and my testimony that I would not be able to forward to Det. Tanino or to the Crown, a copy of the email I sent to editor@desicapuano.com on 2021-08-13, until I would be released from custody; and to reject my testimony that I could not have been involved in putting the website online, updating, or maintaining the website since 2018 due to being in custody during that time.
66. However, given that the judge's belief was, in fact, erroneous my submissions and testimony were not only reasonable, they were the only possible option that could have occurred. And once the judge became aware and acknowledged that her belief was false, and being that her guilty verdict was based, substantially, on that false belief, she should have immediately vacated that verdict and reconsidered the all of the evidence.
67. If, as the judge stated during the sentencing submissions, she had been unsure of whether or not I had access to the internet and to my email from within custody, I believe that is something she should have determined or clarified while I was testifying, because that fact was critical to the case. Given the significance of this issue, the judge should not have simply assumed it was so.
68. I believe the judge's erroneous assumptions in this matter resulted in a miscarriage of justice and rendered the trial fundamentally unfair.
69. This error prejudiced me in that if the trial judge had known I did not have access to the internet from within NFPC and FRCC then I could not have possibly been involved with the website or forwarded the email to the police or the Crown during the times I was in custody. And that would, necessarily, mean I could not have been the person who put the website online or who had been updating and maintaining the website since 2018.

Error 04: The trial judge erred in making numerous critical inferences and assumptions rather than seeking clarification.

70. The trial judge erred in making numerous erroneous assumptions and/or inferences regarding critical parts of my testimony, rather than requesting clarification or further explanation. The judge should have known that as an unrepresented, in-custody

defendant I may not have been aware of what additional, unstated information may have been helpful for the court or required for me to make full answer and defense. I believe, when dealing with an unrepresented defendant the court should not make ANY inferences or assumptions regarding the defendant's statements - particularly the statements made by the unrepresented defendant while giving testimony. The unrepresented defendant may not be aware that information which he may unknowingly take for granted and therefore inadvertently failed to state, may not be obvious to the judge or the other parties.

71. These erroneous assumptions and/or inferences were not made apparent until the judge read her Reasons for Judgment and Reasons for Sentence, by which point it was too late for me to clarify or further explain.
72. In her RFJ, at para 25, the judge claimed I could have contacted Ms. Munoz to regain control of the website upon my release from custody and ensure it was no longer available. However, Ms. Munoz has absolutely nothing to do with the website. Her involvement with the website was limited to overseeing it being put back online in 2018. There was no evidence or testimony provided at the trial to suggest her involvement went beyond that (TR p100l30-p102l13, p120l13-47). Therefore, there would be no reason for me to contact Ms. Munoz to try to regain control of the website.
73. In her RFJ, at para 26, the judge said "If he was not successful in persuading Ms. Munoz to take down the website...". However, Ms. Munoz has nothing to do with the website and no ability to take it down. There was no evidence provided at trial to suggest otherwise.
74. In her RFJ, at para 26, the judge claimed I could have provided Ms. Munoz' contact information to the police so they could make a request to Ms. Munoz to take down the website. However, Ms. Munoz has nothing to do with the website. And even if she did, she is not a Canadian citizen or national, she has no ties to Canada, the Canadian police and courts have no authority over her, and she dislikes Ms. Capuano very much - she would not be inclined to do anything to benefit Ms. Capuano. Moreover, the police and the Crown already had Ms. Munoz' contact

information from my previous prosecutions - in fact, at one point, the RCMP sent two Constables to Los Angeles to interview Ms. Munoz in person.

75. In her RFJ, at para 26, the judge said I did not contact Ms. Munoz about taking down the website "...either because he actually owns the website, not Ms. Munoz...".

However, another possibility was because I knew Ms. Munoz had no involvement with the website and no interest in doing anything to benefit Ms. Capuano.

76. After entering her guilty verdict, the judge admitted she had falsely assumed I had access to the internet and to my email from within jail (TR p143l44-p144l44) (see also, Error 03, above). This erroneous assumption, in particular, is very significant because it tainted the judge's perception of some of the very critical evidence and testimony. For example, I testified that, contrary to any prior admissions I may have made to the police, I could not have possibly been involved in publishing, updating and maintaining the website because I was in custody during those times.

77. There may be additional erroneous assumptions and/or inferences made by the judge which may have influenced her verdict, but which she didn't explicit state in her RFJ or in the course of the trial/sentencing, and therefore I would have no way of knowing about them.

78. This error prejudiced me in that the judge made her findings based on false assumptions rather than on the truth and reality. Had the judge been correctly informed on the matters stated above, I believe the outcome of the trial would have been significantly different. Moreover, I believe by not asking questions in order to be fully and correctly informed on the matters, or in the least, informing me of the inferences/assumptions she was making, the trial was rendered fundamentally unfair because it was not apparent to me what unstated information the judge was erroneously inferring.

Error 05: The trial judge erred in failing to consider the Crown has the burden of establishing I actually have the capability to comply with the probation condition.

79. I believe the Crown must have the burden of proving I have the capability and legal authority to do what the probation condition requires, before the burden can shift to me to show that I had a reasonable excuse for not complying.

80. This must be so because it would be impossible for me to prove that I am not capable of taking down a website that I do not own and have no control over. In order for me to prove that I would need, for example, records from the hosting provider, GoDaddy, showing that I am not the account holder, but I cannot compel GoDaddy to provide me those records, nor can any Canadian court because GoDaddy is a US entity subject to US laws and courts. The access logs for the cPanel interface to the hosting account might show the IP addresses the administrative users connected from, but not being the account holder I would not have access to that information. Basically, it would be impossible for me to prove I am not associated with the website if I am not associated with the website - and therefore, the burden MUST be on the Crown to prove I am associated with the website.
81. During my cross-examination of Det. Dent, the judge seemed to take the position that the Crown is only required to prove that I failed to ensure that the website was no longer available, and that the Crown was not required to prove that I had the capability of fulfilling that requirement. The judge seemed to be saying that it would be up to me to present as a defense, my physical and logistical inability to comply with the condition (TR p8919-30). However, as stated above, that would literally be impossible. And, it would be even more impossible for me to prove, given that I was in custody, unrepresented, and had no or, at best, extremely restricted access to the outside world, including to the hosting providing.
82. At the trial the Crown did not produce any evidence that I had any ownership of, or control over, the website during the times stated on the indictment or relevant to the charge. And without ownership or control over the website I did not have the capability or the legal authority to cause the website to be no longer available. In her RFJ, the judge repeatedly stated I had retained control over the website (paras 21, 22, 25, 29), however she did not refer to any evidence that would support her insistence, nor did the Crown offer any such evidence. In a criminal proceeding in a just society such a finding cannot be made simply because the Crown and the judge want it to be so, there must be some evidence to support it.

83. The Crown may argue that, if anything, this would be a flaw in the condition itself and the appropriate remedy would be an application to vary the probation order, not an appeal. I would disagree that an appeal of a conviction for a breach of a flawed probation condition is not an appropriate remedy, with respect to the conviction itself. Whether it is appropriate to address the flaw in the condition I do not know.
84. This error prejudiced me in that it placed the impossible burden on me, of having to prove that I do not have ownership, control, or influence over the website.

Error 06: The trial judge misapprehended my testimony about taking back control of the website after the probation order expires.

85. The trial judge misapprehended my testimony about taking back control of the website when my probation expires. I testified I would either do that if the current owner will release it to me OR if not then I would start a new website (TR p125l4-19, p14l45-p15l38). The judge erroneously found that my statement that I would take back control of the website was evidence that I retained control over it (RFJ para 21), however that only works if you only consider a particular fragment of my statement (that I intend to take back the website) and ignore the other relevant and critical parts of the statement (if the current owner releases it to me; and if not, then I would create a new site).
86. When taken in its entirety my statement did not suggest that I maintain any control or influence over the website.
87. Moreover, since I never actually had ownership or control over the website, I could not have retained control over it. As was discussed previously and at the trial (TR p100l44-p102l28), because I was in custody at the time the website was put online and each of the times any updates were made to the website, there is no way I could have been involved in those actions. And, since I was not the one who put the website online, I never, at any point, actually had ownership or control of the website - regardless of any supposed admissions I may have made to the police.

Error 07: The trial judge erred in finding I had sufficient opportunities to present the email I had sent to editor@desicapuano.com.

88. The judge found that at the time of my arrest I could have provided the police access to the email (RFJ para 23). However, the police had already seized my laptop and phone, and what the police were requesting of me - the only option they presented me - was to give them the passwords for my phone and laptop, supposedly so THEY could locate the email, on their own, in my absence (TR p127l24-37). Providing the police the passwords for my phone and laptop would have given them full access to all of the data and information on the devices. I believe the intentions of the police were to gain access to my devices to try to find incriminating evidence on them - NOT to access and verify the email I sent editor@desicapuano.com. That belief is supported by Det. Dent's testimony that they put no real effort into obtaining the email (TR p76l40-p77l4, p92l5-12). Moreover, as discussed in the trial, "gmail" is an IMAP based service which means the messages are stored on the server, not on the user's device (TR p76l24-30, p77l20-27). So, even if I had provided the police my passwords, giving them full access to my laptop and phone, that would not have given them access to my email account or more specifically, to the email I sent to editor@desicapuano.com on 2021-08-13. If the police had really wanted to access my email account, in order to verify that I did send a message to editor@desicapuano.com on 2021-08-13, they could have done so from any device with a web browser, they did not need access to my laptop or phone - they only needed the password for my gmail account. But the police did not ask me for the password for my email account - they had no intention and no interest in verifying that email message.
89. The judge found that I could have used my laptop, which was in police custody and which Det. Dent had brought to court for the trial, to access and present the email in the courtroom, during the trial (RFJ paras 7, 23). However, it is my understanding, based on Mr. Johnson's statements to me, that by doing that I would be subjecting the laptop to further inspection by the police and Crown, and the court may have ordered me to provide Crown the passwords for it, thereby providing them full access to all of the information and data on it (TR p128l43-p129l12). As discussed during the trial, the laptop runs Linux, but also the Linux partitions are encrypted so the VPD's Digital Forensics Unit had been unable to access anything on the laptop

other than an unused Windows partition (TR p74l37-p76l8, p92l13-26, p128l8-16). It was my understanding, from Crown, that booting, logging into, and accessing content on the laptop as part of the trial could result in the court ordering me to make the encrypted partitions of the laptop accessible to the police and/or Crown so they could prepare a cross-examination.

90. The judge had erroneously believed I had access to the internet, and therefore to my email, from within NFPC (TR p143l44-p144l44). For that reason, she believed that at any point in the six months from the time of my arrest until the time of the trial, while I was detained at NFPC, I could have forwarded a copy of the email to Crown or the police. But that was simply wrong - from the moment of my arrest on 2021-08-17 until the end of my sentence on 2022-04-17, I had been in custody with absolutely no access to the internet or to my emails. (On 2022-05-16 I was arrested again and have been in custody at NFPC since that time. Therefore, I again have no access to the internet or to my emails.)
91. Clearly, from the time of my arrest until the time of my release from custody, long after the trial, I did not have a single, reasonable opportunity to access my email in order to provide a copy of the message to the Crown or to the court.

Error 08: Crown failed to disclose critical evidence (letter to Det. Fontana).

92. During his cross-examination of me, Mr. Johnson relied on and questioned me about a letter I had sent to Det. Fontana in 2019, regarding another matter (TR p111l4-p115l7). The judge then relied on that letter in her RFJ (paras 18-20). The letter was used by the Crown and accepted by the judge, as evidence to support the Crown's allegations - not merely to impeach my testimony. The letter was subsequently admitted as an exhibit.
93. However, that letter was never provided to me as part of the disclosure in the current matter. While I was aware of the existence of the letter and it had been used in a previous matter, the fact that it was not included with the disclosure in the current matter precluded me from anticipating that the Crown would use it in the current matter. If I had received notice that the Crown might use the letter as evidence, and

not just for the purpose of impeaching my testimony, I may not have called myself as a witness.

94. Unfortunately, not having access to legal research source material at NFPC, I am unable at this time to adequately research this matter to determine the following, relevant questions:

94.1. Is the purpose of disclosure, at least in part, so that the defense may be aware of the evidence the Crown might, potentially, use at trial?

94.2. Is the Crown required to disclose to the defense, material which the defense may already be aware of, or which may have been used as evidence in a prior matter? If the Crown is not required to disclose material the defense already knows about then that would mean the Crown is not required to disclose the defendant's own statements because the defendant must, obviously, know about them.

95. This error prejudiced me because if I had known that the Crown might rely on that letter that would have affected my decision to call myself as a witness.

Error 09: The trial judge erred in allowing Crown to admit evidence while not allowing me to state my objection.

96. During his cross-examination of me, Mr. Johnson relied extensively on a letter I had written to VPD Det. Jennifer Fontana in 2019, regarding another matter (TR p11114-114110). During that cross-examination, I objected to the lines of question regarding the letter, based on lack of relevance to the current charge. Mr. Johnson responded that the next sentence would be relevant and he continued (TR p112140-45).

Ultimately, there was nothing in the letter or in Mr. Johnson's questions regarding the letter, which held any relevance to the current allegation. At the same time, some statements in the letter could be considered inflammatory and result in unfair prejudice against me.

97. After cross-examining me on the letter, Mr. Johnson sought to have it admitted as an exhibit (TR p114111-32). The judge agreed; the letter was admitted; *then* the judge asked me if I had any objection to it being admitted as an exhibit. I responded "Oh,

yes, yes." The judge ignored my response and told Mr. Johnson to continue. The judge did not allow me to state my objections.

98. The judge then referred to that letter repeatedly in her RFJ (at paras 18-21). It was clearly a significant factor in her judgment.
99. Had I been permitted to state my objections, I would have objected based on lack of relevance to the current charge, pointing out:
- a. The letter was written more than two years prior, so even if the admissions in the letter were true, that I had published the website, that does not mean that I still have ownership or control over the website two years later.
 - b. As it was pointed out in my earlier testimony, I was in custody at FRCC when the website was published and, therefore, I could not have been the person who published it, regardless of the fact that I may have "admitted" in the letter to being the person who published it.
 - c. The disproportionate prejudice the letter was likely to cause me, due to the clearly antagonistic and mocking tone of much of the letter. While certain parts of the letter, which was written in June 2019 for a specific purpose, may be offensive to some members of the Canadian justice system, there is nothing in the letter which relates to the question of whether, between 2021-08-12 and 2021-08-14, I took all necessary steps to ensure the website was no longer available.
100. This error prejudiced me by rendering the trial process unfair by allowing one party to enter an exhibit without allowing the opposing party to state their objections.

Error 10: The trial judge erred in finding that it is "simply absurd" that a third party would be willing to put the effort into keeping the website online.

101. The trial judge erred in finding that it was implausible that a third party who is not related to or involved in the matters between Ms. Capuano and myself would be willing to put the time and effort into maintaining the website on their own (RFJ para 18). However, the time and effort involved in maintaining such a website is, literally, almost completely nil. Moreover, as I had testified, since 2018 when the website was taken over by a third party, it has been focused almost exclusively on

highlighting the corruption and misconduct going on in the local justice system - NOT on Ms. Capuano; and in fact, as I had testified, since the website had been put back online in 2018 there have not been any updates about Ms. Capuano.

102. In addition, the Crown and the Crown's witnesses acknowledged that there have been updates to the website while I have been in custody and, therefore, I could not possibly have been the one to make those updates. Therefore, contrary to the judge's finding, there must be a third party who was maintaining the website.
103. And while the judge, at para 18 of her RFJ, claimed it is "simply absurd" to suggest that Ms. Munoz would pay to keep the website online; at paras 25-26 the judge claimed that in my efforts to ensure the website was no longer available I could have: contacted Ms. Munoz to regain control of it; or requested Ms. Munoz take it down; or provide Ms. Munoz's contact information to the police so they could submit a request to her. The judge's statements in paras 25-26 completely contradict her assertion in para 18! If the judge considered it "simply absurd" to suggest Ms. Munoz had control of the website at para 18 then how could the judge also have believed that Ms. Munoz could have control of the website at paras 25-26? I submit that since these two points are mutually exclusive, the judge must have believe at least one of her statements was untrue.
104. The judge also seems to be making the false assumption that keeping a small, simple website such as the one in question here, online takes significant cost and effort. That is false. A basic hosting plan with GoDaddy costs about \$10US a month (or \$115US a year); and simply keeping a site online, without concern for publishing updates, takes absolutely no effort - there is, literally, no human intervention required. The website could be deployed, made public, then neglected for years without any complications. If the hosting plan had been configured with automatic renewal/payments, or if it was prepaid for a significant duration of time, then there would be nothing for the owner to have to address. These details were not stated in the trial, but the judge should not have made assumptions about them. If there was any uncertainty on her part, she should have asked about them while I was on the witness stand.

105. In addition, there are a number of websites on the internet, which maintain cached copies and archives of other websites dating as far back as 25 years. One such example, which was mentioned in the trial, is the "Wayback Machine" on archive.org (TR p123l40-p124l2). The organizations and/or parties that maintain those archives pay the costs associated with maintaining those archives. So it is indisputable that there are, in fact, parties other than myself, who are not only willing but who actually do maintain independent copies of the desireecapuano.com and desicapuano.com websites. I have absolutely nothing to do with any of that and there is absolutely nothing absurd about suggesting that those third-party entities, who have nothing to do with the issues between Ms. Capuano and myself, are, of their own volition, maintaining and supporting those copies of the websites.
106. This error prejudiced me in that the judge's findings were based on false assumptions she had made, and given the contradiction highlighted above, possibly insincere.

Error 11: The trial judge erred in finding my testimony that a third party put the website online was not credible.

107. The trial judge erred in finding my testimony about my friend putting the current website online not credible considering my prior statements to the police that I had put the current website online then transferred ownership and control to a third party (RFJ paras 11-13, 15-16, 20-21). The judge found my statements in my testimony were less incriminating than the statements I had made to the police and that that was the reason for the inconsistent statements (RFJ para 16).
108. However, it was no more incriminating to say I was involved in putting the current website online then transferring control to a third party; than it is to say a third party arranged to put the current website online without my involvement (TR p100l44-p101l15); because either way, it occurred BEFORE the probation began and by the time the probation began I had no involvement or association with the website. Moreover, the statement to the police could not have possibly been true because I was in custody at FRCC at the time the website was published and did not have access to the internet, a computer, or the website content - therefore, it would have

been impossible for me to publish the website (TR p99I46-p100I5, p100I44-p101I3, p102I18-22, p119I45-p120I1, p143I47-p144I5, p144I20-23).

109. I had explained, in my testimony, that the statements I am making in my testimony are under oath and subject to penalty of perjury (TR p119I39-44), whereas the statements I made to the police were not under oath, I was not under any legal obligation to tell them the full truth, and I had an interest at that time of encouraging them to charge me with criminal harassment related to the current website (TR p111I8-15, p111I39-45, p112I6-9, p113I15-19, p113I43-p114I1).
110. Crown may argue I have provided no evidence that the website was published while I was still in custody at FRCC. However, the burden is on the Crown to prove the facts of their allegations, not me. And in the matter of 244069-6-B (BCCA no. CA46979) Crown Counsel Chris Johnson admitted that the Crown has no knowledge of whether the website was published before or after the probation order came into effect (2020-08-19 TR p46I31-33, p47I57, p50I33-40).
111. And finally, contrary to any suggestions by the Crown or the court that this was the first time I had raised the possibility that a third party had actually put the current website online - NOT me - I had actually alluded to exactly that when I cross-examined VPD Det. Jennifer Fontana at my trial in Provincial Court file 244069-6-B (BCCA no. CA46979) on 2020-08-19 (CA46979 TR p37I21-31).

Error 12: The trial judge erred in finding my testimony that it was simpler to say I transferred ownership of the website not credible.

112. The trial judge erred in finding my testimony that it was simpler to say to the police I had transferred ownership and control of the website, than to say a third party put the website online without my involvement, not credible because it is in no way simpler to say I transferred ownership and control (RFJ paras 15-16).
113. However, the judge is misrepresenting what I had said. What I had said was in response to the Crown saying "You've already indicated that...you've transferred [the website] to your friend." And my response was that "I had been phrasing it that way so far because it's much simpler than giving the full explanation that I have provided here today." (emphasis added) (TR p124I23-32).

114. And, in fact, my statement is correct because it is generally simpler to say what is more consistent with what the police, prosecutors, and judges already believe or are alleging, because they will be more inclined to accept that without further questioning; than to say something which contradicts what they already believe or are alleging, because that will usually result in further questioning, because they will seek to disprove or discredit statements which contradict their beliefs or allegations. And since the police, prosecutors, and judges already believed and were alleging that I alone published and was maintaining the website then saying I published it would likely result in less follow-up questioning than saying someone else published it without my involvement.

115. The judge further claimed it was more incriminating for me to say I transferred ownership and control, and that I "obviously realized that before testifying" (RFJ para 16). I believe the judge's implication is that that is the reason for the inconsistency between my statements to the police and my testimony. However, it could not possibly be any more or less incriminating because at the time the website was put online or "made available" I was not even on probation yet, and so it could not possibly be a breach of the probation conditions. Even if I, personally, had executed the act of actually putting the website online admitting it would not be incriminating, at all, because I wasn't on probation when it occurred and, therefore, it wouldn't have violated any laws.

115.1. The Crown may argue that the website constitutes criminal harassment and that by admitting I put the website online I would be admitting to committing criminal harassment, even though it occurred prior to me being on probation. However, the Crown, the police, and the judges know that is false. If the Crown really believed there was anything, at all, illegal about the website they would prosecute me for that - not just for breaches of probation. And if the Crown actually believed the website constituted criminal harassment they would absolutely prosecute me for that, especially considering that would mean I have been continuously subjecting Ms. Capuano to ongoing, perpetual criminal harassment for the past seven years and the Crown and the police have done absolutely nothing to stop it (i.e. to actually get the website shut down) for that

entire seven years - other than arresting, imprisoning, and prosecuting me (which has had absolutely no effect on causing the website to be shut down).

Error 13: Crown Counsel brought and prosecuted the charges for improper motives (abuse of process).

116. On 2021-02-02, Crown Counsel Chris Johnson admitted in open court, on the record, that the reason I am being prosecuted is because the disclosure material from my cases keeps ending up on the internet (CA47391 SuppTR p33112-22).
117. On 2022-06-15, Crown Counsel Adam Flanders admitted in open court, on the record, that the reason I am being prosecuted is because the BCPS believes I am engaging them in a "game of chicken" and "the justice system can't blink on this" (2022-06-15 TR p12110-14). Mr. Flanders later went on to say "this case has over the years...been discussed in the media quite heavily... I would urge Your Honor to make a finding here because Mr. Fox has essentially thumbed his nose at the justice system quite heavily for six years... And so if Mr. Fox were released, it would bring the administration of justice into disrepute" (2022-06-15 TR p17124-45). I believe it is abundantly clear from Mr. Flanders' statements in court, that the BCPS is more concerned with saving face and with not being the first to blink in this game of chicken they claim I am playing with them.
118. As was also discussed at the June 2022 proceedings, over the past six years, since the BCPS first commenced criminal prosecutions against me related to the website, neither the BCPS, the RCMP, nor the VPD, have taken a single step toward actually getting the website taken down, other than arresting, prosecuting, and imprisoning me (2022-06-15 TR p25121-p2618, p26140-46, p27134-42; 2022-06-22 TR p2129-p3128,). I believe that shows that the reality is that the BCPS has no interest in, or concern for protecting Ms. Capuano from any supposed harm or harassment from the website being online - and that the truth of the matter is that the BCPS is actually using these prosecutions as retaliation against me for publishing proof of the corruption and misconduct that has been going on in my cases. If the purpose of these prosecutions was to protect Ms. Capuano from harassment caused

by the website then the BCPS would have taken actions to get the website shut down, but they have not.

119. Further, in this matter, Det. Dent testified at the trial that the VPD put absolutely no effort into investigating my claim that I had sent an email to editor@desicapuano.com the day after I was released asking them to shut down the website (TR p76l40-p77l8, p92l5-12). Even though that email would have proven that I had made efforts to ensure the website was no longer available, and the email was easily obtainable from the "Sent" folder of my gmail account. I believe this proves the VPD had no interest in determining the truth of the matter - their purpose was only to commence my detention then hand me over to the BCPS for prosecution while I am detained without bail.
120. In addition to the BCPS and the police taking absolutely no action toward getting the website shut down, Ms. Capuano also has done absolutely nothing in the past six years to have the website shut down. Ms. Capuano lives in Arizona which is the same state the hosting provider is located in. Ms. Capuano could easily seek an injunction against the hosting provider, in the Superior Court, but she has not. I believe that proves that Ms. Capuano does not believe she is being adversely affected by the website. Moreover, in each of the breach of probation prosecutions against me related to the website, neither the police nor the Crown actually spoke with Ms. Capuano to inquire whether she believed she was being harmed by the website. And, just like with the Crown, the only actions Ms. Capuano has taken with respect to the website are those which could reasonably be expected to result in me being arrested and imprisoned - NOT those which could result in the website actually being shut down.
121. When all of these factors are considered, I believe it becomes indisputable that the BCPS's intentions with these prosecutions has nothing to do with protecting or pursuing justice for Ms. Capuano, and everything to do with saving face and retaliation against me for having repeatedly publicly exposed their corruption, misconduct, and ineffectiveness.
122. This error prejudiced me by subjecting me to prosecutions and prolonged imprisonment which, if not for the Crown's pursuit of the improper motives, would

likely not have occurred at all. The Crown's conduct in this regard has been an egregious abuse of process.

Error 14: Wording of probation condition is vague and ambiguous.

123. The wording of Condition 6 of the probation order is vague and ambiguous in that it imposes on me a requirement to engage in conduct but it does not state what conduct I am required to engage in. Instead of articulating specific acts which I am required to perform, it states "...take all necessary steps to ensure...", then it states what the result of those "necessary steps" is expected by the Crown and the court to be.
124. This has resulted in the situation where I have taken the only steps I believed were available to me, namely attempting to communicate with the administrator of the website to request they remove the website until my probation orders expire; but the Crown insisting, after my arrest and incarceration for breach, that there were more steps I could have taken - while adamantly refusing to give any indication of what additional steps he was referring to; and the judge agreeing with the Crown, then listing a number of additional steps she believed I could have taken - none of which would have had any effect whatsoever (see Error 04, above).
125. I believe a probation condition which requires a person to engage in some particular conduct should be required to state, as precisely and objectively as possible, what actions the person is required to engage in. It should not state some expected end result and then leave it to the accused party to figure out what actions he is required to perform in order to achieve that end result. This is particularly so in circumstances such as this, where the accused person states he does not have the legal authority or the capability to achieve that end result; the Crown fails to provide any evidence that he does; and yet the court insists the accused DOES have the capability to achieve the end result, even though there has been no evidence that he does.
126. The Crown might argue, if anything, this is a flaw in the wording of the condition itself and therefore the proper method of addressing it would be an application to vary the probation order, not an appeal from the conviction. However, this appeal

does not seek to correct the wording of the condition, I am appealing the conviction that resulted from that flawed wording. And I believe that is within this Court's authority.

127. This error prejudiced me by creating a situation whereby I am required, under threat of imprisonment, to accomplish something which I am not capable of accomplishing, while simultaneously failing to provide any guidance as to how I am expected to accomplish that end result. I believe this error inherently renders the entire trial process unfair.

PART 4 - NATURE OF ORDER SOUGHT

128. I seek an order allowing the appeal, and quashing the conviction and ordering a new trial or, in the alternative, directing that verdicts of acquittal be entered on all counts.

PART 5 - LIST OF AUTHORITIES