

Excerpts from BMF Factum Filed in Ontario Superior Court

[https://www.thefactsmatter.ca/uploads/1/1/2/2/112286303/bmf -
applicants factum 2.pdf](https://www.thefactsmatter.ca/uploads/1/1/2/2/112286303/bmf-_applicants_factum_2.pdf)

Court File No. CV-17-578681-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N :

**BRUNO-MANSER-FONDS, Association for the Peoples of the Rainforest
and MUTANG URUD**

Applicants

- and -

**ROYAL BANK OF CANADA, TORONTO-DOMINION BANK,
MANULIFE FINANCIAL CORPORATION and
DELOITTE & TOUCHE**

Respondents

**FACTUM OF THE APPLICANTS
(Application for with-notice *Norwich Pharmacal* order
returnable February 5-6, 2018)**

January 26, 2018

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Lawyers for the Applicants

PART I - INTRODUCTION

1. The applicants seek a *Norwich Pharmacal* order to obtain information for the purpose of determining whether there are reasonable grounds for a Canadian private prosecution of the criminal offences of money laundering and the possession of property obtained by crime, and against which individuals or entities such prosecution could be pursued (the “**Norwich Application**”).

4. Still, further evidence is required to determine whether there are reasonable grounds for a private criminal prosecution and against which individuals or entities such prosecution could be pursued. Through the Norwich Application, the applicants are seeking to obtain and evaluate information that may potentially increase their “*bona fide* or reasonable claim” (the *Norwich Pharmacal* test) to “reasonable grounds” to believe the offences in question were committed (the *Criminal Code* test).

35. In particular, the applicants require further information to uncover the critical facts about the flow of funds (such as those in banking and fund transfer related documents) before they can determine if they can properly swear that they have reasonable grounds to believe criminal offences have been committed. While the applicants have clearly identified Jamilah, Murray, and certain corporations within the Sakto Group as potential wrongdoers, they do not believe that they currently have sufficient information to determine if there are reasonable grounds for a private prosecution and therefore require more information. The applicants also possess even less information about the remaining corporate entities in the Sakto Group.

D. Conclusion

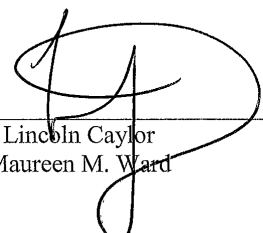
76. The applicants submit that obtaining information required to evaluate whether there are reasonable grounds for a private prosecution is a legitimate purpose for a *Norwich Pharmacal* order. The applicants have met the test for a *Norwich Pharmacal* order and disclosure should therefore be ordered.

PART V - RELIEF SOUGHT

77. The applicants respectfully request the draft order attached hereto as Schedule “D”.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

January 26, 2018



Lincoln Caylor
Maureen M. Ward

Excerpts from Reasons for Decision Ontario Superior Court

<http://canlii.ca/t/hq9g5>

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: BRUNO-MANSER-FONDS, ASSOCIATION FOR THE PEOPLES OF THE
RAINFOREST AND MUTANG URUD, Applicants

AND:

ROYAL BANK OF CANADA, TORONTO-DOMINION BANK, MANULIFE
FINANCIAL CORPORATION and DELOITTE & TOUCHE, Respondents

BEFORE: S.F. Dunphy J.

COUNSEL: *Lincoln Caylor, Maureen M. Ward and Nathan Shaheen*, for the Applicants

Marie-Andrée Vermette and Anastasija Sumakova, for the Satko Group
Respondents

Junior Sirivar and Vladimira Ivanov, for Respondents Royal Bank of Canada
and Toronto Dominion Bank

Andrew Gray and Stacey Danis, for Respondent Manulife Financial
Corporation

Lara Jackson and Jed Blackburn for Respondent Deloitte & Touche

HEARD at Toronto: February 5, 2018

REASONS FOR DECISION

(iii) *Reasonable grounds to believe*

[27] The applicants have filed seven volumes of evidence. This includes evidence from a wide variety of sources of varying degrees of reliability. The two criminal charges the applicants seek to investigate are knowing receipt of the proceeds of crime and knowing concealment or conversion of the proceeds of crime (the essential elements of each crime are of course more complex than my brief summary would suggest). For the time being at least, the applicants have suspicions but very little concrete evidence as to the amount, timing and criminal source of funds of the Satko Group. These are all matters that go to essential elements of the crimes the applicants wish to investigate.

[28] The applicants do not suggest that the evidence accumulated yet rises to the level of reasonable grounds to believe that an indictable offence under the *Criminal Code* has been committed. That would be the standard they would have to meet to lay an information under s. 504 of the *Criminal Code*.

[29] The applicants similarly do not presently have the reasonable grounds needed to obtain a search warrant under s. 487 were that avenue open to them as potential private prosecutors. Stated differently, even if the police were to have picked up this investigation, it has not progressed to the point where a search warrant analogous to what I am being asked to approve could be obtained by police. The links between the assets

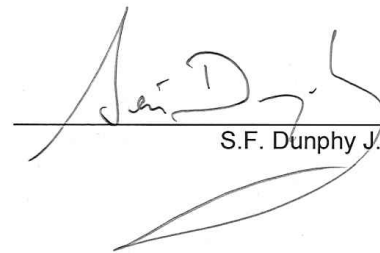
of the Satko Group in Canada and the alleged corruption of Mr. Taib in Malaysia depend upon conjecture and suspicion more than evidence.

[30] The applicants are looking not only to determine who committed a particular crime and how, they are looking to find if any crime has been committed at all.

Disposition

[42] I ruled at the hearing that the application must be dismissed. My reasons for so ruling are expanded upon above and I have so endorsed the application record.

[45] I congratulate all of the parties on a very thorough and well-presented review of these novel and important issues.



S.F. Dunphy J.

Date: February 7, 2018