

244069-10-BC
Vancouver Registry

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

Vancouver, B.C.
June 15, 2022

REGINA

v.

PATRICK HENRY FOX

**PROCEEDINGS AT
JUDICIAL INTERIM RELEASE HEARING**

BAN ON PUBLICATION 517(1) CCC

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Crown Counsel:

A. Flanders

Appearing on his own behalf:

P.Fox

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Proceedings**BAN ON PUBLICATION 517(1) CCC**

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CNSL A. FLANDERS: And so for the record it's Flanders, F-l-a-n-d-e-r-s, first initial A., appearing for the provincial Crown, he/him pronouns. Dealing with number 1 on Your Honour's list, the Fox matter. This is Mr. Fox, just by way of introduction.

THE COURT: All right. And what are we doing today?

CNSL A. FLANDERS: We are likely going to do a lengthy -- well, in talking to him he's confirmed that we will be proceeding with a judicial interim release hearing.

THE COURT: All right.

CNSL A. FLANDERS: There's a great deal of back story in this case and that's why it's been set aside for -- for the length of time that --

THE COURT: Pardon me?

CNSL A. FLANDERS: There's a great deal of back story in this matter. It's been going on for some time. And so that's why it's been set aside for Your Honour's morning.

THE COURT: All right.

CNSL A. FLANDERS: But I don't know if Mr. --

THE COURT: And on what basis is the Crown seeking detention?

CNSL A. FLANDERS: On -- on all the bases actually.

THE COURT: All right.

CNSL A. FLANDERS: So primary ground, secondary ground and ultimately a tertiary ground.

THE COURT: Okay.

CNSL A. FLANDERS: But perhaps I'll let Mr. Fox bring up anything that he wants to before we get going in earnest.

THE COURT: All right. Mr. Fox.

THE ACCUSED: I don't know that there's anything that I would bring up at this point until I've heard what the Crown's arguments are. There's not really much for me to say.

THE COURT: All right. Have a seat.

SUBMISSIONS FOR CROWN BY CNSL A. FLANDERS:

CNSL A. FLANDERS: And so, again, as I've said, the Crown is seeking Mr. Fox's detention on the primary, secondary and tertiary grounds. Just for

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1 the purposes of the record and Your Honour's
2 iteration, Mr. Fox does typically choose to
3 represent himself and he's -- he's done so on
4 another court appearance where we discussed bail,
5 and so I assume that's still the case that he
6 wishes to be self-represented.
7 THE ACCUSED: Yes.
8 CNSL A. FLANDERS: I am, before we get started, seeking
9 a publication ban under s. 517(1).
10 THE COURT: There will be a ban on publication on any
11 evidence heard -- any evidence or submissions
12 heard in this case until such time as all charges
13 have been dealt with in court and completed.
14 CNSL A. FLANDERS: And for reasons that I'm going to
15 get into, as part of that ban I am asking that the
16 materials that I provide to the court and also a
17 copy to Mr. Fox not leave the court -- the
18 courtroom.
19 THE COURT: I think it is part of that ban. Thank you.
20 CNSL A. FLANDERS: And so this is a copy for Your
21 Honour of materials that I'll be referencing.
22 THE COURT: Thank you.
23 CNSL A. FLANDERS: And so --
24 THE ACCUSED: I'm sorry. I may have some objection to
25 this not leaving the courtroom.
26 THE COURT: Pardon me?
27 THE ACCUSED: I may have some objection to this -- the
28 request that this not leave the courtroom.
29 THE COURT: I'm sorry. You may have some objection...
30 THE ACCUSED: Oh, to this artefact that was just given
31 to me by the Crown --
32 THE COURT: Why?
33 THE ACCUSED: Well, I mean, it seems that there might
34 be stuff in here - - sorry, I just -- this is the
35 first I've received this, so I'm not really sure
36 all of what's in here, but this is something that
37 was provided to the court, right, so it's becoming
38 part of the record, is it not?
39 THE COURT: Yes.
40 THE ACCUSED: So then shouldn't I be allowed to have a
41 copy of it?
42 THE COURT: Didn't you just get a copy of it?
43 THE ACCUSED: Oh, yes, but the Crown wants me to give
44 this back to them?
45 THE COURT: The Crown wants...
46 THE ACCUSED: Me to give this back to them.
47 CNSL A. FLANDERS: At the -- at the conclusion of the

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1 bail hearing I would like to and it's because of
2 some problems that have occurred. Part of this
3 case is disclosure of court materials in what the
4 Crown says is a harassing fashion of his ex-
5 partner. We are in the midst of a complicated
6 disclosure process. It involves a laptop that's
7 sent to the facility. And so he will receive any
8 germane materials for certainly the trial, but
9 it's the Crown's view that it should be received
10 only in that format.

11 THE COURT: Well, what is there in here that the Crown
12 is concerned about?

13 CNLSL A. FLANDERS: Really I'm not concerned about any
14 of the materials at the start. It would only be
15 the materials found in Tab 7 which are part of the
16 allegations.

17 THE COURT: Sorry. Let me look at it. So is Tab 7 the
18 allegations that form the basis of Count 3?

19 CNLSL A. FLANDERS: Yes, Counts 2 and 3.

20 THE COURT: All right. Well, then, I'll direct
21 that -- I'll direct that those portions be taken
22 out of the book and the rest Mr. Fox can take with
23 him to the prison when he -- or to when he's
24 released.

25 CNLSL A. FLANDERS: Yes. I think that that would be
26 acceptable. I have to -- I am going to be asking
27 for a more formalized order that was used on a
28 prior occasion with Mr. Fox. I have to review it
29 to see if that -- if it's within that order.

30 THE COURT: All right. Well, let's see what happens --

31 CNLSL A. FLANDERS: Yes.

32 THE COURT: -- and then I'll worry at the time.

33 CNLSL A. FLANDERS: Yes.

34 THE COURT: Have a seat, Mr. Fox.

35 THE ACCUSED: I'm sorry, though. Can I just respond
36 very quickly?

37 THE COURT: I haven't made any ruling. Just have a
38 seat.

39 THE ACCUSED: Okay.

40 CNLSL A. FLANDERS: Thank you. And so as Your Honour
41 has seen, Mr. Fox is before the court on a three-
42 count information. All of those allegations are
43 probation breaches. That refers to a probation
44 order ordered by Judge Denhoff imposed on
45 February 25th, 2022. That can be found -- that
46 probation order is found at Tab 1.

47 And just briefly -- I mean, really the

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1 probation order's main focus seems to be what many
2 probation orders that Mr. Fox has been on have --
3 have had as their focus, which is that he remove
4 the contents of this harassing website involving
5 his ex -- ex-spouse or ex-partner.

6 And so as I mentioned, there's -- there's a
7 great deal of history and context here.

8 THE COURT: Before you go on, may I ask a stupid
9 question?

10 CNSL A. FLANDERS: I don't imagine it'll be stupid,
11 but...

12 THE COURT: No, it is. You'd said something about the
13 police having seized a computer.

14 CNSL A. FLANDERS: No. Sorry. I didn't meant to leave
15 that intention [sic]. The way that we've been
16 disclosing things to Mr. Fox, both on this matter
17 and also some appellate matters, has been through
18 a password protected laptop that is held at the
19 facility and he has access to when he'd like to
20 review things.

21 THE COURT: Oh, I see. Okay.

22 CNSL A. FLANDERS: And so that's

23 THE COURT: No, no, no, no.

24 CNSL A. FLANDERS: -- how the disclosure

25 THE COURT: That's fine.

26 CNSL A. FLANDERS: -- will come in this case.

27 THE COURT: So what I don't understand is if the
28 website existed before the probation order, right?

29 CNSL A. FLANDERS: Yes, it did previously.

30 THE COURT: Why is it -- and it contains matters which
31 other judges have concluded were criminal in
32 nature.

33 CNSL A. FLANDERS: At one point, yes. The initial
34 incident was a criminal harassment, yes.

35 THE COURT: All right. So why can't the police have
36 someone who knows how to do computer or internet
37 things -- I mean, clearly I don't because of the
38 way I'm speaking - - delete it?

39 CNSL A. FLANDERS: So I believe Mr. Fox will get into
40 this. But there is a jurisdictional issue as a
41 component of that. So it's hosted outside of
42 Canada, so any order from

43 THE COURT: I didn't make -- I didn't say an order. I
44 just don't understand why it just can't be done.

45 CNSL A. FLANDERS: There would need to be an American
46 order sought and obtained. We would need to know
47 where the server was. I mean, I'm speaking off

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1 the cuff somewhat because I don't know. I'm not a
2 technical-minded person either. But it would have
3 to be sought out. Mr. Fox has said that the
4 server is hosted in Arizona. I don't know if
5 that's actually true. So that order would have to
6 be sought. And ultimately the -- at the
7 conclusion of that the -- the server could simply
8 be switched to another serve.

9 THE COURT: I understand that, but --

10 CNSL A. FLANDERS: Yes.

11 THE COURT: -- I just wanted to know why. Okay.
12 Anyway. Go on.

13 CNSL A. FLANDERS: And unfortunately I don't even know
14 what would go into getting an order in America
15 from Canada --

16 THE COURT: Well, I imagine it would be under the
17 Mutual Legal Assistance Treaty. But anyway. Go
18 on.

19 CNSL A. FLANDERS: Right. And so, again, there is a
20 great deal of history here, but I'm going to point
21 out that Mr. Fox hasn't been granted bail in any
22 of these matters that I'm going to go into since
23 2016. And so I'm going to suggest that Your
24 Honour should follow all of those judges and
25 should also decline to grant Mr. Fox bail.

26 To go into that history, just the judicial
27 interim release history, he was first detained on
28 the initial substantive criminal harassment
29 charges on June 22nd, 2016.

30 THE COURT: Sorry. One sec.

31 CNSL A. FLANDERS: Sorry.

32 THE COURT: Detained on --

33 CNSL A. FLANDERS: In June 22nd of 2016. That was by
34 Judge Werier. He remained in custody awaiting
35 that trial until the end of it in 2017 when he
36 began serving a lengthy sentence.

37 THE COURT: All right. I'm just looking. Okay.

38 CNSL A. FLANDERS: So since that bail hearing Mr. Fox
39 has conducted four additional bail hearings all on
40 breach allegations of -- of various kinds of
41 various orders of the court, and he's been
42 detained every time. By my count he has also had
43 the benefit of three s. 525 hearings at the
44 supreme court. Again he's remained in custody at
45 the conclusion of those hearings.

46 And so put as finally as I can, every court
47 in the last six years over five bail hearings,

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1 three bail reviews, have found Mr. Court [sic] to
2 be an unacceptable bail -- candidate for release.
3 The only thing he has done since then is continue
4 to breach, at least as alleged by the Crown.
5 And so throughout that period he has spent
6 almost all of his time in custody either awaiting
7 trial or serving a sentence, and so he has spent
8 only very brief periods outside of jail before
9 subsequently breaching and being returned to jail.
10 On the case before Your Honour he was released
11 from Fraser Regional on April 17th, and it alleged
12 that he had breached by April 21st, essentially
13 immediately.
14 THE COURT: Pardon me. Essentially...
15 CNSSL A. FLANDERS: Essentially immediately. Within
16 three days. It's further alleged that he
17 continued to breach into -- into May.
18 THE COURT: When was he arrested on this?
19 CNSSL A. FLANDERS: Unfortunately with digital files, I
20 mean --
21 THE COURT: Pardon me?
22 CNSSL A. FLANDERS: Unfortunately without my -- I -- we
23 no longer have physical files to note that down.
24 THE COURT: Oh, right. Madam Registrar, what was the
25 first appearance date?
26 THE CLERK: It shows here, Your Honour, May 17th.
27 THE COURT: Pardon me?
28 THE CLERK: May 17.
29 THE COURT: Okay.
30 CNSSL A. FLANDERS: And that accords with my memory. I
31 note that --
32 THE COURT: So then he would've had to be arrested
33 May 16th. May 17th was a Tuesday.
34 CNSSL A. FLANDERS: And -- and I see Mr. Fox --
35 THE COURT: All right.
36 CNSSL A. FLANDERS: -- nodding his head, so that makes
37 sense. And I know he's been in for about a month
38 now.
39 THE COURT: Okay.
40 CNSSL A. FLANDERS: And so to understand this context
41 that I've been bringing up, I direct Your Honour's
42 attention to Tab 2. And so in 2017 Mr. Fox was
43 convicted for that criminal harassment of his ex-
44 spouse. Ultimately he had created a website, the
45 sole purpose of which seemed to be to harass her
46 quite explicitly. I don't know if Your Honour's
47 familiar, but Mr. Fox was in and out of the news

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1 quite heavily in this period of time. He had
2 suggested that essentially he would do anything
3 within -- with the caveat, admittedly, of his view
4 being that he would do anything within the law to
5 essentially harass her or drive her to suicide.
6 And so the B.C. Court of Appeal in two
7 separate decisions outlined Mr. Fox's conduct in
8 relation to that website quite extensively. Most
9 recently they outline that at Tab 2, *Fox*, 2021
10 BCCA 308. And so I'll just briefly direct Your
11 Honour to Tab 4 -- or, sorry.
12 THE COURT: Sorry. What do you want me to look at at
13 Tab 2?
14 CNSL A. FLANDERS: Tab 2, paragraph 4.
15 THE COURT: One moment.
16 CNSL A. FLANDERS: And the court of appeal --
17 THE COURT: Sorry. One moment.
18 CNSL A. FLANDERS: Yes.
19 THE COURT: Paragraph 24?
20 CNSL A. FLANDERS: No. Sorry. Four.
21 THE COURT: Oh, paragraph 4. Okay.
22 CNSL A. FLANDERS: And they just --
23 THE COURT: Wait. Let me read it. Okay.
24 CNSL A. FLANDERS: And so that briefly outlines the
25 background. In 2008 --
26 THE COURT: Sorry. One moment.
27 CNSL A. FLANDERS: Or sorry, 2018.
28 THE COURT: Sorry. One moment.
29 CNSL A. FLANDERS: Yes.
30 THE COURT: Okay. 2018?
31 CNSL A. FLANDERS: Yes. This --
32 THE COURT: Yes.
33 CNSL A. FLANDERS: And this is at Tab 3, *Fox*, 2018 BCCA
34 431.
35 THE COURT: All right. One moment. So it's an earlier
36 case.
37 CNSL A. FLANDERS: It is. But it's really involved in
38 this -- what I'll describe as an omnibus appeal
39 process that Mr.
40 THE COURT: Okay.
41 CNSL A. FLANDERS: Fox is involved in. And so
42 beginning at paragraph 3 and really continuing
43 THE COURT: Let me read it.
44 CNSL A. FLANDERS: Yes.
45 THE COURT: Is it -- in what country is the
46 complainant?
47 CNSL A. FLANDERS: The complainant is in the United

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1 States. I believe she's in Arizona. At least
2 that was --
3 THE COURT: Okay.
4 CNSL A. FLANDERS: -- true for some time.
5 THE COURT: Okay. Do you want me to continue reading
6 after paragraph 3?
7 CNSL A. FLANDERS: Yes. And it is a lengthier --
8 THE COURT: That's all right.
9 CNSL A. FLANDERS: I had intended to just read it into
10 the record.
11 THE COURT: I don't mind reading what Madam Justice
12 Garson wrote. Just give me a moment.
13 CNSL A. FLANDERS: Sure. And -- and --
14 THE COURT: Wait. Let me read it.
15 CNSL A. FLANDERS: No, I know. But I'll just say to
16 Your Honour that really it continues for quite
17 some time.
18 THE COURT: Well, when I get -- when I think I'm
19 sufficiently informed, I'll stop reading.
20 CNSL A. FLANDERS: Yes. Thank you.
21 THE COURT: Okay. I've read some. Let me -- let me
22 ask one question. When I look at the allegation
23 in Count 3 today --
24 CNSL A. FLANDERS: Yes.
25 THE COURT: -- is it alleged that since his release in
26 April, new material has been put on the website?
27 CNSL A. FLANDERS: Yes.
28 THE COURT: Okay.
29 CNSL A. FLANDERS: And that --
30 THE COURT: All right.
31 CNSL A. FLANDERS: That is really the -- the heart of
32 the Crown's case on that point.
33 THE COURT: All right.
34 CNSL A. FLANDERS: That there have been new materials
35 that have been distributed essentially --
36 THE COURT: Okay.
37 CNSL A. FLANDERS: -- about the main complainant. I
38 would just ask how far Your Honour got so that I
39 know where to focus my submissions.
40 THE COURT: Sorry. I just want to make a note of what
41 I just asked you. Paragraph 20 of the trial
42 judge's reasons, page 3.
43 CNSL A. FLANDERS: Yes.
44 THE COURT: I can go on if you want, but I felt I got a
45 flavour for what -- what it was.
46 CNSL A. FLANDERS: Yes. And I mean, I will
47 THE COURT: I'll read more. That's okay.

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1 CNSL A. FLANDERS: Thank you.
2 THE COURT: Okay. I'm stopping at the appeal and
3 grounds of appeal.
4 CNSL A. FLANDERS: Yes.
5 THE COURT: Okay.
6 CNSL A. FLANDERS: And so I think that Your Honour used
7 the perfect word that that's essentially the
8 flavour of -- of the initial incidents. There's
9 really two crimes for which he was convicted. One
10 was the criminal harassment. The other was
11 involving firearms seemingly attempted to be
12 shipped across the border and bringing that
13 firearm to that location to ship those items.
14 And so upon his conviction in -- I note that
15 he's just --
16 THE COURT: Oh, sorry. Can we stand down for a minute?
17 You don't have to go anywhere, sir. I just need
18 to do a -- a fast video appearance.
19 CNSL A. FLANDERS: Yes.
20 THE COURT: That's the one I said was coming from 307.
21 Just have a seat. It'll take me two and a half
22 minutes, max.
23 CNSL A. FLANDERS: Thank you, Your Honour.
24
25 (PROCEEDINGS ADJOURNED)
26 (PROCEEDINGS RECONVENED)
27
28 THE COURT: Okay. Let's go back. Mr. Flanders.
29 CNSL A. FLANDERS: Yes, Your Honour.
30 THE COURT: You can stop it, Madam Registrar. Well,
31 for the time being. Okay.
32

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33
34
35 CNSL A. FLANDERS: So as -- as I was saying, Your
36 Honour, that essentially gives the flavour for
37 the -- what I'll call the inciting, substantive
38 charge. Upon his conviction in 2017 he was
39 sentenced to custody with probation to follow.
40 He'd spent a significant period of time in
41 custody. And so even though he received a
42 sentence that would ordinarily put him into the
43 federal system, it's my understanding that he --
44 with the amount of time he had to serve, a
45 probation order was available.
46 And that sentencing decision -- and I won't
47 go into it -- is found at Tab 4. That's from the

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1 B.C. Supreme --

2 THE COURT: Pardon me?

3 CNSL A. FLANDERS: The sentencing decision from that
4 matter is found at Tab 4. I'm not going to go
5 into that, but just for Your Honour's iteration,
6 that sentencing decision is there. It really has
7 the most context of the inciting incident. But a
8 term of his first probation order was the removal
9 of this website from the internet. He didn't
10 remove it, is the Crown's position. Three
11 subsequent court orders following convictions,
12 rather, for breach probation had the same term or
13 similar terms to remove the website and not post
14 to it.

15 And since -- since that time he's essentially
16 steadfastly refused to remove the website, is our
17 view, from the internet and has continued to post
18 to it. In the Crown's respectful submission he's
19 flagrantly disregarded this series of court orders
20 ordering him to do so.

21 Now, I'll note that in addition to his -- I
22 just note that Mr. Fox is standing.

23 THE COURT: Yes, sir.

24 THE ACCUSED: I'm sorry. The pen that the clerk had
25 given me has died. I wonder if somebody might
26 have another. I'm not allowed to bring a pen from
27 the jail, so --

28 THE COURT: Here. Madam Registrar. I don't know if
29 this works, but there seems to be pens here.

30 Thank you.

31 THE ACCUSED: Thank you. Yes. Thank you.

32 CNSL A. FLANDERS: And so before I get into the real
33 meat of Mr. Fox's Canadian criminal record I will
34 note Mr. Fox also has a criminal record in the
35 United States.

36 THE COURT: Did you had that up?

37 CNSL A. FLANDERS: Well -- so it's contained --
38 knowledge of that is contained in Tab 5,
39 paragraph 12.

40 THE COURT: Okay. One sec.

41 CNSL A. FLANDERS: Those are the reasons of --

42 THE COURT: One sec.

43 CNSL A. FLANDERS: -- Judge Sutherland.

44 THE COURT: What paragraph?

45 CNSL A. FLANDERS: Paragraph 12.

46 THE COURT: That certainly sounds like an American-
47 imposed sentence for that offence.

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1 CNSL A. FLANDERS: Yes. And it -- and it is relevant
2 on these proceedings because Mr. Fox still
3 maintains that he is an American citizen and that
4 he is in B.C. and Canada unlawfully and he has no
5 status here, and that has been --

6 THE COURT: Well, I'll just say this. Even if that's
7 true it's of no moment to me because there are
8 many people who enter Canada illegally and commit
9 crimes contrary to the Criminal Code and their
10 citizenship status or otherwise non-status in
11 Canada is of no moment. The issue is whether a
12 crime has been committed.

13 CNSL A. FLANDERS: Well, and I say it to some extent
14 because I anticipate that that will be part of his
15 submission

16 THE COURT: Well, he can make the argument, but he's
17 heard what I said. Thank you.

18 CNSL A. FLANDERS: Yeah. It is also relevant because
19 some of the things he say -- he says -- well, his
20 credibility is at issue.

21 THE COURT: Well, I --

22 CNSL A. FLANDERS: The perjury conviction is --

23 THE COURT: -- I read -- I read --

24 CNSL A. FLANDERS: Yes.

25 THE COURT: -- you know, the history of him being in
26 the United States and one of the facts you asked
27 me to read, so...

28 CNSL A. FLANDERS: Yes. And so Tab 6 is where we reach
29 the Canadian criminal record, the JUSTIN
30 conviction list. As I mentioned, it has those
31 first two offences dealt with in 2017. And then
32 again he goes through these -- this period of
33 fairly consistent breaches. And I'll note that on
34 these breaches he's receiving significant
35 sentences, Your Honour. And in my view that's a
36 reflection of the seriousness with which we have
37 to treat these breaches.

38 I know that breaches are always not viewed as
39 the most serious criminal charge, but it really
40 is --

41 THE COURT: Well, not in this court.

42 CNSL A. FLANDERS: Well, yes.

43 THE COURT: No, no, no. I view -- I view the violation
44 of a court order seriously.

45 CNSL A. FLANDERS: Right. And I would suggest that
46 even where -- or especially where he has
47 repeatedly breached the same order in the same

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1 way, it is becoming even more serious. It really
2 comes down to that he's committing crimes against
3 the administration of justice at this point. It
4 is really the Crown's submission that he has at
5 various junctures said that he will never take
6 this website down, that he -- it certainly seems
7 to be his position that he will never take this
8 website down no matter what they -- the justice
9 system does.

10 But my position is that that cannot be
11 allowed to stand that essentially the -- in this
12 game of chicken that Mr. Fox has set up that the
13 justice system can't blink on this type of order
14 and that he needs to start following it.

15 And so just for the purposes of the record,
16 again, he's received a 12-month jail sentence, a
17 6-month jail sentence, the equivalent of
18 16 months, 12 months, all for -- for breaches.
19 One of those breaches involved -- at the time he
20 was on an order not to leave British Columbia, and
21 he surrendered himself to the United States,
22 seemingly made a refugee claim in the United
23 States. He was held for some period of time and
24 then returned to Canada. And that's important
25 because the Crown says that he is a primary ground
26 risk. I'll get more into that, but that is
27 what -- partially what grounds the Crown's
28 concerned that he will simply flee to the United
29 States and not show up for court if he's released.

30 Now, as far as what he's before the court on.
31 Again, the terms of Mr. Fox's probation order
32 required him to attend at the probation office and
33 tell his probation officer what efforts he had
34 made to remove the website. Now, candidly, he
35 did -- he did appear and I anticipate that there
36 will be a legal issue of whether or not he was
37 required to attend again in order to -- in order
38 to comply with the condition fully, which is that
39 it's a two-part order really. He has to comply --

40 THE COURT: And what tab is that order again, again?

41 One?

42 CNSL A. FLANDERS: That's Tab 1, yes.

43 THE COURT: All right. Let me just read that
44 conviction. Okay.

45 CNSL A. FLANDERS: And so Mr. Fox did report on
46 April 19th. He was directed to continue
47 reporting.

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1 THE COURT: Pardon me?
2 CNSL A. FLANDERS: He was directed to continue to
3 report so that he could report what steps he had
4 taken in compliance with the order, and he refused
5 to do so, citing that it was his view that he only
6 needed to report on one occasion. And so I don't
7 shy away from -- I anticipate that that will be
8 Mr. Fox's argument at a trial, but that it's an
9 argument.
10 Ultimately the Crown's view is also that he
11 did not take down the website and that in fact it
12 continued to go through -- between May 1st and
13 May 11th new postings were in fact uploaded onto
14 the website. And those can be found --
15 THE COURT: Sorry. Slow down, please.
16 CNSL A. FLANDERS: Certainly. And so I'm referring to
17 Tab 7.
18 THE COURT: Sorry. Where can those be found?
19 CNSL A. FLANDERS: Tab 7.
20 THE COURT: Okay. So can you just direct me to what's
21 new.
22 CNSL A. FLANDERS: Everything that we've included in
23 the booklet is new from the Crown's perspective.
24 THE COURT: I see.
25 CNSL A. FLANDERS: Like, they are dated.
26 THE COURT: Oh, I see. Like May 11, 2022.
27 CNSL A. FLANDERS: Yes.
28 THE COURT: Gotcha. Okay. Can you just give me a
29 moment to read it?
30 CNSL A. FLANDERS: Yes.
31 THE COURT: Thank you. So all the stuff on the left
32 okay. I'm reading the stuff on the right, but
33 what's the stuff on the left?
34 CNSL A. FLANDERS: Those are links to other articles
35 or -- or sometimes the articles. So if Your
36 Honour notes "Judge Katherine Denhoff and her
37 delusional reasons for judgment" --
38 THE COURT: Yes.
39 CNSL A. FLANDERS: -- is the article. "I defraud the
40 public and still nothing happens to me" is another
41 article. And essentially they're -- they're in --
42 at least as I review them, I believe they are in
43 date order.
44 THE COURT: Okay. All right. So -- but I see some of
45 them are quite old. Like some are 2016 and '15.
46 Okay.
47 CNSL A. FLANDERS: Yes.

Submissions for Crown by Cnsl A. Flanders**BAN ON PUBLICATION 517(1) CCC**

1 THE COURT: Let me just finish reading this. Do I
2 really need to go any further than the specious
3 comments that still means "still"?
4 CNSL A. FLANDERS: No. I think again Your Honour has
5 the flavour.
6 THE COURT: I got the flavour of it, yes.
7 CNSL A. FLANDERS: I can say that all of the postings
8 are -- are sort of consistent over time. It's
9 often written from the perspective of his ex-wife.
10 And -- and obviously --
11 THE COURT: Well, I think this one's clearly written
12 from Mr. Fox's perspective.
13 CNSL A. FLANDERS: That -- that first one yes, but
14 there are --
15 THE COURT: Well, is there anything about after -- is
16 there anything since his release from custody
17 about the -- the initial complainant?
18 CNSL A. FLANDERS: Yes.
19 THE COURT: Where is that?
20 CNSL A. FLANDERS: And so unfortunately it's not
21 paginated because it's --
22 THE COURT: That's okay.
23 CNSL A. FLANDERS: But if you go down to what would be
24 the next article, "I defraud the public and still
25 nothing happens to me, perspective, Desiree," that
26 is written -- that's what I'm referring to that
27 it's written from the perspective of --
28 THE COURT: Okay. So that's on the first page.
29 CNSL A. FLANDERS: No. Sorry. That's -- if Your
30 Honour continues to flip. And as I said, they're
31 not paginated, but it's -- it's many pages in.
32 THE COURT: Okay. I'll look for it.
33 CNSL A. FLANDERS: There's actually a photo --
34 photograph halfway down showing Ms. --
35 Ms. Capuano.
36 THE COURT: Sorry. May 8, 2022?
37 CNSL A. FLANDERS: Yes.
38 THE COURT: "I created a Go Fund campaign"?
39 CNSL A. FLANDERS: Yes. And that is again written
40 from -- as if she is writing it, but --
41 THE COURT: Okay. So -- just give me a moment. I'm
42 sorry. I'm just reading it.
43 CNSL A. FLANDERS: Right.
44 THE COURT: Okay. Thank you.
45 CNSL A. FLANDERS: And so the Crown's position is that
46 really this is just a continuation of the same
47 pattern of breaching that he's had throughout

Submissions for Crown by Cnsl A. Flanders**BAN ON PUBLICATION 51 7 (1) CCC**

1 since he was released in 2017. I won't go
2 through -- through the details of them, but Tabs 8
3 through 11 hold the various probation orders he's
4 been on over the last six years. Again, all of
5 them required some type of condition where he
6 would remove it or not add to it and in the
7 Crown's view he's been convicted several times of
8 that exact thing. And that is the rub in this
9 case. Mr. Fox's behaviour in some ways is
10 inexplicable.

11 THE COURT: Is...

12 CNSL A. FLANDERS: Inexplicable. It is very focused on
13 continuing this website, ultimately continuing to
14 harass Ms. Capuano. And so it seems that he is
15 incapable of doing what the court has ordered, and
16 for that reason he will almost certainly breach
17 any order that Your Honour could impose upon him
18 while he remains in the community. He's
19 repeatedly shown that he won't be bound by those
20 conditions. Specifically this condition.

21 I'll just direct Your Honour's attention back
22 to Judge Sutherland's reasons on a similar bail
23 hearing.

24 THE COURT: Which tab again?

25 CNSL A. FLANDERS: At Tab 5.

26 THE COURT: Five?

27 CNSL A. FLANDERS: That's Tab 5, yes. Specifically
28 paragraphs --

29 THE COURT: Sorry. One moment. Paragraph...

30 CNSL A. FLANDERS: Sixty-three through 66.

31 THE COURT: Okay. Give me a moment. Thank you.

32 CNSL A. FLANDERS: And so essentially the Crown views
33 those comments by Judge Sutherland as the
34 secondary ground concern in a nutshell. It's a
35 telling comment in the sense that it demonstrates
36 Mr. Fox's commitment to continue in this campaign
37 to harass Ms. Capuano and to breach this court's
38 orders.

39 How Judge Sutherland viewed the primary
40 ground is found just after that beginning at
41 paragraph 68.

42 THE COURT: I'm not really all that concerned with the
43 primary ground.

44 CNSL A. FLANDERS: Well, and, again, I bring it up only
45 because he did flee to America --

46 THE COURT: I know.

47 CNSL A. FLANDERS: -- on one occasion.

Submissions for Crown by Cns1 A. Flanders**BAN ON PUBLICATION 517(1) CCC**

1 THE COURT: I know. He -- I know. I get it.
2 CNSL A. FLANDERS: I -- I also bring it up because more
3 recently than that, in the Crown's respectful
4 view, the primary ground is -- is -- has been made
5 more relevant or it's been made clearer.
6 I was contacted some time ago by David Layton
7 from the Crown's office who is running the
8 appeal -- again, this omnibus appeal with Mr. Fox.
9 And so that was back on June 2nd. Mr. Layton
10 informed me by email that -- and I'll just read
11 out the email. [as read in]:

12
13 Today he --

14
15 And he was referring to Mr. Fox.

16
17 -- and I were before Justice Frankel for a
18 case management appearance at which time he
19 stated both off the record to me directly and
20 on record --

21
22 THE COURT: Pardon me? At which time --
23 CNSL A. FLANDERS:

24
25 ...at which time he stated both off the
26 record to me directly and on the record to
27 Justice Frankel that he will be leaving
28 Canada as soon as he is released from
29 custody.

30
31 THE COURT: All right.

32 CNSL A. FLANDERS: To Justice Frankel he added that he
33 recognizes that this will means that his appeals
34 will likely be dismissed as abandoned if they
35 haven't been heard by then. [As read in]:

36
37 In an off-the-record discussion with me after
38 the appearance, Mr. Fox also said that he
39 realized that leaving Canada will result in a
40 warrant being issued for his arrest. He did
41 not explain why he believed this would
42 happen, and I didn't ask.

43
44 And so again Mr. Fox is essentially informing us
45 he's still very focused on leaving Canada at
46 basically all costs. And so we don't, in my
47 respectful submission, have to guess what Mr. Fox

Submissions for Crown by Cnsl A. Flanders**BAN ON PUBLICATION 517(1) CCC**

1 plans to do. He has told us. Given the first
2 opportunity he is going to again attempt to enter
3 the United States. Given his history I imagine he
4 will again claim that he is an American citizen.
5 He will potentially again make a refugee claim, at
6 which point he will be detained by the Americans
7 and sent back to Canada in due course, I would
8 imagine. But, again, none of that involves
9 attending court regularly, appearing for trial.

10 And so in the Crown's respectful submission,
11 for all the reasons he's been detained every other
12 time, Mr. Fox should be detained again, in my
13 respectful submission. He continuously violated
14 court orders and he's made it clear through his
15 conduct that will not abide by these conditions or
16 any conditions imposed by the court. And so he
17 will continue to breach both his old probation
18 order, continuing to commit new offences, and we
19 can't have any confidence that he won't continue
20 to breach any new order that Your Honour were to
21 impose.

22 As I mentioned, the Crown has these primary
23 ground concerns. But, finally, there is this
24 tertiary ground issue. As I've mentioned,
25 there -- this -- this case has over the years
26 received a lot of public attention. It's been
27 advertised quite heavily. Or not advertised.
28 It's been discussed in the media quite heavily.

29 Now, Judge Sutherland quite specifically that
30 he didn't need to address the tertiary ground
31 because of his findings on a primary and secondary
32 ground, but I'm going to request that Your Honour
33 make that finding. I would urge Your Honour to
34 make the finding here because Mr. Fox has
35 essentially thumbed his nose at the justice system
36 quite heavily for six years. He's made it a point
37 to suggest that he will not be constrained by
38 orders of this or any court in B.C. And as
39 recently as June 2nd, as I mentioned, he's
40 informed the court of appeal that he will simply
41 flee the jurisdiction despite being found by this
42 probation order and also needing to attend to this
43 matter in court.

44 And so if Mr. Fox were released, it would
45 bring the administration of justice into disrepute
46 and it should be noted for the public for what
I'm -- and for what I'm sure will be future bail

Submissions for Crown by Cnsl A. Flanders**BAN ON PUBLICATION 517(1) CCC**

1 hearings conducted by Mr. Fox that he is simply no
2 longer releasable given his -- given his prior
3 conduct. That he is too great a risk on the
4 primary, secondary and ultimately this tertiary
5 ground to be released and it would bring the
6 administration of justice into disrepute, in fact,
7 in my submission, if he were released.
8 THE COURT: Okay. Give me one moment.
9 All right, Mr. Fox. Can you stand up,
10 please, sir. I'm going to start asking you
11 questions, all right? How old are you, sir?
12 THE ACCUSED: Forty-eight.
13 THE COURT: Where were you born?
14 THE ACCUSED: Florida.
15 THE COURT: Where in Florida?
16 THE ACCUSED: Hollywood in Broward County.
17 THE COURT: All right. And where did you grow up?
18 THE ACCUSED: Mostly in Los Angeles.
19 THE COURT: What part of Los Angeles?
20 THE ACCUSED: North Hollywood.
21 THE COURT: What school did you go to?
22 THE ACCUSED: North Hollywood High School, then UCLA.
23 THE COURT: What did you take at UCLA?
24 THE ACCUSED: Computer science.
25 THE COURT: Pardon me?
26 THE ACCUSED: Computer science.
27 THE COURT: Did you graduate?
28 THE ACCUSED: Yes. Bachelors.
29 THE COURT: So you have a bachelor of fine arts or a
30 bachelor of arts?
31 THE ACCUSED: Bachelor of science in computer science.
32 THE COURT: Pardon me?
33 THE ACCUSED: Bachelor of science in computer science.
34 THE COURT: Oh, okay. And what year did you graduate?
35 THE ACCUSED: '96.
36 THE COURT: All right. And where did you go then?
37 THE ACCUSED: I --
38 THE COURT: Where did you go after you graduated?
39 THE ACCUSED: Where did I go? I remained in Los
40 Angeles.
41 THE COURT: Okay.
42 THE ACCUSED: In the 90s I had spent some time in some
43 other states on business. Texas, Colorado, et
44 cetera, but my primary residence remained Los
45 Angeles.
46 THE COURT: All right. And where did you live then in
47 Los Angeles?

Proceedings

BAN ON PUBLICATION 517(1) CCC

1 THE ACCUSED: Let's see. I moved around quite a bit in
2 the 90s as --
3 THE COURT: I know.
4 THE ACCUSED: -- my career was going.
5 THE COURT: Give me some addresses. My family all
6 lives in Los Angeles. I'm very familiar with the
7 city.
8 THE ACCUSED: Okay. So first I stayed in North
9 Hollywood for I think the first year after I
10 graduated. Then I lived for a while in Marina del
11 Ray. And I'm not going chronologically here. I'm
12 just going from my memory. I lived in Marina del
13 Ray for a while, West Hollywood. Eventually I
14 moved down to the area called South Bay.
15 THE COURT: Called...
16 THE ACCUSED: South Bay. Which --
17 THE COURT: South...
18 THE ACCUSED: South Bay.
19 THE COURT: As in the South Bay in San Francisco?
20 THE ACCUSED: No, no. The part of Los Angeles that
21 includes Hermosa Beach, Redondo Beach.
22 THE COURT: Oh, I see. Okay.
23 THE ACCUSED: Torrance.
24 THE COURT: Yes. All right.
25 THE ACCUSED: And so I lived in Torrance for a number
26 of years. Eventually I moved to Phoenix in --
27 well, I lived in Phoenix also briefly in 2000 and
28 2001.
29 THE COURT: All right. Where -- where's your family?
30 THE ACCUSED: I don't really have any anymore. My
31 parents are deceased and I have no extended family
32 that I've ever kept in contact with. I have --
33 THE COURT: No siblings?
34 THE ACCUSED: No. I have a son and of course my ex-
35 wife.
36 THE COURT: Okay. What's your son's name?
37 THE ACCUSED: Gabriel.
38 THE COURT: Pardon me?
39 THE ACCUSED: Gabriel.
40 THE COURT: And what was his date of birth.
41 THE ACCUSED: September 27th, 2000.
42 THE COURT: All right. So what year did you meet the
43 complainant?
44 THE ACCUSED: I met her in January of 2000.
45 THE COURT: And when did you get married?
46 THE ACCUSED: In -- I believe it was August of 2000.
47 THE COURT: And when did you separate?

Proceedings

BAN ON PUBLICATION 517(1) CCC

1 THE ACCUSED: October 2001.
2 THE COURT: Okay. When did you come to Canada?
3 THE ACCUSED: I was deported here in February 2013, but
4 in March I went back to Los Angeles, and then I
5 was deported here a second time in May of 2013.
6 THE COURT: Okay. I'll phrase the question this way.
7 Why does the United States believe you're a
8 Canadian citizen?
9 THE ACCUSED: My answer to that would be I believe that
10 the United States does not believe I'm a Canadian
11 citizen. They know exact who I am. IRCC and CBSA
12 documents from here in Canada --
13 THE COURT: Sir, you're not answering my question, and
14 you understood my question.
15 THE ACCUSED: Well, yes of course --
16 THE COURT: No, no, no, no. No, no, no, no.
17 THE ACCUSED: Okay.
18 THE COURT: I asked a very specific question and I
19 asked it very fairly not to hurt you. So
20 remember -- pay attention to what I'm asking you.
21 THE ACCUSED: Yes.
22 THE COURT: Why does the United States believe that
23 you're a Canadian citizen?
24 THE ACCUSED: Right. And my answer to that is --
25 THE COURT: Not "my answer to that is." You know the
26 answer. What is it? Why do they think you're not
27 American?
28 THE ACCUSED: But I don't believe that they do.
29 THE COURT: Well, they can't -- they wouldn't be
30 sir, the only reason they deport you to Canada is
31 because they believe you're Canadian. So I'm
32 asking why do they believe you're Canadian?
33 THE ACCUSED: I can't answer that because it's based on
34 the assumption that they do believe that, but --
35 THE COURT: Okay. All right. So -- all right. So
36 where are you living now, sir?
37 THE ACCUSED: Well, currently at North Fraser.
38 THE COURT: Well --
39 THE ACCUSED: I have no --
40 THE COURT: -- where are you planning -- if I were to
41 release you, where are you planning on living?
42 THE ACCUSED: I would have to go to a homeless shelter
43 because since I've -- since my arrest in 2016 I've
44 not had a fixed address in Canada.
45 THE COURT: Where were you arrested?
46 THE ACCUSED: I was staying at the Belkin House
47 shelter.

Proceedings**BAN ON PUBLICATION 517(1) CCC**

1 THE COURT: Pardon me?
2 THE ACCUSED: Belkin House. Salvation Army Belkin
3 House.
4 THE COURT: Okay. And that was -- that's where you
5 were arrested?
6 THE ACCUSED: Yes.
7 THE COURT: And is that where you stayed after Judge
8 Denhoff's sentence expired?
9 THE ACCUSED: That is correct, yes.
10 THE COURT: And were you -- did you initially go to
11 Belkin House because the jail directed you there,
12 or you went there on your own?
13 THE ACCUSED: I went on my own.
14 THE COURT: Okay. All right. So what else did you
15 want to tell me about why you think you should be
16 released? And there's certain things I may stop
17 you because judges can make only so many inquiries
18 and I have to protect your right to remain silent,
19 so I may stop you.
20 THE ACCUSED: Right. Well, I would like to respond to
21 some of the points that the Crown had made.
22 THE COURT: Go ahead. If I tell you that you're
23 entering into --
24 THE ACCUSED: Sure.
25 THE COURT: -- an inappropriate field, I will tell you.

SUBMISSIONS FOR ACCUSED BY PATRICK FOX:

26
27
28
29 THE ACCUSED: Oh, first I want to clarify. With
30 respect to the firearms charge that the Crown had
31 brought up.
32 THE COURT: I'm not in the least bit concerned with
33 that.
34 THE ACCUSED: Oh, okay. Well, I did --
35 THE COURT: I'm not concerned with that.
36 THE ACCUSED: Okay.
37 THE COURT: I'm concerned with the website. Forget --
38 the firearms --
39 THE ACCUSED: Right.
40 THE COURT: -- I'm not concerned with.
41 THE ACCUSED: Since 2018 the current website that's
42 online -- because this is the second website.
43 There was another original website that was hosted
44 at DesireeCapuano.com. That one was created and
45 went online in 2014. But while I was serving my
46 sentence in 2018 that website went off line very
47 briefly and then this newer current one which is

Submissions for Accused by Patrick Fox**BAN ON PUBLICATION 517(1) CCC**

1 hosted at DesiCapuano.com went online. That went
2 online while I was in custody and all of these
3 prosecutions that have been brought against me
4 since 2019 about failing or refusing to take down
5 the website, the Crown has failed to provide any
6 proof, any tangible proof or evidence whatsoever
7 that I actually have any involvement with this
8 website.

9 THE COURT: Okay.

10 THE ACCUSED: And the fact that the website was put
11 online while I was in custody at FRCC establishes
12 that I couldn't have been involved in putting it
13 online, that some third party must have been doing
14 that. But also over the past few years while I've
15 been in custody there have been a number of
16 updates or posts made on the website while I've
17 been in custody. So, again, since I don't have
18 access to the internet from within North Fraser or
19 Fraser, there's no way that I could've made those
20 posts. So that also shows that someone else is
21 actually maintaining this website.

22 THE COURT: All right. Let me ask you something.

23 THE ACCUSED: Sure.

24 THE COURT: Okay. Mr. Flanders, has anyone checked if
25 since May 16th anything has been done to the
26 website?

27 CNSL A. FLANDERS: I certainly haven't because I
28 haven't wanted to make myself a witness. I don't
29 know if police -- nothing I've seen from police
30 has indicated that they've been monitoring it
31 continuously.

32 THE COURT: All right. Since his arrest. Okay.

33 CNSL A. FLANDERS: Yes. But I -- I mean, I --

34 THE COURT: That's okay.

35 CNSL A. FLANDERS: I have access to it. I can go and
36 look at it --

37 THE COURT: All right.

38 CNSL A. FLANDERS: -- if Your Honour would like.

39 THE COURT: Go on, Mr. Fox.

40 THE ACCUSED: Can I -- can I respond to one point that
41 the Crown made. He kind of -- he brought it up at
42 length, I believe, the issue of my citizenship.

43 I was deported from the U.S. to Canada, but
44 as I was about to say earlier, IRCC and CBSA
45 documents, which I don't have on me here because I
46 didn't think that they were going to be brought
47 up, those documents also clearly state that I was

Submissions for Accused by Patrick Fox

BAN ON PUBLICATION 517(1) CCC

1 born in the United States, and so the Canadian
2 government is well aware of the fact that I was
3 born in the United States. It's there in their
4 own records. And those are actually on the
5 website, I understand.

6 My statement -- and I have stated this a
7 number of times over the past few years that I
8 will never take down the website. The Crown keeps
9 ignoring the fact that the reason I say I will
10 never taken down the website is because I don't
11 own the website now. It's not -- it's not in my
12 control to take it down. By saying that I'm
13 thumbing my nose at the system. I'm saying that I
14 don't have the capability to take down the
15 website. If I'm released right now or if I'm kept
16 in custody, the website is still going to be
17 online. And if I get sentenced to two years or
18 four years for this, it's not going to change
19 anything. The website will still be there.

20 Now, with regard to Count 1. I did report on
21 April 19th, and there's no dispute about. To
22 probation, I mean. I spoke with an officer named
23 Julie who was not the officer -- probation
24 officer specifically assigned to me and they
25 wanted me to come back --

26 THE COURT: This is where you can't --

27 THE ACCUSED: Oh, okay.

28 THE COURT: This is where --

29 THE ACCUSED: Right.

30 THE COURT: -- it's not appropriate.

31 THE ACCUSED: But all I would say on that, then --

32 THE COURT: This is where it's not appropriate.

33 THE ACCUSED: It's my understanding that when I was
34 released from Fraser back in April the website was
35 already offline at that point. And so there was
36 nothing for me to do to comply with --

37 THE COURT: Who told you that?

38 THE ACCUSED: That the website was offline?

39 THE COURT: Yes.

40 THE ACCUSED: Well, I checked it myself when I was
41 released. And when you would try to pull it up at
42 that point, it would give -- I think it was a 403
43 error message, meaning prohibited or access denied
44 or something.

45 And then shortly after that, a few days after
46 that, then it changed for that to prompting for a
47 password, so --

Submissions for Accused by Patrick Fox**BAN ON PUBLICATION 517(1) CCC**

1 THE COURT: Pardon me?

2 THE ACCUSED: A few days after that it changed so that
3 it required a username and a password to access
4 it. And I don't have that username or password,
5 so I don't know what was going on with it.

6 Also I want to point out that all of the
7 prior convictions related to the same allegation
8 about failure or refusing to take down the website
9 are all still currently on appeal. And in each of
10 them I think the grounds of appeal are -- some of
11 the grounds are very strong, and even Mr. Layton
12 himself has agreed that there are some very strong
13 grounds that I'm raising.

14 And when I had said to Mr. Layton on -- I
15 guess it was June 2nd that I intended to leave
16 Canada as soon as I can once I'm released. I also
17 mentioned to him that if I were released on bail,
18 though, I wouldn't be able to do that because as
19 the Crown had pointed out here that would result
20 in a warrant for my arrest. Then Homeland
21 Security or the U.S. authorities would end up just
22 sending me back here anyway. So when I had said
23 to Mr. Layton that I intend to leave Canada as
24 soon as I can, that would mean after this matter
25 would be completed.

26 Also I've never made a refugee claim or
27 asylum claim in the U.S. That was Homeland
28 Security that brought that up.

29 I also disagree with the Crown's position
30 that releasing me would bring the justice system
31 into disrepute.

32 THE COURT: I'm not -- you don't have to --

33 THE ACCUSED: Okay.

34 THE COURT: -- address that one either.

35 THE ACCUSED: So those are the points that the Crown
36 made that I wanted to address. I did have some
37 arguments that I wanted to bring up, but --

38 THE COURT: Go ahead.

39 THE ACCUSED: Okay.

40 THE COURT: If it's inappropriate I'll tell you it's
41 inappropriate.

42 THE ACCUSED: Sure.

43 THE COURT: There's only certain things as a judge I
44 can inquire from an unrepresented accused.

45 THE ACCUSED: Right.

46 THE COURT: So if you go into that area I'll say "be
47 quiet, sir."

Submissions for Accused by Patrick Fox**BAN ON PUBLICATION 517(1) CCC**

1 THE ACCUSED: Thank you. I think it is very relevant
2 and very significant that the website has been
3 online, whether the first or the second website,
4 they've been online since 2014. And over the past
5 few years since the criminal harassment conviction
6 they've still been online, yet the Crown and Ms.
7 Capuano herself, neither of them have done
8 anything at all to try to get the website taken
9 offline. Even -- you had brought that up earlier.
10 You had asked about that.

11 Ms. Capuano, unless she's moved, but the last
12 I heard she was living in Arizona. The website is
13 hosted with a hosting provider in Arizona. It
14 would be a very simple thing for her to go to
15 court there and get --

16 THE COURT: I don't know about that, but okay. I have
17 your argument on that point.

18 THE ACCUSED: Right. Yet she --

19 THE COURT: I don't know about that, so -- and there's
20 no evidence about her, so don't go into that.

21 THE ACCUSED: Likewise, the Crown could take some steps
22 to try to get the website taken down. Like, it's
23 clear that prosecuting me for these things and
24 locking me up in jail is not going to result in
25 the website coming down. It's been years that
26 this has been going on and for six years of my
27 life I've been in jail because of this and the
28 website is still there. The Crown --

29 THE COURT: You know what I'm going to do, sir?

30 THE ACCUSED: Sure.

31 THE COURT: I'm going to stop this proceeding right
32 here, right now.

33 THE ACCUSED: Okay.

34 THE COURT: For the time being. I'm seized of it. In
35 fact, Madam Registrar, I'm ordering a transcript
36 of what we've heard so far. And what I want is
37 for the Crown to investigate why not -- and I'm
38 aware that since Madam Justice Holmes made the
39 initial order on November 10, 2017, that the
40 website be taken down. I am quite curious as I
41 asked you before your -- when you first commenced,
42 I want to know why the police have not worked with
43 counsel for the Department of Justice of Canada
44 through MLAT, Mutual Assistance -- Mutual Legal
45 Assistance Treaty, to get it taken down. And I'm
46 very curious about that why -- because I don't
47 know, but I suspect that could've been done. I

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BAN ON PUBLICATION 51 7 (1) CCC

1 just say that. I'm not sure. But if it takes you
2 a week to find out, Mr. Flanders, if it takes you
3 two weeks to find out, Mr. Flanders, that's fine
4 with me. But I want that --
5 CNSL A. FLANDERS: I think it will take some time.
6 THE COURT: -- answer -- I want that answer before we
7 continue because Mr. Fox is right, quite frankly.
8 That is significant to me.
9 CNSL A. FLANDERS: Well, I -- I will do that. I will
10 make those inquiries.
11 THE COURT: No, no, no. That's significant to me and
12 I'm adjourning these proceedings. Right now
13 I'll tell you. I'm in court -- today is
14 June 15th. I'm in -- the only problem is next
15 week some days I'm in courtrooms that don't have
16 prisoner's boxes.
17 CNSL A. FLANDERS: Well, for this inquiry I wonder
18 whether or not it makes sense for us to --
19 THE COURT: Yes.
20 CNSL A. FLANDERS: Not having him brought in person. I
21 know that's an inconvenience, and so --
22 THE COURT: Do you mind appearing by video?
23 THE ACCUSED: I prefer to be here in person if I'm
24 going to be making any submissions or arguments.
25 THE COURT: No. Because next week is just to find out
26 if they know.
27 THE ACCUSED: Oh, I see. Okay.
28 THE COURT: So February -- February. June 22nd in
29 whatever courtroom I'm in.
30 CNSL A. FLANDERS: What day of the week is that, Your
31 Honour? Because --
32 THE COURT: Wednesday.
33 CNSL A. FLANDERS: Wednesday. Okay.
34 THE COURT: That's why I said a week. Why?
35 CNSL A. FLANDERS: I just wanted to -- I don't have a
36 calendar in front of me. I'm in court just
37 Tuesday and Thursday, so I want to make sure --
38 THE COURT: Oh, okay. So June 22nd at 9:30 in whatever
39 courtroom I'm in. And Mr. Fox can appear by
40 video. And I'm adjourning it for the Crown to
41 attempt to discover why it is the authorities have
42 made -- or I'll even rephrase it. What, if an,
43 attempts have the authorities made to have the
44 website taken down? And why is it that the
45 authorities can't have it taken down? Like, it
46 just seems virtually perverse to me, but -- you
47 know, as I said, I'm certainly not a website

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1 designer. I've never created a website. In fact
2 I've never put anything on a website. So I really
3 don't know how to works, but hopefully we'll --
4 we'll find out.
5 So I'll see you next Wednesday, Mr. Fox.
6 THE ACCUSED: Okay. Could I just say, first, thank you
7 for -- for this. And the other thing is I wanted
8 to mention I have no objection to staying in
9 custody longer if we could get to the bottom of
10 this situation.
11 THE COURT: Well, I've already ruled that you're going
12 to stay in custody longer --
13 THE ACCUSED: No.
14 THE COURT: -- until
15 THE ACCUSED: What I mean is if it's going to take the
16 Crown a week or two weeks or even a month to find
17 out why this hasn't been done, I'm -- I'm fine
18 with that.
19 THE COURT: Okay. Good. Because I really need to know
20 that answer.
21 CNSL A. FLANDERS: Thank you.
22 THE COURT: I'm really confused by that, so I want to
23 know. Okay.
24 CNSL A. FLANDERS: Now, just because we have the time
25 available and Mr. Fox here, if he has more
26 submissions involving that point.
27 THE COURT: No. No, no, no, no, no.
28 CNSL A. FLANDERS: I don't know if it makes sense to
29 continue.
30 THE COURT: He's had a very significant portion -- part
31 of his argument which is, judge, it's going to be
32 very hard to prove that I'm the person because I
33 was in custody and sometimes ethe website appears
34 to be down. I don't know that answer, but what I
35 do need to know is how is it possible that in six
36 years of prosecutions nobody has bothered to try
37 to take it down. And I'm certain, certain,
38 certain knowing Madam Justice Holmes as well as I
39 do, and now she's Associate Chief Justice Holmes,
40 that she wouldn't have asked why the authorities
41 can't do this to protect the complainant. So I
42 need to know that answer.
43 CNSL A. FLANDERS: Yes.
44 THE COURT: All right. Thank you. Okay. I'll see
45 you -- even though you know how much I hate video,
46 Mr. Fox, I'll see you next Wednesday by video.
47 THE ACCUSED: Thank you.

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1 THE COURT: Thank you. And, Madam Registrar, I'm going
2 to ask you to send a direct message --
3 CNSL A. FLANDERS: Actually, Your Honour, Mr. Sheriff
4 is pointing out we still haven't dealt with this
5 book of authorities, whether he'll be taking this
6 back.
7 THE COURT: Oh. Leave it with the Crown for the time
8 being, sir.
9 THE ACCUSED: Okay. I do just want to point out,
10 though, that the Tab 7 that he had concern about
11 looks like it's all just stuff that's on the
12 website anyway.
13 THE COURT: Sir.
14 THE ACCUSED: No, I understand.
15 THE COURT: You know what? I'm not going to get into
16 it now. Gove it back to him. You'll see it next
17 time you're here in person.
18 THE ACCUSED: Right. Thank you.
19 THE COURT: Okay.
20 CNSL A. FLANDERS: Thank you, Your Honour.

21
22
23 (PROCEEDINGS ADJOURNED TO JUNE 22, 2022, AT 9:30
24 A.M. TO)

25
26
27 Transcriber: A. Pinsent

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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 that reads "A. Pinsent". The signature is written in a cursive style with a large initial "A" and a stylized "Pinsent".

A. Pinsent
Court Transcriber