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2022-08-18

Attn: Elliott Poll
BC Prosecution Service
865 Hornby St, 5th Floor
Vancouver, BC V6Z 2G3

Re: R. v. Patrick Fox;
Court file 244068-10-BC

Dear Mr. Poll:

Thank you for your letter dated 2022-08-16. There are a few points I wish to respond to, as follows:

1. You said "The Crown has proceeded by indictment...".
(page 5, para 5, line 1)

This is news to me. As of the time of my bail hearing and arraignment (2022-06-24), the Crown was proceeding

summarily, and all that is included in the disclosure is an information, not an indictment. If that has changed, shouldn't it have received a formal notice of it, by way of the previous information being withdrawn and a new indictment being filed (which, I believe, would cause the entire process to start over)?

My preference is to proceed by indictment so that way the appeal goes directly to the BCCA, rather than having to first go through the BCS. But, obviously, I oppose having to start the process over again. If you can switch to indictment without restarting the process, that would be ideal.

As for elections, I would always choose a jury trial in the BCS over a judge only trial in the BCC, but according to the BCS and the BCC judges, the BCC has absolute jurisdiction over these charges and they would not allow me to choose a jury trial in the BCS. Also, I've already had the arraignment, back on 2022-06-24.

2. Regarding my request to cross-examine Mr. Johnson.
(page 1, para 3)

The testimony I will be seeking from Mr. Johnson is that after I reported to probation on 2022-04-19, I spoke with Mr. Johnson on the telephone and advised him that the probation officer was insisting I had to return and report a second time on the following Thursday (2022-04-21), even though the probation order explicitly stated I was only required to report one time and only for the purpose of informing the probation officer of the exact steps I had taken to comply with the probation order. Mr. Johnson agreed that it was his understanding that I was only required to report the one time. I then asked him, if I don't report that second time (on 2022-04-21), whether the BCPS was going to prosecute me for that, and he said that if I already reported and informed the officer of the steps I've taken to ensure the website is no longer available then he can't imagine that they would prosecute me for failing to report because as far as he would be concerned I have fulfilled the reporting requirement.

3. In your letter, you said "The Crown position is that Mr. Johnson could not relieve you of your obligations under the order." (page 1, para 3, lines 4-5)

That's fine, and I'm not suggesting that he could. What I'm saying is that I did fulfill the requirement of Condition 4 on 2022-04-19 when I reported to Julia Seath and informed her that I had taken absolutely no steps to ensure the website was no longer available, because prior to my release from custody, the website had already gone offline and was still offline as of the time I had reported to her - there was nothing for me to do to ensure it was no longer available because it was ~~and~~ already no longer available. And since the last sentence of Condition 4 of the probation order states:

Once you have reported these exact steps you have taken to comply with that condition, you will no longer be required to report to a Probation Officer.

Therefore, I clearly and irrefutably complied with Condition 4 when I reported to Ms. Seath on 2022-04-19.

4. When I spoke with Johnson on the phone on 2022-04-19, after he assured me the BCTS would not likely prosecute me for refusing to report the second time (on 2022-04-21), I told him I would love for the BCTS to prosecute me for not reporting the second time because they would, literally, be prosecuting me for actually, exactly

COMPLYING with the probation condition. And here you guys are, doing exactly that! Please tell me how it is possible to NOT construe this as harassment and abuse of process?

5. You said "the order required you to do more than take steps to ensure the website was no longer available; you were required to ensure the website was taken down." (page 1, para 3, lines 5-6)

I disagree. And so does Judge Denhoff - the very judge that imposed the probation order. At my trial and sentencing, on 2022-02-25, Judge Denhoff stated:

You don't have to take it down. The part I'm having difficulty is, is that you seem to think that the probation condition requires you to take it down and that once you've taken it down, you've satisfied your obligation. What it required [sic] you to do was to ensure that it was no longer available to anyone. (TR p 137 l 32-38)

So, based on Judge Denhoff's own words, I was NOT required to take the website down, I was only required to make it "no longer available to anyone."

6. Regarding my request for Clog entries and notes from from the probation department from 2022-02-25 onward. (page 2, para 1)

You said that you're confused and you don't see the relevance of the Clog entries and notes from prior to the date that I actually reported. Regardless, if it's part of my probation file and it's subsequent to the time of the imposition of the sentence (i.e. 2022-02-25), then it will either contain nothing (in which case there's nothing to disclose), or anything it does contain is going to be clearly related to their enforcement of this probation order, and therefore, clearly relevant to Covert 1 of the information.

7. Regarding my request for any recordings of my attendance at the probation office on 2022-04-19 (page 2, para 3)

The point of this is to prove, with actual, physical evidence, not with witness testimony - testimony is not evidence (regardless of what your Canadian justice system participants pretend to believe), people lie (even under oath), memory is unreliable and subjective - that I did

attend and report to a probation officer on 2022-04-18.

I know the probation office has video footage of the relevant areas of the interior of the office because the security cameras are all conspicuously placed. And if you guys (either Community Corrections, the VPD, or the BCPD) failed to retain the video footage even though it would clearly be relevant evidence in a criminal proceeding, that is going to be a serious problem that is going to have to be addressed. And, I would point out that this would be the second time now that the Crown has deliberately allowed or caused video evidence which is critical to my defense to be destroyed (see 244069-5-6C and the Bernie Wolfe / CBST fiasco).

8. I absolutely DO NOT want Count 1 to be stayed, however. I very much want the charge to go to trial so I can, once again, make you all look like a bunch of fools - this time for arresting, detaining, and prosecuting me for actually doing exactly what the probation condition required me to do. And what's most amazing about it is that the VPD, Community Corrections, and the BCPD have all acknowledged I did actually do exactly what the probation condition required (i.e. I reported

in person within 72 hours of my release from custody). Yet, still the BCIS proceeds with the charge! Again, how can this be anything other than harassment and abuse of process?

9. You said "As you pointed out on our last appearance, this matter should be brief. The facts are simple." (page 2, para 6, line 1)

Right. And so now I would like to point out, again, that there is absolutely ~~no~~ no way this trial will last three days. And even if you were able to stretch it out over three days, there is absolutely no requirement that those three days must be scheduled contiguously. I believe the only reason to schedule them contiguously is so you can use that as an excuse for scheduling the trial much farther into the future. And the only reasons the Crown would want to schedule the start of the trial farther into the future are:

- a. to potentially prolong the accused's pretrial detention so you can use their release to negotiate a plea agreement; and/or
- b. because you realize the case is bunk and there is no

way you can legitimately get a conviction at trial, so you're delaying the inevitable in the hopes that it'll wear down and accept a plea agreement before that time.

And on this topic of scheduling the trial dates, you also claimed in your letter that you believed I hadn't yet made elections, but if I hadn't made elections then how could you have scheduled the trial date? I mean, if you didn't know which court the trial would be in, how could you have scheduled it? Hmm! Interesting.

10. You said "An order was made that you take down the website." (page 2, para 6, lines 1-2)

In fact, as pointed out above, according to Judge Denhoff the order DO NOT require me to take down the website. It only required me to "ensure the website was no longer available." Therefore, the website could remain in existence and online, as long as it was not "available" to anyone.

Then there's the issue that the wording of the condition is

vague and ambiguous. The condition did not actually require me to engage in any particular or specific conduct. Instead, it stated an end result and ordered me to "take all necessary steps" to ensure that end result is achieved. This is an issue I am raising in one of my current appeals (CA48145).

11. There are, actually, other things the Crown has to prove, in addition to what you've stated in your letter, but I'll save that for the trial.

12. You said "The police received information that the website had not been taken down and confirmed that to be the case." (page 2, para 7, lines 1-2)

In fact, that is not correct. It is clearly established that the website went completely offline, prior to my release from custody (somewhere in the later half of March 2022) and remained as such until around 2022-04-21 at which time an authentication requirement was put on it, such that it could not be accessed without the user name and password. Whether or not anything was actually on the website once the authentication requirement

was added cannot possibly be known by anybody other than whoever was maintaining the website because the authentication requirement prevented anybody from seeing what, if anything, was there. But even if the entire desicapiano.com website was there, behind the authentication requirement, it wouldn't matter because the authentication requirement rendered the website "no longer available". And, presumably, no one in the VPD or the BCTS had the user name and password so there is no way any of you could have known what, if anything, was actually on the website.

So, therefore, it is false to say that the website had not been taken down and that the police confirmed that to be the case. And no amount of posturing and bluster will change that.

13. Regarding page 4, para 8 through page 5, para 2 of your letter, I am quite confident that someone from either the BCTS and/or the VPD attempted to access the website within the 48 hours following my release from custody in order to verify whether or not I had "taken all necessary steps to ensure the website was no longer available." And so, that person has relevant testimony

because they have first hand knowledge that the website was actually completely offline at that time. Therefore, I must insist that that person (or persons) be produced to testify at the trial.

Keep in mind, you guys insist that I own/control the website. That being the case that means I have access to the access logs, which means I am able to see exactly when anyone accesses the website from a Government of BC (e.g. the BCPS) and/or City of Vancouver (e.g. the VPD) IP address. Which means that if you (and/or they) claim that nobody from the VPD or the BCPS attempted to access the website at any given time I'd be able to prove you/they are lying by showing the access logs. To which you might say the fact that I have the access logs proves that I own/control the website. To which I might say I sent an email to editor@desicquano.com requesting the access logs to use in my trial to catch the prosecutor and his witnesses lying (which I suspect "editor" would be very agreeable to helping me do).

So go ahead, Mr. Tall, claim that nobody from the VPD or the BCPS checked whether the website was accessible in the 48 hours following my release from custody.

14. Regarding my request for "all artefacts relating to all search warrants, including the search of the property seized from me ...". (page 2, para 9)

I am referring to such artefacts as the ITO and any supporting affidavits or evidence, the warrants themselves, and any other things related to the search warrants and the efforts to obtain the search warrants.

I used the word "artefacts" so the request would not be construed as being limited to the ITO and the warrant. If there were other, supporting things, or "artefacts", then I am requesting those as well.

15. You said "I've been advised by the Vancouver police, that they have a Lenovo tablet and a cell phone ...". (page 2, para 10, line 1)

Please be advised, they also seized a number of electronic storage devices (e.g. USB sticks).

16. Regarding my request for all artefacts relating to any/all arrest warrants (page 3, paras 3-4)

During the interrogation, Det. McElroy clearly stated a warrant had been issued for my arrest for breaching, by failing to report on 2022-04-21 (see the video of the interrogation at 18:27 - 18:42). And, again, I use the word "artefacts" to make the request more broad than to include just the warrant and the 140 - in other words, if there is any additional supporting evidence, (for example, communication with or documents from the probation department), which were used in processing or obtaining the warrant, then I request those as well.

17. Regarding my request for the identities of the justice system participants who were involved in the email correspondence initiated by Mr. Lipton on 2022-05-15, (page 3, paras 5-6)

There is no effort required, on your part, to determine who those parties may be. They are stated in the "From" and "To" header fields of the email messages which have already been disclosed to me. However, they have been redacted in the disclosure. All you have to do is remove the redactions.

I disagree with you that the information is not potentially relevant, because according to that email thread, Mr. Lipton claimed the website was accessible for some brief period

of time, on 2022-05-15, and while he was looking at it it suddenly ceased to be accessible any longer. That would seem to suggest that if it was, in fact, made accessible for some brief period of time it was done so inadvertently and whoever caused that to happen promptly corrected the error when they realized it occurred. And, that type of information would certainly seem relevant to my defense. And, the identities of any justice system participants who might have information relating to that would certainly seem to be relevant so that I could pursue and investigate what information they may actually have about whether or not the website was actually publicly accessible, for how long, who caused it to become publicly accessible, et cetera.

18. This also raises the troubling issue that there were justice system participants who purportedly discovered the website had become publicly accessible, yet they refused to notify me of it so that I could do something about it (assuming I actually had the ability to do something about it). How could all of you expect me to comply with a probation condition by "taking all necessary steps to ensure the website is no longer available" if I am not even aware that the website has become available?

19. You said "That others may have observed that the website could be accessed is of no significance. The proposed evidence of Ms. Meiklejohn shows that the offending website could be accessed and that you had not taken it down. Other witnesses who may have seen the website operating are not necessary for the Crown to prove its case nor can they provide evidence of any potential defense." (page 3, para 6, lines 4-8)

I disagree. First of all, as discussed above, according to Judge Denhoff at the time of sentencing, there is no requirement that I take the website down; only that I take steps to ensure it is no longer available (see item 5). The fact that it was not accessible without a valid user name and password means that it was "no longer available." Unless you can identify even one person who had the user name and password then there is no evidence that the website was actually available to anyone during the time the authentication requirement was in place.

The significance of Mr. Layton and others "observing that the website could be accessed", as you say, is that if they were suddenly able to access it but only for a brief period of time and then suddenly no longer able to access it again, that would support the theory that it becoming available

again was inadvertent and then, upon discovery of that error, it was promptly corrected (i.e. shut down completely). And it seems to me that would be pretty relevant to my defense because you have to prove: that I knew the website was available again; that it was the one that caused it to become available again; and that I intended for it to become available again. It is not a breach if it happens by accident or if it happens because someone else did it without my knowledge.

And as for Ms. Meiklejohn's supposed evidence, that is of little concern and I look forward to tearing it apart and making her, the VTD, and the BCTS look foolish when I cross-examine her on it.

20. You said "Further, your request potentially seeks disclosure of privileged communications." (page 3, para 6, lines 8-9)

The communications have already been disclosed to me in their entirety. It's only the identities of the participants which I am requesting.

21. Regarding my request for all correspondence relating to

this prosecution and the police investigation. (page 3, paras 7-9)

What I am mainly seeking here is any correspondence between the probation department and the investigating agency (VPD). I mean, McElroy claims I was arrested based on a warrant that had been issued, but you're claiming there was no arrest warrant, which would mean that the probation department must have had some communication with the VPD which resulted in the VPD coming and arresting me for failing to report even though I DID report exactly as I was required to in the probation order. So what the heck is really going on here?

22. Regarding my request for the computer firewall rules which would have affected the ability of VPD to access the website. (page 4, paras 3-4)

During the interrogation, McElroy stated that Meiklejohn had been able to access the website, and that she had saved the screenshots to prove it. I told McElroy I didn't believe her, because I knew the website was not publicly accessible. I requested McElroy show me that the

website was available, that she access the live website, in real-time, from the internet - meaning the actual website, not some saved or cached copy. She agreed that she would do that using a computer in the next room. But when she came back 10 minutes later, she claimed the VPD's "firewall was not allowing her to access the site anymore". Obviously, I didn't believe her. If the firewall/NAT/router/proxy configuration wasn't allowing her to access the site at that time then it wouldn't have allowed Meiklejohn to access the site three hours earlier.

So, the reason I'm requesting the firewall rules is to prove that McElroy was lying. There was no rule configured in the VPD firewall which would have prevented access to the website at that time. And, when I cross-examine McElroy, I'll explain how it is that I know that. The reality of the matter is that the website wasn't publicly accessible. This is further supported by the fact that when I pointed out to McElroy that she could use a device which wouldn't have to go through the VPD's firewall, for example any mobile phone, she refused... because she knew the website wasn't actually publicly accessible.

23. I also requested the VPD's firewall access logs relating to any attempts to access any resources at "devicerecords.com" on 2022-05-16, however you did not reference that in your letter.

The purpose of this request is to show that, in fact, there were multiple attempts from parties within the VPD's network to access the website on that day but that those attempts failed to locate or to access the requested resources. In other words, it was not the firewall that was impeding access, it was the ~~(web)~~ web server that was responding that the requested resource was not available. In other words, the website was not actually publicly available. (How do I know all of this? We'll discuss that on the record, at the trial.) This would seem to be extremely relevant to my right to make full answer and defense.

24. You said "Whatever the reason for the unsuccessful attempts is irrelevant," (page 4, para 4, line 5)

That is completely wrong. If the reason for the unsuccessful attempts was that the website was offline or "taken down" or otherwise "no longer available" then it is

completely relevant because it proves that at certain times the website was "no longer available." And, if the website was, at some particular point, "no longer available", but then at some subsequent point it became available, then that means that somebody must have explicitly engaged in conduct that caused that to occur. And, it is my understanding that in such circumstances, it would be the Crown's burden to prove that I caused that - because I cannot, reasonably, be held accountable for someone else's actions. And, having proven that the website was made "no longer available", it would also be the Crown's burden to prove that I knew that the website was subsequently made available - because I cannot reasonably be expected to "take all necessary steps to ensure the website is no longer available" if I'm not even aware that the website is available. Of course, this is all hypothetical because I don't believe, and your evidence doesn't actually prove, that the website "desicapsano.com" was publicly available during the time stated on the information (as it will make abundantly apparent when I cross-examine Meeklejohn).

25. You said "The fact that the police successfully accessed

the site is what matters because it shows you had not taken the site down." (page 4, para 4, lines 3-5)

I disagree. First, according to Judge Denhoff, I am not required to take down the website, I am not required to do anything to cause or encourage anyone else to take down the website. I was only required to cause the website to be no longer available. And since the website was already "no longer available" prior to, and at the time of my release from custody, I was, literally, not required to do anything at all.

Moreover, even if the police were able to access the website on 2022-05-16 that does not mean that the website had not been taken down. It would only mean that the website was online at that precise time that they accessed it. Just because something is so at a precise, given point in time (e.g. 2022-05-16) doesn't mean that it was so for every moment, continuously, without interruption, leading up to that precise, given point in time. For example, if you see me standing in front of a Starbucks, sipping a coffee on 2022-04-17; and the next time you see me is on 2022-05-16, standing in front of that same Starbucks, sipping a coffee; does that mean that I've been standing in front of that Starbucks, sipping that same cup of

coffee, continuously, for those 29 days? Of course it doesn't! To make such an inference would be idiotic. So why do you prosecutors keep trying to make such an idiotic implication? Particularly in this instance, where your own evidence proves that the website was, in fact, taken down at some points! Or is this just more of that ridiculous posturing that prosecutors do when they know they're full of crap?

26. You said "I will not be calling Mr. Layton nor will I make him available for you to call. Simply put, he has no potentially relevant evidence to give."
(page 4, para 7)

As discussed above, in item 17, Mr. Layton claims to have first hand knowledge of the website not being available, then suddenly being available, then even more suddenly no longer being available again. Those facts would seem to support the theory that it becoming available was inadvertent and likely done by someone who is not me, and that as soon as they realized the website was inadvertently made publicly available they promptly made it no longer available again by taking it offline. All of which seems extremely relevant to my defense.

if you are not willing to produce Mr. Layton, then I will need to seek a subpoena for him. May you please schedule a hearing for that on the earliest date?

27. You said "Leaving aside whether it vastly overstates matters to suggest that someone in the BCPS was monitoring your website..." (page 5, para 2, lines 1-2)

I don't understand what you mean. Please clarify.

28. Regarding my request for the party/parties within the BCPS who had been monitoring the website prior to and subsequent to my release from custody to be produced as witnesses at trial. (page 4, para 9 - page 5, para 2)

Those parties could have observed that the website went completely offline somewhere around late March 2022 or early April 2022, while I was still in custody; and that it remained as such until some time more than 48 hours after my release from custody; and that the authentication requirement was put on the website at some point after that. Therefore, those parties would have first hand knowledge that I was actually in compliance

with any condition which may have required me to do something within 48 hours of my release from custody to cause the website to be "no longer available". Which, I believe, is what you're alleging in Count 2, that I didn't do.

29. You said "As I've said, the police received information that your website was still up and running and available to the public." (page 5, para 3, lines 1-2)

That is completely false! Even based on the information purportedly from Meiklejohn, the website was clearly and unquestionably NOT available to the public on 2022-05-03. It's right there in the disclosure material you provided me. If the website was blocked with a user name and password requirement then it was not available to the public or to anyone else. And neither the BCPS nor the VPD can possibly have any knowledge of what was or was not available behind that password. Was it a blank page? Was it NO page? Was it the entire, usual version of the website? No one knows! Therefore, your statement is false.

Your statement is also contradicted by Mr. Layton's own

statements in his emails with his supervisor. On 2022-05-15, the day before you and the VPD claim the VPD was able to access the website, Mr. Laston stated "It seems like it's not available at all." Therefore, it is false to say that it was "still" up and running and available to the public on 2022-05-16.

Moreover, your statement is irrelevant because the probation order did not require the website to NOT be up and running - it only required it to not be available; and it clearly was not available.

The word "still" means "continuously, without interruption". How is it that all of the justice system participants involved in each of the prosecutions against me based on allegations that I failed or refused to "take down the website" do not know the meaning of the word "still"? And why do you all insist on continuing to use it incorrectly?

30. I also note you stated "...your website...". (page 3, para 3, line 1)

You have absolutely no evidence establishing any

association between me and the website during the times relevant to the current charges (i.e. 2022-04-17 through 2022-05-16). If I did own the website, or have any involvement with it, that would be incredibly easy for the BCPD and the VPD to prove (this will be covered further during my ~~first~~ cross-examination of the lead investigator, and of Det. Dent). But it's been more than three years and three prosecutions, and the VPD insists they have made absolutely no attempt to determine who owns the website or whether I have any involvement with the website. I don't believe that for one second! Surely, in the course of performing their due diligence, they contacted the hosting provider and inquired who's associated with the account and who's paying for the hosting, and what IP addresses have the users been logging in from.

31. You said "They investigated to confirm whether the assertion was true and found that it was." (page 5, para 3, lines 2-3)

Yet, when they interrogated me and I insisted they show me that the website was available, they admitted they weren't able to access it. And, the day before that, the day

before it was arrested and incarcerated, Mr. Layton was asked by his supervisor "Is it password protected again or not online at all?" And Mr. Layton responded "It seems like it's not available at all."

How is it possible that the website was supposedly publicly accessible at 9:30am on 2022-05-16 when Meiklejohn claims to have accessed it, but no longer accessible at 12:30pm, after it was arrested and detained, while it was confined to the interrogation room? Is it the Crown's position that it took it offline telepathically, from within the interrogation room? Come on, man!

Where are you getting your information from, Mr. Ball? Are you guys really prosecuting and imprisoning me based solely on the VPD's summary of their narrative in the RTCC again? Have you even reviewed the interrogation video? Have you tried accessing the website?

There is not even any evidence that the website was even publicly accessible at the times the VPD claims it was. The documents purporting to "prove" Meiklejohn accessed the website on 2022-05-16 could have simply been created in a text editor; she could have saved one of the pages of the website from before, then simply modified the HTML

content and claimed it was a new page which was publicly accessible on 2022-05-16. Apache rewrite rules, or either HTTP or DNS redirects could have been used on the server to automatically redirect any requests for resources under "desicapucano.com/" to an archived or cached copy of the site. Did Meiklejohn investigate to ensure that ~~she~~ what she was accessing was actually the website hosted at desicapucano.com and not a redirection to another copy or site? Would she even know what any of this means, or how to verify it? I'm pretty sure the answer to these questions is "No". But now she'll have time to read up on these issues so she'll know what I'm talking about when I cross-examine her about it and confront her with proof of it.

32. Thank you for your assistance with arranging for a computer to be available to me during my cross-examinations.

33. Personally, I would like to have a PTC as early as possible because I anticipate these disclosure and witness issues are going to drag on somewhat. And since your entire case is complete bunk, I don't want

to delay the trial any more than necessary. For those reasons, I request you please schedule a FTC ASAP.

34. And finally:

- Condition 4 required me to report one time to the probation department to inform them of exactly which steps I have taken to ensure the website is no longer available;
- Condition 5 prohibited me from having any contact with Capuano; and
- Condition 6 prohibited me from disseminating, distributing, publishing, et cetera, any information about Capuano.

Those are (~~in fact~~) the only conditions stated in the order. There is, in fact, no condition stated in the order which requires me to take all necessary steps to ensure the website is no longer available. You will probably try to argue that it is included in Condition 4, but condition 4 does not say I that I have to do that, it only says that I have to inform the probation officer about what steps I have taken toward that end. But I'm quite certain you guys are already well aware of this.

Interesting that I saved this point for the very end, huh?

So yes, Mr. Poll, I very much look forward to the trial in this matter.

If you have any questions or concerns please let me know.

Sincerely,



Patrick Fox

P.S. As we'd discussed on the telephone, may you please return a copy of this letter to me for my records?
Thank you.