Natha[redacted] Dempsey
[redacted]

December 11th, 2023

The Honourable Justice in Chambers
[redacted]

Subject: Respondents' Motion for Payment Out of Court, and Summary Observations

My Lord / My Lady:

I write on the suggestion of [redacted] in response to [redacted] motion for payment out-of-court of an amount of [redacted] the same amount paid by myself into this court pursuant to the order of justice [redacted] on [redacted] for security of costs in this Appeal.

This court dismissed my Appeal in chambers on [redacted] whereas, pursuant to the same arguments before [redacted] I seek a hearing before the SCC concerning lower court action numbers and have filed motions to stay costs. I rely on those same arguments in response to [redacted] motion concerning the disbursal of my monies in the [redacted] trust account. The matters before the SCC concern constitutional law.

The Proceedings [redacted]

Accompanied by the foregoing request, it is incumbent upon me to address the manner and disposition of matters heard [redacted] which relate to the proceedings in British Columbia. Events originating in 2020 concerning a state-sponsored Director have occasioned a scandal pertaining to the conduct of state and state-sponsored agencies here in Canada. Its chronological points are detailed in my Factum. To this end, I will briefly summarize the [redacted] proceedings beginning [redacted] up until the hearing of this Appeal [redacted]

Motion before justice [redacted]

I filed a motion to stay an execution order filed in the [redacted] "*stay motion*"), concerning an award of costs totaling $41,217.53 in the BC Court of Appeal ("BCCA"). The corresponding BCCA application was comparable in scope and complexity to this motion heard before justice [redacted] on July 12th, 2023, which was billed at $500. As such, I was charged over 98% more in costs for a comparable application in BC, which in its own right ignored pivotal contextual evidence, thereby occasioning one component of a broader scandal originating in the province of British Columbia.

The stay motion was heard before justice [redacted] Justice [redacted] advised that I had met a portion of criteria which would authorize the [redacted] to stay the execution order. This was predicated on section 8(2)(c)(ii) of The Enforcement of Canadian Judgments and Decrees Act ("*The Enforcement Act*"), and a balance of convenience, in view that the Respondents are wealthy and are sponsored by the Federal Government.

Notwithstanding, justice [redacted] dismissed my motion to stay the execution order. His basis for doing so was by way of discretionary opinion, in that he was of the opinion that *"the likelihood of my matter being heard in the SCC is remote"*, whereas SCC docket entry requires the presence of issues of public importance.

His error in judgment concerns a palpable error in fact as disclosed at paragraph (1) of the written decision dated [redacted] Despite being briefed on the background of the BC proceedings in two Affidavits filed [redacted] and [redacted] respectively, and reminded of the same in chambers, justice [redacted] wrote that I had been "*successfully sued by* [redacted] *in British Columbia*". It follows from the same that his discretionary opinion concerning SCC docket entry is incorrect, as his rendition of events does not concern a matter that the SCC would typically be involved with.

Justice [redacted] may have adopted a different approach at the initial hearing per his comments in [redacted]

"*The trial judge also erroneously asked whether the appellant would be successful in an abuse of process claim when that was not an issue before him.*"

I filed to Appeal the [redacted] order as a result of his palpable error in fact concerning the nature of the proceedings in BC. Because the legal right and balance of convenience had already been recognized in my favor, success in the Appeal of the [redacted] decision appeared to be effortless. Success in the Appeal need only require that I, (1), demonstrate the actual issues involved in the proceedings in BC, and (2), demonstrate customary jurisprudence in view of the same context as it relates to SCC docket entry. Per the Factum, and as is further supported in my August 23rd, 2023 Affidavit, the matter before the SCC is suffused with important public issues, in addition to issues of national importance. Why then did the Appeal fail?

Respondents' Motion before justice [redacted]

On [redacted] the Parties appeared before [redacted] in response to a motion for security of costs, filed by [redacted]. Justice [redacted] granted the motion, whereas I paid an amount of [redacted] into this court shortly thereafter. Paragraph 6 in her written decision outlines the contention in the matter. At paragraph 6;

"Commencement of an Appeal does not automatically act as a stay of an order".

Justice [redacted] acknowledged that an Application for Leave to Appeal had been filed in the SCC, but no mention was made of my SCC motions to stay all costs made in the lower courts, and my motion to expedite the stay of costs. [redacted] It might be argued that had consideration of my motions for stay been recognized in the decision, [redacted] motion may have been dismissed. The remainder of her posted decision focuses on a vexatious declaration made by justice Andrew Majwa in S-229680 which appears to serve as the primary justification of the order, though the same declaration is under appeal with no due consideration by justice [redacted] of the same. Applicable jurisprudence in *Pintea v. Johns*, 2017 SCC 23, [2017] 1 S.C.R. 470, *Jonsson v Lymer*, 2020 ABCA 167, and *Girao v. Cunningham*, 2020 ONCA 260 is relevant to the vexatious declaration, as is the manner in which justice Majawa obstructed justice in the BC file, which also contrasts with the precedent he set in *A Lawyer v. The Law Society of British Columbia*, 2021 BCSC 914 at paragraph 63.

Motion for Fresh Evidence and Confidentiality

On September 1st, 2023, an Affidavit containing a detailed chronology of events concerning the BC scandal was filed, alongside a motions to adduce the same as fresh evidence and apply modest redactions in biographical and commercial data. [redacted] made an *ex parte* interim confidentiality order at my request.

Highlights in the August 23rd, 2023 Affidavit include the following, along with references to other items as cited in related Affidavits as specified:

- Workplace harassment exhibits introduced by the order of BCSC justice Beaton, February 11th, 2022 (November 22nd, 2023 SCC Affidavit, Exhibit G);
- An order by the BC Registrar to disclose shareholder records (page 42);
- Shareholder fraud (pages 43-51);
- Collusion and bad faith in the [redacted] settlement (pages 52-56);
- Sophisticated criminal harassment and mischief beginning prior to S-220956 including disruption in day-to-day life and business, and continuing thereafter, facilitated by third-party actors identifying with state-sponsored CEO and CAF operatives (Exhibit A, and pages 60, 82-99, 103, 132-133, Exhibit F);
- A threat to strike S-220956 while the May 20th, 2022 Affidavit was enroute to British Columbia via courier yet still undisclosed, which first chronicled external mischief related to the CEO and the proceedings (pages 39-41);
- Proof of perjury in the September 22nd, 2021 settlement affidavit (pages 43-45, 48);
- Systemic refusal of police to address criminal mischief and obstruction related to and impacting the matter, including the publication of false reports obtained via freedom of information request (“FOIPOP”) vs. audio recording (pages 104-115);

A compendium of state-sponsored crime.

- Refusal of the NS Police Complaints Commissioner ("POLCOM") to process a complaint concerning the false report filed by Halifax Regional Police (November 22nd, 2023 Affidavit, Exhibit B);
- Encounter in early March 2022 in Sambro, NS by individuals claiming to be members of the Canadian Armed Forces ("CAF"), the same having expressed *a priori* details concerning these matters, accompanied by a threat (page 36);
- April 1st, 2022 BCSC order for audit discovery which was precluded through subsequent obstructions and interference (page 58);
- Violation of rules governing the style of proceedings, abuse of process, and obstruction of justice in chambers following the April 1st, 2022 BCSC order for audit discovery (pages 57-78, 122-132);
- Extrajudicial authorizations (pages 64-66, 76, 122, 134-135);
- Protection orders made in the absence of evidence or perceived risk (pages 61-62);
- *Res judicata* via the authorization of unfounded pre-drafted order templates (pages 63, 67, 70-71);
- Ignored contextual evidence and legal tests (Exhibits B, pages 122-132);
- Denial of the existence of filed evidence (pages 109-110);
- Unfounded biased and disproportionate resistance from DOJ counsel (pages 160, 64-65, 104);
- *A priori* preclusion of access to counsel including ProBono support (pages 116-121);
- Undue preclusion of support from CJC, CBA, and legal advocacy groups (November 22nd, 2023 Affidavit, pages 256-266, 278-282);
- Unlawful and arbitrary doubling of costs by a BCCA Registrar (pages 127-128);
- Egregious cost certifications, ten (10) times the customary amount charged in an out-of-province court for comparable proceedings (November 22nd, 2023 Affidavit, pages 223-252);
- Contempt declarations made in neglect of criminal interference, denial of safe avenue, and related necessitating factors, and the denial of the existence of the same evidence in both BC lower courts. *R. v. Ruzic*, [2001] 1 S.C.R. 687, 2001 SCC 24, *R. v. Hibbert,* [1995] 2 S.C.R. 973, *Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79 (Exhibit B, pages 16, 21 August 23rd, 2023 Affidavit, criminal mischief exhibits in all Affidavits);
- A vexatious declaration in direct contradiction to the jurisprudence in P*intea v. Johns*, 2017 SCC 23, [2017] 1 S.C.R. 470, *Jonsson v Lymer*, 2020 ABCA 167, and *Girao v. Cunningham*, 2020 ONCA 260 against a self-represented litigant (November 22nd, 2023 Affidavit, Exhibit F, and the [redacted] Affidavit);
- Admission by a BCCA judge that a trial of the common issues in S-229680 might occasion "*social unrest*", the imposition of an unjust reverse onus to preclude trial at the appellate level, and the refusal by a BCCA Registrar to grant access to the same audio record [redacted] Affidavit pages 33-46);

- The extrajudicial sealing of the entirety of S-229680 prior to the acceptance of service of its initial pleadings by the CEO Respondents (page 122).

Via email on September 19th, 2023, [redacted] advised that the Respondents took no position concerning the confidentiality motion and the proposed redactions to the August 23rd, 2023 Affidavit. On the eventual hearing of these motions on October 10th, 2023, justice [redacted] opted to extend the initial confidentiality order over the entirety of the Affidavit, and in addition, had extended the confidentiality order over any and all peripheral materials relating to it, including the motions themselves. No party had requested this, and such an order is contrary to constitutional law (*Charter of Rights and Freedoms*, section 2(b)).

At the October 10th, 2023 hearing, I had referenced the same charter violation, and made mention that the sealing orders in British Columbia likewise occasioned the same violations of constitutional law. Likewise, preclusion of these matters from the public eye would, and could be expected to preclude intervention opportunities, germane to the merits of an open court. Justice [redacted] then advised that the same question concerning settled constitutional law be brought before a panel of judges in this court. I had obtained the chambers transcript for this hearing from an authorized [redacted] transcriber. Per page 10 of the transcript;

THE COURT: All right. So I'm not, I'm not deciding the motion. This is, there's an interim order in effect until the motion can be properly heard...

MR. DEMPSEY: Okay.

THE COURT: ...and disposed of. It's an important issue, Mr. Dempsey.

MR. DEMPSEY: Yes.

THE COURT: You've raised important issues and I think it should be dealt with by a panel.

MR. DEMPSEY: Okay.

THE COURT: All right.

I had asked the Registrar why a matter of settled constitutional law might attract reconsideration in a lower court, and why the matter might be considered contentious enough to attract debate by a panel. This precedent is likewise contrary to earlier precedents set by the same judge in other matters. [redacted] wrote in [redacted]

August 23rd, 2023 Affidavit remained censored.

Palpable double-standard.

"The Supreme Court of Canada decided that medical assistance in dying is a constitutionally-protected right. Parliament debated and passed the MAiD scheme into Canadian law. It seems [redacted] wants to relitigate issues that have been considered and decided by both the SCC and Parliament."

This is key as justice [redacted] held that a precedent concerning settled constitutional law should merit no further discussion. Why then should my matter concerning settled constitutional law be treated differently than [redacted]? In placing my (consensual) motion before a panel of judges, this court had occasioned a double-standard concerning its approach to constitutional law. The same pattern is suffused in the BC proceedings, albeit the latter likewise involves criminal matters pursuant to CCC 139, third-party interference, denial of a trial (not just a fair trial, but any trial), and demonstrates abuses of the bench in costs.

At the same hearing, [redacted] suggested comity might play a role in replicating unjust sealing and protection orders made in British Columbia to the [redacted] and whereas, ultimately, the panel on [redacted] made the same determination. However, the BC sealing and protection orders were not registered [redacted] and the law makes no provision that they should be. Pursuant to the *Reciprocal Enforcement of Judgments Act* R.S., c. 388, s. 1. at section 5;

"No order for registration shall be made if it is shown to the court to which the application for registration is made that;

> *a) the original court acted either (i) without jurisdiction, or (ii) without such authority."*

The SCC held the same in *Morguard Investments Ltd. v. De Savoye* [1990] 3 S.C.R. 1077;

"The courts in one province should give "full faith and credit" to the judgments given by a court in another province or a territory, so long as that court has properly, or appropriately, exercised jurisdiction in the action. [...] These concerns, however, must be weighed against fairness to the defendant. I noted earlier that the taking of jurisdiction by a court in one province and its recognition in another must be viewed as correlatives, and I added that recognition in other provinces should be dependent on the fact that the court giving judgment "properly" or "appropriately" exercised jurisdiction. It may meet the demands of order and fairness to recognize a judgment given in a jurisdiction that had the greatest or at least significant contacts with the subject-matter of the action."

The BC sealing orders, many of which are unenforceable in their own right as they concern social media content implicating the Respondents, were made contrary to settled constitutional law. What interest does this court have in continuing the same unlawful precedent?

Events Following October 10th, 2023

I should point out that events continued to unfold germane to the broad matter generally speaking since the October 10th, 2023 hearing, whereas these new events might be considered fresh evidence as it relates to presenting the robust case for leave to appeal in the SCC.

Pages 109 and 110 in the August 23rd, 2023 Affidavit detail a meeting with Halifax Regional Police ("HRP"), myself, and a family member on December 8th, 2022. During this 79-minute meeting, an HRP constable acknowledged hard evidence implicating Respondent [redacted] in shareholder fraud and perjury, and his real and substantial connection to criminal interference impacting the proceedings, which began following the closure of the initial shareholder dispute in November 2021, and prior to the opening of S-220956 in British Columbia. HRP likewise articulated an intent to open an investigation and re-engage in the days that followed. Instead, a police report was filed which mischaracterized the meeting and denied the existence of any evidence. However, I had executed a recording of the entire encounter (CCC 183.1) and later filed it in an Affidavit on February 21st, 2023 along with a copy of the police report obtained via FOIPOP. Recently in November 2023, in a remarkably biased and inconsistent letter in response to hard evidence inviting prosecution under CCC 137, I was informed by the office of the NS Police Complaints commissioner ("POLCOM") that their office would not process the complaint concerning this act of police misconduct.

Notwithstanding that a trial of the common issues germane to the broad matter had been prevented from happening at any time by means of procedural violations, Justice [redacted] would consider the foregoing to contribute to miscarriage in justice. [redacted] wrote in [redacted] respectively;

"Returning to the police conduct in this matter – does it amount to an abuse of process? At this point it is important to recall that a finding of an abuse of process by the trial judge was neither requested nor necessary. [redacted] *only had to show there was a reasonable possibility the late disclosure of the evidence foreclosed realistic opportunities to investigate this issue and advance an abuse of process claim at a new trial. [...] In my view,* [redacted] *had crossed that threshold and a mistrial should have been ordered. It would be entirely possible for a judge to find the police conduct revealed by the undisclosed information could amount to an abuse of process. I will explain why. However, the determination of whether it amounts to an abuse of process is for the judge hearing the new trial. My comments here are only to illustrate a viable argument can be made. Whether it will be successful is not for me to decide. [...] Considering all the above, there is the potential that a court may find the undisclosed information constituted a residual category abuse of process."*

The second recent event, taking place in late November, concerned an additional certification of **$376,201.97** in costs in the BCSC, heard before Master Scarth. Vancouver Police Department advised they could not prosecute any member of the judiciary as the same was under the purview of the Canadian Judicial Council, and whereas the CJC likewise refused to address

matters germane to the file. Master (not Registrar) Scarth certified costs at 100% despite counsel's ask being suffused with examples of overlap between four lawyers assigned to the file. A similar pattern is evident in the **$41,217.53** execution order before this court, whereas three lawyers and 89 billable hours were approved in response to a simple application, resulting in an 11-page written argument resembling a template expected to be re-used and adapted by other Osler Hoskin and Harcourt LLP staffers (1,000+) from time-to-time using Google docs.

Appeal Hearing Before Justices [redacted]

[redacted] I have obtained the chambers transcript for this hearing, as shown below depicting pages 10 & 11. During the hearing I had reiterated the basis for the appeal, concerning palpable error in paragraph (1) of the [redacted] decision.

But as it turned out the vast majority of the, the case materials it's effused with obstruction of justice in the proceedings themselves at both the BC Supreme Court and the appellant court levels. By means of that I filed a motion for cert- certiorari in the Supreme Court of Canada, which is really my, you know, my hope in this in, in dealing with these problems.

The RCMP has indicated that it is also investigating the file as well. I don't have that email from the RCMP in, in the, in the affidavit. I mean that's in my November 22nd affidavit but not in this one. But suffice it to say can you confirm for me that I have successfully identified the fact that I was not successfully sued in BC? This involves something different. Can we at least say that?

THE COURT: We don't answer questions, sir. If you have established it we will deal with it. If you haven't then we

will also deal with it.

MR. DEMPSEY: Okay. All right. Well, I, I guess I'm asking if, if I have established it because I don't want to continue on the next point until I have established this point first.

THE COURT: The point being that even if you have established it what difference does it make?

MR. DEMPSEY: Well, it makes a lot of difference because it affects the decision.

THE COURT: Well, the execution orders were still issued against you. They're, by the BC courts. They were reciprocally enforced [redacted]. So what difference does it make if there was a slip of tongue that you were not successfully sued in BC?

MR. DEMPSEY: Well, be- because that, that impacts the, the discretionary opinion that Justice [redacted] made concerning the entrance into the Supreme Court of Canada. So if, if I take it back to the Appeal Court appeal book I - page 16 of the appeal book, paragraph 31, do you see that?

This is Scary.

Whereas I had attended the hearing by phone, I am uncertain if it was justice [redacted] or justice [redacted] who had acted as interlocutor. As outlined initially, the legal provision for a stay of execution was recognized and the balance of convenience in granting a stay was acknowledged in my favor. The issue thus involved justice [redacted] opinion that matters concerning the Parties would not be heard in the SCC, though the same opinion stemmed from his palpable error made at paragraph (1) of the written decision. My Factum and Affidavits filed in this court effectively corrects this mistake. However, this correction was not recognized by the panel.

In reviewing the transcript, the first issue is evident at page 11 lines 6-7, where the panel dismisses the basis of the appeal. Again, whereas the legal right under section 8(2)(c)(ii) of the

Enforcement Act is established alongside a favorable balance of convenience, the only factor that prevented the stay was a discretionary opinion concerning the likelihood of SCC admission which was made in error. By means of the same, a *correctness* standard of review applies in the appeal.

Subsequently at line 13, the judge characterized the palpable error made by justice [redacted] as a "*slip of the tongue*". [redacted] Yet, this matter concerns a paragraph in justice [redacted] **written decision** dated [redacted]. At page 11 line 13, this court essentially stated that a written decision from [redacted] is not a document that can be relied upon, which invariably introduces a question of public trust concerning these institutions.

This court has recognized a correctness standard of review likewise reflected by the members of the hearing panel. [redacted] penned the following at paragraphs 11 and 13 respectively;

"The correctness standard for statutory appeals is not new; it is based on the law which required that statutory interpretation be correct, not simply "reasonable", [redacted] *[...] Respectfully, the reasons of the majority in* [redacted] *for such an indulgent standard of review as reasonableness, are unconvincing."*

While this appeal was concerned with a stay of an execution order made in BC, the question in this appeal concerns the nature of proceedings being brought before the SCC which are suffused with matters of constitutional law. [redacted] wrote in [redacted]

"The first two issues in this appeal involve the application of constitutional legal principles. The standard of review is correctness."

Likewise at paragraph 44 in the same matter;

"In MacKay v. Manitoba, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357, the Court found the determination of Charter issues requires a factual basis. The absence of a factual underpinning is fatal to a challenge to the constitutional validity of legislation. Courts cannot consider Charter issues in a factual void, nor can they be based on the unsupported hypotheses of enthusiastic counsel."

The Supreme Court of Canada in *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 held at paragraphs 79 and 80;

"Third, the ability to challenge a decision on the basis that it is unreasonable does not necessarily change the standard of review that applies to other flaws in the decision or in the decision-making process. For instance, the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be "correctness". [...] It will not be necessary to determine whether the decision made by the Warden in the instant case was unlawful on the basis of unreasonableness. As I will explain below, the decision was unlawful because it was procedurally unfair."

It is evident that neither the [redacted] had adhered to a standard of review evidencing correctness. Both courts were privy to two Affidavits detailing the background of proceedings, filed [redacted] respectively.

It must likewise be assumed that justice [redacted] written reasons were thoughtful and intentional, and perhaps construed to skew public understanding of the matter and/or obstruct justice. Such an inference, which is what it is at this stage, would coincide with the nature of events and obstructions of justice in the BC proceedings generally-speaking, and whereas the broad matter seeks Charter remedies against serious state-sponsored crimes. There is no analogue to suggest that a competent judge acting in good faith would intentionally fudge a court record. It is likewise unrealistic to assume an honest mistake had been made, whereas the same would have been corrected. Judicial assistants, who also have access to the court record, are likewise expected to proofread decisions before submitting them for entry.

Following lengthy oral submissions by myself in reiterating the background of proceedings and how they meet customary test criteria for SCC docket entry, the court recessed for ten minutes. On reconvening, [redacted] was excused from making oral submissions, the appeal was dismissed, and the confidentiality order was made permanent. Per page 33 in the transcript;

! !

THE COURT: We are unanimously of the view that the appeal is entirely without merit and is to be dismissed. We are also satisfied that the entire record and materials submitted for the motion for confidentiality and motion for fresh evidence ought to be subject to have a confidentiality, a confidentiality order as a contained information subject to sealing orders issued by the British Columbia Courts. The interim confidentiality orders will be continued as a permanent confidentiality order. The motion to introduce fresh evidence is dismissed. The appeal is denied with costs to the respondents in the amount of $2,500, inclusive of disbursements payable forthwith. Thank you.

THE CLERK: All rise please. This hearing of [redacted] has concluded and the [redacted] is now closed. God save the King.

No written reasons were provided by the panel for the [redacted] hearing, or any hearing concerning the motion for fresh evidence and confidentiality [redacted] *Suresh*, supra, at paragraphs 126-127).

Likewise, there is no identifiable analogue for the result of this Appeal considering the circumstances. Justice [redacted] concealed an account of state-sponsored crime at paragraph (1) of his July 21st, 2023 written decision. This panel had likewise sidestepped the same palpable error instead of correcting it, as shown in the transcript. A permanent sealing of the August 23rd, 2023 Affidavit likewise violates constitutional law under section 2 of the Charter.

Should this panel sincerely believe there are no public issues at stake in the BC proceedings, it should respond to the Affidavit evidence presented in a specific fashion, and measure these findings against customary jurisprudence. I have provided both of these modalities in submissions. Notwithstanding, the latter is a matter for the SCC to decide, whereas the task of this court was to simply acknowledge the existence of important questions put before the SCC.

Besides a result in this appeal which coincides with the events in British Columbia, this court has adopted an unnaturally callous approach in its treatment of the file. The August 23rd, 2023 Affidavit is a truncated encyclopedia of state-sponsored crime, weaponization in Canadian institutions, and obstruction in justice. Page 94 provides an example of the damage this caused, showing a total income of $8,790.49 in 2022 as a result of sophisticated mischief attributed to a CAF Social Influence/PsyOp/CIMIC program. Recent CAF whistleblower reports made similar submissions. Reasonable people do not willingly dismantle their lives. I have no criminal record, three degrees, and up until 2021, have lived a stable, drama-free life focused on my work. The events related to this file have destroyed my life, and not by means of an ill-conceived mistake of my own making. People need to examine this and consider what is happening in Canada.

Finally, no consideration was given to how other Canadians might be affected by the same subject matter. A small army of 50 or more social contractors does not exist for the sake of one person. A similar theme is relevant when considering the consistency among agencies in preventing access to justice. As such, I again ask, what interest would this court have in treating this file in an onerous fashion? I invite this panel to provide a detailed response to the foregoing, and I invite the panel to reconsider their decision.

In closing, [redacted] invites a discovery of factors which may have influenced our courts to act in a manner antagonistic to their statutory function. As such it is joined to my SCC motion for Certiorari, and related investigative efforts.

Sincerely,

[redacted]

Nathan Dempsey

Relevant Jurisprudence

Against Piecemeal Litigation ("Litigation in Slices")

1. Customary jurisprudence requires exceptional caution in dealing with interrelated subject matter. Likewise, the interrelationship between matters concerning this SCC file requires the merging of action numbers, and the treatment of criminal components impacting the proceedings. Per Groberman, J. in *Coast Foundation v. Currie*, 2003 BCSC 1781 at paragraphs 13 and 15;

   "The question of when the court ought to give judgment on an issue, as opposed to on the claim generally, is more complex. The court is justifiably reluctant to decide cases in a piecemeal fashion. In addition to all of the concerns that arise when the entire claim is before the court, there is a multitude of others. The result is that the court must exercise considerable caution before coming to the conclusion that it should grant judgment on an issue in a summary trial [...] The court must also be wary of making determinations on particular issues on a Rule 18A application when those issues are inexorably intertwined with other issues that are to be left for determination at trial: Prevost v. Vetter, 2002 BCCA 202, 210 D.L.R. (4th) 649; inter-relatedness of issues is not always obvious, and caution is necessary whenever a party seeks judgment on an issue as opposed to judgment generally under Rule 18A: B.M.P. Global et al v. Bank of Nova Scotia, 2003 BCCA 534, [2003] B.C.J. No. 2383"

Police Duties

2. This matter concerns criminal harassment and mischief related to the Respondents and these proceedings which law enforcement has **refused** to investigate, to the extent that false reports have been filed, and their escalations dismissed by regulators. These events began prior to the filing of S-220956 and had informed its creation and timing. Law enforcement agencies have likewise refused to enforce criminal violations germane to section 139 as they relate to obstruction of justice in proceedings, which remain outside the jurisdiction of the Canadian Judicial Council. The necessity of police investigations and law enforcement must thus be reinforced in this file. Paragraph 35 in *R. v. Beaudry*, [2007] 1 S.C.R. 190, 2007 SCC 5 states;

   "There is no question that police officers have a duty to enforce the law and investigate crimes. The principle that the police have a duty to enforce the criminal law is well established at common law: R. v. Metropolitan Police Commissioner, [1968] 1 All E.R. 763 (C.A.), per Lord Denning, M.R., at p. 769; Hill v. Chief Constable of West Yorkshire, [1988] 2 All E.R. 238 (H.L.), per Lord Keith of Kinkel; P. Ceyssens, Legal Aspects of

Policing (loose-leaf ed.), vol. 1, at pp. 2-22 et seq."

3. How should the same mandate be interpreted? An exceptionally low threshold is applied to the overarching policing mandate. An oft-cited example is cited in *495793 Ontario Ltd. (Central Auto Parts) v. Barclay*, 2016 ONCA 656 (CanLII). Juriansz J.A. states at paragraph 51;

   "The function of police is to investigate incidents which might be criminal, make a conscientious and informed decision as to whether charges should be laid and present the full facts to the prosecutor: Wong, at para. 56. Although this requires, to some extent, the weighing of evidence in the course of investigation, police are not required to evaluate the evidence to a legal standard or make legal judgments. That is the task of prosecutors, defense lawyers and judges: Hill, at para. 50."

4. Juriansz J.A. elaborates at paragraph 52;

   "Nor is a police officer required to exhaust all possible routes of investigation or inquiry, interview all potential witnesses prior to arrest, or to obtain the suspect's version of events or otherwise establish there is no valid defense before being able to form reasonable and probable grounds: Kellman v. Iverson, 2012 ONSC 3244 (CanLII), [2012] O.J. No. 2529, at para. 16; Wong, at para. 59."

5. This court has underscored the critical importance of diligence in police investigations. McLachlin C.J. states in paragraph 1 of *Hill v. Hamilton-Wentworth Regional Police Services Board*, [2007] 3 S.C.R. 129, 2007 SCC 41 ("*Hill*");

   "The police must investigate crime. That is their duty. In the vast majority of cases, they carry out this duty with diligence and care. Occasionally, however, mistakes are made. These mistakes may have drastic consequences."

6. Paragraphs 44 and 140 in Hill further underscore the public interest;

   "The effective and responsible investigation of crime is one of the basic duties of the state, which cannot be abdicated. [...] The enforcement of the criminal law is one of the most important aspects of the maintenance of law and order in a free society. Police officers are the main actors who have been entrusted to fulfill this important function."

Institutional Bias and Negligence

7. This court has addressed matters of police negligence by way of bias. The same may be applied to bias with respect to favoritism, ideological bias, or undue third-party influence, so long as the police duty itself is impaired. In *R. v. Beaudry*, [2007] 1 S.C.R. 190, 2007 SCC 5 ("*Beaudry*"), Charron J. writes at paragraph 1;

"The appellant police officer, Alain Beaudry, is charged with obstructing justice under s. 139(2) of the Criminal Code, R.S.C. 1985, c. C-46. It is alleged that he deliberately failed to gather the evidence needed to lay criminal charges against a suspect who he had reasonable grounds to believe had been operating a motor vehicle while intoxicated. In answer to the charge, Mr. Beaudry contended that his decision was a proper exercise of police discretion. The Crown argued that the decision was founded not on police discretion, but on preferential treatment of a fellow police officer. Mr. Beaudry was tried by a judge sitting alone and was convicted."

8. Charron J. outlines the test in Beaudry at para 16;

"According to Judge Beaulieu, when a peace officer claims to have exercised his or her discretion as in the present case, the court must determine the underlying intention of the exercise of the discretion in order to ascertain whether the peace officer exercised it honestly, and not arbitrarily, out of favoritism or with any other dishonest intention. He therefore concluded that the outcome of the trial turned entirely on whether the court was satisfied beyond a reasonable doubt that Alain Beaudry had decided not to have Mr. Plourde take a breathalyzer test because Mr. Plourde was a Sûreté du Québec officer. In short, if Sergeant Beaudry was lenient because Mr. Plourde was a peace officer, the exercise of his discretion was unacceptable."

9. This court has likewise treated matters concerning bias in adjudicative institutions, where lower courts fell short of standards provisioned by the Charter of Rights and Freedoms. Gonthier J. writes in the preface of *J.R. v. Lippé*, [1991] 2 S.C.R. 114 and subsequently in the decision to allow the appeal;

"The respondents were charged with various infractions of municipal regulations and of the Highway Safety Code. They brought motions for evocation, certiorari and prohibition before the Superior Court, alleging that certain provisions of the Cities and Towns Act and the Municipal Courts Act violated their right to a fair hearing before an independent and impartial tribunal guaranteed under s. 11(d) of the Canadian Charter of Rights and Freedoms and s. 23 of the Quebec Charter of Human Rights and Freedoms. The Superior Court found that the municipal court system failed to meet the standards of judicial independence and impartiality under both Charters and granted the motions."

10. This court recognized an overarching concern in the efficacy of Charter rights, to which Canadian courts and police agencies are established to uphold. Gonthier J. continues;

"If a judicial system loses the respect of the public, it has lost its efficacy. As Proulx J.A. expressed in his judgment below, public confidence in the system of justice is crucial to its

continued existence and proper functioning (at pp. 61-62): [TRANSLATION] Other values contribute to maintaining public confidence, such as the most democratic access to justice, equality before the law, the independence and professionalism of the Bar, a hearing within a reasonable time, to only name a few. Throughout the course of a trial and at the time judgment is rendered, the parties to a case know that while the tribunal will have to decide in favor of one and to the disappointment of the other, they ultimately accept this because he or she who has the responsibility for deciding has nothing to gain by finding in favor of one party rather than the other and also because his decision is rendered freely and according to his conscience. Therefore, I conclude that the issue in this appeal should be characterized as one of "institutional impartiality".”

11. In Lippé, this court further characterizes its legal test for bias as being predicated on sound logical inferences;

“If the Canadian Charter does not guarantee "ideal" institutional impartiality, what is the test for determining when there is an infringement? The parties agree that the test for both "independence" and "impartiality" should be that set out by de Grandpré J. in Committee for Justice and Liberty v. National Energy Board, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369, at p. 394, a test adopted in Valente, supra, as applicable to both the issue of independence and impartiality (at p. 684, citing de Grandpré J. and at p. 689):

> *“The apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude".”*

12. This court has likewise recognized logical inferences based on circumstantial facts as an appropriate test in *Sherman Estate v. Donovan*, 2021 SCC 25 @ paragraphs 97-98, whereas, an inference need not be shown to be likely, but must be more than negligible, fanciful, or speculative.

13. Finally, as delivered by the Chief Justice in *Committee for Justice and Liberty v. National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369 @ para 391, the seriousness of proper disposition in our institutions invites an exceptionally low threshold to police any manner of misconduct. This decision is not recent, but the fundamentals governing our democracy and its enforcement mechanisms remain constant, and likewise, our rights under the Charter;

“This Court in fixing on the test of reasonable apprehension of bias, as in Ghirardosi v. Minister of Highways for British Columbia, and again in Blanchette v. C.I.S. Ltd., (where Pigeon J. said at p. 842-43, that “a reasonable apprehension that the judge might not act

in an entirely impartial manner is ground for disqualification") was merely restating what Rand J. said in Szilard v. Szasz, at pp. 6-7 in speaking of the "probability or reasoned suspicion of biased appraisal and judgment, unintended though it be". This test is grounded in a firm concern that there be no lack of public confidence in the impartiality of adjudicative agencies, and I think that emphasis is lent to this concern in the present case by the fact that the National Energy Board is enjoined to have regard for the public interest. For these reasons, the appeal is allowed and the question submitted to the Federal Court of Appeal is answered in the affirmative."

<u>*A Comparative Treatment of BCSC Chambers Judge Andrew Majawa*</u>

14. *A Lawyer v. The Law Society of British Columbia*, 2021 BCSC 914 ("*Lawyer*") is cited in comparison to the disposition of BCSC files S-220956 and S-229680. Whereas the latter was dismissed via overt procedural violation, the former was dismissed in contempt of an outstanding discovery order made April 1st, 2022 in the same court. Justice Majawa dismissed both files in a manner diametrically opposed to the disposition evident in Lawyer. This is relevant whereas it aligns with the fundamental argument in S-229680.

15. In Lawyer, justice Majawa ordered a sweeping investigation of an *entire law practice* on the basis of a hypothesis by the LSBC. Anneke Driessen, a LSBC staff lawyer, wrote on February 11th, 2022;

"The auditor identified, among other things, that you may have allowed clients to use your trust accounts for the flow of funds in the absence of substantial legal services related to those funds and/or in the absence of making reasonable inquiries," wrote Anneke Driessen, a law society staff lawyer on Feb. 11, 2020."

The foregoing hypothesis is compared with hard evidence presented in Mr. Dempsey's first Affidavit of S-220956, which BSCS Master Cameron acknowledged on April 1st, 2022 as compelling enough to serve on Canada Revenue Agency, CPA firm [redacted] and holding company [redacted] B.C. Ltd. This evidence is again presented in exhibit materials herein.

16. Justice Majawa offers his opinion concerning due diligence and the merit in investigations beginning at paragraph 63 in Lawyer;

"A key principle derived from these cases is that the investigatory powers of a regulator should not be interpreted too narrowly as doing so may "preclud[e] it from employing the best means by which to 'uncover the truth' and 'protect the public'" (Wise v. LSUC, 2010 ONSC 1937 at para. 17 [Wise], citing Gore at para. 29). Thus, in my view, the powers granted to the Law Society by s. 36(b) of the LPA, and as operationalized by R. 4-55 of the Law Society Rules, ***should be read broadly to permit the investigation of a***

member's entire practice, as that may in certain circumstances be the best means to <u>"uncover the truth" and "protect the public"</u> and to determine whether disciplinary action should be taken. *Given the context within which lawyers and their trust accounts operate, the broad investigatory power authorizing the Law Society to conduct an "investigation of the books, records and accounts of the lawyer" provided for in s. 36(b) of the LPA and in R. 4-55* ***should not be distorted to mean something narrower without explicit statutory language suggesting the same****: Wise at para. 17."*

17. Justice Majawa continues at paragraph 64 in underscoring the burden of duty by regulators;

"Moreover, the jurisprudence suggests that the investigatory powers of a regulator should be interpreted broadly in the context where a member of that self-regulating body has a duty to cooperate with such investigations: Gore at para. 20; Wise at para. 18. The petitioner in the present case was required to cooperate with the investigation. Section 36(d) of the LPA provides the Law Society with the authority to require its members to cooperate with an investigation authorized under s. 36(b) (i.e., a R. 4-55 investigation)."

18. At paragraph 60 in Lawyer, justice Majawa cites the basis of this duty and cooperation as serving the public trust in our institutions;

"Public trust in professionals, and their important role in society, is directly related to the extent regulators are able to supervise the conduct of those professionals. A professional regulator, in this case the Law Society, has an onerous obligation to ensure the protection of the public. The Supreme Court of Canada reviewed the importance of the role of the professional regulator in Pharmascience Inc. v. Binet, 2006 SCC 48 [Pharmascience]."

19. At paragraph 54, justice Majawa writes that a broad (vs. narrow) investigation is germane to the object and purpose of the regulator executing the work;

"The broad scope of investigations conducted pursuant to s. 36(b) of the LPA and R. 4-55 of the Law Society Rules is consistent with the context, scheme, object, and purpose of the LPA and the Law Society Rules. The context within which these provisions are found is informed by the statutory objective and duty of the Law Society as set out in s. 3 of the LPA which provides that the duty of the Law Society is to "to uphold and protect the public interest in the administration of justice". Section 3 goes on to provide the means by which this duty is fulfilled including by "ensuring the independence, integrity, honour and competence of lawyers", by "establishing standards and programs for the education, professional responsibility and competence of lawyers" and by "regulating the practice of law".

20. At paragraph 74, justice Majawa introduces convenience and practicality as arguments in the interest of overarching diligence;

"If the petitioner's view is correct and the scope of a R. 4-55 investigation must be related to the specific misconduct concerns giving rise to the chair's reasonable belief, then it seems to me that the Law Society would be required to open a new R. 4-55 investigation each time a new area of concern was uncovered in order to conduct a broad investigation of a member's practice. In my view, such a requirement would effectively negate the ability of the Law Society to broadly investigate a member's practice when circumstances warrant it and would render investigations under R. 4-55 essentially the same as investigations under R.3-5. An interpretation that renders a provision duplicative of another is an absurdity that should be avoided: Jorgensen v. Surface Rights Board, 2021 BCSC 396 at para. 98."

21. Finally, justice Majawa states at paragraph 121;

"A permanent stay of a proceeding as a remedy for an abuse of process is only appropriate in the "clearest of cases": R v. Babos, 2014 SCC 16 at para. 31. Such cases are generally those where state conduct compromises trial fairness or where state conduct does not threaten trial fairness but risks undermining the integrity of the judicial process."

Further to the same comments, paragraph 30 in Babos states;

"A stay of proceedings is the most drastic remedy a criminal court can order (R. v. Regan, 2002 SCC 12, [2002] 1 S.C.R. 297, at para. 53). It permanently halts the prosecution of an accused. In doing so, the truth-seeking function of the trial is frustrated and the public is deprived of the opportunity to see justice done on the merits. In many cases, alleged victims of crime are deprived of their day in court."

In dismissing both BCSC files and ordering egregious special costs, justice Majawa acted in a manner diametrically opposed to his own ruling in Lawyer, in enabling the [redacted] respondents to escape prosecution, enabling criminal actors related to the same respondents to escape prosecution, and enabling the powers of the BC Bench to be weaponized against a law-abiding citizen seeking relief. It must be underscored that criminal mischief related to the Respondents was the principal factor that occasioned the opening of S-220956 in the absence of RCMP support.

22. None of the principles justice Majawa outlined in Lawyer were applied to either BSCS file by the same judge, or any other adjudicator present to the file.

Principles of Fundamental Justice & Right to a Fair Trial

23. The lower court proceedings were denied the principles of fundamental justice under section 7 of the Charter. This court in *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 SCR 46 upheld Charter rights irrespective of the civil / criminal / family distinction at paragraph 58, albeit this matter further concerns matters of personal security and privacy under the same section.

"*Although these cases considered the right to security of the person in a criminal law context, I believe that the protection accorded by this right extends beyond the criminal law.*"

24. Notwithstanding criminal violations impacting the proceedings, the following principles apply in any court of competent jurisdiction outside the criminal context and are applicable in this matter. They have not unfolded, and further inform Mr. Dempsey's motion for Writ of Certiorari;

a) This court recognized the right to a hearing before an independent and impartial court in *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 at paragraph 38;

"It should be mentioned at the outset that the right to be tried by an independent and impartial tribunal is an integral part of the principles of fundamental justice protected by s. 7 of the Canadian Charter (see, inter alia, R. v. Beauregard, [1986] 2 S.C.R. 56, Pearlman v. Manitoba Law Society Judicial Committee, [1991] 2 S.C.R. 869, and R. v. Généreux, [1992] 1 S.C.R. 259)."

b) Mr. Dempsey was jeopardized through negligence in retained counsel in S-[redacted], and could not obtain new counsel, either via private representation or ProBono thereafter. This same trend is related to state-sponsored influence and mischief as is outlined in Affidavit records. Also see:

[https://www.canada.ca/en/department-national-defence/maple-leaf/defence/2022/06/cimic-psyops-new-qualification-badge.html]
[https://www.cbc.ca/news/politics/psychological-warfare-influence-campaign-canadian-armed-forces-1.6079084]
[https://ottawacitizen.com/news/national/defence-watch/documents-related-to-canadian-forces-propaganda-program-have-disappeared-investigation-is-under-way]

Mr. Dempsey was later declared vexatious by BCSC justice Andrew Majawa for filing "prolix and voluminous materials". This court in *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 at paragraphs 73 through 75 and 119 recognized a constitutional right to present one's case effectively;

New Brunswick at paragraph 73: *"For the hearing to be fair, the parent must*

have an opportunity to present his or her case effectively."

New Brunswick at paragraph 74: *"If no legal aid is available, as in this case, the parent is forced to participate in the proceedings without the benefit of counsel. The majority of the Court of Appeal nevertheless held that the procedural rights provided by the Family Services Act, if complied with, would have been sufficient to "ensure reasonable compliance with constitutional standards" (p. 98)."*

New Brunswick at paragraph 75: *"In the circumstances of this case, the appellant's right to a fair hearing required that she be represented by counsel. I have reached this conclusion through a consideration of the following factors: the seriousness of the interests at stake, the complexity of the proceedings, and the capacities of the appellant. I will consider each in turn."*

New Brunswick at paragraph 119: *"It is the obligation of the trial judge to exercise his or her discretion in determining when a lack of counsel will interfere with the ability of the parent to present his or her case. I also agree with him that this discretion was not properly exercised here. The trial judge was in error in not adequately considering the values of meaningful participation in the hearing affecting the rights of the child or the complexity of this case and the difficulty the appellant would face in presenting her case."*

c) Mr. Dempsey's lower court Affidavits in British Columbia were sealed in their entirety, including public social media content and case descriptions containing no biographical information. Likewise, Mr. Dempsey's Affidavit in S-228567, containing no body of statements and comprised solely of data available via google search, was also permanently sealed. Mr. Dempsey's August 23rd, 2023 Affidavit, [redacted] was sealed through extraordinary means by a panel of judges. This court has strongly rejected unlawful censorship, and maintained a constitutionally-enriched right to the availability of court records to the public to ensure public accountability. *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3, 2002 SCC 75 at paragraph 53 states;

"The concept of open courts is deeply embedded in our common law tradition and has found constitutional protection in s. 2(b) of the Charter. This Court confirmed in Canadian Broadcasting Corp. v. New Brunswick (Attorney General), [1996] 3 S.C.R. 480, the importance of this principle, which is inextricably linked to the rights guaranteed by s. 2(b). As stated by La Forest J. at para. 23:

> *Openness permits public access to information about the courts, which in turn permits the public to discuss and put forward opinions and criticisms of court practices and proceedings. While the freedom to express ideas*

and opinions about the operation of the courts is clearly within the ambit of the freedom guaranteed by s. 2(b), so too is the right of members of the public to obtain information about the courts in the first place."

d) Mr. Dempsey's opportunity to be heard on all relevant evidence, and right to a decision on the facts and the law has been denied, and most certainly concerning contempt hearings. This is not because he was not permitted an opportunity to file materials or make oral submissions. Conversely, compelling evidence has been simply ignored and pushed aside, despite initial acknowledgements by both the court and law enforcement officers. The same triggers attention under CCC 139. This court wrote in Charkaoui *v.* Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9 at paragraph 29;

"This basic principle has a number of facets. It comprises the right to a hearing. It requires that the hearing be before an independent and impartial magistrate. It demands a decision by the magistrate on the facts and the law. And it entails the right to know the case put against one, and the right to answer that case. Precisely how these requirements are met will vary with the context. But for s. 7 to be satisfied, each of them must be met in substance."

At paragraph 48 in Charkaoui; *"To comply with s. 7 of the Charter, the magistrate must make a decision based on the facts and the law. In the extradition context, the principles of fundamental justice have been held to require, "at a minimum, a meaningful judicial assessment of the case on the basis of the evidence and the law. A judge considers the respective rights of the litigants or parties and makes findings of fact on the basis of evidence and applies the law to those findings. Both facts and law must be considered for a true adjudication. Since Bonham's Case [(1610), 8 Co. Rep. 113b, 77 E.R. 646], the essence of a judicial hearing has been the treatment of facts revealed by the evidence in consideration of the substantive rights of the parties as set down by law" (Ferras, at para. 25). The individual and societal interests at stake in the certificate of inadmissibility context suggest similar requirements."*

Likewise at paragraph 41 in *Canada (Citizenship and Immigration) v. Harkat, 2014*: *"Pursuant to the principles of fundamental justice, a named person must be provided with a fair process: Charkaoui I, at paras. 19-20. At issue in the present appeal are two interrelated aspects of the right to a fair process: the right to know and meet the case, and the right to have a decision made by the judge on the facts and the law. The named person must "be informed of the case against him or her, and be permitted to respond to that case": Charkaoui I, at para. 53. Correlatively, the named person's knowledge of the case and participation in the*

process must be sufficient to result in the designated judge being "exposed to the whole factual picture" of the case and having the ability to apply the relevant law to those facts: ibid., at para. 51."

e) Mr. Dempsey was denied the right to written reasons that articulate and rationally sustain an administrative decision in the May 16th, 2023 Stromberg-Stein ruling (*Suresh*, supra, at paragraph 126), being the 20-minute long-form oral reasons recited in chambers which suggested prosecuting S-229680 *Defendant4* is antagonistic to Canada's political interest (not the truncated version online).

f) Mr. Dempsey was denied the right to protection against abuse of process (United States of America v. Cobb, [2001] 1 S.C.R. 587, 2001 SCC 19). This court wrote at paragraph 52;

"By placing undue pressure on Canadian citizens to forego due legal process in Canada, the foreign State has disentitled itself from pursuing its recourse before the courts and attempting to show why extradition should legally proceed. The intimidation bore directly upon the very proceedings before the extradition judge, thus engaging the appellants' right to fundamental justice at common law, under the doctrine of abuse of process, and as also reflected in s. 7 of the Charter. The extradition judge did not need to await a ministerial decision in the circumstances, as the breach of the principles of fundamental justice was directly and inextricably tied to the committal hearing."

g) Further, at paragraph 53 in Cobb: *"In my view, the extradition judge had the jurisdiction to control the integrity of the proceedings before him, and to grant a remedy, both at common law and under the Charter, for abuse of process. He was also correct in concluding as he did that this was one of the clearest of cases where to proceed further with the extradition hearing would violate "those fundamental principles of justice which underlie the community's sense of fair play and decency" (Keyowski, supra, at pp. 658-59), since the Requesting State in the proceedings, represented by the Attorney General of Canada, had not repudiated the statements of some of its officials that an unconscionable price would be paid by the appellants for having insisted on exercising their rights under Canadian law."*

h) Germane to section 2(e) of the Canadian Bill of Rights, Mr. Dempsey was denied the right of protection against misconstrued law; evident in the proceedings themselves and in draft orders presented by the [redacted] counsel which was contemptuous of prior rulings, including commentary in the same hearing (August 12th, 2023 MacNaughton ruling).

Testimony of CRA Officials in Civil Proceedings

25. Testimony of CRA officials can help the court adjudicate on most if not all matters in the file, including the criminal involvement of third-party actors related to the Respondents.

26. In April 1st, 2022, the Court ordered service on Canada Revenue Agency ("CRA") as a result of hard evidence implicating the [redacted] Respondents, in accord with jurisprudence in *Hawitt v. Campbell*, [1983] CanLi 307 @ paragraph 19, and *Slattery (Trustee of) v. Slattery*, [1993] 3 S.C.R. 430 ("Slattery"). The basis of the April 1st, 2022 discovery order was predicated on sections 241(3) and 222 of the Income Tax Act. Slattery is essential because it sets the context under which ITA 241(3) is to be understood. Iacobucci J. outlines in its preface;

"I agree with the respondent that, in Glover, the proceedings in question had no connection whatsoever with the administration or enforcement of the Income Tax Act. As a result, this Court's decision must be read to mean that the confidentiality provisions apply to any legal proceeding of a civil character which is not covered by the exception provided in s. 241(3). In other words, ss. 241(1) and (2) apply to civil proceedings which are not related to the administration or enforcement of the Income Tax Act. In my view, Glover does not inform the issue already set out: the essential question is whether or not the bankruptcy proceedings taken herein are related to the administration or enforcement of the Income Tax Act. As I will now discuss, I think they are."

27. In Part 2 of Slattery, notwithstanding an automatic right to CRA testimony in criminal proceedings under ITA 241(3.1), and notwithstanding the criminal components impacting Mr. Dempsey's file, this court has outlined the context by which the testimony of CRA Officials may be introduced in Civil proceedings;

"Disclosure of information obtained through tax returns or collected in the course of tax investigations may be necessary during litigation in order to ensure that all relevant information is before the court, and thereby to assist in the correct disposition of litigation. But this necessity is sanctioned by Parliament in a very limited number of situations. Disclosure is authorized in criminal proceedings and other proceedings as set out in s. 241(3). Certain other situations are specified in s. 241(4), which have been described by the Ontario Court of Appeal as being "largely of an administrative nature" (Glover v. Glover (No. 1), supra, at p. 397)."

28. Iacobucci J. clarified the meaning and context in s. 241(3) with respect to proceedings which are related to the enforcement of the Income Tax Act;

"As already noted, s. 241(3) provides, inter alia, that the confidentiality provisions in s. 241(1) and (2) do not apply "in respect of proceedings relating to the administration or

enforcement of" the Income Tax Act. The appellant argues that the only proceedings covered by this exception are those which are expressly provided for in Part XV of the Act, entitled "Administration and Enforcement". The appellant's argument would require the words in s. 241(3) to be read as meaning that the confidentiality provisions do not apply "in respect of proceedings taken pursuant to the administration or enforcement provisions" of the Income Tax Act. Neither the text nor context of s. 241 supports this argument. The connecting phrases used by Parliament in s. 241(3) are very broad. The confidentiality provisions are stated not to apply in respect of proceedings relating to the administration or enforcement of the Income Tax Act. The phrase "in respect of" was considered by this Court in Nowegijick v. The Queen, [1983] 1 S.C.R. 29, at p. 39: The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters. [Emphasis added.] In my view, these comments are equally applicable to the phrase "relating to". The Pocket Oxford Dictionary (1984) defines the word "relation" as follows: ... what one person or thing has to do with another, way in which one stands or is related to another, kind of connection or correspondence or contrast or feeling that prevails between persons or things;... So, both the connecting phrases of s. 241(3) suggest that a wide rather than narrow view should be taken when considering whether a proposed disclosure is in respect of proceedings relating to the administration or enforcement of the Income Tax Act."

29. By way of the foregoing, ITA 241(3) should be understood as any type of civil proceeding which involves content that CRA Auditors should be reasonably concerned with. This theme is further supported in continued commentary by Iacobucci J. in Slattery;

"The next question to ask considers what type of administration or enforcement proceedings are contemplated by s. 241(3): only proceedings brought under the Income Tax Act itself, or both such proceedings and others? To answer this question, one must look first to the wording of s. 241(3). That provision contains no language which confines the concept of proceedings relating to administration or enforcement to the boundaries of the Income Tax Act. This conclusion is buttressed when one considers the context of s. 241. Section 241 is found in Part XV of the Income Tax Act, which deals with administration and enforcement as previously noted. It is obvious, but the fact must nonetheless be highlighted, that the collection of money owing to Revenue Canada is an important part of the Act's enforcement. This proposition is confirmed by s. 222 of the Act which reads as follow:

> ***S. 222:*** *All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty and recoverable as such in the Federal Court of*

> *Canada or any other court of competent jurisdiction or in any other manner provided by this Act. [Emphasis added.]*

Section 222 is a clear statement that, in addition to the procedures specified in the Income Tax Act, the Minister may resort generally to the courts to institute civil proceedings to collect taxes as debts. But, in order to take full advantage of this power, the Minister must be able to disclose in court otherwise confidential information in order to prove the cause of action in debt. It must therefore be possible to disclose such information to establish the amount owed and to prove related matters. Absent the ability to disclose as required to prove a debt, s. 222 would be deprived of part of its meaning. The absurdity of such a result strongly suggests that the collection proceedings specified in s. 222 are proceedings "relating to the... enforcement" of the Income Tax Act within the meaning of s. 241(3)."

30. Mr. Dempsey's BC court Affidavits, and again as exhibited herein, include sworn statements by [redacted] in his September 22nd, 2022 settlement Affidavit inviting tax audit. This concerns two conflicting accounts in the same Affidavit concerning the termination of [redacted] revenue partnership with [redacted] and the disposition of former [redacted] employees as it relates to CSR records, their employment tenure, and sworn statements in paragraph 12 of the same Affidavit. In Slattery, this court has mirrored Mr. Dempsey's right to due diligence via testimony by CRA officials by way of the shareholder evidence presented, and further, by way of criminal code violations related to the proceedings, a number of which have directly threatened Mr. Dempsey's life and well-being, including home invasions forcing relocation [redacted] in February 2022. Likewise, this right should certainly be upheld prior to allowing an enforcement of **$376,207.97** in costs at the BCSC, and another **$41,217.53** from the Outerbridge ruling for a grand total of **$417,425.50**, resulting in irreparable harm, an estate conflict with estranged relatives implicated in harassment alongside the Respondents as early as December 2021 (see August 23rd, 2023 Affidavit [redacted] and May 20th, 2022 Affidavit for the latter), and a new life in a tent city, while hard evidence concerning the Respondents and related criminal actors is ignored.

Miscarriage in Justice, State Interference, & Charter Rights

31. This court has outlined test criteria concerning the likelihood of state interference in *Canada (Attorney General) v. Bedford*, 2013 SCC 72 (CanLII), [2013] 3 SCR 1101 ("Bedford"). Per the Chief Justice at paragraph 76;

> *"A sufficient causal connection standard is satisfied by a reasonable inference, drawn on a balance of probabilities (Canada (Prime Minister) v. Khadr, 2010 SCC 3, [2010] 1 S.C.R. 44, at para. 21."*

32. Likewise, this court in *Canada (Prime Minister) v. Khadr,* 2010 SCC 3, [2010] 1 S.C.R. 44 has promulgated a test concerning a balance of probabilities at paragraph 21;

> *"An applicant for a Charter remedy must prove a Charter violation on a balance of probabilities (R. v. Collins, [1987] 1 S.C.R. 265, at p. 277). It is reasonable to infer from the uncontradicted evidence before us that the statements taken by Canadian officials are contributing to the continued detention of Mr. Khadr, thereby impacting his liberty and security interests."*

33. In the matter of *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 (CanLII), [2007] 1 SCR 350 ("Charkaoui"), this court has maintained that national security, political, and/or state-sponsored third-party interests cannot be used to excuse procedures that do not conform to fundamental justice at the section 7 stage of (Charter) analysis. Delivered by the Chief Justice, the SCC in Charkaoui wrote at paragraphs 22, 23, and 27;

> *"The question at the s. 7 stage is whether the principles of fundamental justice relevant to the case have been observed in substance, having regard to the context and the seriousness of the violation. The issue is whether the process is fundamentally unfair to the affected person. If so, the deprivation of life, liberty or security of the person simply does not conform to the requirements of s. 7. The inquiry then shifts to s. 1 of the Charter, at which point the government has an opportunity to establish that the flawed process is nevertheless justified having regard, notably, to the public interest." [...]*
> "*It follows that while administrative constraints associated with the context of national security may inform the analysis on whether a particular process is fundamentally unfair, security concerns cannot be used to excuse procedures that do not conform to fundamental justice at the s. 7 stage of the analysis. If the context makes it impossible to adhere to the principles of fundamental justice in their usual form, adequate substitutes may be found. But the principles must be respected to pass the hurdle of s. 7. That is the bottom line." [...] "The procedures required to conform to the principles of fundamental justice must reflect the exigencies of the security context. Yet they cannot be permitted to erode the essence of s. 7. The principles of fundamental justice cannot be reduced to the point where they cease to provide the protection of due process that lies at the heart of s. 7 of the Charter. The protection may not be as complete as in a case where national security constraints do not operate. But to satisfy s. 7, meaningful and substantial protection there must be."*

34. Ongoing criminal mischief and harassment related to the Respondents meets the threshold of a Section 7 Charter violation as exemplified in *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 SCR 46. Lamer C.J. writes at paragraphs 58, 59;

"This Court has held on a number of occasions that the right to security of the person protects "both the physical and psychological integrity of the individual": see R. v. Morgentaler, 1988 CanLII 90 (SCC), [1988] 1 S.C.R. 30, at p. 173 (per Wilson J.); Reference re ss. 193 and 195.1(1)(c) of the Criminal Code, 1990 CanLII 105 (SCC), [1990] 1 S.C.R. 1123, at p. 1177; Rodriguez v. British Columbia (Attorney General), 1993 CanLII 75 (SCC), [1993] 3 S.C.R. 519, at pp. 587-88. Although these cases considered the right to security of the person in a criminal law context, I believe that the protection accorded by this right extends beyond the criminal law [...] Delineating the boundaries protecting the individual's psychological integrity from state interference is an inexact science. Dickson C.J. in Morgentaler, supra, at p. 56, suggested that security of the person would be restricted through "serious state-imposed psychological stress."

35. Paragraph 71 of Mr. Dempsey's [redacted] Factum details fourteen (14) factors which support an inference concerning the involvement of CAF InfoOps and CIMIC activities, to the exclusion of less reasonable alternatives. These include recent whistleblower reports by retired CAF Major General Daniel Gosselin in the Ottawa Citizen (the "*Gosselin Reports*"), the CBC, and other media venues, [redacted] state sponsorship and NATO designation, the relationship of lead counsel Emily MacKinnon to the CAF among other circumstantial modalities, and the scope and sophistication of the events themselves. This evidentiary framework surpasses the inference test in *Sherman Estate v. Donovan*, 2021 SCC 25 @ paragraphs 97 and 98 beyond its ability to be dismissed as fanciful, and whereas the circumstantial evidence in its own right precludes alternative inferences suggesting private actors.

<u>Self-Represented Litigants & Vexatious Declarations</u>

36. Justice Majawa imposed an onerous vexatious declaration against Mr. Dempsey, irrespective of the substance in the file, the distinction between action numbers, and settled jurisprudence concerning self-represented litigants as established in this court in *Pintea v. Johns*, 2017 SCC 23, [2017] 1 S.C.R. 470 at paragraph 4;

"We would add that we endorse the Statement of Principles on Self-represented Litigants and Accused Persons (2006) (online) established by the Canadian Judicial Council."

37. In *Girao v. Cunningham*, 2020 ONCA 260 ("Girao"), Lauwers J.A underscores the precedent set in *Pintea* concerning the *Statement of Principles on Self-represented Litigants and Accused Persons.* Paragraph 156 in *Girao* outlines an example where the same mandate has been ignored;

"The impression left by the limited trial record is that the trial judge allowed himself to be led by trial counsel's arguments. Ms. Girao, a self-represented, legally unsophisticated plaintiff who struggled with the English language, was left to her own devices. Fairness required more, consistent with the expectations placed on the trial judge by Statement of

Principles on Self-represented Litigants and Accused Persons."

38. The example in *Girao* has specific relevance to this matter whereas it highlights crucial evidence which was not properly addressed. At paragraph 174;

"I have outlined above the skewed orientation in the evidence that went to the jury. [...] Because some of the best evidence that supported the statutory accident benefits settlement was excluded by the trial rulings, there was little to oppose the defence's evidence. Dr. Sanchez's opinion also provided the trial judge with a lens through which he looked askance at the other medical evidence Ms. Girao led. Because of the basic unfairness that permeated the trial, I would set aside the ruling on the threshold motion."

39. Lauwers J.A. underscored the requirement for diligence in fair proceedings at paragraphs 176 and 177 in *Girao*, which resulted in an order for a new trial;

"Ms. Girao was entitled to but did not get the active assistance of the trial judge whose responsibility it was to ensure the fairness of the proceeding. As a self-represented litigant, she was also entitled to, but did not get, basic fairness from trial defence counsel as officers of the court. The trial judge was also entitled to seek and to be provided with the assistance of counsel as officers of the court, in the ways discussed above. This did not happen. [...] I would allow the appellant's appeal, set aside the judgment and orders, and order a new trial. I would award the costs of this appeal and of the trial to the appellant, including her disbursements."

40. Similar to Mr. Dempsey's evidence-based account in a [redacted] the Alberta Court of Appeal addressed the unjust use of vexatious declarations against self-represented litigants as it pertains to procedure and case management. Slatter J. wrote in *Jonsson v Lymer*, 2020 ABCA ("*Lymer*") 167 at paragraph 14;

"Vexatious litigants must be distinguished from self-represented litigants. Merely because a self-represented litigant uses a process that is not in accordance with the Rules of Court, or advances a claim without merit does not mean that they are vexatious. Many self-represented litigants are unfamiliar with court procedures, and are inadequately or inaccurately informed about their legal rights and the limitations on them. Merely because the self-represented litigant excessively or passionately believes in the merit of his or her cause does not make them vexatious."

41. Lymer further highlights the importance of case management. I further note that by way of procedural violations in S-229680 which the lower courts are unwilling to address, Mr. Dempsey was denied the assignment of a case management judge; a provision under BCSC Practice Direction 5, which BCSC Scheduling had initially acknowledged in an

email on January 27th, 2023. Slatter J. writes in paragraph 60;

"This was a case of complex litigation involving a difficult litigant which was already in case management. The issues should have been dealt with in case management. A blanket vexatious litigant order did not address the problem in a proportionate or effective way, and was not an effective or appropriate remedy for contempt. The case management judge should have granted a carefully crafted case management order, and possibly a litigation plan under R. 4.5, instead of a boilerplate vexatious litigant order."

42. Lymer highlights the fact that at times, self represented litigants approach the judicial system in this fashion because they are unable to obtain counsel for one reason or another. Paragraph 71 details an example of a financial barrier. Mr. Dempsey, as detailed assiduously in his Affidavit records, had been consistently denied representation opportunities throughout proceedings following [redacted] and was beset by negligence in counsel, causing shareholder default in [redacted] Slatter J. writes at paragraph 71;

"The order also provides that the appellant cannot seek permission to commence fresh proceedings unless he is represented by a lawyer. Litigants have a right to represent themselves in court, and as previously noted, most self-represented litigants are unrepresented because they cannot afford a lawyer. Requiring the vexatious litigant to obtain a lawyer presents a financial barrier that may be insurmountable."

43. At paragraphs 85 and 86 in Lymer, the court concludes that self-represented litigants should not be denied access to justice through onerous orders limiting their participation, in an absence of more reasonable and customary provisions;

"Parties are entitled to self-represent, and the court should be sensitive to the challenges faced by self-represented litigants. Vexatious litigant orders should only be made when other procedural techniques have proven to be inadequate and the offensive conduct is persistent. [...] In conclusion, the appeal is allowed. The vexatious litigant order should not have been granted in these circumstances, and in any event the form of order granted was overbroad. The sanction for contempt cannot stand given the failure to afford the appellant a fair hearing. The question of sanction for contempt is referred back to the trial court for a fresh hearing before a different judge."

This foregoing principle likewise applies to the unjust reverse onus applied by justice Stromberg-Stein in refusing to grant the hearing of an Appeal in [redacted]

Necessity, Excuse, & Evidentiary Context in Contempt Rulings

44. Cromwell, J. outlined the just standard for civil contempt rulings at paragraph 36 in Carey *v.* Laiken, 2015 SCC 17, [2015] 2 S.C.R. 79;

"The Court confirmed that the contempt power is a discretionary one. If courts were to find contempt too easily, a court's outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect. The Court also stated that the court's contempt power should be used "cautiously and with great restraint". It is an enforcement power of last, rather than first resort."

45. The BC Appellate court, before justices [redacted] ignored the contextual background in both matters, and whereas the latter account demonstrated no enforceable breach. Justice [redacted] also denied the existence of proof in police misconduct. Mr. Dempsey relies on the jurisprudence of this court concerning evidentiary context. This court held in *R. v. Ruzic,* [2001] 1 S.C.R. 687, 2001 SCC 24 at paragraph 29;

"*The notion of moral voluntariness was first introduced in Perka v. The Queen, [1984] 2 S.C.R. 232, for the purpose of explaining the defense of necessity and classifying it as an excuse. It was borrowed from the American legal theorist George Fletcher's discussion of excuses in Rethinking Criminal Law (1978). A person acts in a morally involuntary fashion when, faced with perilous circumstances, she is deprived of a realistic choice whether to break the law. By way of illustration in Perka, Dickson J. evoked the situation of a lost alpinist who, on the point of freezing to death, breaks into a remote mountain cabin. The alpinist confronts a painful dilemma: freeze to death or commit a criminal offense. Yet as Dickson J. pointed out at p. 249, the alpinist's choice to break the law "is no true choice at all; it is remorselessly compelled by normal human instincts", here of self-preservation. The Court in Perka thus conceptualized the defense of necessity as an excuse. An excuse, Dickson J. maintained, concedes that the act was wrongful, but withholds criminal attribution to the actor because of the dire circumstances surrounding its commission. He summarized the rationale of necessity in this way, at p. 250:*

> *"At the heart of this defense is the perceived injustice of punishing violations of the law in circumstances in which the person had no other viable or reasonable choice available; the act was wrong but it is excused because it was realistically unavoidable."*

46. At paragraph 30, LeBel J. underscores a requirement for due diligence in contempt hearings, whereas civil contempt contains a quasi-criminal component;

"Like necessity, duress operates to relieve a person of criminal liability only <u>after</u> he has been found to have committed the prohibited act with the relevant mens rea: see also Bergstrom v. The Queen, [1981] 1 S.C.R. 539, at p. 544 (per McIntyre J.)."

47. The matter of ongoing online and CIMIC-style mischief, beginning November 2021, was at no time investigated and prosecuted by police. This harassment included on-heels stalking, break-and-enters, death threats, amid other forms of harassment as outlined in Mr. Dempsey's affidavits. Mr. Dempsey made concerted efforts to seek customary safe avenue to police, which was not provided. This court held at paragraph 66 in Ruzic;

"Notably, at common law, there is no requirement that the threats be made by a person who is present at the scene of the crime. It has been said that the threat must be "immediate" or "imminent" and that persons threatened must resort to the protection of the law if they can do so. While the defense is not available to those who have "an obvious safe avenue of escape", I agree with Martin J.A. that the operative test is "whether the accused failed to avail himself or herself of some opportunity to escape or render the threat ineffective."

48. Likewise at paragraph 35 in Ruzic;

"Without requiring a full mens rea, the Court decided that, generally speaking, absent very clear and explicit language to the contrary, at least a defense of due diligence should be available to the accused."

49. In further consideration of deliberate and wilful intent as it relates to contempt, this court in *R. v. Hibbert, [1995] 2 S.C.R. 973* ("Hibbert") has provided a defense germane to the matter at stake. Per paragraph 52 in Hibbert,

"As a justification the defense of necessity can be related to Blackstone's concept of a "choice of evils". It would exculpate actors whose conduct could reasonably have been viewed as "necessary" in order to prevent a greater evil than that resulting from the violation of the law. As articulated, especially in some of the American cases, it involves a utilitarian balancing of the benefits of obeying the law as opposed to disobeying it, and when the balance is clearly in favor of disobeying, exculpates an actor who contravenes a criminal statute. This is the "greater good" formulation of the necessity defense: in some circumstances, it is alleged, the values of society, indeed of the criminal law itself, are better promoted by disobeying a given statute than by observing it."

50. Hibbert likewise encapsulates the core negligence of the BCCA hearings, whereas this court has underscored the necessity of adducing all relevant evidence pertaining to contextual background. Lamer C.J. writes at paragraph 59;

"This Court has previously indicated that when assessing the reasonableness of an accused's conduct for the purposes of determining whether he or she should be excused from criminal responsibility, it is appropriate to employ an objective standard that takes into account the particular circumstances of the accused, including his or her ability to

perceive the existence of alternative courses of action."

51. In *Carey v. Laiken, 2015 SCC 17, [2015] 2 S.C.R. 79*, paragraph 62, this court identified two qualifications to the general rule that a contempt finding at the first hearing is final:

    "First, rule 60.11 contemplates that a judge may set aside a finding of contempt if the contemnor purges the contempt, since the contempt proceedings have secured compliance with the court order. Second, contempt proceedings are subject to the standard principles that allow parties to reopen findings in exceptional circumstances to permit consideration of fresh evidence or new facts that were not before the court at the first hearing."

52. The issue is that the contextual background necessitating disclosure of a redacted Affidavit (which nonetheless met the requirements of the Open Court Test in Sherman), was not considered by any court, and was likewise obstructed by law enforcement. In requiring Mr. Dempsey to purge contempt before allowing an Appeal of S-229680 (which in its own right was dismissed via procedural violations), Justice [redacted] ignored the underlying principle this court established in *Carey at* paragraph 37;

    "A judge may properly exercise his or her discretion to decline to impose a contempt finding where it would work an injustice in the circumstances of the case."

    Treatment of the contextual evidentiary record can purge the unlawful contempt orders made in the BCCA. Instead, these orders were used to prevent a trial of the common issues, which, ironically, concern the same necessitating factors that had invited the Respondents' contempt Applications to begin with.

53. Mr. Dempsey has demonstrated a history of compliance with existing sealing orders, including calling for the same when appropriate as was the case following an act of negligence by his counsel in [redacted] in failing to seal confidential materials at inception. This is evident in;

    a) The initial consensual sealing order in [redacted] pronounced August 27th, 2021;
    b) The sealing order requested by Mr. Dempsey in S-220956 alongside originating pleadings on February 8th, 2022; and;
    c) From inception through to September 6th, 2022 in S-220956, when the Mr. Dempsey's redacted Affidavit was forwarded to a basket of potential interveners in the midst of exceptionally difficult circumstances and in the absence of safe avenue (*R. v. Ruzic*, [2001] 1 S.C.R. 687, 2001 SCC 24 @ paras 29, 66).

Costs & Special Costs

54. Mr. Dempsey has reiterated a number of times that a trial of the common issues has never taken place, that criminal violations and procedural violations impacting the file

have derailed proceedings, and, in view of hard evidence implicating [redacted] in fraud, collusion, and perjury as presented in S-220956, the BCSC validated the merit in the same file, thereby displacing any consideration of special costs on April 1st, 2022. A summary overview of special costs is found in the matter of *Nuttall v. Krekovic, 2018 BCCA 341*, where the court explained these principles at paragraphs 26 and 29;

"First, special costs have a punitive or deterrent element and are only appropriate where the conduct in issue is deserving of punishment or rebuke. This well-known principle stems from numerous cases, most recently enunciated in J.P. v. British Columbia (Children and Family Development), 2018 BCCA 325 at para. 28. The chambers judge erred in principle by failing to consider the cautious approach to an award of special costs against a lawyer personally, as well as the kind of reprehensible conduct that would justify such an award, mandated by the Supreme Court of Canada in Young v. Young, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3 and more recently in Quebec (Director of Criminal and Penal Prosecutions) v. Jodoin, 2017 SCC 26. [...] Consistent with these decisions, this Court has long held that such orders should be made only in "very special circumstances", and not on the basis of mistake, error in judgment or even negligence: see Hannigan v. Ikon Office Solutions Inc. (1998), 1998 CanLII 6141 (BC CA), 61 B.C.L.R. (3d) 270 (C.A.); Pierce v. Baynham, 2015 BCCA 188 at para. 41."

55. To ensure this tool is not able to be unlawfully or prejudicially weaponized in a court of law, the customary purpose and nature of Special Costs is further summarized in these following examples:

a) *"The nature and purpose of special costs were described by our Court of Appeal in 567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc., 220 BCCA 69 ("Le Soleil"): "Special costs are not compensatory; they are punitive."*
Smithies Holdings Inc. v. RCV Holdings Ltd., 2017 BCCA 177 at paragraph 56;

b) *"The purpose of special costs is to censure and deter litigation misconduct, not to compensate the plaintiff."*
Tanious v. The Empire Life Insurance Company, 2019 BCCA 329 at paragraph 53;

c) *"Special costs are fees a reasonable client would pay a reasonably competent solicitor to do the work described in the bill."*
Bradshaw Construction Ltd. v. Bank of Nova Scotia (1991), 54 B.C.L.R. (2d) 309 (S.C.), paragraph 44;

d) *"A special costs award is to provide an indemnity to the successful party, but not a windfall."*
Gichuru v. Smith, 2014 BCCA 414, at paragraph 155;

e) *"Although there may be a close relationship between actual legal expenses and special costs, they are not necessarily the same."*
Tanious v. The Empire Life Insurance Company, 2019 BCCA 329, paragraph 49;

f) *"This is because legal fees that a lawyer can recover from a client are determined on a subjective standard, pursuant to the Legal Professions Act, whereas only fees that are objectively reasonable in the circumstances are recoverable as special costs."*
Gichuru, paragraph 155.

The Open Court Principle and Sealing Orders

56. Sealing orders are not designed to conceal incriminating narratives or obstruct justice. In *Sherman Estate v. Donovan*, 2021 SCC 25, Kasirer J. held that the presumption in favor of open courts cannot be overcome lightly, and predicated the threshold for the open court test on the preservation of individual dignity, likewise concerning data involving the biographical core of persons. The SCC held that that the public interest in preserving dignity will only be at risk where the information sought to be protected;

"*...strikes at what is sometimes said to be the biographical core identity of the individual concerned: information so sensitive that its dissemination could be an affront to dignity that the public would not tolerate, even in service of open proceedings. [...] Dignity will be at serious risk only where the information that would be disseminated as a result of court openness is sufficiently sensitive or private such that openness can be shown to meaningfully strike at the individual's biographical core in a manner that threatens their integrity. The question is whether the information reveals something intimate and personal about the individual, their lifestyle or their experiences."*

57. Concerning the disclosure of "commercially-sensitive information", the BCSC likewise adopted a high threshold for an exception to the open court principle in *United States v. Meng,* 2021 BCSC 1253 at paragraph 33;

"As I have noted, Ms. Meng is expected to argue, in her s. 32(1)(c) application, that the evidence in the HSBC documents is essential to her defense in the extradition proceedings, and that it may affect the ultimate decision on committal. Given the high public interest in the case as a whole, the potential centrality of the documents suggests that banning publication of their contents would have heavy negative effects on freedom of expression. There is a strong interest in the public being informed of the contents in order to understand the positions of the parties and the reasons for the Court's decisions."

58. Jurisprudence germane to the function of settlement privilege in sealing orders is established in *Nguyen v. Dang,* BCSC 1409. Paragraph 23 at subsection (c) outlines the legal test whereas settlement privilege is not a justification for an exception to open court disclosure;

"*Both the text referred to above and the various cases expressly discussing the issue,*

including Berry v. Cypost Corp., 2003 BCSC 1827 and Meyers v. Dunphy, 2007 NLCA 1 (CanLII), [2007] N.J. No. 5 (NLCA), list various types of communications which are exceptions to settlement privilege. In Cypost the list is as follows; (c) where the concluded settlement agreement is itself an issue"

Onus of State Responsibility in Matters Evidencing Miscarriage of Justice

59. McLachlin C.J. outlines that the state should accept responsibility for miscarriage due in part to errors in investigation in *Hill v. Hamilton-Wentworth Regional Police Services Board*, [2007] 3 S.C.R. 129, 2007 SCC 41 at paragraph 37;

'As Peter Cory points out, at pp. 101 and 103: If the State commits significant errors in the course of the investigation and prosecution, it should accept the responsibility for the sad consequences. Society needs protection from both the deliberate and the careless acts of omission and commission which lead to wrongful conviction and prison."

SCC Docket Entry

60. This court in *R. v. C.P.*, 2021 SCC 19 has affirmed its basis for adjudicating appeals which evidence miscarriage in justice. Iacobucci J. writes at paragraph 137;

"There is no basis to believe that a serious argument pointing to a miscarriage of justice would not meet the public interest standard for leave to appeal to the Court [...] The Supreme Court would and does exercise its leave requirement in accordance with the principles of fundamental justice."

61. This court has affirmed its basis for inviting appeals evidencing unfounded censorship, whereas, the same constitutionally-enriched right to an open court has been violated throughout the lower court files by extraordinary means, including materials expected to be available to the public online. This has severely skewed public perception of the matter, has precluded intervention opportunities, and encumbered investigation. In *Sherman Estate v. Donovan*, 2021 SCC 25, Kasirer J. writes at paragraph 1;

"This Court has been resolute in recognizing that the open court principle is protected by the constitutionally-entrenched right of freedom of expression and, as such, it represents a central feature of a liberal democracy. As a general rule, the public can attend hearings and consult court files and the press — the eyes and ears of the public — is left free to inquire and comment on the workings of the courts, all of which helps make the justice system fair and accountable."

62. Per the SCC website (FAQ, paragraph 14): "*Such leave, or permission, **will be given** by the Court when a case involves a question of public importance."*