

## Appendix 2

The trial transcript proves beyond all doubt Cooke J. was intentionally not listening to the total lack of professionalism and faulty logic out of Heiser's mouth. The refusal to admit the affidavits and hold him to account for his lies prove the judge was there to throw the trial regardless of how much I proved my client's case.

The transcript reveals all too clearly that the judge didn't even want to recognize the glaring omission in the misleading affidavit in question. Here's the interaction between the Court, myself and his lawyer:

Me: My Lord, why is there no reference in that affidavit or [Heiser's secretary's] - - [Sadownik interrupts] Excuse me, may I finish? He is listening to what I am saying.

Sadownik: With all due respect, sir, nobody is listening to what you are saying.

The Court: Go on. Go on.

Me: Why is there no reference in that October affidavit to the effect that there were undertakings supplied on June 4? Why in [Heiser's secretary's] affidavit does she [not] state that she received...

The Court: Because Mr. Burns' affidavit was in the file and Mr. MacPherson - - if Mr. MacPherson had drawn that fact to my attention instead of sending a handwritten FAX that talked about the time within which the notice of motion was served - - I mean, I was sitting there faced with a fact that there had been an application started on May 25, that was adjourned at the request of the defence. There was - - it was set over to June 4<sup>th</sup>. It did not go forward on June 4<sup>th</sup>, either, and the very same application with the very same material, the same affidavits was now set for June 11<sup>th</sup> and somebody was saying that notwithstanding all of this background and the fact that he got a FAX of the notice of motion which he knew about by phone, in any event, he chooses to say - - his only representation to the court is I don't have proper notice. All right.

Now, then, it may well be that if that FAX had said, in addition to there not being proper notice, I draw your attention to Mr. Burns' affidavit, I might have made some different representations; but - - and I have to say that my view is that, well, perhaps Heiser was a little short on candor. On the other hand, perhaps, Heiser assumed that I was looking - - that I was looking at Ross's affidavit. Perhaps, Mr. MacPherson believed that - - or Mr. McPherson's affidavit - - pardon me. Perhaps, Heiser and MacPherson both thought that I would have been looking at Burns' affidavit.

Instead of addressing the glaring omission in the two incriminating affidavits, Cooke J. goes off on some weird tangent speculating about the motion hearing and what or what may not have gone on prior to the motion. His 'speech' isn't clear, concise, logical or relevant. Rather it's undeniably a monologue consisting of incoherent rambling, looking for things to talk about other than what I had pressed him to consider. To make his intentions even more obvious, he immediately proceeds to talk about another irrelevant topic:

The reality of the situation in chambers, and that's why people go to chambers is to represent their clients, and in chambers you simply don't go through the entire file. You rely on counsel, and Heiser should have, perhaps, said to me, My Lord, there is, in fact, Mr. Burns' affidavit. On the other hand, Mr. Heiser may well have said to himself, well, he's got the file in front of him, he must be looking at Burns' affidavit.

So it's, perhaps, more than anything, it's the fault of the system in which chambers' judges are supposed to address 25 or 30 matters in a two-and-a-half-hour period.

First, the documents in the unacknowledged FAX were not in my client's affidavit during the motion to strike. They were sent to Heiser after it had been sworn, filed and served on Heiser. That was why, standing before the Court without MacPherson present, Heiser was under a super high duty to advise the judge he had received documents and why he could cover-up receipt.

Second, to continue to avoid discussing the materiality of the two affidavits, the two central pieces of evidence of fraud (and conspiracy), Cooke J. goes on about the hearing of the motion; and then gets really stupid talking about how it's the court adjudication system's fault for making Chambers an inefficient forum to resolve interlocutory disputes.

I'm thoroughly cognizant of this bamboozle and I put on the record the following submission:

Thank you, Your Lordship. In response, I would like for the record to say that the issue of whether Mr. MacPherson showed up in chambers or not is irrelevant, I respectfully submit. The whole attempt by [opposing counsel] to try and put evidence into the Court about whether Mr. MacPherson should have been there or should have not been there, whether there was miscommunication between the two lawyers, I think is absolutely a non-issue.

The lawyer representing Heiser, and complicit in the fake litigation, made the unprofessional remark, "Sir, nobody is listening to what you are saying" because that is exactly what was going on at that time.

Because the Judge wasn't going to let the affidavits in the only choice left was to call him to the stand. The court transcript of his testimony unequivocally demonstrates his complete lack of credibility as a witness in his own defence to the allegation of fraud because it catches him again 'east of the rock and west of the hard place'. He couldn't offer any explanation about the secondary evidence. During the two years of litigation before the May 1990 motion to strike pleadings he had an unbroken pattern of some dozen and a half letters he sent to opposing counsel acknowledging receipt of whatever he was sent. Yet during the week before the motion he failed to do so when MacPherson sent him correspondence. On the stand he blatantly lies -- caught in his own illogic -- when he says that he didn't

respond to MacPherson's two letters and court-relevant documents. Why didn't he reply?

...because I simply saw no reason to acknowledge a FAX coming in unless I had something else to say beyond, I acknowledge.

His testimony immediately prior to that sentence is:

I felt the [court-relevant documents] were wholly inadequate.

The point of the motion to strike was *the inadequacy of the documents* which were meant to better answer the undertakings given at discovery to produce documents. Heiser should have written MacPherson back and said, "these are inadequate" and discussed the technicalities why they were deficient.

The case was a legal profession - judicial tag-teaming railroad into professional humiliation. And not even great lawyering by me as confirmed by the court transcript before and during the trial was going to derail the outcome.