

COURT OF APPEAL

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

REGINA

RESPONDENT

v.

PATRICK FOX

APPELLANT

TRANSCRIPT

BAN ON PUBLICATION 486.5(1) CCC

Ministry of Justice, Solicitors for the Crown (Respondent)
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Appearing on his own behalf

244069-8-B
Vancouver Registry

In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE DENHOFF)

Vancouver, B.C.
February 25, 2022

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL & SENTENCE

BAN ON PUBLICATION 486.5(1) CCC

Crown Counsel:

C. Johnson, Q.C.

Appearing on his own behalf:

The Accused

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Patrick Fox (for Accused)
evidence by the Accused
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1 Vancouver, B.C.
2 February 25, 2022
3
4 CNSL C. JOHNSON: Morning, Your Honour, Chris Johnson,
5 J-o-h-n-s-o-n, I appear for the Provincial
6 Crown --
7 THE COURT: Yes.
8 CNSL C. JOHNSON: -- and I can recall the Fox matter.
9 THE COURT: Thank you. And you concluded your case on
10 Wednesday --
11 CNSL C. JOHNSON: Yes.
12 THE COURT: -- and now it's Mr. Fox's opportunity to
13 present his case.
14 CNSL C. JOHNSON: Yeah.
15 THE ACCUSED: I would like to testify.
16 THE COURT: All right. Feel free to come up to the
17 witness stand and bring any documents with you
18 that you'll want to refer to.
19 THE ACCUSED: I may or may not require some of these
20 during -- probably during cross-examination, so
21 should I --
22 THE COURT: Just take them with you, sure.
23 CNSL C. JOHNSON: And I've provided Mr. Fox with a pen,
24 Your Honour, and he has some paper, I see.
25 THE COURT: Oh good. Okay. Thank you for doing that.
26
27 **PATRICK FOX**
28 the Accused herein, called
29 on his own behalf,
30 affirmed.
31
32 THE CLERK: Please state your name and spell your full
33 name for the record.
34 A Patrick Henry Fox, P-a-t-r-i-c-k, H-e-n-r -- H-e-
35 n-r-y, F-o-x.
36 THE COURT: Okay. Thank you. Now, feel free to stand
37 or sit, whatever is more convenient for you.
38 Perfect. Okay. So, because you don't have a
39 lawyer assisting you with the questions, you can
40 just relate your story to me in the fashion that
41 you feel is best; okay? So, just tell me what you
42 want me to know.
43
44 **EVIDENCE BY THE ACCUSED:**
45
46 A Okay. In 2018, I was serving the sentence on the
47 index offence at Fraser Regional Correctional

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1 Centre and in that year, the original website,
2 which was accessible at desireecapuano.com had
3 gone offline because the hosting plan expired and
4 it hadn't been renewed in time. And my -- a
5 friend of mine --
6 THE COURT: Sorry, what -- what expired?
7 A Oh, the original website, which was accessible at
8 desireecapuano.com.
9 THE COURT: It expired. Okay. You'll have to tell me
10 on -- I'm not very technically --
11 A Right.
12 THE COURT: -- knowledgeable, so you'll have to explain
13 that to me a little bit. Why -- why would it
14 expire?
15 A Sure, but first, can ask -- I should have brought
16 the water with me.
17 THE COURT: Oh, of course, feel free to get it.
18 CNSL C. JOHNSON: I'll hand it to you.
19 THE COURT: Okay, Mr. Johnson will hand it to you.
20 A Thank you.
21 Okay. The reason that it expired was because
22 the hosting plan, which had to be paid for
23 periodically, had ran out and needed to be
24 renewed.
25 THE COURT: Oh, okay, in other words, it had been paid
26 -- prepaid and the payment had run out?
27 A Right, right. And the reason that happened was
28 because I had automatic payments set up with my
29 bank account, but that account eventually ran out
30 of money. And so, my friend in Los Angeles, who I
31 have no objection to naming, Liz Munoz --
32 THE COURT: How do you spell the last name?
33 A Oh, M-u-n-o-z.
34 THE COURT: Okay. In Los Angeles, yeah.
35 A Right. She had overlooked or forgotten to make
36 sure that the plan would continue to be paid for.
37 THE COURT: Okay.
38 A So, that's why the original website had gone
39 offline.
40 THE COURT: Mm-hmm. And that was in 2018 it went
41 offline?
42 A Yes.
43 THE COURT: Okay.
44 A And then at some point thereafter, in 2018, the
45 new website was put online. It was set up with
46 all the same -- all the same content as the
47 original website. In November or December, My

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1 friend, Ms. Munoz, had informed me that she had
2 taken care of that, that the website had been put
3 back online.
4 THE COURT: Sorry, so -- so, in 2018, it -- the same
5 website was put back online with the same content
6 by Ms. Munoz?
7 A Well, it couldn't have been by Ms. Munoz herself;
8 she wouldn't have the technical expertise to do
9 that. And so, somebody else would have had to
10 have to done it for her.
11 THE COURT: But at her request?
12 A At her request. Now, I want to emphasize, it was
13 not because I had requested that she do that, I
14 guess she just did it because she was responsible
15 for looking after the original website.
16 CNSL C. JOHNSON: And sorry, was that in November or
17 December of 2018? I missed that.
18 A It was in November or December that she informed
19 me of it. When it actually was put online, I have
20 no idea.
21 THE COURT: Okay.
22 A And so, I informed her at that time that because
23 of the probation conditions, which were going to
24 be starting at the end of December, I'm prohibited
25 from having any involvement in the website. So, I
26 told her, I don't want to know anything about who
27 had put it online, or any other information about
28 it because as long as I don't know, then I can't
29 be compelled to say who it is that's running it.
30 So --
31 THE COURT: Okay. So, just stop for a second --
32 A Sure.
33 THE COURT: -- because I'm taking notes of what you're
34 saying and unfortunately, I can't write as fast as
35 you can speak.
36 A Right, sorry.
37 THE COURT: So, just give me a moment to catch up.
38 Just give me a minute, I have to catch up.
39 A Yeah.
40 THE COURT: Okay. Go ahead.
41 A Before I continue, I should say I drank a lot of
42 coffee before I left the jail this morning, that's
43 why I'm a little jittery and --
44 THE COURT: That's fine and if you need a break to use
45 facilities, just -- just let me know.
46 A Okay.
47 THE COURT: Yeah.

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1 A Thank you. So, sorry, I'm trying to remember
2 where I was.

3 THE COURT: You -- what you said is you knew you were
4 going to be released at the end of December, so
5 you told Ms. Munoz that you could not have
6 anything to do with the website, so don't tell you
7 who relaunched it or anything about it.

8 A Right. So, I told her until the probation period
9 ends, I'm prohibited from having anything to do
10 with the website and so, I don't want to know
11 anything about who put it online, et cetera, so
12 that I couldn't be compelled to disclose that
13 information.

14 And so, I know it was online at the time that
15 I was released at the end of December because I
16 checked and so, I know that it was sometime prior
17 to that.

18 Now, given that technically, I never actually
19 had physical ownership or control of the website,
20 because I was in custody, it would have been
21 impossible for me to be the person who put it
22 online.

23 THE COURT: Okay.

24 A and my ability to contact the people or person that
25 is currently maintaining the website, if, in fact,
26 anybody even is, is only through the email address
27 editor@desicapuano.com, which is on each page of
28 the website.

29 THE COURT: Okay.

30 A Sorry, I'm trying to think if there's anything
31 else that would be relevant to that at this point
32 that I should say.

33 No, I don't think that there's any other
34 information about that that I can offer up. I'm
35 sure there'll be questions that will come up on
36 cross-examination though.

37 With respect to -- with respect to the
38 current allegations, I was released from custody
39 on August 12th from FRCC. And then on the 13th, I
40 had sent an email to that address,
41 editor@desicapuano.com requesting that they take
42 down the website because of the probation
43 conditions and about how I could be prosecuted and
44 convicted about this. But I have no idea of
45 anybody is even monitoring that email address.

46 Now, I do understand that there have been
47 updates made to the website over the past year or

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1 year and a half, while I've been in custody and
2 so, clearly, somebody is doing something with the
3 website.

4 THE COURT: Yes?

5 A I don't think that there's much more that I can
6 say about actions that I took related to the
7 current charge because I was only out of custody
8 for five days. And like, if I had sent the email
9 on -- on the 13th, I mean, I would have to wait
10 maybe a couple of days or so to get any kind of
11 response, or maybe even a month or two months, I
12 have no idea, to be honest. Beyond sending an
13 email to them, requesting that they shut it down,
14 I don't know that there's much more that I could
15 have done. I could contact the hosting provider,
16 GoDaddy, but since I'm not the account holder, I
17 mean, they're not going to make any changes to the
18 account at my request.

19 THE COURT: Okay.

20 A I would like to say that with respect to the
21 statements that I had made that upon -- or once
22 the probation orders expire, I intend to return to
23 running the website, I don't believe that there is
24 anything inappropriate or questionable about
25 stating or intending to do that because if there's
26 a probation order that prohibits a person from
27 engaging in otherwise lawful conduct, once the
28 probation order ends, there's -- there's no reason
29 that they would not be allowed to continue or go
30 back to engaging in that lawful conduct.

31 For example -- and I'll pause here.

32 THE COURT: Yeah, go ahead.

33 A Oh, okay. For example, the order that was imposed
34 by Justice Holmes, back in 2017, prohibited me
35 from leaving British Columbia or from being within
36 a hundred metres of the U.S. border and it
37 prohibited me from using the internet for anything
38 other than sending emails or for employment. Now
39 that that order has expired though, I mean,
40 there's absolutely nothing wrong with me now using
41 the internet for any purpose whatsoever, or as
42 long as it's lawful, or for returning to the U.S.,
43 or going near the U.S. border. And likewise,
44 since there is nothing illegal about the website,
45 there is nothing inappropriate for me to say that
46 once the -- once the prohibition on having
47 anything to do with the website is removed, that I

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1 would intend to go back to running it.
2 Also, it should be mentioned that once that
3 that happens, most likely, I'm going to be back in
4 the U.S. and so, it would be the laws there that
5 would apply, not any laws that would be up here.
6 THE COURT: I see you're looking at some notes. Are
7 these notes you made for your testimony, or?
8 A These are actually notes that I prepared for my
9 closing arguments --
10 THE COURT: Okay.
11 A -- and so, I just want to scan over it quickly,
12 see if there's something else I should mention
13 here.
14 THE COURT: Okay. Do you have any objection to him
15 looking at his notes?
16 CNSL C. JOHNSON: No, I don't, Your Honour.
17 THE COURT: Okay. Go ahead.
18 A And I bring up this next point because I'm sure
19 it's going to come up on cross-examination. There
20 has been -- there've been some allegations by the
21 Crown about me stealing their e-disclosure laptop
22 and some hard drives and such and I will say right
23 now, I did not steal any of their e-disclosure
24 material and I have absolutely no knowledge of
25 what may or may not have happened with it.
26 THE COURT: Okay.
27 A I believe that's all the relevant information I
28 can offer at this time.
29 THE COURT: Okay. So, that's the end of your testimony
30 in chief? That's the end of your own testimony?
31 A Yes. I'm sure there's a lot that I'm overlooking
32 because I don't have expertise in this, but . . .
33 THE COURT: Okay. Well, just take your time.
34 A Well, no, what I mean is, I wouldn't even know
35 what information --
36 THE COURT: Oh, I see.
37 A -- would be relevant, or what information I should
38 bring up.
39 THE COURT: All right. Then I'll invite Mr. Johnson to
40 conduct cross-examination.
41 CNSL C. JOHNSON: Thank you, Your Honour.
42
43 **CROSS-EXAMINATION BY CNSL C. JOHNSON:**
44
45 Q Mr. Fox, I take it you acknowledge that you're
46 here because of a probation order that requires
47 you to make all reasonable efforts to take down

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1 the website www.desicapuano.com; is that correct?
2 A I acknowledge that I am here in relation to that
3 probation order, yes.
4 Q And you would agree, just by way of your
5 background, that this all started many years ago
6 and ultimately, you were convicted by a jury
7 and -- in Supreme Court and the judge was Madam
8 Justice Holmes?
9 A I agree that I was convicted. I also acknowledge,
10 though, that there is a copious amount of evidence
11 of perjury and prosecutorial misconduct that
12 occurred during that trial which is now publicly
13 accessible on the very website that we're talking
14 about here.
15 Q And would you agree that you appealed that and
16 that your appeal was not successful?
17 A I would agree that I appealed that and the appeal
18 was dismissed for failure to prosecute for the
19 reason that I was at North Fraser and had no
20 access to legal research source material, or
21 educational material, to litigate the appeal.
22 Q And so, ultimately, you'd agree that your appeal
23 was unsuccessful?
24 A I would -- well but saying that it was
25 unsuccessful kind of suggests that it was
26 dismissed on the merits and that's not the case.
27 Q I didn't suggest anything. I'm just --
28 A Okay.
29 Q -- suggesting that it was unsuccessful. That is,
30 you were not successful in overturning your
31 conviction?
32 A That is correct, I was not successful in
33 overturning the conviction because it was
34 dismissed for failure to prosecute.
35 Q All right. And just so that we're clear, because
36 I'm going to be asking you questions about this,
37 you acknowledge that you've been convicted of
38 those offences, which I'll outline in a second,
39 but also breaching the probation -- subsequent
40 probation orders on a number of occasions?
41 A I agree with that.
42 Q And I'm just showing you a copy of your criminal
43 record and I'm just going to ask you -- it's two
44 pages on each side, if you could acknowledge that
45 that is, in fact -- those are, in fact, the things
46 that you've been convicted of.
47 A Sorry, there's an entry on here I'm not familiar

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1 with. I'm wondering what this is about? This
2 last one?
3 Q The last one? Yes, that -- sorry, that is not a
4 conviction --
5 A Oh.
6 Q -- that was the 525 --
7 A Right.
8 Q -- bail application that you made that was not
9 successful.
10 A Right, right. Okay. Yes, then I would say
11 everything appears to be accurate on here.
12 Q Thank you. And so, you agree that in November of
13 2017, you were sentenced for two offences. One
14 was criminal harassment and the second one was
15 possessing a firearm where not allowed?
16 A Yes, I agree with that. And I would like to point
17 out that none of this is in dispute.
18 Q Right. And you were sentenced to a term of three
19 years in jail, less time served, and three years'
20 probation; is that correct?
21 A That's not correct. It was actually three years
22 and 10 months in jail.
23 Q All right.
24 A Because it was three years on the criminal
25 harassment, 10 months on the firearm --
26 Q Right.
27 A -- offence.
28 Q Now, let me ask you this, if it was three years 10
29 months and then you were given time credited, as
30 of November 10th, 2017, how much time did you
31 spend in jail on that charge?
32 A From November 10th, 2017 until December 30th,
33 2018.
34 Q Right.
35 A So, about 13 months, I guess.
36 Q And then you were released and you were on
37 probation for a period of three years at that
38 point.
39 A But wait, before I move on to responding to that
40 one, that was that period of time after I was
41 sentenced, plus all of the pretrial time. I think
42 I had spent 17 months --
43 Q Yes.
44 A -- in pretrial custody up to that point.
45 Q Yes.
46 A Okay. And so, the next question then about --
47 sorry --

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1 Q You said -- you indicated you were released from
2 that jail sentence in December of 2018?
3 A Yes.
4 Q And then as of December 2018, you were put on --
5 the probation started to apply; is that correct?
6 A Yes, on December 30th, 2018, I was released from
7 custody and that's when the first probation order
8 took effect.
9 Q All right. And then in June of 2020, you were
10 convicted of breach of a -- two counts of
11 breaching of a probation order; is that correct?
12 A June of 2020 --
13 Q I believe the prosecute --
14 A -- that was the first one that you had prosecuted;
15 right?
16 Q No, I believe that --
17 A Because the one that Bernie Wolfe had prosecuted,
18 that was one about going near the border and
19 returning -- or leaving Canada.
20 Q Yes, I believe that was the one that Bernie Wolfe
21 had prosecuted.
22 A Is that the one you're talking about now?
23 Q Yes.
24 A Was that June? I thought it was March or --
25 anyway, it was in 2020.
26 Q All right. And then, again, on August the 19th of
27 2020, you were convicted of breach of probation?
28 A Yes.
29 Q And if it refreshes your memory, I was the --
30 A That was the one --
31 Q -- prosecutor.
32 A -- you prosecuted.
33 Q And then on April 12th of 2021, you were again
34 convicted of breach of probation and again, to
35 refresh your memory, I was the prosecutor?
36 A Yes.
37 Q And on both of those occasions, those two latter
38 occasions, the specific breach was that you failed
39 to remove the website, essentially?
40 A Well, essentially, but more specifically, on the
41 first one, the allegation was that I had
42 republished the website, rather than failing to
43 take it down --
44 Q Right.
45 A -- because the Crown, apparently, at that time,
46 was not aware that the website was already up and
47 so, I was accused of putting the website online in

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1 March of 2019, even though it had already been up
2 for, I don't know, six months or something, or a
3 year at that point.
4 Q Right. And with respect to both of those
5 convictions, that is, November of 2017 and --
6 sorry, I'm giving you the wrong dates. On -- the
7 conviction on August of 2020, you received a jail
8 term of six months and a probation order of six
9 months; is that correct?
10 A From August 2020, that --
11 Q That was from Judge Phillips.
12 A -- that's correct, yes.
13 Q And then on April the 12th of 2021, with respect
14 to that breach, you received a jail term of 16
15 months less time served and a probation order of
16 one year; is that correct?
17 A More specifically, it was 16.5 months' jail
18 sentence.
19 Q All right.
20 A And then the probation order, I guess, is one
21 year.
22 THE COURT: Sorry, did you say August 20th --
23 CNSL C. JOHNSON: That --
24 THE COURT: -- August of 2020 was by Judge Dhillon?
25 CNSL C. JOHNSON: Judge Phillips.
26 THE COURT: Okay. Phillips, oh, sorry. Yeah.
27 CNSL C. JOHNSON: Judge N. Phillips.
28 THE COURT: Yeah.
29 CNSL C. JOHNSON:
30 Q And then on April the 12th of 2021, that was Judge
31 Rideout; is that correct?
32 A Yes.
33 Q And so, on that -- with respect to that
34 conviction, you're still on probation for some
35 period of time?
36 A Yes, I believe that will expire in August of this
37 year.
38 Q Right. Now, with respect to your -- the matter
39 where you were convicted by Judge Phillips, you've
40 filed an appeal of that; is that correct?
41 A Yes, and that is still outstanding.
42 Q Right. And you've received transcripts of that
43 appeal?
44 A Yes.
45 Q And I do have a copy. I just wanted to ask you
46 about one portion of that --
47 A Mm-hmm.

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1 Q -- if I might. And would you agree with me that
2 what I've just handed up to you is a transcript of
3 the trial that took place before Judge Phillips?
4 A It appears to be.
5 Q And on that occasion, you were convicted and then
6 you made submissions to the judge?
7 A Yes.
8 Q Or argument. And if I could ask you to turn to
9 page 53?
10 A Okay.
11 Q And there's a heading at line 9 which says:
12 Submissions on Sentence by the Accused.
13 A Yes.
14 Q And first of all, I should ask you, this -- you've
15 already agreed, I think, but this is a transcript
16 of that trial; you agree with that?
17 A I agreed that it appears to be, yes.
18 Q Right. And if I could draw your attention to line
19 31 --
20 A Okay.
21 Q -- and I'm going to suggest that you made this
22 submission to the court, where you said [as read
23 in]:
24
25 And with respect to the probation condition
26 about taking down the website, with all due
27 respect to everybody who is here, there is
28 absolutely no way the website is going to
29 come down on my release from custody and I
30 don't expect to be released from custody
31 before the end of December 2021, end of
32 probation.
33
34 Do you see that?
35 A Yes, I do.
36 Q And do you agree that you said that?
37 A Yes, I do agree that I said that and it makes
38 perfectly good sense that I would say that. If I
39 don't have any ownership or control over the
40 website, then putting me on probation or locking
41 me up in jail is not going to cause the website to
42 come down. So, for me to say that the website is
43 not going to come down when I get released from
44 custody, I mean, it's not an admission that I have
45 any intention of violating the probation
46 conditions, it's not in my control to do so.
47 Q Right. And your explanation, somewhat similar,

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1 follows --
2 A Mm-hmm.
3 Q -- that, starting at line 38, where you said [as
4 read in]:
5
6 But on my release from custody, I intend to
7 return to the United States and so, I don't
8 see how any probation conditions imposed here
9 at this time are going to make any difference
10 at that point.
11 So, regardless of what the decision is
12 on that, the website is not going to come
13 down. It's not going to go away. If I need
14 to transfer ownership of the website to
15 another party, so that I technically don't
16 own it at the time, so be it, but that's all.
17
18 A Sure.
19 Q And so, that, you've already agreed, was in August
20 of 2020; is that correct?
21 A Yes.
22 CNSL C. JOHNSON: And Your Honour, I'm wondering if I
23 could -- I've provided Mr. Fox with a copy and for
24 fullness, I'll provide a copy to Your Honour.
25 THE COURT: Okay.
26 CNSL C. JOHNSON: And that portion of the transcript
27 was on page 53.
28 THE COURT: Right.
29 A Now, I would like to point out also though that
30 the statements here in this transcript are
31 submissions that were being made. I guess --
32 right, regarding the sentence.
33 CNSL C. JOHNSON: Yes, I -- I think --
34 A This was not sworn testimony.
35 CNSL C. JOHNSON: That's correct.
36 A Okay.
37 CNSL C. JOHNSON:
38 Q Now, Mr. Fox, do you agree that you, on June 6th
39 of 2019, wrote a letter to Detective Jennifer
40 [phonetic] Fontana of the Vancouver Police
41 Department?
42 A Yes, I did.
43 THE COURT: Sorry, what date? What was the date?
44 CNSL C. JOHNSON: June 6th of 2019.
45 THE COURT: June 6, 2019, and he wrote a letter to
46 whom?
47 CNSL C. JOHNSON: Detective Jennifer Fontana, F-o-n-t-

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1 a-n-a.
2 THE COURT: Okay.
3 CNSL C. JOHNSON:
4 Q And I will supply you with a copy of that, Mr. Fox
5 and can you verify that that's the letter that I'm
6 asking you about, please?
7 A It certainly appears to be that letter, yes. And
8 I can say, proactively, that at the time of
9 writing this letter, I was very actively seeking
10 to convince the B.C.P.S. to prosecute me for
11 criminal harassment based on the new website. In
12 fact, even to this day, I would still do
13 everything that I can to try to convince the
14 B.C.P.S. to prosecute me for criminal harassment
15 based on this new website.
16 Q All right. And just for the record, when you
17 refer to the new website, I'm assuming there's an
18 old website. So, just so that we're all clear
19 here, the old website that you're referring to is
20 www.desireecapuano.com?
21 A Yes.
22 Q And when you say the new website, you're referring
23 to www.desicapuano.com?
24 A Yes.
25 Q And with respect to this letter, essentially, I
26 think you've said this already, but I'm suggesting
27 that the main purpose here was that you were
28 inquiring about being charged with criminal
29 harassment?
30 A Well, first, let me say, I don't believe that this
31 letter has been disclosed to me in this matter. I
32 don't know if that raises some disclosure issue,
33 but --
34 Q Well, it was an exhibit in one of your previous
35 trials.
36 A Yeah, it was, yeah.
37 Q And so, going back to my question --
38 A Right.
39 Q -- you'd agree with me that the purpose of this
40 letter was you were, I think, and disagree if you
41 feel like it, but you were encouraging the police
42 to charge you with criminal harassment?
43 A Yes, but more specifically than the police, what I
44 want or wanted was for the B.C. Prosecution
45 Service to prosecute me for criminal harassment.
46 Q Right. And just --
47 A The police did actually recommend a charge of

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1 criminal harassment on this and then the Crown
2 specifically said no, that they won't.
3 Q That's correct, and you -- you, in fact, would
4 agree that you've asked me to charge you with
5 criminal harassment?
6 A Yes, I even said that I would plead guilty to any
7 breach charges that you bring against me relating
8 to the website if you would agree to prosecute me
9 for that.
10 Q And just to be open here, the purpose -- the
11 reason why you'd like to be charged with criminal
12 harassment is because it would be criminal
13 harassment of Desiree Capuano and you would get to
14 cross-examine her?
15 A Whether I cross-examine her personally or another
16 486 -- it was a 486; right? The appointment of --
17 Q Yes.
18 A -- the lawyer? Or if it's done that way,
19 regardless, the important point though is that if
20 I were to be prosecuted for criminal harassment
21 again, based on the current or new website, that
22 would necessarily bring up or draw attention to
23 all of the corruption and the misconduct and the
24 perjury that occurred at the first trial and that
25 would be the objective of that.
26 Q And with respect to this letter then that is
27 before you, would you -- you've already indicated
28 that it's yours, but on page 2 of that letter, if
29 I could reference a portion, at the bottom of the
30 page, where you wrote [as read in]:
31
32 On the other hand, how do you and the Crown
33 explain not pursuing another criminal
34 harassment charge to the many angry feminists
35 in Canadian news media who adamantly refuse
36 to accept that Capuano is simply an evil
37 person?
38
39 Question -- question mark.
40 A Okay. Before we go any further, I would like to
41 object at this point because I don't see how any
42 of this has any relevance to the current charge.
43 Q Well, the next sentence, I believe does, and
44 perhaps you could wait until I get there.
45 A Okay.
46 Q And the next sentence is [as read in]:
47

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1 Particularly since, by publishing the new
2 website, I have engaged in exactly the same
3 conduct which Justice Heather Holmes declared
4 formed much of the basis of the guilty
5 verdict in 2017.
6

7 Do you see that?

8 A Yes, I do see that and I can explain that if I had
9 said in the letter that my friend, Liz, had
10 arranged for the website to be put back online
11 with no involvement or not in any -- not in
12 response to a request from me, that would mean
13 that I would have nothing to do with the website
14 and therefore, cannot be prosecuted for criminal
15 harassment based on it. Since my objective was to
16 antagonize or influence the police to prosecute or
17 initiate prosecution for criminal harassment, then
18 that wouldn't have really been consistent with
19 what I was trying to accomplish.

20 Q But regardless, you'd agree that in this letter,
21 you said [as read in]:
22

23 . . . since, by publishing the new website,
24 I have engaged in exactly the same
25 conduct . . .
26

27 Et cetera.

28 A Yes.

29 Q And --

30 A Yes, I do say that there.

31 Q -- and the clear reading of that, I'm suggesting,
32 is that you published the new website,
33 www.desicapuano.com.

34 A Well, I would say that would be a clear reading of
35 that. I would also point out in my interviews
36 with, for example, Detective Dent and Detective
37 Tanino, I have admitted to a great many -- a great
38 many potential criminal offences that I clearly
39 had nothing to do with.

40 Q So, you're suggesting that you confessed to things
41 that you didn't do; is that what your suggestion
42 is?

43 A I'm suggesting that there have been times with the
44 police, be it the RCMP or the VPD where I had said
45 things that I -- and probably they as well -- knew
46 that were not true because I was deliberately
47 trying to get them to start a prosecution for

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1 criminal harassment. And I don't see how that is
2 much different from the police making false
3 statements to me, or misrepresenting issues to me
4 in order to build a rapport and gain my trust, so
5 that I would say things that they could use
6 against me. If it's okay for them to lie and
7 manipulate me, then it should be okay for me to do
8 the same back to them, should it not?
9 Q Thank you.
10 A You're welcome.
11 CNSL C. JOHNSON: And Your Honour, those are the
12 questions I have about that letter and I'd like to
13 file a copy with the court, please.
14 THE COURT: Okay.
15 CNSL C. JOHNSON: And if that could be the next
16 exhibit.
17 THE COURT: This will be the next exhibit then.
18 What exhibit is that, Madam Registrar?
19 THE CLERK: Your Honour, I [indiscernible] --
20 THE COURT: I don't know that --
21 THE CLERK: -- [indiscernible].
22 THE COURT: -- we have any exhibits so far in this, do
23 we?
24 THE CLERK: I [indiscernible].
25 CNSL C. JOHNSON: That could -- that could well be,
26 yes.
27 THE COURT: I think this is Exhibit 1 then.
28 CNSL C. JOHNSON: Thank you.
29

**EXHIBIT 1: Letter from Patrick Fox to
Detective Jennifer Fontana, dated June 6,
2019**

30
31
32
33
34 CNSL C. JOHNSON: And Mr. Fox, if I could have that
35 copy back, please? Thank you.
36 A I'm sorry, since that's an exhibit in the case,
37 shouldn't I be allowed to have a copy?
38 THE COURT: Does he not have a copy?
39 CNSL C. JOHNSON: He has a copy of that exhibit.
40 A Really? Where?
41 THE COURT: Do you have a copy of the letter?
42 CNSL C. JOHNSON: It is referenced in some of the
43 materials that you have. I actually don't object
44 to giving you another copy if --
45 THE COURT: If you have another copy, it -- it would
46 probably be helpful --
47 CNSL C. JOHNSON: That's fine.

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1 THE COURT: -- to give it to him now. Sure.
2 A Thank you.
3 THE COURT: So, you have no objection to that being
4 Exhibit 1? Mr. Fox?
5 A Oh, yes, yes, I just marked it as --
6 THE COURT: Okay. Thank you.
7 All right. Go ahead, Mr. Johnson.
8 CNSL C. JOHNSON:
9 Q Now, Mr. Fox, with respect to the matters that
10 I've canvassed with you, you've indicated that
11 you've been to the Court of Appeal and if I
12 suggest that you've been there on a number of
13 occasions, would you agree with that?
14 A Yes.
15 Q And currently, I gather, you have matters that are
16 before Mr. Justice Fitch in the Court of Appeal?
17 A Yes, there are two matters before the B.C. Court
18 of Appeals and then one in the B.C. Supreme Court
19 that was a summary conviction appeal.
20 Q All right. And you, I gather, when decisions are
21 made, you get copies of them, do you?
22 A Generally.
23 Q And I'm going to provide you a copy of a decision
24 of Mr. Justice Fitch in our Court of Appeal, which
25 entitled *R. v. Fox* and it's -- it's dated August
26 10th of 2021.
27 A Sure. Now, but before we go on with this, there
28 is something that I would like to comment on with
29 respect to this letter and your suggestion that
30 there's an admission in this letter that is
31 somewhat incriminating, I would like to point out
32 that regardless of what statements might have made
33 by me or by anyone else, the physical evidence
34 fully supports what I am saying here today and
35 what I've been saying all along. And I believe
36 that the physical evidence far outweighs words
37 that people can say. Continue.
38 CNSL C. JOHNSON: Why, thank you. You've now got this
39 decision before you.
40 And Your Honour, I intend to refer to several
41 portions of it, so, it might assist the court if
42 there was a --
43 THE COURT: Yes, thank you, then I can follow along.
44 Thank you.
45 CNSL C. JOHNSON:
46 Q And Mr. Fox, you'll see, if you look at page 3 of
47 that decision, that this was an application by you

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1 for an order appointing counsel on your behalf in
2 two appeals?

3 A Yes.

4 Q And you argued that, I take it, and there was a
5 Crown counsel who argued on the other side and
6 then this decision was granted; is that right?

7 A Well, it was partially granted on one of the
8 appeals and I believe, dismissed on the other.

9 Q Well, when I said granted, I meant this decision
10 was given, I should have said.

11 A Oh, oh, okay, yeah, yeah, yeah.

12 Q And I just want to canvass some portions of the
13 decision. And so, if I could ask you to turn to
14 page 4, under the heading of Background Facts in
15 paragraph 4 -- do you see that?

16 A Yes, I do.

17 Q Where the court states [as read in]:

18
19 Since 2014, the appellant has engaged in a
20 relentless campaign of harassment directed at
21 his former spouse.
22

23 A I do see that and I do have a comment about that.
24 What Justice Fitch is referring to in here comes
25 straight from Justice Holmes reasons for sentence,
26 which I believe the court had received from Mr.
27 Johnson a couple of days ago. And I strongly
28 object to the ongoing use by the Crown of Justice
29 Holmes' reasons for sentence because I believe --
30 I believe it grossly misrepresents or
31 mischaracterizes the facts of the situation. And
32 it is my strong belief that if anything that is
33 stated in Justice Holmes' reasons for sentence
34 were actually true, then it would be shocking that
35 the Crown refuses to prosecute me for criminal
36 harassment, because apparently, I'm continuing to
37 engage in the same conduct that she felt so
38 strongly about.

39 Q And just looking at that paragraph going on --

40 A Mm-hmm.

41 Q -- where it states:

42
43 Among other things, the appellant created a
44 website in the name of his former spouse.
45 The website contains a large amount of
46 private information about the appellant's
47 former spouse and others with whom she is

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1 associated. The purpose of the website
2 appears to be to denigrate, humiliate and
3 intimidate her, to interfere with her
4 personal relationships, and to impair her
5 economic prospects and emotional security.
6
7 So, just on that paragraph, I'm sure you have more
8 to comment, but just so that we're all clear, that
9 is referencing, you say, the decision of Madam
10 Justice Holmes in sentencing you; is that right?
11 A Yes, this is essentially just taken straight from
12 Justice Holmes' reasons for sentence and I mean, I
13 obviously dispute the accuracy of much of what is
14 said in there, but regardless.
15 Q And --
16 A The point though is that I don't believe that
17 those are Justice Fitch's words or opinion, he's
18 just --
19 Q -- you think --
20 A -- going based on that.
21 Q -- you suggest that he's borrowed that from
22 Justice Holmes, is that your explanation?
23 A Yes. But I'm not saying that he -- that I believe
24 that he -- his opinion is one way or the other.
25 Q Right. When -- again, just for clarity, when Mr.
26 Justice Fitch refers to your former spouse, we're
27 talking about Desi or Desiree Capuano; is that
28 correct?
29 A The best I can say on that is he's referring to
30 the person that was known as Desiree Capuano
31 because it's my understanding that she has legally
32 changed her name since then and so, she is
33 technically no longer Desiree Capuano.
34 Q Right. And she's your -- that person is your
35 former spouse?
36 A Well, again, technically, since she had the
37 marriage annulled, we were never legally married.
38 Q All right.
39 A And so --
40 Q Whether legally married or not, you were in a
41 relationship with her.
42 A We were in a relationship --
43 Q I'm using the word --
44 A -- yes.
45 Q -- spouse in a general term.
46 A Yes, yes. I'm just clarifying that because the
47 marriage was annulled, as opposed to a divorce,

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1 under U.S. laws, at least in Arizona and
2 California, it's as though the marriage never
3 existed.
4 Q Right. Now, if I could ask you to turn to page 6
5 of this decision, paragraph 9. That references
6 your trial and conviction before Judge Phillips
7 and I've already asked you questions about that;
8 is that correct?
9 A Yes.
10 Q And you've seen this transcript and there's
11 nothing, I'm going to suggest, in there that you
12 disagree with? Paragraph 9?
13 A One moment, please, because I haven't read this
14 recently.
15 Q Yes, take your time.
16 A Okay. Yes.
17 Q And then moving on to page 7, at the bottom of the
18 page, paragraph 13, Events Giving Rise to Appeal,
19 you see that?
20 A Yes, I do.
21 Q And paragraph 13, again, you'd agree with that, I
22 take it?
23 A Yes, I'd agree with that.
24 Q And then onto the next page, it indicates that the
25 appellant was tried in a Provincial Court of
26 British Columbia before The Honourable Judge
27 Rideout?
28 A Yes.
29 Q And then on page 9, at paragraph 20, the court
30 quotes part of Judge Rideout's decision; you see
31 that?
32 A I see it. Give me one moment, please, to give it
33 a quick read. Okay. Yes, I do not agree with
34 what he's saying there and that does actually form
35 part of the basis of the current appeal.
36 Q Right. So, just on that point, you agree that
37 Judge Rideout said that, but you appealed that
38 decision; is that right?
39 A I agree that Judge Rideout did say that, yes.
40 Q Now, with respect to this particular case here,
41 you heard the evidence from Catherine Meiklejohn
42 that on four different occasions, she checked the
43 website www.desicapuano.com. This is, I believe,
44 August 12, 13, 14 and 15 of 2021 and she testified
45 that that website was operational. And I take it
46 you don't agree -- you don't disagree that at the
47 time she checked, it was operational?

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1 A I agree that she did check it once a day for a
2 four-day period and at each of those times, it was
3 -- well, okay, I can't say that it was or was not
4 operational at that time, but I give her the
5 benefit of the doubt that it was. Because the
6 five days that I was out, I was not sitting there
7 monitoring the website. So, whether or not it was
8 online or not, I couldn't say.

9 But I also do remember that she also
10 testified that she has no knowledge of whether or
11 not the website was -- remained online in between
12 those periods when she checked it.

13 CNSL C. JOHNSON: Right.

14 THE COURT: So, just for my understanding because I
15 made a note and I reviewed this the other day, I
16 understand, Mr. Fox, that you made that admission
17 at the beginning of the trial, that the website
18 was operational on the 12th, 13th, 14th and 15th
19 of 2021.

20 A I believe that my admission was that it's my
21 understanding or that I believe it was online
22 because I -- I have no firsthand knowledge of it.
23 As I said, I didn't continuously go and check that
24 the website was still up and running.

25 I mean, more appropriately, I would say I
26 don't dispute that the website was online for most
27 of that time.

28 THE COURT: Okay.

29 CNSL C. JOHNSON:

30 Q I take it that your explanation now is that --
31 well, first of all, with respect to the website
32 www.desicapuano.com, do you now disagree that you
33 created that website? Is that your evidence?

34 A First, let me say I -- I believe it's not
35 necessary to put the www part in front because
36 it's actually the hose name, not the domain name
37 and so, it is sufficient to just say
38 desicapuano.com.

39 And right now, under oath, subject to being
40 charged with perjury and having sworn that I'm
41 going to say that everything that I say is true to
42 the best of my knowledge and ability, I say that I
43 had no direct involvement in putting that website
44 online and that that would be evidenced by the
45 fact that when it was put online, I was in custody
46 at Fraser Regional Correctional Centre and had no
47 access to the internet, or to the material, for

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1 that matter.
2 Q And your evidence, I gather, is that that website,
3 desicapuano.com, is essentially a reboot of the
4 old website?
5 A It is, for the most part, from what I've seen,
6 mostly the same content that was on the original
7 website, but it is clear that there have been some
8 updates to, like, the layout and the colours, and
9 there have been some additional posts that have
10 been made on there. And I believe that the
11 information related to Capuano's other son has
12 been removed from it.
13 Q And you indicated today that you have a friend
14 whose name is Liz Munoz?
15 A I do have a friend whose name is Liz Munoz, yes.
16 Q And she lives in California?
17 A To the best of my knowledge, she still lives
18 there.
19 Q All right. And you talk to her on occasion and
20 correspond with her?
21 A Not so much anymore because I've been in -- well,
22 I've been exiled to a foreign country now for
23 eight years and I've been in jail in this foreign
24 country for five and a half years and over that
25 period of time, people have a tendency to move on
26 with their lives and gradually, over time, like,
27 we've been moving apart because she has a life and
28 she's gotten married and she's moved on with
29 things and I'm sitting in jail.
30 Q Right. But she's still your friend --
31 A I would --
32 Q -- you've already --
33 A -- I would still consider her my friend, yes, but
34 we're not in regular contact like we used to be.
35 Q All right. And your explanation, I gather, is
36 that with respect to desicapuano.com, is that you
37 gave control of that website to your friend, Liz
38 Munoz?
39 A Technically speaking, I cannot say that I gave
40 control of desicapuano.com to Liz Munoz or to
41 anyone else because technically speaking, I never
42 had control of it to give to her. When she
43 informed me that it'd had been -- it'd been put
44 back online and then I immediately told her, at
45 that point, there's no point in giving any control
46 of it to me. There's nothing I can do with it
47 until the probation ends.

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- 1 Q Could you suggest any possible reason why some
2 other person, aside from yourself, would want to
3 operate this website?
- 4 A Yes, I can. I can -- I can suggest a number of
5 reasons why there would be quite a large number of
6 people that would be interested in ensuring that
7 this website stays online.
- 8 First of all, a person like Desiree Capuano,
9 who has spent so much time and effort manipulating
10 and exploiting people and lying to them and going
11 in the public news media and telling all of these
12 lies to -- to gain people's support back in 2016
13 and then when it gets exposed that she had
14 actually lied about all that stuff, a lot of those
15 people were very upset with her because they got
16 sucked in by her and by her lies and such.
- 17 Q Right.
- 18 A Now, on top of that, there's all of the people
19 that she hurt directly when she, for example,
20 abducted Gabriel [phonetic], our son, and ran off
21 to Arizona with him, taking him from all the
22 people that he considered his family.
- 23 And then, of course, there's a lot of people
24 here in Canada, as you've been seeing recently,
25 with these protests that have been going on,
26 there's an increasing number of people, even here
27 in Canada, that have been getting upset with what
28 they consider government tyranny and government
29 overreach and it's my understanding that over the
30 past few years, there have been less and less and
31 less people who have been supporting Desiree and
32 there have been more and more people who have been
33 supporting the website. So, it's my understanding
34 that there are actually quite a lot of people that
35 would like to see the website stay up and running.
- 36 Q And when you say --
- 37 A Oh, let me -- let me also point out though that
38 since, I guess -- well, since my arrest in two
39 thousand -- well, no, let's say from -- okay, with
40 the new version of the website, it's been -- it
41 seems to me that the focus is much more on
42 exposing corruption and misconduct that's been
43 going on in my cases and in the hundreds of other
44 cases here in the Vancouver Courts and on the
45 parts of these LLS lawyers and the prosecutors and
46 such. It's my understanding that there's been
47 very little, if any, new information about Capuano

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1 put on there.
2 Q But the body of information about Capuano, as you
3 call her, is still there on the initial website.
4 A Most of the content that was on the original
5 website, it's my understanding, is also on the
6 current website.
7 Q Now, you're aware, of course, that you are subject
8 to the terms of a probation order which requires
9 you to voluntary steps to remove that website;
10 correct?
11 A I am aware -- well, hang on, my -- my answer is
12 going to be a little bit more involved. So, can I
13 ask you first, are we finished with this order,
14 can I put it aside?
15 Q Yes, you may.
16 A Okay. I am aware that there is a probation order
17 that requires me essentially to do -- or sorry, it
18 requires me to -- sorry, can I -- I want to make
19 sure I'm precise in the wording of it. I have a
20 copy of it. It's in my legal box. Unless you
21 have a copy I can borrow?
22 Q What are you looking for?
23 A I copy of the --
24 THE COURT: Perhaps we can just give him a copy of the
25 information.
26 A -- the probation order.
27 THE COURT: The --
28 CNSL C. JOHNSON: I only have a -- I don't have a copy
29 of the probation order.
30 THE COURT: What about the information?
31 CNSL C. JOHNSON: I have a copy of the information.
32 THE COURT: Perhaps he can look at the information.
33 A Okay. I do have the probation order in my legal
34 box, if you want to . . .
35 CNSL C. JOHNSON: I don't want to go --
36 THE COURT: Do you want to --
37 CNSL C. JOHNSON: -- into your things.
38 A Right. It's just that it doesn't have --
39 THE COURT: Okay.
40 A -- the full wording of --
41 THE COURT: Why don't -- why don't you retrieve it?
42 A Okay.
43 THE COURT: Just -- you can get it now.
44 A Okay.
45 THE COURT: You were answering, you said it requires
46 you to --
47 A Okay. Yes, I am aware that there is a probation

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1 order currently in effect that I am subject to
2 which requires -- or required me, within 48 hours
3 of my release from custody to [as read in]:
4

5 . . . take all necessary steps to ensure that
6 any website . . .
7

8 And then it goes on to articulate a number of
9 other artifacts, or types of content.

10 CNSL C. JOHNSON:

11 Q All right. And I'm suggesting to you --

12 THE COURT: Well, let -- let him finish his answer.

13 A Wait, wait, let me -- this -- this last part is
14 very important:

15
16 Including the website published under . . .
17

18 Et cetera, et cetera.
19

20 . . . are no longer available via the
21 internet or any other means.
22

23 I'm aware of that.

24 CNSL C. JOHNSON:

25 Q All right. And I'm suggesting to you that the
26 only step that you may or may not have taken is
27 that you say that you sent an email; is that
28 right?

29 A In the five days that I was out of custody, in
30 August of 2021, that is the only step that I have
31 taken toward causing that website that I have no
32 ownership or control, or involvement in to be
33 taken down, yes.

34 Q And you'd agree with me then that you -- because
35 you're a technical person, you didn't take all
36 necessary steps? That's -- there's much more that
37 you could have done.

38 A It is my belief and opinion that I took all
39 necessary steps because we're talking about
40 something that I don't own or control. I would
41 like to point out that there are other copies of
42 the same website online. For example, on the
43 website archive.org, there's something called the
44 Wayback Machine which contains snapshots of
45 websites from all over the internet at specific
46 points in time. In that Wayback Machine on
47 archive.org, there are snapshots of

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1 desireecapuano.com and of desicapuano.com. It's
2 the exact same content --
3 Q That's not the question I'm asking you, Mr. Fox.
4 A Well, you're asking if I took --
5 Q The question I'm --
6 A -- all necessary steps.
7 Q -- I'm -- I'm suggesting to you --
8 A Yes.
9 Q -- that the only step you took was sending,
10 perhaps --
11 A Uh-huh.
12 Q -- possibly, an email.
13 A That is -- I agree, that is the only step that I
14 had taken in that five day period, yes.
15 Q And you'd agree with me that there were other
16 steps that could have been taken?
17 A Two things. First, I don't agree with you.
18 Second, please, advise me what other steps could I
19 have taken? Oh, in fact, if you articulate some
20 other steps that I could have taken, then if this
21 situation ever arises again, perhaps I will take
22 those additional steps.
23 Q Well, you've already indicated that, first of all,
24 you've transferred this to your friend.
25 A Well --
26 Q Did you --
27 A -- okay. I've been phrasing it that way so far
28 because it's much simpler than giving the full
29 explanation that I have provided here today. And
30 so, it's much simpler to simply say that I
31 transferred ownership or control to my friend, but
32 as -- as I've testified about today, technically,
33 I didn't transfer ownership or control to her
34 because the ownership and control never went from
35 her to me to begin with.
36 Q You told Detective Dent and he testified about
37 that here --
38 A Yes, I also told him --
39 Q -- that you --
40 A -- something about where the children's bodies
41 were buried.
42 Q Could you allow me to answer the -- ask the
43 question, please?
44 A Please do. Sorry.
45 Q You told Detective Dent, in respect of this
46 website that you did it very deliberately to
47 transfer to another person, so that you couldn't

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1 be charged.
2 A Yes, that would be a simple explanation for it,
3 yes.
4 Q And you've also indicated, on more than one
5 occasion, that once your probation is over, you
6 will take back control of the website.
7 A Well, there's actually more to that that you seem
8 to be ignoring. When I was speaking with
9 Detective Tanino, I had said to her that my
10 intention would be that once the probation is
11 finished, first, I won't be in Canada anymore, so
12 I won't be subject to Canadian laws and at that
13 point, I would seek to take control of the website
14 back, but even if I'm not able to do that, like,
15 if the person who has control of the website at
16 that time isn't willing to give it back to me for
17 some reason, then at that time, it would be an
18 easy enough matter to simply put up a new website
19 with the same content.
20 Q Regardless, I'm suggesting that you agree that
21 you've said on more than one occasion that once
22 you're probation is over, you're taking back
23 control of the website.
24 A I have stated that and that roughly would be my
25 intention. I say roughly because whether it's
26 putting up a new website, or whether it's taking
27 the original website or this website back,
28 regardless, I'll no longer be on probation and no
29 longer be in Canada, therefore, there will be
30 nothing illegal about it.
31 Q And just on a -- something that you just raised,
32 do you agree with me that you've been refused
33 entry to the United States because you're not an
34 American citizen, but you're, in fact, a Canadian
35 citizen? Do you agree with that?
36 A No, I have been -- I -- sorry, I'm trying to think
37 because this is a very legal topic that we're
38 bringing up here now. First, I object because it
39 has no relevance to this matter. But I will
40 answer the question. I was denied admission to
41 the United States because there is a prior order
42 of removal based on a conviction for a false claim
43 of U.S. citizenship, which is contradicted by the
44 fact that I have a U.S. birth certificate and the
45 facts that IRCC and CBSA documents clearly state
46 that I was born in the United States.
47 Q So, I take it you do agree that you were refused

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1 entry to the United States?
2 A I was denied admission, yes. I've also been
3 denied admission to Canada.
4 Q Mr. Fox, I'm suggesting to you that it would be a
5 very easy thing for you to do to remove this
6 website, but you adamantly refuse to do so.
7 A I understand that that is a suggestion that you're
8 making and you're entitled to make that or any
9 other suggestion, but is that a question that you
10 went me to respond to, or?
11 Q It's a question.
12 A Oh, because you said, I'm suggesting. So, if it's
13 a question, what exactly is the question?
14 THE COURT: He's made an assertion to you that it's
15 very easy for you to remove the website, but you
16 have adamantly refused to do so.
17 A Okay. If that is the case, I ask you, what do you
18 believe that I could do to cause the website to
19 cause --
20 THE COURT: Okay. Well --
21 A -- the website to be taken down?
22 THE COURT: -- I'm just going to stop you right there.
23 A Okay.
24 THE COURT: You probably know this from previous
25 proceedings. Your role right now is to answer
26 questions, not --
27 A Correct.
28 THE COURT: -- to ask them. So, when Constable Dent
29 was in the stand, you were allowed to ask him
30 questions in cross-examination. He wasn't allowed
31 to question you.
32 A Okay.
33 THE COURT: So, similarly now, it's the prosecutor's
34 opportunity to challenge your testimony by asking
35 you questions. You're not allowed to ask him
36 questions.
37 A Okay. Then I would say that I disagree with your
38 assertion. It would be a very easy thing to do if
39 I had the user account name with the hosting
40 provider and the password so I can log into the
41 account and if I had the authority -- the legal
42 authority of the owner of the account to be able
43 to that. But without the username and the
44 password, I cannot log into the account and make
45 any changes to it.
46 CNSL C. JOHNSON:
47 Q And having transferred the account to your friend

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1 and indicated on more than one occasion that you
2 intend to restart the website, I'm suggesting
3 that's false, what you just said.

4 A I -- I disagree with that suggestion or assertion
5 because it's based on the false premise that I
6 transferred ownership or control to my friend.

7 Q And I'm suggesting, Mr. Fox, that in fact, when
8 you were released from custody on August the 12th
9 of 2021, that you made no efforts whatsoever to
10 remove the website.

11 A I disagree.

12 I would like to point out that when Detective
13 Dent was testifying, he very openly admitted that
14 the VPD made absolutely no -- well, I can't say
15 absolutely no, they made no reasonable effort to
16 verify that email that I had sent and they made no
17 effort to determine whether or not I have any
18 involvement in the website.

19 Q Well, just on that point, you'll recall that
20 Detective Tanino testified that she asked you
21 about that email and you said you wouldn't give it
22 to her.

23 A No, no, no, no. That's actually not correct.
24 What she said was that -- or what happened was
25 that Detective Roberts and then Tanino, had asked
26 for my passwords for my phone and my laptop, so
27 that they could go into them and get the
28 information. That's what I refused to provide.

29 Q Right.

30 A Now, contrary to what you had said to the court at
31 my 525 hearing, they had never given me the option
32 of allowing them access to my laptop with me
33 present to make sure that they only pull up that
34 one email. What they were asking for was my --
35 was access -- unlimited access to my devices so
36 that they could check it outside of my presence
37 and that's what I refused.

38 Q Do you recall asking me to have Detective Dent
39 bring your laptop here to court?

40 A Yes, I --

41 Q And --

42 A -- intended to use that in my cross-examination of
43 him, but that never came up.

44 Q -- and do you recall indicating to me that if he
45 did bring it, you might choose to show us this
46 purported email?

47 A I do not recall saying that to you. I do not

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1 recall saying anything associating that email with
2 my laptop being here at jail.
3 Q You would agree, I take it, that I did advise you
4 that Detective Dent did bring your laptop?
5 A Yes.
6 Q And you agree, I take it, that you chose not to
7 ask him anything about it, or look at it?
8 A Yes. And the reason I wanted the laptop here was
9 so that I could show that the efforts that they
10 made to find that email on the laptop were -- were
11 so minimal because they looked only at this
12 Windows partition, even though I don't use Windows
13 and they completely ignored everything in the
14 Linux partition. They didn't even -- apparently,
15 didn't even know that there was a Linux partition
16 on there.
17 Q It would have been simple, I'm suggesting, for you
18 to ask Detective Dent to let you access your
19 laptop and show us this purported email.
20 A Here in the courtroom?
21 Q Yeah.
22 A Well, it would need to connect to the -- to the
23 internet and I suppose that would be a
24 possibility.
25 Q And you didn't do that?
26 A I did not.
27 Q And I'm suggesting, Mr. Fox, that, in fact, you
28 didn't send an email because if you did, you would
29 have showed it to somebody.
30 A Would I have?
31 Q That's my suggestion to you.
32 A I believe that your suggestion is inaccurate.
33 CNSL C. JOHNSON: Thank you, those are all the
34 questions I have, Your Honour.
35 THE COURT: Okay. Did you have anything in response to
36 the questions that the prosecutor asked that you
37 would like to tell me about?
38 A Sorry, let me take a quick look at my notes.
39 THE COURT: Yes, of course.
40

EVIDENCE BY THE ACCUSED, CONTINUING:

41
42
43 A Well, I could say one -- one concern that I would
44 have with if I had brought the laptop into the
45 courtroom in order to pull up that particular
46 email, once the laptop becomes evidence in the
47 matter, that could potentially open the entire

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1 laptop up to being scrutinized or investigated and
2 that's one thing that I certainly would want to
3 avoid because there may be other unrelated
4 information or artifacts on the laptop that I
5 would not want to share with everybody, perhaps
6 related to my birth identity or citizenship, or my
7 cases against the B.C. Prosecution Service, et
8 cetera, or CBSA.

9 And in fact, I do recall that Mr. Johnson had
10 mentioned something along those lines, that if I
11 did bring the laptop in, a situation like that
12 could -- could arise.

13 THE COURT: Okay. Anything else?

14 A There's nothing that I can think of, sorry.

15 THE COURT: Okay. That's fine. You can go back to
16 your seat then.

17 A Okay.

18

19 (WITNESS EXCUSED)

20

21 THE COURT: And feel free to take that water with you,
22 if you like.

23 THE ACCUSED: Thank you, yes. Oh --

24 THE COURT: Yes.

25 THE ACCUSED: -- there is one thing. It's not part of
26 the testimony, but I should mention sometimes
27 people find my presentation a little off-putting
28 and so, I assure everybody that it's not my
29 intention to be assertive, or aggressive, or
30 offensive to anybody, I think it's just because
31 I'm an engineer and a scientist and so, I have a
32 tendency to be very direct and say things in a
33 less than tactful way.

34 THE COURT: Okay. Well, if I think it's inappropriate,
35 I'll let you know. But thank you for that
36 warning.

37 So, now, at this point, I'm just -- I'm going
38 to ask you, Mr. Fox, do you have any other
39 evidence that you're going to be leading as part
40 of your case? Like, are you calling any other
41 witnesses?

42 THE ACCUSED: There will be no other witnesses, no.
43 And I don't believe that I have any further
44 evidence.

45 THE COURT: Okay.

46 THE ACCUSED: Oh, well, I'm not sure if this is an
47 appropriate time to bring this up, certainly it

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1 will be on appeal, but this -- one of the
2 situations that has arisen this time, as has in
3 all of the previous cases, is since I'm in custody
4 and I have no resources on the outside to assist
5 me with things, obviously, I have no access to
6 physical evidence to support my claims. And so,
7 it creates a situation where once I finally get
8 released from custody and then I appeal, part of
9 the basis of the appeal is newly discovered
10 evidence that I didn't have access to at the time
11 of the trial. And so, I fear that that's probably
12 going to be the situation that's going to arise
13 here as well, because there's, for example, the
14 email that I had sent, which I don't have physical
15 access to and that's why I'm not able to present
16 it here. And I'm not about to give the Crown or
17 the police access to my electronic devices to pull
18 it up on their own.

19 THE COURT: Okay. So, at this point then, there's
20 nothing that you can think of that you want to put
21 before the court as part of your own case?

22 THE ACCUSED: That is correct.

23 THE COURT: All right. So, you've concluded your case
24 and now we'll have submissions.

25 It's time for the morning break and if you
26 would like to take a little bit longer morning
27 break, in order to review your notes, I know you
28 said you do have some notes for your final
29 submission, but if you'd like to review those,
30 just in terms of your recent testimony, if you
31 want to add anything to them, just take the extra
32 time that you need; okay?

33 THE ACCUSED: Okay. Thank you.

34 THE COURT: So, Madam Registrar, I'll just ask, if you
35 don't mind, if you could call me please, when the
36 parties are ready; okay?

37 Oh, is this the only exhibit?

38 THE CLERK: Yes.

39 THE COURT: Okay. Sorry, do you have --

40 CNSL C. JOHNSON: Do you need a copy of anything
41 that --

42 THE COURT: Do you have a copy of the letter?

43 CNSL C. JOHNSON: Yes.

44 THE COURT: Because I've written on -- I thought this
45 was my copy, I'm sorry. So, that was the only
46 exhibit, I think, was the letter; right?

47 THE CLERK: Yes.

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1 THE COURT: Okay. The other ones are court decisions.
2 So, we'll mark that one formally that Mr. Johnson
3 just gave to you. Okay.
4 A SHERIFF: Order in court.
5
6 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
7 (PROCEEDINGS RECONVENED)
8
9 THE COURT: Okay. Thank you.
10 CNSL C. JOHNSON: Recalling the Fox matter, Your
11 Honour.
12 THE COURT: Yes, thank you.
13 CNSL C. JOHNSON: Now, Mr. Fox testified, which means
14 technically that he should argue first.
15 THE COURT: Right.
16 CNSL C. JOHNSON: I am prepared to go first if that's
17 to his advantage, just out of --
18 THE COURT: Okay.
19 CNSL C. JOHNSON: -- courtesy, or he can proceed.
20 THE COURT: Sure. So, typically, when a defendant
21 testifies, or calls evidence in a -- in the
22 defence case, they're obligated to argue first.
23 But because you're not legally trained, Mr.
24 Johnson has offered to make his argument first, so
25 that you can understand what response -- what
26 you're responding to. I'll still give you -- so
27 then I would give Mr. Johnson an opportunity to
28 reply to your argument and then I'll give you,
29 although it's not usually the case, I'll give you
30 an opportunity to surreply to him, so that you get
31 the last say.
32 THE ACCUSED: Okay. Thank you. I would appreciate
33 that.
34 I did want to ask though, while I was
35 downstairs, an issue occurred to me that I had
36 wanted to -- or there was something that I had
37 wanted to state or a further clarification.
38 THE COURT: Okay.
39 THE ACCUSED: Is it too late? Like, I don't need to be
40 sworn in again.
41 THE COURT: I don't have any problem with him adding to
42 his evidence. Do you, Mr. Johnson?
43 CNSL C. JOHNSON: No, I don't either, Your Honour.
44 THE ACCUSED: It just relates --
45 THE COURT: Okay.
46 THE ACCUSED: -- to Mr. Johnson's question about me
47 being denied to the U.S. and my admission that I

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1 had been denied admission.

2 THE COURT: Yes.

3 THE ACCUSED: I want to point out that I was denied
4 admission to the U.S. only two times and both
5 times, it was because I told CBP or the border
6 patrol that I had previously been deported from
7 the U.S. to Canada. Now, there are other many,
8 many, many times that I wasn't denied admission,
9 where I just show my U.S. birth certificate and my
10 driver's licence and I'm just waived through. So,
11 it's only two times and it was because I brought
12 it up the U.S. authorities, not because they
13 looked into it.

14 THE COURT: Okay.

15 THE ACCUSED: And so, that -- that was it.

16 THE COURT: Okay. Good, thank you.

17 THE ACCUSED: Oh, I should also mention, as I had said,
18 that I had also been denied admission to Canada
19 back in the 1990s, two or three times I was denied
20 admission from the U.S. into Canada. And that's
21 all.

22 THE COURT: Okay. In the 1990s?

23 THE ACCUSED: Yes.

24 THE COURT: Okay. All right. Anything else you'd like
25 to tell me?

26 THE ACCUSED: No, no, that's all, thank you.

27 THE COURT: Anything arising from that, Mr. Johnson?

28 CNSL C. JOHNSON: No, I can advise Your Honour I don't
29 intend to make any submissions related to that,
30 thank you.

31 THE COURT: Okay. All right. So, then I will ask, Mr.
32 Johnson, if you'll start your submissions first.

33

34 **SUBMISSIONS FOR CROWN BY CNSL C. JOHNSON:**

35

36 CNSL C. JOHNSON: Thank you, Your Honour.

37 Mr. Fox has agreed that he's bound by a
38 probation order and the allegation here is that he
39 failed to comply with that order, specifically,
40 within 48 hours of his release from custody, he
41 was required to take all necessary steps to ensure
42 that any website, et cetera, was removed.

43 And I say that the Crown's case establishes
44 that Mr. Fox made no -- or minimal efforts at best
45 -- to comply with that order. Mr. Fox says that
46 he sent an email. He's given no further
47 information about that email. He declined the

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1 opportunity to provide a copy of that email and
2 so, it's the Crown's position that -- firstly, I
3 say that email, on the evidence, is unlikely to
4 exist, but even if it did exist, that falls far
5 short of complying with the order and the positive
6 steps that Mr. Fox is required to make.

7 Mr. Fox's explanation today, as it has been
8 in the past, in a number of occasions, is that
9 he's transferred ownership of this website to some
10 other person, although today he did give us a name
11 and --

12 THE COURT: I don't think it's fair to say today that
13 he's saying he transferred ownership. He's saying
14 that it was simpler to say that previously and
15 today he said he didn't transfer ownership because
16 he never had ownership. Ms. Munoz launched the
17 new website. He had nothing to do with it. That
18 -- that's what I understood his evidence today to
19 be.

20 CNSL C. JOHNSON: I think that's -- that's probably
21 true.

22 THE COURT: Okay.

23 CNSL C. JOHNSON: I don't say that that is true, but
24 that's true that that's --

25 THE COURT: No, no, I hear you.

26 CNSL C. JOHNSON: -- his evidence.

27 THE COURT: I just wanted to --

28 CNSL C. JOHNSON: And --

29 THE COURT: -- fairly summarize his evidence today.

30 CNSL C. JOHNSON: Yes, I appreciate that, Your Honour.

31 And the Crown says that that flies in the
32 face of Mr. Fox's other evidence, which is
33 exhibited, most particularly in this trial, in the
34 letter that he wrote that's Exhibit 1 and I gather
35 his evidence about that is that he claimed that he
36 published the new website for some ulterior
37 purpose, but nevertheless, there is evidence
38 before this court that he is, in fact, the person
39 who published the website, the Crown says.

40 In addition, he made no bones of the fact, on
41 the evidence here, that he advised the police that
42 he fully intended to take control of the website
43 once again, once his probation has expired. And I
44 say, from that, the court can infer, as other
45 courts have, that Mr. Fox is able to have some
46 measure of control over this website.

47 The Crown says that it's an outlandish

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1 explanation at best that the website may have been
2 taken down briefly between the 12th and the 15th
3 and that there's -- that contradicts Mr. Fox's
4 admissions, firstly, and secondly, the evidence of
5 Catherine Meiklejohn. And in addition to that,
6 there's no evidence before you on which you could
7 conclude, in my submission, that the website would
8 have been removed as a result of anything that Mr.
9 Fox did. The website was clearly in existence
10 both during the 48 hours that he was required to
11 take all reasonable steps to remove it and so --
12 THE COURT: I'm -- I'm not sure that it really has much
13 relevance because he doesn't claim to have taken
14 it down.
15 CNSL C. JOHNSON: That's -- that's correct.
16 THE COURT: So, he could only fulfill his probation
17 order if he took steps to ensure that it was not
18 accessible. He says he didn't take those steps
19 because he didn't feel he was obligated to do it.
20 CNSL C. JOHNSON: I don't disagree with that.
21 THE COURT: Okay.
22 CNSL C. JOHNSON: In any event, the Crown says that
23 while they're -- I'm not in a position to prove
24 whether Mr. Fox physically accessed this website,
25 or did access it in any way, shape or form, the
26 clear inference, on the evidence, given Mr. Fox's
27 evidence and in particular, his statements in the
28 past that he will never take this website down,
29 coupled with his statements that as soon as his
30 probation is over, he's going to reassume control,
31 the clear inference of that is that Mr. Fox does
32 and is able to exercise some measure of control
33 over the website and once one comes to that
34 conclusion, the Crown says it's an inexorable
35 conclusion that Mr. Fox failed to comply by taking
36 any -- or at least, at the very most, minimal
37 steps to comply with the probation order and as a
38 result, the Crown says that it's been proven well
39 beyond a reasonable doubt that Mr. Fox was in
40 breach of that probation order.
41 THE COURT: Thank you, Mr. Johnson.
42 CNSL C. JOHNSON: Those are my submissions. And I -- I
43 do -- I do point out that Mr. Fox has made this
44 same argument that he's making before Your Honour
45 to other courts and you have copies of decisions
46 where the same conclusion that I'm urging upon you
47 has been adopted by the courts.

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1 Thank you.

2 THE COURT: Thank you.

3 Did you want a little bit of time to respond
4 to Mr. Johnson, or are you prepared to do so now?

5 THE ACCUSED: I'm -- I'm prepared, thank you.

6 THE COURT: Okay.

7

8 **SUBMISSIONS BY THE ACCUSED:**

9

10 THE ACCUSED: First, I want to respond to a few of the
11 points that Mr. Johnson had just made.

12 With respect to the -- to my -- my statements
13 that when the probation conditions expire I intend
14 to regain control or take over control of the
15 website again, I'm pretty sure that I was pretty
16 clear when I testified that what I had stated to
17 the police was either that, or, if I'm not able to
18 regain control of that website, to start a new
19 website.

20 So, my statements to the police at that time
21 provide no real indication, in my opinion, that I
22 have any -- any control or ability to gain control
23 of that particular website. What I had said to
24 the police was that if I can't get control of that
25 website back, I could start a new one.

26 And I would like to point out that even
27 though the argument that I'm making with respect
28 to ownership of the website or with respect to
29 whether or not the website had actually come down
30 in that period of time, I have made those
31 arguments in the previous matters, but this is the
32 first time that I've provided testimony in the
33 matter. And part of the reason that the argument
34 may not have had much weight in the previous cases
35 was because there was no actual evidence, there
36 was no testimony to support them. It was simply
37 the arguments.

38 Sorry, [indiscernible] the probation order.

39 I should also clarify, because it did come up
40 in Mr. Johnson's submissions a moment ago, what I
41 had stated today is consistent with what I had
42 stated previously, in that Ms. Munoz was the
43 person who might have overseen putting the website
44 back online, but she was not the person who did it
45 herself. And so, when I state -- when I've stated
46 in my statements to the police before that I have
47 no knowledge of who's actually running the

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1 website, that is consistent with what I said
2 today. Ms. Munoz was not the one that had done
3 it. Someone else that she knew about at the time
4 had done and I explicitly requested that she not
5 inform me of who that person was.

6 So, let's see, it -- it's my understanding,
7 based on the specific wording in condition 6 of
8 the probation order, which is the condition that
9 I'm accused of breaching, that if I -- if I took
10 down the website -- and this is, of course,
11 assuming that I had the ability to take down the
12 website, this is -- for the same of argument, that
13 if I had control and ownership of the website,
14 then if I took down the website within 48 hours of
15 my release, such that all of the content on the
16 website ceased to be publicly available on the
17 internet, at that exact moment in time, I would
18 have fulfilled condition 6.

19 The content that's stated in the condition
20 and there's quite a number of items that are
21 listed there, but all of that content would, as of
22 that moment, once the website is taken down, would
23 no longer be available via the internet or any
24 other means. And it's my understanding of
25 condition 6 that there's no wording in that
26 condition which state -- which states that the
27 content must remain no longer available for any
28 duration or period of time.

29 THE COURT: Well, isn't that the very meaning of no
30 longer?

31 THE ACCUSED: I'm sorry?

32 THE COURT: Isn't that the very meaning of no longer?
33 If something is no longer, it existed in the past
34 and does not exist now. If I no longer own my
35 car --

36 THE ACCUSED: Right.

37 THE COURT: -- I owned it in the past, but I don't own
38 it now. It's a continuing --

39 THE ACCUSED: But --

40 THE COURT: -- it's a continuing state.

41 THE ACCUSED: -- but if -- if you're -- if a person is
42 ordered to engage in specific conduct to cause
43 something to no longer be available, then once
44 they achieve that point where it's no longer
45 available, it's my understanding that they have --
46 they have complied with that -- with that content
47 or with that instruction. And given that

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1 condition 5 explicitly prohibits the publishing or
2 the dissemination of any information, it seems to
3 me that the intention would be for condition 6 to
4 require the website to be taken offline and then
5 condition 5 would prohibit putting it back online.
6 THE COURT: Well, then it would have said, you must
7 take it offline. Not that you must ensure that it
8 no longer is available.
9 THE ACCUSED: Hmm. See, if -- if condition 6 had said
10 no longer available and remain no longer
11 available, or if it had said no longer available
12 and remain as such, then that's how I would have
13 understood that to mean. Otherwise, it seems to
14 me that the two conditions, there's some overlap
15 and they're kind of redundant, like. But anyway,
16 so that would be my understanding of it.
17 THE COURT: Okay.
18 THE ACCUSED: And so, even -- even if I had had the
19 ability to take the website down, at the time,
20 when I was released from custody, it would have
21 been my understanding that condition 6 was telling
22 me to take the website down and once I had done
23 so, then that's it, the condition had been
24 complied with.
25 And also, with respect to Ms. Meiklejohn's
26 testimony about the website being online at the
27 times when she had checked it, there was nothing
28 in the probation condition that required me to
29 notify any authorities, be it the VPD or the
30 Crown, when the website was -- had actually been
31 taken down.
32 THE COURT: You don't have to take it down. The part
33 I'm having difficulty is, is that you seem to
34 think that the probation condition requires you to
35 take it down and that once you've taken it down,
36 you've satisfied your obligation. What it
37 inquired [sic] you to do was to ensure that it was
38 no longer available to anyone.
39 THE ACCUSED: In perpetuity? I mean, because --
40 THE COURT: As long as the probation order --
41 THE ACCUSED: -- that raises the --
42 THE COURT: -- is in existence.
43 THE ACCUSED: Well, if that's the case, then there's a
44 gross misunderstanding on my part and I would have
45 -- I would have hoped that the author of the
46 condition would have been a little more clear on
47 that.

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1 If -- if it is the court's understanding that
2 are no longer available is to be interpreted in
3 that way, that it is to become no longer available
4 and remain no longer available as long as the
5 probation order is in place, then there's very
6 little that I can say further on that matter.

7 Now, when Detective Dent was testifying, he
8 stated that he believes that I'm still involved
9 with the website. However, he admitted that that
10 belief is not based on any actual evidence, but
11 rather just his inferences from vague and indirect
12 statements he claims that I had made when he
13 interviewed me in 2020 -- or in September 2020.

14 And I would like to point out that it seems
15 to be the Crown's position that I could have done
16 much more to cause the website to be taken down,
17 beyond simply sending an email to the email
18 address that's on the website. And as I said,
19 while I was testifying, I'm certainly open to any
20 suggestions that the Crown might have about what
21 additional steps they think that I could have
22 taken. If they believe there's more I could have
23 done, it would have been nice for them to provide
24 me with that guidance, or that suggestion prior to
25 my release from custody back in August.

26 I suppose then that that is all that I can
27 say on that matter.

28 THE COURT: Okay.

29 THE ACCUSED: Thank you.

30 THE COURT: You have no other submissions?

31 THE ACCUSED: Well, I mean, I -- I could say that I do
32 not believe that even the Crown believes that
33 there is any sincerity at all to these claims that
34 this website is causing any kind of harm to Ms.
35 Capuano and that the Crown's real objective here
36 is to get the information related to the
37 allegations of the corruption and misconduct
38 that's been going on in my -- my cases removed
39 from the internet and even Mr. Johnson himself
40 admitted to that in a prior matter, that the
41 reason I'm being prosecuted is because this
42 disclosure material and other evidence keeps
43 ending up on the internet, not because of any
44 perceived harm to Ms. Capuano.

45 And in case Mr. Johnson is wondering when it
46 was that I claimed that he said that, it was
47 February 2nd, 2021, before Judge Rideout.

Submissions for Accused by the Accused**BAN ON PUBLICATION 486.5(1) CCC**

1 And that would be all I would have then.
2 THE COURT: Okay. Thank you.
3 THE ACCUSED: Thank you.
4 THE COURT: What I'd like to do, it's about 10 minutes,
5 or eight minutes before 12:00, I'd like to take
6 the noon hour break. I think I'll be in a
7 position to give my reasons this afternoon but I'd
8 like to come back at one o'clock. I hope I'm
9 ready at one o'clock. Are you able at one
10 o'clock?
11 CNSL C. JOHNSON: I am, yes.
12 THE COURT: Are we able to do that, Madam Registrar?
13 So, let's come back at one o'clock then. If
14 I'm -- if I'm not quite ready, I'll let Madam
15 Registrar know.
16 Do you want to call me about five to 1:00?
17 THE CLERK: Yes, Your Honour.
18 THE COURT: Okay. So, we're going to come back at one
19 o'clock. I hope to be ready by then because I
20 know that this has been ongoing for you, Mr. Fox,
21 for a long time and I've been able to give it
22 considerable thought over the last few days, so
23 I'm hopeful to be ready at one o'clock.
24 THE ACCUSED: Thank you.
25 THE COURT: Okay? Thank you.
26 THE SHERIFF: Order in court.
27
28 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
29 (PROCEEDINGS RECONVENED)
30
31 CNSL C. JOHNSON: Chris Johnson, Your Honour, appearing
32 for the Provincial Crown and recalling the Fox
33 matter.
34 THE COURT: Yes, thank you.
35 Mr. Fox, did you have anything else you
36 wanted to say before I give my reasons?
37 THE ACCUSED: I'm -- actually, there was one issue that
38 occurred to me while I was downstairs.
39 THE COURT: Yes?
40 THE ACCUSED: I would like to request a publication ban
41 on Ms. Munoz's name. Do you want me to provide a
42 reason, or?
43 THE COURT: Yes.
44 THE ACCUSED: There's a certain individual that has a
45 history of violent, aggressive and psychologically
46 unstable behaviour and I'm concerned that if this
47 ends up in the news, which I'm sure it will be,

Proceedings

BAN ON PUBLICATION 486.5(1) CCC

1 that if Capuano -- that's who I'm referring to --
2 if she finds out that Ms. Munoz had some
3 involvement in this, then I'm concerned that that
4 may cause problems for Ms. Munoz. And Ms. Capuano
5 does have a history of doing things deliberately
6 to try to cause for Ms. Munoz.
7 Mr. Johnson?
8 CNSL C. JOHNSON: I'll say this, I don't object to his
9 request. I don't agree with the reasoning for it
10 at all, but I'm also going to ask for a
11 publication ban on the name Desiree Capuano or
12 capuano.com because it's clear --
13 THE COURT: Okay.
14 CNSL C. JOHNSON: -- Mr. Fox has a history of
15 publishing.
16 THE COURT: So, there will be a publication -- oh,
17 sorry?
18 THE ACCUSED: I do have a response to Mr. Johnson's
19 request. It should be noted that in the beginning
20 of this, back in 2016 and '17, there was
21 originally a publication ban on Ms. Capuano's
22 identity, but then at the start of the trial, she
23 requested Crown counsel request that that
24 publication ban be removed because the news media
25 wanted to be able to interview her and such and
26 so, she couldn't do that because of the
27 publication ban.
28 Based on that, I don't believe that --
29 CNSL C. JOHNSON: I don't have any knowledge of that,
30 but --
31 THE COURT: Well, I don't have any information that
32 that --
33 THE ACCUSED: Oh.
34 THE COURT: -- continues to be her position.
35 THE ACCUSED: It's -- it's in the transcripts from the
36 trial.
37 THE COURT: So, I am inclined to give a publication
38 order for both of the individuals who have been
39 named here. And what is the section, Mr. Johnson?
40 CNSL C. JOHNSON: Oh, I apologize, Your Honour --
41 THE COURT: Maybe you can look for it --
42 CNSL C. JOHNSON: I can look for it.
43 THE COURT: -- if you don't mind.
44 So, Madam Registrar, there will be a
45 publication order with respect to the name Desiree
46 Capuano and to the websites www.desireecapuano and
47 www.desicapuano, and also to the name Munoz --

Submissions on Sentence for Crown by Cnsl C. Johnson**BAN ON PUBLICATION 486.5(1) CCC**

1 THE ACCUSED: Oh, Ms. Munoz?

2 THE COURT: -- Ms. Munoz. Her first name is Liz; is
3 that right?

4 THE ACCUSED: That's correct. L-i-z.

5 THE COURT: To Liz Munoz and I will provide that -- Mr.
6 Johnson is going to provide that section number to
7 you.

8 All right. First of all, I want to thank
9 both of you for your submissions. I have had some
10 time to think about this matter because we started
11 the trial two days ago and so, I was aware of all
12 of the evidence and the expected defence of Mr.
13 Fox as I'd been through his cross-examination and
14 some of his remarks in court and so, I am in a
15 position today to give my reasons.

16 My reasons are as follows.

17
18 [REASONS FOR JUDGMENT]

19
20 THE COURT: Thank you. Are you ready to deal with
21 sentencing, Mr. Johnson?

22 CNSL C. JOHNSON: Yes, I am.

23 THE COURT: Are you ready to deal with sentencing, Mr.
24 Fox?

25 THE ACCUSED: Sure, yes.

26 THE COURT: Okay.

27

28 **SUBMISSIONS ON SENTENCE FOR CROWN BY CNSL C. JOHNSON:**

29

30 CNSL C. JOHNSON: I can be very brief, Your Honour, as
31 you have the record before you, I believe.

32 THE COURT: I do.

33 CNSL C. JOHNSON: Mr. Fox has previously been convicted
34 of this exact same offence and I think I indicated
35 on a previous appearance that upon conviction,
36 which has now just occurred, the Crown position is
37 that he should serve a sentence of 12 months'
38 imprisonment.

39 The Crown is also seeking an additional term
40 of two years' probation with the same conditions
41 that were granted by Judge Rideout, with some
42 variation and --

43 THE COURT: Okay. Now, I'm just curious, 12 months, I
44 thought that was the Crown's position if he were
45 to enter a guilty plea?

46 CNSL C. JOHNSON: I actually said eight months in an
47 effort to try to resolve this matter earlier.

Submissions on Sentence for Crown by Cnsl C. Johnson**BAN ON PUBLICATION 486.5(1) CCC**

1 THE COURT: I see. And now you're saying 12 months?
2 CNSL C. JOHNSON: Yes. And --
3 THE COURT: I note this last -- his last sentence was
4 for 16 months and 15 days.
5 CNSL C. JOHNSON: Sentencing is always in Your Honour's
6 purview and I've given a position --
7 THE COURT: Right.
8 CNSL C. JOHNSON: -- to Mr. Fox previously.
9 THE COURT: Okay.
10 CNSL C. JOHNSON: But I can't disagree with what you
11 just said.
12 And a 12-month jail sentence would -- he's
13 been in custody since August the 17th and so, I'll
14 just do the math.
15 THE COURT: Yes.
16 CNSL C. JOHNSON: He has served, as of today, six
17 months and eight days, which, at 1.5 is nine
18 months, 12 days and deducting that from 12 months,
19 would be a remaining time served of two months and
20 18 days.
21 THE COURT: Right.
22 CNSL C. JOHNSON: And I should say, with respect to the
23 terms of probation --
24 THE COURT: I mean, is there a reason you're seeking a
25 two-year probation as opposed to a three-year
26 probation?
27 CNSL C. JOHNSON: I'll say that I was mistakenly
28 thinking that two years is the maximum and I'm
29 happy to concede three years' probation.
30 THE COURT: Okay. The terms you're seeking?
31 CNSL C. JOHNSON: Would be the number --
32 THE COURT: Just -- if I might just stop for a moment,
33 I'm just going to look at the probation order from
34 Judge Rideout --
35 CNSL C. JOHNSON: Yes.
36 THE COURT: -- because I expect you may be mirroring it
37 as you indicated. Okay. Go ahead.
38 CNSL C. JOHNSON: So, number -- condition 1 would be
39 the same: Keep the peace and be of good
40 behaviour.
41 Condition --
42 THE COURT: Right.
43 CNSL C. JOHNSON: -- 2: Appear before the court when
44 required to do so by the court.
45 And then I'd ask Your Honour to consider a
46 reporting condition that you -- he report to a
47 probation officer at 275 East Cordova within 72

Submissions on Sentence for Crown by Cnsl C. Johnson**BAN ON PUBLICATION 486.5(1) CCC**

1 hours of your release and thereafter as and when
2 directed.

3 THE COURT: Is there a reason for the reporting
4 condition?

5 CNSL C. JOHNSON: Yes, because I'm going to be
6 suggesting another condition which would require
7 him to provide information to a probation officer.

8 THE COURT: Okay.

9 CNSL C. JOHNSON: And nextly [sic], the same condition
10 number 4, although, the name James Pendleton
11 didn't come up in this trial whatsoever, so, I'm
12 going to seek that same condition with the name of
13 Desiree Capuano, but not Mr. Pendleton.

14 THE COURT: Okay. As well as her friends, relatives,
15 employers, or co-workers?

16 CNSL C. JOHNSON: Yes.

17 THE COURT: Okay.

18 CNSL C. JOHNSON: And similarly, the next condition in
19 Judge Rideout's order, I would seek the exact same
20 condition --

21 THE COURT: All right.

22 CNSL C. JOHNSON: -- less the name of Mr. Pendleton.

23 THE COURT: Okay.

24 CNSL C. JOHNSON: And similarly, condition 6, I would
25 seek the exact same condition.

26 THE COURT: Mm-hmm.

27 CNSL C. JOHNSON: And then I would ask Your Honour to
28 consider an additional condition -- and I should
29 say, Your Honour, I -- I have no way of
30 determining when, exactly, Mr. Fox would get
31 released from custody and so, I would be content
32 to make that 72 hours, as opposed to 48 hours.

33 And then I'm going to ask Your Honour to
34 consider this condition, which is: You are to
35 report to your probation officer and advise,
36 within 96 hours of your release from custody, as
37 to exactly which steps you have taken to comply
38 with the previous condition.

39 THE COURT: Sorry, you are to, upon your release,
40 report to your probation officer and advise,
41 within 96 hours, the exact steps you took to
42 comply with condition formerly number 6?

43 CNSL C. JOHNSON: Yes, please, Your Honour.

44 THE COURT: Is there a reason why he can't comply with
45 that while he's in custody? Does he not have
46 access to the internet while in custody?

47 CNSL C. JOHNSON: He does not have access to the

Submissions on Sentence for Crown by Cnsl C. Johnson**BAN ON PUBLICATION 486.5(1) CCC**

1 internet while in custody.
2 THE COURT: No -- no inmates do, or just him?
3 CNSL C. JOHNSON: I know that he specifically doesn't
4 have and I don't believe any inmates do, although
5 I stand to be corrected.
6 THE COURT: Because is Judge Holmes probation order
7 still in effect? I think its expired.
8 CNSL C. JOHNSON: I think it's expired.
9 THE COURT: And I don't -- is there another probation
10 order that prohibits you, sir, from having access
11 to the internet?
12 THE ACCUSED: No, that was the only one.
13 THE COURT: What -- why -- why wouldn't -- why am I
14 asking for him to remove the website within 72
15 hours of his release? Why wouldn't I ask him to
16 do it within 48 hours of now, if he has access to
17 the internet?
18 CNSL C. JOHNSON: I don't believe he does have access
19 to the internet.
20 THE ACCUSED: I -- I might be able to answer that.
21 The first is at North Fraser and at Fraser
22 Regional, no inmates have any access to the
23 internet. It's strictly forbidden.
24 THE COURT: Oh, okay.
25 THE ACCUSED: The other reason would be because a
26 probation order doesn't take effect until the
27 period of incarceration is completed.
28 THE COURT: Right.
29 THE ACCUSED: And so, the probation -- this probation
30 order wouldn't actually take effect until I get
31 released from custody.
32 THE COURT: And so, you're not able to receive or send
33 emails at all?
34 THE ACCUSED: Correct. Which is --
35 THE COURT: No inmates -- yes?
36 THE ACCUSED: -- which is why I have not been able to
37 get the email. Sorry, I'm -- it's --
38 THE COURT: Okay. So --
39 THE ACCUSED: -- it's a little frustrating, this whole
40 process.
41 THE COURT: All right. Okay. Just was curious about
42 that. I wasn't aware that you didn't have access
43 to the internet.
44 THE ACCUSED: Okay.
45 THE COURT: Okay. Sorry -- I'm sorry to have
46 interrupted you, Mr. Johnson, was there anything
47 else?

Submissions on Sentence by the Accused**BAN ON PUBLICATION 486.5(1) CCC**

1 CNSL C. JOHNSON: No, that -- that was the end of what
2 I was going to say, Your Honour.
3 THE COURT: Okay. Mr. Fox --
4 CNSL C. JOHNSON: And -- and I should say, Your Honour,
5 that I'm seeking additional probation because of
6 the main concern that I have with respect to this
7 matter is that Mr. Fox remove the website.
8 THE COURT: Sorry, you're seeking additional probation
9 because?
10 CNSL C. JOHNSON: The reason I'm seeking a longer term
11 of probation, I suppose one could look at it as
12 I'm not seeking the maximum imprisonment, but I am
13 seeking the maximum of probation because that
14 is --
15 THE COURT: Of three years.
16 CNSL C. JOHNSON: Yes.
17 THE COURT: All right. Mr. Fox?

SUBMISSIONS ON SENTENCE BY THE ACCUSED:

20
21 THE ACCUSED: With respect to the proposed probation
22 order, I do have some concerns about that. The
23 fact remains that I have no status in Canada and
24 I'm not allowed to work in Canada or receive any
25 kind of government benefit. This was an issue
26 that kept coming up on the previous order and I
27 applied a number of times to have the condition
28 requiring me to remain in British Columbia and to
29 report removed so that I could go back to the U.S.
30 and -- and work and live.
31 Part of the reason that I've not cared about
32 staying in jail for the past few years is because
33 if I'm stuck in Canada and I can't work or support
34 myself, then being in jail is not that much more
35 of a severe punishment.
36 So, I have a concern that if we impose
37 another probation order for three years that
38 requires me to report on a regular basis, I'm --
39 I'm stuck in that same situation now, where I'm
40 stuck in a country where I'm not legally
41 authorized to work and technically, I can't apply
42 for any kind of visa and I wouldn't want to
43 anyway, but I wouldn't -- I wouldn't qualify for
44 it because I've convicted of an indictable
45 offence.
46 THE COURT: Well, that was why I asked Mr. Johnson
47 about his reasons for asking for a reporting

Submissions on Sentence by the Accused**BAN ON PUBLICATION 486.5(1) CCC**

1 condition and as I understand it, it's really for
2 the purpose of you advising the probation officer
3 of all the steps you've taken to comply --
4 THE ACCUSED: Mm-hmm.
5 THE COURT: -- with the condition that we've been
6 talking about, in terms of removing -- ensuring
7 that the website is not longer available and so,
8 it would only be for that purpose and it wouldn't
9 be an ongoing requirement to report.
10 That wasn't your intention that there be an
11 ongoing --
12 CNSL C. JOHNSON: No, that's correct.
13 THE COURT: -- requirement? Okay.
14 THE ACCUSED: Okay. Because it was my understanding
15 what he meant was for it to be ongoing because he
16 had stated that I would report first upon my
17 release and then as directed.
18 THE COURT: Well, you would report upon your release
19 and as directed, but then there would be a
20 provision that your reporting was only for the
21 purpose of advising your probation officer within
22 96 hours of all of the exact steps you have taken
23 to comply with the condition in the probation
24 order which requires you to ensure that the
25 website is not available.
26 THE ACCUSED: Okay. So, can I take that to mean then
27 that I would only have to report within a short
28 period after my release and then beyond that, I
29 wouldn't have to continue reporting?
30 THE COURT: You'd report twice. You'd report first of
31 all within 48 hours of release and then --
32 THE ACCUSED: Right.
33 THE COURT: -- and then you would report within 96
34 hours to advise. Now, if, in that first 48 hours,
35 you're able to tell the probation officer on your
36 first meeting what steps -- exact steps you have
37 taken to ensure that the website is not available,
38 then you wouldn't have to report again.
39 THE ACCUSED: Right.
40 THE COURT: So, probably what I would do is meet in the
41 middle and say within 72 hours and that would give
42 you sufficient time to deal with the website and
43 you could report it all at the same time.
44 THE ACCUSED: Okay. And I'm wondering though what's
45 going to happen upon my release when the website
46 doesn't come down. Do we get to start this whole
47 process over again? I just --

Submissions on Sentence by the Accused**BAN ON PUBLICATION 486.5(1) CCC**

1 THE COURT: Well, you're going to explain to the -- I
2 have concluded that --

3 THE ACCUSED: Uh-huh.

4 THE COURT: -- you have the ability to --

5 THE ACCUSED: Yes, I understand that.

6 THE COURT: -- to ensure that it's not available.

7 THE ACCUSED: Right.

8 THE COURT: Mr. Johnson is asking that I make an order
9 that you take those same steps within a certain
10 period after you're released from custody and --

11 THE ACCUSED: Mm-hmm.

12 THE COURT: -- that you report to your probation
13 officer about those steps that you've taken.

14 THE ACCUSED: I -- I understand all of that, but like,
15 whether the Crown and the court accept it as being
16 truthful or not, the simple fact is I don't have
17 access or control over the website. The website
18 is not going to come down.

19 THE COURT: Okay. Well, you --

20 THE ACCUSED: If it means I'm going to spend the rest
21 of my life in jail in Canada, so be it, but --

22 THE COURT: -- you've heard my reasons --

23 THE ACCUSED: Right.

24 THE COURT: -- about the steps you could take to
25 have -- to ensure that that website is not
26 available. I'll leave it to you. You're a very
27 intelligent man.

28 THE ACCUSED: Mm-hmm.

29 THE COURT: You are technically knowledgeable about the
30 internet and so, I'm going to leave it to you, but
31 I made some suggestions in my reasons that you can
32 consider; okay?

33 THE ACCUSED: Okay. Now, another concern, or another
34 thing I would like to bring up about the probation
35 order, once I leave Canada and return to the
36 United States, I understand that I would still be
37 subject to the probation order, but is it possible
38 to put -- to put something in there stating that
39 once I am no longer in Canada, being that I'm not
40 a Canadian citizen and I have no intention to ever
41 come back to Canada, that at that point, it will
42 no longer be enforced, or it --

43 THE COURT: The intent --

44 THE ACCUSED: -- won't happen?

45 THE COURT: -- here is to ensure --

46 THE ACCUSED: Mm-hmm.

47 THE COURT: -- that you don't have any contact with Ms.

Submissions on Sentence by the Accused**BAN ON PUBLICATION 486.5(1) CCC**

1 Capuano during your probation term and that you
2 not publish or allow any currently published
3 websites or other information to continue to be
4 available. That's the intent during the duration
5 of the probation order.
6 You're going to have to seek legal advice
7 about the impact of this probation order on you if
8 you don't reside in Canada. I leave that up to
9 you. I'm sorry, I can't give you legal advice.
10 THE ACCUSED: Okay. Well, clearly --
11 THE COURT: But the intent of this probation order --
12 THE ACCUSED: Mm-hmm.
13 THE COURT: -- is, for the longest period possible --
14 THE ACCUSED: Yes.
15 THE COURT: -- to prevent you from the things that are
16 stated in the -- in the preceding probation
17 orders, being in contact with Ms. Capuano,
18 publishing anything about Ms. Capuano, allowing
19 any websites to be available.
20 THE ACCUSED: I -- I understand and I respect that and
21 with all due respect to the court and to the
22 Crown, I've been on probation under these same
23 conditions for over three years now and it has had
24 zero impact on anything. I don't know why the
25 Crown would all of a sudden now think that
26 imposing a new probation order with the same
27 conditions is suddenly going to change anything.
28 I mean --
29 THE COURT: Well, I -- I can tell you what will happen
30 is your period of incarceration --
31 THE ACCUSED: Mm-hmm.
32 THE COURT: -- will continue to increase.
33 THE ACCUSED: If I'm in Canada, yes. But once I go
34 back to the U.S., I mean, I don't think they're
35 going to extradite me back to Canada for a breach
36 again.
37 THE COURT: I can't comment on that, sir.
38 THE ACCUSED: Okay. So, I oppose being in a position
39 of another probation order. I think it's going to
40 be futile and a waste of everybody's time and
41 efforts, but -- and as for the sentence, I would
42 argue in favour of time served. A longer sentence
43 is not going to have any deterrent effect. It's
44 not going to make any difference whatsoever, to be
45 honest.
46 THE COURT: Why do you say that?
47 THE ACCUSED: It's -- it's not going to change my

Submissions on Sentence by the Accused**BAN ON PUBLICATION 486.5(1) CCC**

1 behaviour. It's not going to make me do anything
2 differently and I still insist that I don't have
3 the capability to take the website down. So,
4 leaving me in jail for another three months, or
5 another year and a half, or even if you sentence
6 me to four years, the statutory maximum for a
7 breach, it's not going to cause the website to
8 come down. Like, nothing is going to change. I
9 mean, I understand that, okay, it'll get me off
10 the street, so maybe I won't be out offending, but
11 if I am out, I wouldn't be offending anyway.
12 Like, the website will still be there, regardless
13 of if I'm in jail, or if I'm outside and people
14 are still going to be making updates to the
15 website regardless.

16 THE COURT: You remember -- remember, Mr. Fox, I'm
17 sentencing you today --

18 THE ACCUSED: Mm-hmm.

19 THE COURT: -- because I am of the opinion --

20 THE ACCUSED: Mm-hmm.

21 THE COURT: -- that you do have control over that
22 website --

23 THE ACCUSED: Yes.

24 THE COURT: -- and that you are breaching, and that you
25 have breached a probation order by not ensuring
26 that it's no longer available.

27 THE ACCUSED: Right.

28 THE COURT: That's the basis upon which you're being
29 sentenced.

30 THE ACCUSED: Okay. So, I would argue in favour of
31 time served, plus a day and I guess that's all the
32 submissions that I would have.

33 THE COURT: Okay. Thank you.

34 Well, I can tell you that I had a far more
35 severe penal sentence in mind, given that this is
36 the third breach, but Mr. Johnson has asked for 12
37 months. He is very experienced and senior counsel
38 and he has explained his rationale for doing that.
39 He wants a longer probation order, which I agree
40 is prudent given the societal ill that we are
41 trying to address.

42 So, my -- yes?

43 THE ACCUSED: I'm -- I'm sorry --

44 THE COURT: No, no, that is fine.

45 THE ACCUSED: -- could I suggest, you said that you had
46 a much stricter sentence in mind.

47 THE COURT: Yes.

Proceedings**BAN ON PUBLICATION 486.5(1) CCC**

1 THE ACCUSED: Were you thinking of more than two years,
2 perhaps?
3 THE COURT: I was thinking of 24 months and a three-
4 year probation order.
5 THE ACCUSED: I would certainly be agreeable to two
6 years, yes, because if it's over two years, then
7 you can't impose probation; correct?
8 THE COURT: Right. So, it would be 24 months, less a
9 day and a three-month -- and a --
10 THE ACCUSED: Okay.
11 THE COURT: -- three-year probation. Is that what you
12 are asking for?
13 THE ACCUSED: No, I would ask for two years, so it
14 would be over the two years less a day. Okay.
15 THE COURT: All right.
16
17 [REASONS FOR SENTENCE]
18
19 THE COURT: You do not have any submissions on that,
20 Mr. Johnson?
21 CNSL C. JOHNSON: No, I don't.
22 THE COURT: Okay. Anything else, Mr. Fox?
23 THE ACCUSED: Well, I'm a little bit concerned that
24 we're going to be right back in the same situation
25 in two months and 18 days, or whatever it was. I
26 really wish we could just kind of assume the
27 website will be there forever and just give me a
28 huge, long sentence right now, but that's not an
29 option, is it?
30 THE COURT: It is not.
31 THE ACCUSED: All right. So, then I guess we'll just
32 finish up this sentence and then I will leave
33 Canada and you all can do whatever you want with
34 this.
35 THE COURT: Okay. Thank you all.
36 CNSL C. JOHNSON: Thank you, Your Honour.
37 THE COURT: We'll adjourn now, thank you, Madam
38 Registrar.
39 THE CLERK: Your Honour, if I can get the ban?
40 CNSL C. JOHNSON: Oh, sorry, I do have that.
41 THE COURT: Yes.
42 CNSL C. JOHNSON: Section 486.5(a).
43 THE ACCUSED: Could I have a word with Mr. Johnson
44 though, before I go downstairs?
45 A SHERIFF: Sure.
46 THE ACCUSED: Okay.
47 CNSL C. JOHNSON: Go ahead, Mr. Fox.

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1 THE CLERK: [Indiscernible] Mr. Johnson [inaudible].
2 CNSL C. JOHNSON: Yes.
3 THE ACCUSED: These are yours. You can have
4 those . . .
5

6 (PROCEEDINGS CONCLUDED)
7

8 Transcriber: P. Moore
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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.

A handwritten signature in blue ink, appearing to read "P. Moore". The signature is fluid and cursive, with the first letter "P" being large and looping.

P. Moore
Court Transcriber