

32532-1-W
Vancouver Registry

In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE MADAM JUSTICE LAMB)

Vancouver, B.C.
December 23, 2021

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT JUDICIAL INTERIM
RELEASE HEARING

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**Crown Counsel appearing by
teleconference:**

C. Johnson

Appearing on his own behalf:

P. Fox

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Nil

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1 Vancouver, B.C.
2 December 23, 2021
3
4 (VIDEOCONFERENCE COMMENCES)
5 (JUDGE LAMB IN REMOTE COURTROOM)
6 (CNSL C. JOHNSON IN REMOTE LOCATION)
7
8 THE CLERK: Calling the matter of Her Majesty the Queen
9 and Patrick Henry Fox, Justice.
10 THE COURT: Thank you.
11 I understand Crown is attending by phone
12 today?
13 CNSL C. JOHNSON: Yes, that's correct, Madam Justice.
14 It's Chris Johnson, J-o-h-n-s-o-n. I appear on
15 behalf of the Provincial Crown and my pronouns are
16 he/him, as are Mr. Fox's.
17 THE COURT: Thank you.
18 Mr. Fox, is that you sitting here in the
19 courtroom?
20 THE ACCUSED: That is I, yes.
21 Where would the court prefer that I sit?
22 Normally, I would sit at a table with -- across
23 from Mr. Johnson, but since he's not here I'm sure
24 where you would like me.
25 THE COURT: Yes. May I have some assistance from the
26 sheriff, please.
27 THE SHERIFF: Yeah. Usually, Fox sits there, I assume,
28 My Lady.
29 THE ACCUSED: Right.
30 THE COURT: This is the first time Mr. Fox has appeared
31 in front of me, so --
32 THE CLERK: If I may, Justice --
33 THE COURT: Yes.
34 THE CLERK: -- we're completely in your hands. We can
35 accommodate anything the court needs.
36 THE COURT: All right. Then if Mr. Fox prefers to sit
37 at -- at the -- at counsel table, I'm content to
38 proceed on that basis.
39 THE CLERK: Thank you.
40 THE COURT: Have a seat.
41 THE ACCUSED: Um --
42 THE COURT: Yes, Mr. Fox?
43 THE ACCUSED: Next I need to ask, does somebody have a
44 pen I can borrow? I'm not allowed to bring a pen
45 from the jail.
46 THE COURT: Mr. Registrar, do we have pen that Mr. Fox
47 can use?

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1 THE CLERK: Yes, let me just check.
2 Can I pass it to Mr. Sheriff?
3 THE COURT: Mr. Sheriff --
4 THE SHERIFF: Yes, yes.
5 THE COURT: -- can you assist, please. Thank you.
6 THE ACCUSED: Thank you.
7 THE CLERK: Yeah, thank you.
8 THE COURT: Thanks very much.
9 THE ACCUSED: Thank you.
10 THE COURT: Anything else, Mr. Fox, before we begin?
11 THE ACCUSED: No. Thank you, Your Honour. I'm good.
12 THE COURT: All right.
13 Mr. Johnson, whenever you're ready.

SUBMISSIONS FOR CROWN BY CNSL C. JOHNSON:

16
17 CNSL C. JOHNSON: Thank you, Madam Justice. Mr. Fox is
18 before you on s. 525 bail review. The Crown says
19 that there hasn't been a change of circumstances
20 and that the delay hasn't been unreasonable, and
21 that Mr. Fox should still be detained on the
22 secondary ground.
23 He stands charged in Provincial court with
24 breaching a probation order. There is an order of
25 his detention which, I believe, your -- you have a
26 transcript of -- from August 18th of 2021. At
27 that time, Mr. Fox was ordered detained on the
28 secondary ground by His Honour Judge Galati.
29 You've -- I just want to confirm that you do
30 have that transcript?
31 THE COURT: I do have the transcript, yes. And if
32 you -- if you want to address the court at the
33 court, if the court has, instead of you, that's
34 fine.
35 CNSL C. JOHNSON: Thank you, Madam Justice.
36 THE COURT: Thank you, Mr. Johnson.
37 CNSL C. JOHNSON: The transcript of the proceedings has
38 also been provided to Mr. Fox and --
39 THE COURT: Sorry, I'll just stop you there because Mr.
40 Fox has his hand up.
41 Mr. Fox?
42 THE ACCUSED: I did receive an envelope from the Crown
43 earlier, however, it's missing the reasons for
44 judgment. I have the transcript from the bail
45 hearing, but not the reason for judgment.
46 THE COURT: Mr. Johnson, can you assist?
47 CNSL C. JOHNSON: I do not know. I do know that both

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1 the reasons for judgment and the transcript, I'm
2 told, were provided to Mr. Fox last week at North
3 Fraser Pretrial. But just to be sure, I dropped
4 by the courthouse this morning and provided Mr.
5 Fox with a copy of the transcript and other
6 documents. The reasons for judgment are three
7 paragraphs long.

8 THE COURT: I was going to -- I was going to say, Mr.
9 Fox, if you want to have a look, the reasons are
10 three paragraphs with a cover page. Do you want
11 to have a look just right now?

12 Just hold for a moment, Mr. Johnson, please.

13 CNSL C. JOHNSON: Thank you.

14 THE ACCUSED: This is the transcript, the JUSTIN
15 conviction list, this is a reasons for judgment
16 from the Court of Appeal, it's -- it's a different
17 matter, and oral reasons for judgment from 2019, a
18 different matter -- oh, again, in one of the
19 appeals.

20 THE COURT: Have a look at the first package, sir.
21 The -- the -- the reasons have the same cover
22 sheet.

23 THE ACCUSED: Yeah. This is just the transcript. I
24 already read this downstairs.

25 THE COURT: All right.

26 Mr. Registrar, can we stand down for a moment
27 to get a printout for Mr. Fox of the reasons for
28 judgment?

29 THE CLERK: Yes, Madam Justice.

30 THE COURT: Do you have a copy of those, Mr. Registrar?

31 THE CLERK: I -- I don't have anything, no.

32 THE COURT: All right. Maybe we -- you and I can go
33 out in the hallway. I can send you copy by email
34 or one of us will get it printed.

35 THE CLERK: Sure.

36 THE COURT: All right.

37 So Mr. Sheriff, we'll stand down for -- to
38 get a copy of the reasons.

39 Mr. Johnson, we're just going to stand down
40 to make sure Mr. Fox has a copy of the reasons.

41 CNSL C. JOHNSON: Thank you.

42 THE CLERK: Order in court. Court is stood down.

43
44 (TELECONFERENCE PAUSED)

45
46 (PROCEEDINGS ADJOURNED)
47 (PROCEEDINGS RECONVENED)

Submissions for Crown by Cnsl C. Johnson

1 (TELECONFERENCE RESUMES)

2
3 THE CLERK: Mr. Sheriff, can I get you to pass this
4 along?

5 THE SHERIFF: Yeah.

6 THE CLERK: Thank you. Thank you.

7 THE COURT: We're on the record, Mr. Registrar?

8 THE CLERK: Yes.

9 THE COURT: Mr. Johnson, just so you know, Mr. Fox has
10 now been provided with a copy of the reasons of
11 Judge Galati.
12

13 **SUBMISSIONS FOR CROWN BY CNSL C. JOHNSON, CONTINUING:**

14
15 CNSL C. JOHNSON: Thank you, Madam Justice. Much
16 appreciated.

17 Mr. Fox is before the Provincial court on a
18 file which is an allegation of a breach of
19 probation. He was convicted and sentenced to 16
20 months in jail for previous breaches in April of
21 this year. And when he was convicted by
22 Judge Rideout he was put on a probation, and a
23 condition of that probation is that he remove a
24 website which relates to Mr. Fox's former spouse,
25 Ms. Desiree Capuano. Madam Justice, have you had
26 the opportunity to read the transcript of -- of
27 the bail hearing?

28 THE COURT: I have.

29 CNSL C. JOHNSON: Thank you. Then I won't repeat most
30 of what I said then, but in any event, I do wish
31 to draw the court's attention to what's been said
32 about Mr. Fox and his activities by the Court of
33 Appeal. That would be at page 3 of the transcript
34 of the bail hearing in Provincial court.

35 THE COURT: Yes, just give me a moment. Just give me a
36 moment, please.

37 Yes.

38 CNSL C. JOHNSON: Where I referenced a decision of our
39 Court of Appeal in *R. v. Fox*, that's 2021 BCCA
40 308, and paragraph 4 of that decision states:
41

42 Since 2014, the appellant has engaged in a
43 relentless campaign of harassment directed at
44 his former spouse. Among other things, the
45 appellant created a website in the name of
46 his former spouse. The website contains a
47 large amount of private information about the

Submissions for Crown by Cnsl C. Johnson

1 appellant's former spouse and others with
2 whom she is associated. The purpose of the
3 website appears to be to denigrate, humiliate
4 and intimidate her, to interfere with her
5 personal relationships, and to impair her
6 economic prospects and emotional security.

7
8 And then in the same decision at paragraph 16, the
9 court in referring to the evidence indicated that:

10
11 Det/Cst. Dent testified that on
12 September 16, 2020, he accessed one of the
13 website domain names referred to in the
14 probation order imposed by Phillips P.C.J.
15 Its home page contained an entry dated
16 August 19, 2020, at 1:53 p.m., which was
17 written as a first-person letter to the
18 Attorney General of British Columbia. As I
19 understand it, the appellant contends that
20 this letter was written the day before the
21 probation order came into effect. The entry
22 refers to the proceedings before Phillips
23 P.C.J. and emphasizes "how ineffectual and
24 impotent the Canadian justice system is
25 [because] [t]hey can't even make a little
26 pissant nobody like myself take down a
27 website." The entry further asserts that
28 "[t]hey can lock me up for the rest of my
29 life, but I will never take down the
30 website".

31
32 THE COURT: Mr. Johnson -- Mr. Johnson, your -- the
33 audio is -- is pretty good, but it's not perfect.
34 So just so you know, it's flickering a little bit.

35 CNLS C. JOHNSON: Oh, thank you.

36 THE CLERK: Madam Justice, would it be better if I
37 try -- maybe I can just call him on the phone and
38 that way we can see it might be a little bit
39 better. I -- I just -- it will take just a minute
40 for me to call him back.

41 THE COURT: Mr. Johnson, that might be preferable.
42 Right now, we're accessing you through the -- the
43 MS Teams, I believe, or the equivalent. And so
44 Mr. Registrar, do you want to just let Mr. Johnson
45 know what he should do at this point?

46 THE CLERK: Sure.

47 Mr. Johnson, we're just going to hang up on

Submissions for Crown by Cnsl C. Johnson

1 you and I'll call you back, okay?
2 CNSL C. JOHNSON: Thank you. I'll hang up.
3 THE CLERK: Yeah, thank you.

4
5 (VIDEOCONFERENCE CONCLUDES)

6
7 THE COURT: Thank you.

8
9 (TELECONFERENCE COMMENCES)
10 (CNSL C. JOHNSON IN REMOTE LOCATION)

11
12 CNSL C. JOHNSON: Hello, Chris Johnson.
13 THE CLERK: Mr. Johnson, can you hear us, okay?
14 CNSL C. JOHNSON: Yes, I can. Thank you.
15 THE CLERK: Okay.
16 THE COURT: It's much better, Mr. Johnson, go ahead.

17
18 **SUBMISSIONS FOR CROWN BY CNSL C. JOHNSON, CONTINUING:**

19
20 CNSL C. JOHNSON: Then I just want to advise the court
21 with respect to the outstanding matter from
22 August. Mr. Fox was detained, shortly thereafter
23 a trial date was scheduled, that trial date was in
24 November of this year. And on the day of trial
25 Mr. Fox indicated that he required some further
26 materials, and at least in part because of that,
27 the trial was adjourned and it's been adjourned to
28 January the 10th, at 9:30 at the Main Street
29 courthouse.

30 And so that, really, is in a couple of weeks,
31 or three, I suppose, at the most. But in any
32 event, I wanted to bring it to the court's
33 attention that that trial date is fast
34 approaching.

35 And then, the last thing I do want to refer
36 the court to and Mr. Fox, is a JUSTIN conviction
37 list which was filed with the materials. I
38 believe that -- that Madam Justice, you should
39 have a copy of that and I'm certain that Mr. Fox,
40 because I dropped it off for him this morning.

41 THE COURT: Yes, Mr. Fox is nodding. So I believe he
42 does have that document. And I have it in front
43 of me right now, Mr. Johnson.

44 CNSL C. JOHNSON: Thank you.
45 And I will say that all of the convictions
46 listed therein relate to the very first entry
47 which is a disposition date of November 10th of

Submissions for Crown by Cnsl C. Johnson

1 2017 when Mr. Fox received a three-year jail
2 sentence with respect to charges of criminal
3 harassment and possessing a firearm where not
4 allowed, and in addition to that he received a
5 probation order for three years. He's still on --
6 bound by that probation order.

7 Subsequently, he was convicted on June the
8 12th of 2020 with respect to new allegations of
9 breaching that probation order.

10 And then, more recently, on August the 19th
11 of 2020 he was convicted of another breach of that
12 probation order. That specific breach was in
13 relation to the website which Mr. Fox refuses to
14 remove. And at that point in time, he was
15 sentenced to six months in jail and a further term
16 of probation, a condition of which was to remove
17 the website.

18 Then most recently on April the 12th of 2021
19 Mr. Fox was again convicted of breach of that
20 probation order and he was sentenced to a 16-month
21 jail term. And that, in my submission, should
22 indicate to the court the seriousness of these
23 repeated offences. And again, Mr. Fox was
24 sentenced to probation.

25 And the -- the gist of all of these probation
26 orders are that Mr. Fox is required to remove a
27 website. He has made it clear that he will never
28 do that. He has told the police whether true or
29 false that he transferred the website to some
30 other person, but he is unable to make any --
31 provide any evidence that that's the case or that
32 he has no control over it. A clear inference from
33 his various statements are that he is able to
34 comply with the probation order, but refuses to do
35 so.

36 So given all of those circumstances, the
37 Crown does say that there have been no material
38 change in circumstances, and furthermore, that if
39 he's released, Mr. Fox is almost assuredly going
40 to commit further offences by at the very least
41 breaching his probation order.

42 Those are my submissions.

43 THE COURT: Mr. Johnson, one question in terms of the
44 adjournment at the trial in November of this year.
45 You said that Mr. Fox had requested further
46 materials. Is disclosure now complete?

47 CNSL C. JOHNSON: Yes.

Submissions for Crown by Cnsl C. Johnson
Submissions by Accused

1 THE COURT: Thank you. Thank you, Mr. Johnson.

2 CNSL C. JOHNSON: And I -- I should add on that point,
3 that Mr. Fox recently advised the court, that is
4 the Provincial court, that he had no further need
5 for disclosure because he in effect got the
6 disclosure out of the jail. And I will say that
7 two hard drives provided to Mr. Fox disappeared in
8 the prison last month and that the contents had
9 been published on the internet. And so that was
10 the use that Mr. Fox -- he indicated that's why he
11 wanted the disclosure and that he'd made use of it
12 in that way. But I can say that all of disclosure
13 that he's requested has been provided to him.

14 THE COURT: Thank you, Mr. Johnson.
15 Mr. Fox.

16
17 **SUBMISSIONS BY ACCUSED:**
18

19 THE ACCUSED: First I would like to say with respect to
20 the issue of disclosure, the Crown's position is
21 that they have provided disclosure to the jail. I
22 have not received that disclosure. There's some
23 scheme that they have with the jail right now
24 because they don't want me to have the disclosure
25 in my physical possession. So they provide it to
26 the jail and then I'm supposed to go to the law
27 library and access it there.

28 Apparently, though, the jail has no knowledge
29 of that whatsoever. I've submitted formal
30 requests here to the jail to get access to the
31 disclosure material. As yet, I haven't had that,
32 but that's as of December 14th. Prior to that, I
33 used to have the disclosure in my possession in my
34 cell.

35 THE COURT: Sorry. Just so I'm clear, sir.

36 THE ACCUSED: Sure.

37 THE COURT: Before December 14th, you did have the
38 disclosure in your possession?

39 THE ACCUSED: Right. Prior to December 14th, the Crown
40 would provide the disclosure to me on a hard
41 drive.

42 THE COURT: I see. And what you're saying is that you
43 no longer have those hard drives?

44 THE ACCUSED: I no longer have those hard drives. I
45 hadn't have them for quite some time now. And
46 the -- the Crown, apparently, has provided another
47 copy of the disclosure and the -- the updated

Submissions by Accused

1 disclosure, but they've provided it to the jail
2 and the jail has not given me access to it or
3 confirmed that they have received it or anything.
4 So I personally have not had access to it.
5 Whether or not the jail does, I don't know.

6 THE COURT: All right. Mr. -- Mr. Johnson just told me
7 that the last -- one of the recent times you were
8 in Provincial court, it became clear that -- or
9 that you advised the court that you had no need
10 for disclosure and that you had already had it.
11 Is that accurate?

12 THE ACCUSED: That is correct. The disclosure related
13 to the current case, I don't believe that I
14 require it at this point because I have done all
15 the preparation that I would require for the
16 upcoming trial.

17 THE COURT: Thank you.

18 THE ACCUSED: However, at the trial, I'm going to
19 require it during the cross-examination. But
20 that's -- that's another matter.

21 THE COURT: I expect Mr. Johnson can make arrangements
22 for that.

23 CNSL C. JOHNSON: Yes. And just so that Mr. Fox is
24 aware, again, and I believe he was present when an
25 order was made in Provincial court, the disclosure
26 is available to him at anytime Monday to Friday
27 between 8:30 and [inaudible/audio cuts out]. And
28 all he needs to do is request access to the
29 library.

30 THE ACCUSED: Okay. I understand that that is what Mr.
31 Johnson may have been told, but reality is a very
32 different thing. Now, right here in my hand, I'm
33 holding a special request form. This is formal
34 request that I've submitted at the jail to get
35 access to the disclosure material. It is dated
36 the 15th, signed by the staff on the 15th. We are
37 now on the 23rd, I still have not had access to
38 that material.

39 Reality and what Mr. Johnson might have been
40 told are not necessarily the same thing.

41 THE COURT: Right. Mr. Fox, you just told me that you
42 don't need the disclosure now. You'll need it on
43 the day of trial and -- and I anticipate that Mr.
44 Johnson will ensure that that will happen on the
45 day of trial.

46 THE ACCUSED: Wonderful.

47 Now, the Crown, Mr. Johnson has stated that

Submissions by Accused

1 he believes that there has been no change in the
2 circumstances since the previous bail hearing, but
3 I disagree with that.

4 At the time of my arrest when I was
5 interviewed by the VPD, I informed them that I had
6 sent an email to the administrator of the website
7 requesting that they take down the website until
8 my probation is finished.

9 At the time, the VPD wanted me to give them
10 full access to my entire email account so that
11 they can verify that and I refused because there's
12 a lot of stuff. I mean, there's over ten years of
13 emails in there and I wasn't going to just give
14 them complete access to everything.

15 On October 12th, which was the day that the
16 trial was supposed to commence, Mr. Johnson had
17 stated that if I provide him or the Crown or VPD a
18 copy of that email that he would not prosecute
19 this charge because that would show that I had
20 made some attempt or some effort to get the
21 website taken down. And then on November 23rd,
22 which was the second time that the trial was
23 supposed to proceed, he again said that if I
24 provide or give them access to that email that he
25 would not prosecute the charge.

26 And my position both times has been that
27 since I'm in custody I don't have access to the
28 internet so I cannot access that email myself.
29 And again, I'm not going to give the VPD or the
30 B.C. Prosecution Service full access to my laptop
31 or full access to my email account.

32 Now, I had pointed out to Mr. Johnson on
33 October 12th, and again on November 23rd, that the
34 Crown's position has been that I have ownership
35 and control of the website. And so if I had sent
36 an email to the website based on the Crown's
37 position, that would mean that I'm just sending an
38 email to myself and so it would be irrelevant to
39 the fact that I sent such an email. His response
40 was, "Not necessarily."

41 So the fact that the Crown is now willing to
42 stay or withdraw the charges if I provide them
43 proof that I sent this email to the administrator
44 of the website, shows that the Crown now
45 acknowledges that I don't have ownership or
46 control of the website and that some other party
47 must be in control of the website. The problem

Submissions by Accused

1 though, is that if I don't have ownership or
2 control of the website, I can't be compelled to
3 take the website down. And so I'm not sure how
4 the Crown intends to address that issue, but...

5 Now, it also seems very significant to me
6 that the Crown -- the Crown is supposedly taking
7 the position that the reason for these probation
8 conditions and the reason they want the website
9 taken down is because it is harming my ex-wife,
10 Desiree Capuano. But it's significant -- well,
11 it's -- okay. It may be significant that the
12 website is hosted with a hosting provider in
13 Arizona, in the U.S., which is the state that my
14 ex-wife lives in. She has taken no steps at all
15 over the past five years, certainly not over the
16 past three years, since I've been on the probation
17 order, to do anything about the website. It seems
18 that it's the Crown and the Victim Services
19 Department are the ones that are really pushing
20 very hard to get this website taken down, not my
21 ex-wife.

22 It's my belief that the reason the Crown
23 wants the website taken down is because there is
24 material on there that I believe, irrefutably
25 proves that the Crown has been engaging in
26 outrageous misconduct and corruption in my cases.
27 And that's really, I believe, the Crown's
28 underlying concern here. And I believe that that
29 is also why the Crown is making such a big deal
30 about the publishing of disclosure of material.
31 And I'm not saying that I had anything to do with
32 the publishing of the disclosure material, but
33 that is their allegation.

34 Now, Mr. Johnson did bring up an article that
35 was posted on the website. It was a letter -- or
36 appearing or purporting to be a letter written by
37 me to David Eby [phonetic] where he quoted some
38 stuff from there. That has been on the website
39 for over a year. To this date the Crown has
40 failed or refused to provide any proof or any
41 evidence at all that I had anything at all to do
42 with that particular article. It was posted to
43 the website on August 19th, which is a day that I
44 was in court in person. So that entire day I was
45 in the courtroom or in the holding cells at the
46 courthouse, or being transported back to the jail.
47 It would have been physically impossible for me to

Submissions by Accused

1 have anything to do with composition or the
2 publishing of that particular article.

3 And it should also be pointed out that the
4 Crown has had -- what's it been, I guess three
5 years or so now, to present any evidence at all
6 that I have any ownership or control or even
7 involvement in the website during the period of
8 time that I have been probation. And so far they
9 have not -- they've not provided any evidence to
10 support that. In 2019, the VPD was investigating
11 the first breach allegation related to the
12 website. And Detective Jennifer Fontana was in
13 contact with the hosting provider in Arizona. She
14 succeeded in getting the website suspended for 90
15 days. And presumably during that time she would
16 have inquired about whether or not I am the owner
17 of the website or having anything to do with the
18 website. But even at that point when I cross-
19 examined her at that trial, she stated that she
20 did not have any evidence that I have anything at
21 all to do -- or that I have any ownership or
22 control over the website.

23 The Crown also mentioned that the trial is
24 currently scheduled to start on January 10th, and
25 that is only two and a half weeks or so away. But
26 I would like to point out, for example, back in
27 2019 on the matter of 244069-5-B-C, the allegation
28 that I breached probation by leaving British
29 Columbia without permission, there was a similar
30 situation there where I had a bail review two or
31 three weeks before the trial was scheduled to
32 start. The Crown brought up the fact that the
33 trial was going to be starting in a couple of
34 weeks and so another couple of weeks in custody
35 wouldn't be that big of a deal. But then the
36 trial started, but then ended up being adjourned
37 repeatedly over a seven-month period. Well, I
38 tried to obtain evidence from CBSA and the Crown
39 over that period of time and CBSA consistently
40 stated to the court that that evidence doesn't
41 exist, that there's no record that I ever
42 presented myself to them. After six months I
43 obtained the records proving that they did exist
44 and that I did present myself to them from IRCC.
45 So just because the -- the trial was scheduled to
46 start in two and a half weeks, certainly does not
47 mean that it's not going to be adjourned again or

Submissions by Accused

1 that it might not be delayed for some other
2 reason.

3 THE COURT: Sorry, Mr. Fox, can I ask you. What's your
4 estimate in terms of length of trial? How many
5 days?

6 THE ACCUSED: I believe we have a half day scheduled
7 for it at this point. Maybe Mr. Johnson can
8 confirm that?

9 CNSL C. JOHNSON: Yes, I believe we set it for three
10 hours and we were advised that if we needed more
11 time we could likely have it. So I think it's --
12 it's most likely scheduled for a day.

13 THE COURT: Thank you.

14 THE ACCUSED: Mr. Johnson also mentioned or made
15 reference to a original probation order that was
16 issued by Justice Holmes back in 2017 on the
17 criminal harassment offence. That was imposed for
18 the statutory maximum of three years. That order
19 expires on December 28th, which is only a few days
20 away. That probation order also had a condition'
21 that prohibited me from leaving British Columbia.
22 And I can say that at this point, once I'm no
23 longer required to remain in Canada, it is my
24 intention to leave Canada as quickly as I possibly
25 can. And of course, if I'm released on bail, then
26 obviously, I would have to remain here until the
27 trial is finished in this matter.

28 But let's see, other than that probation
29 order, there's one other probation order. I
30 believe it's the one that was imposed by Judge
31 Rideout which doesn't expire until August of next
32 year. However, since that one is, also,
33 essentially, the same conditions related to the
34 website as the Justice Holmes order, I would
35 likely seek to have that one terminated or I'd
36 like to have the time of it shortened so that once
37 the original Justice Holmes order expires, then
38 perhaps, I can get the other one removed and then
39 I can just go back to the U.S. and move on with my
40 life.

41 What I would say -- I mean, what would seem
42 reasonable to me at this point, since the Crown is
43 acknowledging that there likely is an email that
44 was sent by me to the administrator of the website
45 requesting that they take it down until my
46 probation is completed, and since they have
47 already stated that if I provide them a copy of

Submissions by Accused
Reply for Crown by Cnsl C. Johnson

1 that email, that they won't prosecute this -- this
2 charge, what seems reasonable to me is that I
3 should be released on bail with the condition that
4 within 48 hours of my release I would provide a
5 copy of that email to the Crown. And the reason I
6 would say within 48 hours is because at this
7 point, I'm homeless. I have no contacts, no -- no
8 friends or family in Canada. We have this
9 incredibly brutal cold weather that's coming in
10 the next few days. And my laptop and phone have
11 been seized by the VPD so there may be some
12 logistical issues in being able to forward the
13 email to -- to Mr. Johnson.

14 And those would be all of my submissions.

15 Thank you.

16 THE COURT: Mr. Johnson, in reply?

17

18 **REPLY FOR CROWN BY CNSL C. JOHNSON:**

19

20 CNSL C. JOHNSON: Yes. Just in reply, I don't, on
21 behalf of the Crown, say that it's likely that Mr.
22 Fox made efforts to remove the website. In fact,
23 I take quite the opposite. I did have a
24 discussion, at least one, with Mr. Fox where I
25 indicated that if he was willing to show the
26 police the email that he allegedly sent, that I
27 would consider the charge. I never said that if
28 he has an email I would drop the charge, I said I
29 would consider doing that. But the -- the clear
30 inference is that Mr. Fox refused to provide that
31 to the police and as a result the inference that I
32 believe exists is the same that Judge Galati drew
33 which is that that's unlikely.

34 THE COURT: Unlikely that he sent the email?

35 CNSL C. JOHNSON: Yes.

36 THE COURT: Okay. And I recall from the transcript of
37 the bail hearing before Judge Galati is that Mr.
38 Fox suggests, as he did today, that he was asked
39 to give the police access to all of his emails,
40 whereas the police indicate that they requested
41 only the significant email, if I can put it that
42 way.

43 CNSL C. JOHNSON: Yes. That is correct.

44 THE ACCUSED: Um --

45 THE COURT: Sorry, Mr. Fox has his hand up, again.

46 THE ACCUSED: I'm sorry. I don't mean to interrupt ,
47 but --

Reply for Crown by Cnsl C. Johnson

1 THE COURT: Go ahead.
2 THE ACCUSED: -- it has been established since then
3 that in fact the police were requesting access to
4 the entire email account. That is in the -- the
5 police interview which has been provided. So I'm
6 sure Mr. Johnson is well aware of that at this
7 point.
8 THE COURT: Mr. Johnson?
9 CNSL C. JOHNSON: Well, I -- I dispute that. I say
10 that the police indicated to Mr. Fox that they
11 wanted to look at that email and that email only.
12 Although, that would entail looking with Mr. Fox's
13 assistance, I would assume, at the -- at his
14 email, and all of his emails without examining
15 them, just to produce the one. The police are
16 only interested in the one email. They're not
17 interested in anything else.
18 THE COURT: Right. Anything else in reply, Mr.
19 Johnson?
20 CNSL C. JOHNSON: No, thank you, My Lady. I'm sorry,
21 Madam Justice.
22 THE COURT: That's all right.
23 I note the time. I would propose that we
24 stand this matter down until 3:30. Is that
25 acceptable, Mr. Sheriff?
26 THE SHERIFF: Yeah. Whatever is required, My Lady.
27 UNIDENTIFIED SPEAKER: [inaudible/away from mic]
28 THE COURT: Thank you.
29 Mr. Johnson, then, we'll stand down, Mr.
30 Registrar, until 3:30.
31 CNSL C. JOHNSON: And Mr. -- Mr. Registrar will call me
32 at 3:30?
33 THE CLERK: Yes, I will call you back for -- again,
34 thank you.
35 CNSL C. JOHNSON: Thank you.
36 THE CLERK: Thank you, Johnson.
37 Order in court. Court is stood down until
38 3:30 p.m.
39
40 (TELECONFERENCE STOOD DOWN)
41
42 (PROCEEDINGS ADJOURNED)
43 (PROCEEDINGS RECONVENED)
44
45 (TELECONFERENCE RESUMES)
46
47 THE COURT: Mr. Johnson, are you still on the line?

Proceedings

1 CNSL C. JOHNSON: Yes, I am, Madam Justice.
2 THE COURT: Thank you.
3 Mr. Registrar, I will now give reasons.
4 THE ACCUSED: Um --
5 THE COURT: Yes, Mr. Fox?
6 THE ACCUSED: I'm sorry, before we proceed, may I just
7 make two very short quick notes --
8 THE COURT: Yes.
9 THE ACCUSED: -- that I would like to point out.
10 The first is when I was being interviewed by
11 the VPD following my arrest, what they were
12 requesting from me is the passwords for my phone
13 and my laptop, and that's the only option that
14 they presented to me. Nothing about going through
15 my emails in my presence or anything like that.
16 They wanted full access to my laptop and my -- my
17 phone and there was no other option provided. Mr.
18 Johnson must be aware of this because he's
19 reviewed that -- that interview.
20 And the other point I wanted to make is Mr.
21 Johnson has stated in court on the record that if
22 I provide him a copy of that email that we were
23 discussing earlier that he would likely withdraw
24 the charge. And I bring this up because both of
25 these points are contrary to what Mr. Johnson had
26 stated before we stood down.
27 That's all, thank you.
28 CNSL C. JOHNSON: I won't reply to that, Madam Justice.
29 THE ACCUSED: It's all recorded. It's in the DARS.
30 THE COURT: Thank you, Mr. Fox.
31 Mr. Registrar, I'll now give reasons.
32 THE CLERK: Yes, Madam Justice.
33
34 [REASONS FOR JUDGMENT RE JUDICIAL INTERIM
35 RELEASE HEARING]
36
37 CNSL C. JOHNSON: Thank you, Madam Justice.
38 THE COURT: Thank you. That concludes today's hearing.
39 THE CLERK: Order in court. Court is adjourned.
40
41 (PROCEEDINGS CONCLUDED)
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45 Transcriber: J. Vanin
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I hereby certify the foregoing to
be a true and accurate transcript
of the evidence recorded on a sound
recording apparatus, transcribed to
the best of my skill and ability.



J. Vanin
Court Transcriber