

**BRUNO MANSER FONDS ALLEGATIONS REJECTED  
BY ONTARIO SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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

**- and -**

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

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**LEGAL BRIEF AND EVIDENCE**

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# Bruno Manser Fonds

## Global Corruption Complaints Rejected



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Basel/Ottawa, 2 January 2016

## Complaint against the Saktó Group, Ottawa

This complaint against the Canadian Saktó Group, an Ottawa-based real estate and finance holding with assets in various countries, is based on the OECD Guidelines for Multinational Enterprises

The OECD Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. The countries adhering to the Guidelines, including Canada, have made a binding commitment to implement them.

### 1. Background to this complaint

While this complaint refers solely to the OECD's disclosure recommendations (Section III), it has to be seen in a wider context of goals shared by the OECD, the UN and the G20, including the fight against bribery and corruption, the safeguard of human rights of indigenous peoples, the protection of the environment and the mitigation of climate change.

This complaint is filed by the Bruno Manser Fund, a NGO based in Basel, Switzerland. The Bruno Manser Fund has been working with indigenous rainforest communities from Sarawak in Malaysian Borneo for more than two decades. The Bruno Manser Fund ([www.bmf.ch](http://www.bmf.ch)) is committed to safeguarding the rights of Sarawak's indigenous peoples and to protecting the tropical rainforests of Borneo. Its aims include creating transparency in the global timber trade, combatting corruption and the recovery of stolen assets to their country of origin. The Bruno Manser Fund has been recognized as a charity and tax-exempt by the relevant Swiss authorities since 1992.

Research by the Bruno Manser Fund has shown that the Saktó Group is intimately connected to the family of Abdul Taib Mahmud („Taib“), the current Governor and

former long-term Chief Minister (1981-2014) of the Malaysian state of Sarawak in Borneo. During Taib Mahmud's tenure as Chief Minister, the relatively small state of Sarawak became the world's largest exporter of tropical timber, a position it has held for three decades.

Logging in Sarawak has been controversial since the mid-1980s and often took place illegally on the lands of indigenous communities without their consent. It has led to rapid degradation of the Borneo rainforest, one of the most biodiverse habitats on Earth. As of today, less than 10 per cent of Sarawak's primary rainforests remain intact.<sup>1</sup>

The rapid conversion of secondary forests into oil palm and tree monoculture plantations enhance the adverse effects on the environment. The sheer scale of forest destruction by loggers in Malaysia once led former British Prime Minister Gordon Brown to call the deforestation of Sarawak „probably the biggest environmental crime of our times“.<sup>2</sup>

While the timber industry was brought into the interior of Sarawak under promises of wealth and development, the indigenous rainforest communities have remained appallingly poor. But also the state has benefited far less than expected. American economist David Walter Brown has estimated that, from 1981 to 1999 alone, over 15 billion US dollars in timber revenues were unofficially appropriated in Sarawak by timber concessionaires, the head of state [Taib Mahmud] and his proxies and clients.<sup>3</sup>

The ownership structure and the legitimate origin of Sakto's finances has increasingly been challenged since Sakto co-founder Jamilah Taib has been named as one of Canada's richest women and since Malaysia's Anti Corruption Commission (MACC) opened an investigation against Taib Mahmud in June 2011.<sup>4</sup>

The connection between the Sakto Group and the Taib family has been known since the early 2000s<sup>5</sup> but Canadian legislation has allowed its beneficial owners to remain anonymous and its finances protected from public scrutiny. Canada's legislation, which allows the beneficial owners of a corporation to remain anonymous, is at odds not only with the OECD Guidelines but also with growing international efforts for higher corporate transparency, such as the G20 High-Level Principles on Beneficial Ownership Transparency decided in Brisbane in 2014.<sup>6</sup>

<sup>1</sup> See Lukas Straumann: *Money Logging. On the Trail of the Asian Timber Mafia*, Basel (Bergli Books) 2014.

<sup>2</sup> *Fight for the Borneo rainforest*, The Independent, 10 March 2011.

<sup>3</sup> David Walter Brown: *Why Governments Fail to Capture Economic Rent: The Unofficial Appropriation of Rain Forest Rent by Rulers in Insular Southeast Asia between 1970 and 1999*, PhD thesis, University of Washington, 2001, p. 313-314.

<sup>4</sup> The Frank, 9 August 2000; *Sarawak's Image Unaffected by MACC's Probe on Taib*, Bernama, 10 June 2011.

<sup>5</sup> Andrew Aeria; *Politics, business, the state and development in Sarawak, 1970-2000*, PhD thesis, London School of Economics and Political Science, 2002, p. 163-166.

<sup>6</sup> See [http://www.g20australia.org/sites/default/files/g20\\_resources/library/g20\\_high-level\\_principles\\_beneficial\\_ownership\\_transparency.pdf](http://www.g20australia.org/sites/default/files/g20_resources/library/g20_high-level_principles_beneficial_ownership_transparency.pdf)

## 2. The Sakto Group, a real estate and investment group linked to politically exposed persons (PEPs) from Malaysia

The Sakto Group is a "multi-million dollar real estate development and ownership corporation with assets globally", founded in 1983. Apart from real estate holdings, it has "business investments in hotels, restaurants, golf courses, and timber."<sup>7</sup> Its net assets are estimated at over CAD\$ 300 million, with the main place of business being 333 Preston St, Suite 910, Ottawa, Ontario, K1S 5N4.

The Sakto Group's flagship asset in Canada is the Preston Square in Ottawa's Little Italy, a mixed-use development estimated at over CAD\$ 200 million. The Preston Square development, which is wholly-owned by the Sakto Group, comprises a residential building („The Adelaide") and three office towers rented to corporations like Adobe and Sun Life Financial but also to the Ontario government.

The Sakto Group comprises at least eleven Canadian companies and eighteen subsidiaries / related parties in seven jurisdictions outside Canada. Its main currently active entities in Canada are:

- Sakto Development Corporation, Ottawa, Canada Corporation Number 1552074
- Sakto Corporation, Ottawa, Canada Corporation Number 3404391
- Urban Sky Investments Ltd, Ottawa, Canada Corporation Number 8321647
- Urban Sky Europe Ltd, Ottawa, Canada Corporation Number 8471703
- Waterford Property Group Ltd, Ontario Corporation Number 2352843

The Sakto Group's key executives are Malaysian-Canadian businesswoman Jamilah Taib Murray and her Canadian husband Sean Patrick Murray.<sup>8</sup> Other known executives of the group are Canadian nationals Tanya Caleta (Director), Laird J. Rasmussen (Director), Michel Pilon (Chief Financial Officer), Lee Gartley (Vice President Operations), Barry Wilkinson (Vice President Real Estate Management), Brian Murray (Director), Chris Murray (Director UK subsidiary) and Malaysian national Sulaiman Rahman Taib (Chairman and Director US subsidiary).<sup>9</sup>

The Sakto Group is intimately connected to the Malaysian Taib family and believed to be owned by them. Sakto executives Jamilah Taib Murray and her brother Sulaiman Rahman Taib are the daughter and son of Abdul Taib Mahmud, the long-term Chief Minister and current Governor of Sarawak, a Malaysian state in Borneo. The close association of these Politically Exposed Persons (PEPs) with the Sakto Group raises questions on their exact role and the origin of the funds that enabled the rapid growth of the group.

Jamilah Taib describes Sakto Corporation and her involvement as follows: "*With the help of family and friends, we founded Sakto Corporation when I was in my early twenties.*"

<sup>7</sup> EXHIBIT 1: *LinkedIn profile of Sakto Group's Chief Financial Officer, Michel Pilon*, accessed 3 December 2012 (NB: This profile has since been deleted).

<sup>8</sup> EXHIBIT 2: Bruno Manser Fund: *The Taib Timber Mafia, Facts and Figures on Politically Exposed Persons (PEPs) from Sarawak, Malaysia*, September 2012, p. 26-27 and 45;

EXHIBIT 3: *LinkedIn profile of Sakto Group Chairman / President, Sean P. Murray*, 30 July 2013.

<sup>9</sup> EXHIBIT 4: *Washington Secretary of State, Filing on Wallysons Inc.* 13 August 2013.

*Teamwork, smart business choices, and savvy negotiation skills enabled us to grow Sakto Corporation into the successful company it is today rooted in an unwavering commitment to excellence and integrity – a company in which I take great pride. I am so grateful that I had an amazing staff and team of talented people that tirelessly worked to start the company and who continue to work beside me today – over thirty years since we opened our doors.”<sup>10</sup>*

A company publication describes the Sakto Group and its CEO, Sean Murray, as follows:

*“As President and CEO of Sakto Corporation, a real estate development and management firm based in Ottawa, Canada, Sean Murray has transformed a small single asset entity into an international corporation with holdings not only in Canada, but in the United States, United Kingdom, and Australia. Sakto Corporation primarily offers development, leasing, and management services of ‘Triple ‘A,’ commercial, and residential real estate options.*

*Only three years into his career, Mr. Murray cultivated numerous, global projects including building the office tower in the center of Ottawa’s little Italy. He is also both the co-founder of the boutique property development company, Ridgeford Development Limited, located in London, and serves as the President of Waterford Property Group, a property management, asset management, and general real estate services company.”<sup>11</sup>*

A former version of Mr. Murray’s website, published in 2011, also stated: *“Over the last 22 years Sean has developed and managed property in Canada, the USA, the UK, Poland, Australia and Malaysia.”<sup>12</sup>* Since Sean Murray joined the Sakto Group back in 1987 as a full time staff, it is presumed that all these activities were part of the Group’s operations.

### **3. The Sakto Group as a multinational enterprise**

Despite a lack of knowledge on the exact relationship between the different companies within the Sakto Group, the Group easily qualifies as a multinational enterprise under Section I (Concepts and Principles) of the OECD Guidelines for Multinational Enterprises („the OECD Guidelines“):

*“4. A precise definition of multinational enterprises is not required for the purposes of the Guidelines. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities).*

<sup>10</sup> EXHIBIT 5: <http://jamihtaibmurray.com/about/>; accessed 10 December 2015.

<sup>11</sup> EXHIBIT 6: <http://www.yelp.ca/biz/sakto-development-corporation-ottawa>, accessed 10 December 2015.

<sup>12</sup> EXHIBIT 7: [www.sean-murray.org](http://www.sean-murray.org), accessed December 2011 (NB: Contents of this page have since been modified); <https://web.archive.org/web/20111209095844/http://www.sean-murray.org/>

*According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.*

*5. The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both."<sup>13</sup>*

The Sakto Group is headquartered in Canada and comprises subsidiaries in at least two countries and related parties in at least five countries as follows:<sup>14</sup>

### **3.1 Known Sakto Group companies in Canada, all based in Ottawa and directed by Jamilah Taib Murray and/or Sean Murray:**

- Sakto Development Corporation, Corporation Number 1552074 (active)
- Sakto Corporation, Corporation Number 340439-1 (active)
- Sakto Investment Corporation / City Gate International Corporation, Corporation Number 3413772 / 4460260 (dissolved in 2015)
- Urban Sky Investments Ltd, Corporation Number 8321647 (active)
- Urban Sky Europe Ltd, Corporation Number 8471703 (active)
- 1041229 Ontario Inc., Ontario Corporation Number 1041229 (active)
- 1575 Carling Limited, Ontario Corporation Number 1252339 (active)
- Hawkhurst Island Holding Ltd, Corporation Number 873443-7 (dissolved in 2015)
- Adelaide Ottawa Corporation, Ontario Corporation Number 2028546 (active)
- Preston Building Holding Corporation, Ontario Corporation Number 2108122 (active)
- Tower One Holding Corporation, Ontario Corporation Number 2028542 (active)
- Tower Two Holding Corporation, Ontario Corporation Number 2028543 (active)
- Waterford Property Group Ltd, Ontario Corporation Number 2352843 (active)

### **3.2 Known Sakto Group subsidiaries in the US**

- Wallysons Inc., Tumwater (Washington), UBI Number 601338627 (active)
- Sakti International Holdings Inc., California, Entity Number C1867577 (dissolved)
- Sakti International Corporation, California, Entity Number C1195976 (dissolved)<sup>15</sup>
- W.A. Boylston, Inc., California, Entity Number C1800699 (dissolved)
- W.A. Everett, Inc., California, Entity Number C1800700 (dissolved)

### **3.3 Known Sakto Group subsidiaries in the United Kingdom**

- Ridgford Developments Ltd, Company Number 08251023 (active)<sup>16</sup>
- Ridgford Properties Ltd, Company Number 03268801 (active)
- Ridgford Consulting Ltd, Company Number 5572163 (active)
- Ridgford Properties Management Ltd, Company Number 03837275 (active)

<sup>13</sup> OECD Guidelines for Multinational Enterprises 2011 Edition, p.17-18.

<sup>14</sup> EXHIBIT 22: Companies files of all known Sakto Group subsidiaries and related parties in Canada, the US, the UK, Australia, the BVI, Hong Kong, Jersey and Malaysia.

<sup>15</sup> EXHIBIT 8: Takeover of Sakti International Corporation by Sakto, 14 September 2005.

<sup>16</sup> EXHIBIT 9: Parent company: Urban Sky Investments Ltd (Canada).

- Ridgford Properties (Bolsover Street) Ltd, Company Number 06421430 (active)

### 3.4 Known Sakto Group related parties in Australia

- Sitehost Pty Ltd, Australian Company Number 062312743 (active)<sup>17</sup>
- Golborne Pty Ltd, Australian Company Number 061844148 (active)
- Fordland Pty Ltd, Australian Company Number 161541037 (active)

### 3.5 Known Sakto Group related parties in the British Virgin Islands

- Bexlane Limited (formerly Tess Investments Limited); Company Number 203511
- Courtil Investments Limited (formerly Tagus Investments Limited), Company Number 704170
- Norstar Overseas SA (formerly Astar Properties Ltd), Company Number 201522
- Pioneer City Enterprises Ltd, Company number 575533 (active)
- Tattonpark Holdings Ltd, Company Number 1046132 (active)

### 3.6 Known Sakto Group related parties in Hong Kong

- Natalite Investment Ltd, Company number 0129502 (active)
- Richfold Investment Ltd, Company number 130308 (dissolved)

### 3.7 Known Sakto Group related parties in Jersey

- Sogo Holdings Ltd, Company number 43148 (active)

### 3.8 Known Sakto Group related parties in Malaysia

- Bormill Wood (Trengganu) Sdn Bhd, Company number 32269-T
- Majaharta Sdn Bhd, Company number 244011-X
- Premier Cottage Sdn Bhd, Company number 677270-V
- Tell Media Sdn Bhd, Company number 728021-W

### 3.9 Unknown Sakto Group related party in Poland

Sean Murray disclosed on a former website that, as a director for the Sakto Group, he developed a hotel in Poznan, Poland, in the 1990s.<sup>18</sup> No further details of this Sakto Group involvement in Poland are known.

## 4. Relevant disclosure requirements under the OECD Guidelines for Multinational Enterprises

<sup>17</sup> EXHIBIT 10: On Sitehost Pty Ltd see: Bruno Manser Fund: *The Adelaide Hilton Case – How a Malaysian politician's family laundered AUD\$ 30 million in South Australia*, September 2015.

<sup>18</sup> EXHIBIT 7: [www.sean-murray.org](http://www.sean-murray.org), accessed December 2011 (NB: Contents of this page have since been modified).

This complaint is based on the following disclosure requirements for multinational enterprises as stipulated in Section III (Disclosure) of the OECD Guidelines:

*"1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. [...]"*

*"2. Disclosure policies of enterprises should include, but not be limited to, material information on:*

*a) the financial and operating results of the enterprise;*

*b) enterprise objectives;*

*c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;*

*d) remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board*

*e) related party transactions*

*f) foreseeable risk factors*

*g) issues regarding workers and other stakeholders*

*h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process."<sup>19</sup> [...]*

*"4. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. [...]"<sup>20</sup>*

## **5. Sakto Group breaches of OECD disclosure requirements**

The Sakto Group systematically breaches the disclosure requirements of the OECD. Essential information is being treated as trade secret and withheld from public scrutiny. The only information the Sakto Group publicly gives on its website is the following:

*"Sakto Corporation is privately owned and operated. Today, the company owns and manages multiple property holdings. Sakto Corporation is renowned as one of the nation's capitals foremost property facilitators. Company President Sean Murray has enhanced Sakto Corporation's portfolio and reputation, including the construction of phase one of*

<sup>19</sup> OECD Guidelines for Multinational Enterprises, 2011 Edition, p.27.

<sup>20</sup> OECD Guidelines for Multinational Enterprises, 2011 Edition, p.28.

*Preston Square in 1989. Located in the heart of Ottawa's Little Italy, this project was awarded 2010's BOMA's Building of the Year for Preston Square.*<sup>21</sup> The company's portfolio is being described as 333 Preston St, 343 Preston St, 347 Preston St, 17 Aberdeen St and 1575 Carling St in Ottawa.

From a website run by Sakto President Sean Murray, it can be learned that he is also the Chairman of Ridgford Properties Ltd in the UK, "a real estate company specializing in high-quality commercial and residential developments" in central London. Mr. Murray is also mentioned as "Chairman" on Ridgford Properties' website but does not appear in official company documents filed with Companies House in the UK.<sup>22</sup> While previous versions of Ridgford's website described Sakto Corporation as its "sister company"<sup>23</sup>, all mentions of Sakto have since been removed from the company website.

The Sakto Groups disclosure breaches can be described as follows:

### **5.1. The Sakto Group does not publish financial information**

Given that the Sakto Group is closely connected to Politically Exposed Persons (PEPs) and that its finances appear to depend to a significant extent on loans from its shareholders and other non-bank lenders, Sakto should not only disclose its financial results but also the source of its funding to rule out suspicions that Sakto might be involved in laundering the proceeds of corruption from Malaysia.

Until 1993, one of the Group members, Sakto Development Corporation (SDC), published audited annual financial reports. In 1993, SDC assets amounted to CAD \$ 39.5 million. The company held CAD\$25.6 million in shareholder loans and \$22.9million in other loans. No financial figures have been published or made available after 1993.<sup>24</sup>

In 2014, the Financial Action Task Force (FATF) stated that "the FATF has long understood the risks that corrupt PEPs pose to the financial system" and quoted an earlier report, according to which "the sources for the funds that a PEP may try to launder are not only bribes, illegal kickbacks and other directly corruption-related proceeds but also may be embezzlement or outright theft of State assets or funds from political parties and unions, as well as tax fraud. [...] PEPs that come from countries or regions where corruption endemic, organised and systemic seem to present the greatest risk [...]."

In this context, it is noteworthy that Malaysia is a corruption high-risk country. In September 2015, Transparency International Chair, José Ugaz, stated that "the country is facing a major corruption crisis".<sup>25</sup>

Sarawak Governor and former Chief Minister Abdul Taib Mahmud, is on record saying that he provided his daughter Jamilah Taib Murray the necessary funds to start Sakto

<sup>21</sup> EXHIBIT 11: Screen shot of [www.sakto.com/about](http://www.sakto.com/about), accessed 1 December 2015.

<sup>22</sup> EXHIBIT 12: See [www.sean-murray.org](http://www.sean-murray.org) and [www.ridgford.com](http://www.ridgford.com); files on Ridgford Properties Ltd with Companies House UK.

<sup>23</sup> EXHIBIT 13: Screenshot of [www.ridgford.com](http://www.ridgford.com), accessed 25 March 2010.

<sup>24</sup> EXHIBIT 14: Sakto Development Corporation, Balance Sheet as at August 31, 1993.

<sup>25</sup> EXHIBIT 15: Malayiakini, 1 September 2015.

Group.<sup>26</sup> The amount, date of donation and origin of this acknowledged start capital for Sakto remain unknown.

In this context, it is also noteworthy that Sakto Group director Jamilah Taib provided the Sakto Group two loans of CAD\$20 million in 1996. One of these loans was granted "in trust" and was connected to an agreement between Jamilah Taib with several Taib family members and related offshore companies in Hong Kong (Richfold Investments) and Jersey (Sogo Holdings Ltd).<sup>27</sup>

## 5.2. The Sakto Group does not publish information on its beneficial owners

Beneficial ownership transparency has become a major international concern which has been addressed by the Financial Action Task Force (FATF) in its 2014 Recommendations 24 & 25 (Guidance on Transparency and Beneficial Ownership), the G20 in its 2014 High-Level Principles on Beneficial Ownership Transparency and by the OECD.

The Sakto Group repeatedly replied with evasive answers to attempts by journalists to ascertain its beneficial owners. For instance, when approached by Global Television's 16x9 program in 2011, Ottawa lawyer J Bruce Carr-Harris, partner at Borden Ladner Gervais, replied "on behalf of my clients Sean and Jamilah Murray and their businesses" as follows:

*"1. The issue of beneficial ownership of Sakto. [...] Sakto was incorporated as a Canadian company in 1983 by Jamilah Taib and her Uncle Onn. Her father is on record as saying that he contributed money to her. At no stage did her father have economic benefits from, or any direction of, the business – directly or indirectly. Sean Murray joined Sakto as a director in 1987, and remains an active director of the company. No member of Jamilah's family plays an active role in the company."<sup>28</sup>*

## 5.3 The Sakto Group does not publish information on its group structure and its intra-group relations

The Sakto Group consists of at least eleven Canadian companies directed by Jamilah Taib Murray and her husband Sean Murray and seventeen known subsidiaries and related parties in six jurisdictions. Despite the global activities of the Sakto Group, their lawyer, J. Bruce Carr-Harris, claimed in 2011 that the public had no right to know more about the group structure:

*"2. The issue of the Murray's private companies and assets. The books of these businesses are open to the scrutiny of auditors and authorities, but as with all private companies and individuals, they are protected by privacy laws.*

*3. The issue of their assets and investments worldwide. For the reasons given above, these are matters for the Murrays, Sakto and the relevant regulatory and financial authorities – not for publication. With regard to your question concerning Investments in Malaysia,*

<sup>26</sup> Youtube- Video <https://www.youtube.com/watch?v=0YK8KGX7E4A>

<sup>27</sup> EXHIBITS 16 and 17: Province of Ontario: Charge/Mortgage of Land, 19.08.1996.

<sup>28</sup> EXHIBIT 18: J Bruce Carr-Harris to Global Television, Toronto, 2 December 2011. See also: <http://globalnews.ca/news/185008/family-trees-2/> 2 December 2011.

*Jamilah Murray has some passive investments in Malaysia, but Sakto and Sakti, and Sean Murray do not. On the question of whether any of that money has been used to fund Sakto projects in Canada or Sakti in the U.S., the answer is no.*<sup>29</sup>

#### 5.4 The Sakto Group does not publish sufficient information on its activities

Only two of seven Canadian companies of the Sakto Group have a website, Sakto Corporation ([www.sakto.com](http://www.sakto.com)) and The Waterford Property Group ([www.waterfordpg.com](http://www.waterfordpg.com)).

The information on Sakto's ongoing activities is limited: *"Throughout its three decades of operation, Sakto Corporation has remained true to its core standards of excellence and integrity. (...) Today the company owns and manages multiple property holdings."* In a "portfolio" menu, information on five Ottawa properties can be found.

The information on the Waterford Property Group is not much more ample. The corporation, which is neither registered in Ontario nor with Industry Canada, appears to be involved in Planning and Construction, Facility Management and Leasing. The properties shown are the same as on the Sakto website.

The following currently active Sakto Group members in Canada do not publish any information at all:

- Sakto Development Corporation
- Urban Sky Europe Ltd
- 1041229 Ontario Inc.
- Hawkhurst Island Holding Ltd
- Urban Sky Investments Ltd

According to British corporate records, Ottawa-based Urban Sky Investments Ltd is the parent company of Ridgeford Properties Ltd, a London real estate developer, on whose website ([www.ridgeford.com](http://www.ridgeford.com)) Sean Murray is listed as "Chairman" (though he is not officially registered in such a role with Companies House). Ridgeford's website says that it is *"a UK property company focused on producing exceptional quality single and mixed use in developments in central London."*

The following entities seem to be single asset corporations linked to Ottawa real estate:

- Adelaide Ottawa Corporation
- Preston Building Holding Corporation
- Tower One Holding Corporation
- Tower Two Holding Corporation
- 1575 Carling Limited

<sup>29</sup>EXHIBIT 18: J Bruce Carr-Harris to Global Television, Toronto, 2 December 2011. See also: <http://globalnews.ca/news/185008/family-trees-2/> 2 December 2011

### 5.5 The Sakto Group does not publish sufficient information on its governance

All Sakto Group companies are directed by Jamilah Taib Murray and/or her husband Sean Murray. It is noteworthy that a number of Sakto Group executives are members of the same family which is highly unusual for a multinational enterprise. These executives include Sean Murray's brother, Thady Murray, as well as his cousins Brian Murray and Christopher Murray (director of Sakto Group's British subsidiaries). It is unclear why so many members of the same families are active within the same international real estate group.

In particular, there is a need of an explanation to the double role played by Sean Murray as "President and CEO of Sakto Corporation" and "Chairman" of Ridgford Properties Ltd in the UK, as acknowledged by Mr. Murray on his personal website.<sup>30</sup> In this context, it is noteworthy that, according to official Companies House records, Sean Murray has no role within Ridgford Properties whatsoever.

Another double role in need of an explanation is the one being played by Michel Pilon, the Chief Financial Officer of the Sakto Group. According to Mr. Pilon's 2012 LinkedIn Profile, which has since been deleted, he acted simultaneously as Chief Financial Officer of Sakto Corporation and Secretary Treasurer of City Gate International Corporation since 1995.<sup>31</sup>

The double roles played by leading company staff and the unclear role played by Jamilah Taib Murray and her brother Sulaiman Abdul Rahman Taib within the group show the need for the Sakto Group to publish clear and unambiguous information on its governance.

### 5.6 The Sakto Group does not publish information on related party transactions

Research by the Bruno Manser Fund has shown that, since their incorporation in the 1980s, there have been numerous related party transactions within the Sakto Group. These include shareholder loans to the Sakto Group, loans provided by the Canadian parent company to subsidiaries, such as Ridgford Properties in the UK, or sales of real estate assets within the group.

While some related party transactions can be reconstructed from land registry records, none have been officially disclosed within the last ten years.

By way of example, on 16 September 2008, a mortgage between Sakto Corporation and Sakto Development Corporation over \$29,958,820 was registered with the Ottawa-Carleton Land registry, secured by multiple properties.<sup>32</sup> In 2004, Sakto Corporation provided £2 million in loans to the Sakto Group's British subsidiary, Ridgford Properties Ltd, which was later repaid.<sup>33</sup>

<sup>30</sup> EXHIBIT 12: Screenshot of <http://www.sean-murray.org> (accessed 10 Dec 2015).

<sup>31</sup> EXHIBIT 1: LinkedIn profile of Sakto Group's Chief Financial Officer, Michel Pilon, 3 December 2012 (NB: This profile has since been deleted)

<sup>32</sup> EXHIBIT 19: Ottawa-Carleton Land Registry, Instrument OC903343.

<sup>33</sup> EXHIBIT 20: Companies House records on Ridgford Properties Ltd (Annual Report 2004).

### **5.7 The Sakto Group does not publish information on its accounting standards and its auditors**

It is needless to say that, given that the Sakto Group does not publish financial reports, it also fails to provide information on its accounting standards and auditors.

### **5.8 The Sakto Group is actively attempting to conceal its ownership, group structure, governance and finances**

In 2010, the Bruno Manser Fund and Sarawak Report started to disclose the Malaysian Taib family's unexplained wealth in various countries and published a "Black List of Taib assets" comprising over 400 corporate entities in 25 jurisdictions.<sup>34</sup> Some Sakto Group companies, such as Ridgford Properties, City Gate International and Sakto Corporation, were on that list.

Subsequently, a significant number of companies linked to the Taib family have been dissolved and some of their assets sold. Furthermore, some property holdings were restructured.

By way of example, the Sakto Group's main British subsidiary, Ridgford Properties Ltd, was, from 2001 to 2011, a wholly-owned subsidiary of City Gate International Corporation, a Sakto Group entity directed by Jamilah Taib Murray and Sean Murray. Following a number of disclosures on the Taib family's international businesses, Ridgford Properties' ownership was reorganised. The company's 2013 annual return, filed on 12 October 2013 with Companies House in the UK, showed Urban Sky Investments Ltd to be the new parent company of Ridgford Properties Ltd. Urban Sky Investments' sole director is Sean Murray. As a consequence of this re-organisation, Sean Murray's wife - and thus the Taib name - no longer appears in any public record associated with Ridgford.

## **6. Public interest in the Sakto Group**

The Sakto Group is intimately linked to the family of Malaysian politician Abdul Taib Mahmud („Taib"), the current Governor (since 2014) and former Chief Minister (1981-2014) of the Malaysian state of Sarawak. Due to his role as head of a state government, Taib is a public person.

While the Sakto Group was founded by Taib's brother, Onn Mahmud, the management has later been taken over by Taib's daughter, Jamilah Taib Murray and her Canadian husband. According to FATF and FINTRAC definitions, all of these people qualify as politically exposed persons (PEPs) / politically exposed foreign persons.

The Sakto Group has been the object of a Global Television 16x9 report in December 2011 and of subsequent investigations by The Toronto Star and the CBC. In addition, Malaysian media have repeatedly reported on the group, particularly in the context of an

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<sup>34</sup> EXHIBIT 21: Company List of Taib assets: [www.stop-timber-corruption.org/resources](http://www.stop-timber-corruption.org/resources), 19.01.2012

investigation against Abdul Taib Mahmud by Malaysia's Anti Corruption Commission (MACC).

It is therefore evident that there is a high public interest in the Sakto Group and a disclosure of its beneficial ownership, group structure, governance and finances.

## **7. Requests by the complainants**

Based on the OECD Guidelines disclosure recommendations, the complainants request the following from the Sakto Group:

### **7.1 Disclosure of financial information**

Disclosure of financial information should include but not be limited to the audited financial reports of Sakto Development Corporation, Sakto Corporation, Urban Sky Investments Ltd, Urban Sky Europe Ltd, The Waterford Property Group, City Gate International Corporation and subsidiaries for the last ten years (2006 to 2015).

The disclosed financial information should include but not be limited to details on the Sakto Group's loans, in particular shareholder loans and other secured and unsecured loans from banks and non-bank lenders.

Furthermore, the Sakto Groups' global assets should be disclosed, in particular its investments in hotels, restaurants, golf courses, timber, commercial and residential real estate as well as bank deposits.

### **7.2 Disclosure of beneficial ownership**

Disclosure of beneficial ownership should include details on the Sakto Group's and its subsidiaries' beneficial ownership since its incorporation in 1983. In particular, the disclosure should include the amount of shares held by Taib family and Murray family members and the time of their purchase and sale.

This should include but not be limited to shares held by the company's former and current directors Onn Mahmud, Jamilah Taib Murray, Sean Murray, Mahmud Abu Bekir Taib, Sulaiman Abdul Rahman Taib and other members of the Taib family, such as Laila Taib and Abdul Taib Mahmud.

Disclosure should also include a declaration if group shares were held by shareholders in trust for third parties.

### **7.3 Disclosure of the Sakto Group's group structure and its intra-group relations**

Disclosure of the Sakto Group's internal structure should include but not be limited to an explanation of the holding structure, the ownership structure of the Group's various subsidiaries, the relationship of the Group to offshore investment trusts, and a comprehensive list of related parties. This should include information on the Group's current and past operations in Canada, the USA, the UK, Poland, Australia and Malaysia a

well as information on the Group's relationship with offshore trusts in the British Virgin Islands, Jersey and Hong Kong.

#### **7.4 Disclosure of the Sakto Group's activities**

Disclosure of the Sakto Group's activities should include comprehensive information on its present and past operations in the hotel business, restaurants, golf courses, timber production and trade as well as in the purchase, development or sale of commercial and residential real estate.

#### **7.5 Disclosure of the Sakto Group's governance**

Disclosure of the Sakto Group's governance should include but not be limited to an explanation on the strategic and operative functioning of the Group and the role of its main executives, namely Jamilah Taib Murray, Sean Murray, Laird J. Rasmussen, Tanya Caleta, Michel Pilon, Lee Gartley, Brian Murray, Christopher Timothy Murray and Sulaiman Abdul Rahman Taib within the group. It should also include a declaration if other members of the Tai band the Murray family are involved in the group's operations and describe their roles.

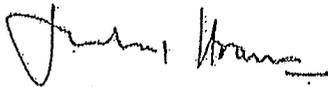
#### **7.6 Disclosure of related party transactions**

Disclosure of related party transactions should include but not be limited to loans granted within the group, financial or other services granted within the Group, purchases and sales of real estate within the Group, and the exchange of other assets or staff within the Group.

#### **7.7. Disclosure of accounting standards and auditors**

Disclosure of the Sakto Group's financial information should include the disclosure of the accounting standards used and the Group's auditors.

BRUNO MANSER FUND



Dr. Lukas Straumann  
Executive Director

Johanna Michel  
Campaigner

**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**

**Plaintiffs**

**- and -**

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

**Defendants**

**NOTICE OF EXAMINATION**

**TO: LUKAS STRAUMANN**

**YOU ARE REQUIRED TO ATTEND**, on Tuesday, January 9, 2018, at 10:00 a.m., at the office of WeirFoulds LLP, TD Bank Tower, 66 Wellington Street West, Suite 4100, Toronto, Ontario, M5K 1B7, Tel: (416) 365-1110, for:

**[X] Cross-examination on your affidavit sworn June 27, 2017 and your supplementary affidavit sworn August 21, 2017**

[ ] Examination for discovery

[ ] Examination for discovery on behalf of or in place of (identify party)

[ ] Examination in aid of execution

[ ] Examination in aid of execution on behalf of or in place of (identify party)

**YOU ARE REQUIRED TO BRING WITH YOU** and produce at the examination the following documents and things: all books, correspondence, contracts, orders, papers, letters, copies of letters, statements, notices, agreements, catalogues, manuals, cards, order forms, computer diskettes, CDs, DVDs, any material contained on the hard drive of a computer or within any form of media, e-mail material, tape recordings, video recordings, photographs, photographic slides, drawings, diagrams, and any and all other documentation, writings, and things in your custody, possession or power containing any entry, memorandum, minute or material in any way relating to the matters which are within the scope of this motion or have any reference thereto.

**December 18, 2017**

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**BRUNO-MANSER-FONDS et al.**  
Plaintiffs

- and - **ROYAL BANK OF CANADA et al.**  
Defendants

**Court File No. CV-17-578681.00CL**

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

Proceeding commenced at Toronto

**NOTICE OF EXAMINATION**

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Claim No.

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

BETWEEN:

**BRUNO MANSER FUND and MUTANG URUD**

Plaintiffs

- and -

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

Defendants

**AFFIDAVIT OF LUKAS STRAUMANN**  
(Sworn June 27, 2017)

I, DR. LUKAS STRAUMANN, BORN JUNE 29, 1969, OF LIESTAL, WITH  
DOMICILE IN BERN, SWITZERLAND, AFTER HAVING BEEN WARNED THAT I  
MUST DECLARE THE TRUTH AND THAT I WILL BE LIABLE TO THE PENALTIES  
IMPOSED BY LAW SHOULD I NOT DO SO, HEREBY DECLARE AND AFFIRM AS  
FOLLOWS:

## I. Introduction

1. I am the Executive Director of the plaintiff in this matter, the Bruno Manser Fund ("BMF"), a charitable association based in Basel, Switzerland. I have personal knowledge of the matters deposed herein, except where I have indicated that my knowledge is based on information provided to me by others and where so I verily believe such information to be true.

2. I am a Swiss citizen and grew up in Liestal, Switzerland. I studied at the Universities of Basel, Neuchâtel (Switzerland) and Salamanca (Spain) and obtained a Master's degree in History. I subsequently worked as a scientific assistant at the Swiss Federal Institute of Technology in Zurich and as a scientific collaborator at the Independent Committee of Experts Switzerland Second World War ("ICE"), an independent expert body commissioned by the Swiss government to investigate allegations of unethical conduct of the Swiss government and Swiss businesses during the Nazi period. In my position with the ICE, I was in charge of investigating the Swiss chemical and pharmaceutical industry's business relationship with Nazi Germany before and during the Second World War. In 2000, I left the ICE to become a full time PhD student. During that time, I was invited as a pre-doctoral research fellow to the Max Planck Institute for the History of Science in Berlin. In 2005, I obtained a PhD in History from Zurich University. In June 2004, I joined the BMF as Executive Director, a position I have held uninterruptedly ever since. In 2007, I obtained a Certificate of Advanced Studies in Environmental Diplomacy in a course offered jointly by the University of Geneva and the United Nations' Environmental Programme. In 2016, I became a Certified Fraud Examiner, a title granted by the U.S.-based Association of Certified Fraud Examiners.

3. In February 2014, I published a book on the history, economy and politics of the Malaysian state of Sarawak under the title "Raubzug auf den Regenwald. Auf den Spuren der malaysischen Holzmafia" with Salis, a Zurich-based publisher. Sarawak is a state in Malaysia that is located in the northern part of the island of Borneo which island is shared by neighbouring Indonesia and Brunei. The book was subsequently published in English in November 2014 under the title "Money Logging: On the Trail of the Asian Timber mafia."<sup>1</sup> Attached hereto as **Exhibit "1"** is a copy of the book in an envelope for the court's reference.

4. The BMF is an association under articles 60ff of the Swiss civil code, founded on December 7, 1991 and is a charitable, non-commercial fund. In 2011, the BMF was certified by ZEWO, a Swiss foundation that allows trustworthy charities to carry its seal of approval. Attached hereto and marked as **Exhibit "2"** is a copy of BMF's Charter.

5. The BMF is committed to rainforest preservation and to campaigning, in particular, for the rights of the peoples who inhabit the rainforests. Given that Bruno Manser, the Fund's founder, and president for many years, spent several years living with the Penan, a nomadic indigenous tribe in Sarawak, BMF's commitment is focused primarily on this people and on protecting the forests of Sarawak. Alongside that focus is a mandate to fight corruption in Malaysia that has, in many ways, negatively impacted both Sarawak's people and landscape.

6. During his lifetime, Bruno Manser was the best-known Swiss activist campaigning for the protection of the rainforests and the respect for human rights. Confronted with the rampant destruction of the rainforest by the timber industry and the corruption of the Malaysian public official in charge of Sarawak, he helped the Penan to resist further intrusion by the loggers and also

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<sup>1</sup> Exhibit 1, Lukas Straumann, *Money Logging: On the Trail of the Asian Timber Mafia* (Basel: Bergli Books, 2014).

became a prominent international activist for threatened peoples in primeval forests. He disappeared without a trace during a journey to the Sarawak rainforest in May 2000. Several search parties failed to find him. On March 10, 2005, the cantonal civil court of Basel-Stadt officially declared him missing and presumed dead.

7. Bruno Manser's work has won international recognition. Inter alia, he won the 1994 Binding-Prize for Conservation and the Protection of the Environment, granted by the Binding Foundation, a non-profit organization based in Lichtenstein. In 2001, he was posthumously awarded the International Society for Human Rights prize for Switzerland.

## II. Relief Sought

8. I make this affidavit in support of an application for a Norwich Pharmacal disclosure order to be made against the Royal Bank of Canada (the "**Royal Bank**"), Manulife Financial Corporation ("**Manulife**"), Toronto Dominion Bank ("**TD Bank**") and Deloitte & Touche ("**Deloitte**"). BMF is also seeking a sealing order over this matter and an order that the defendants be refrained from disclosing to anyone the existence of the action or Norwich order (if granted). The purpose of my application is to obtain financial records detailing the flow of funds from a public official in Malaysia to his daughter, her husband and their numerous Canadian companies in Canada. I verily believe that such funds are proceeds from corrupt activity carried out by Abdul Mahmud Taib ("**Taib**") and that the flow of funds in the manner detailed below in this affidavit constitutes money laundering. I seek this information to determine whether there is a basis for a private prosecution against possibly Taib's daughter, Jamilah Taib-Murray ("**Jamilah**"), Canadian based Taib-related corporations and others unknown to me for the Canadian criminal offence of money laundering.

9. The intention is that with the documents obtained from the Norwich Pharmacal disclosure order I could determine whether there is support for an application (in the form of laying an information) to bring a private prosecution for the offence of money laundering, and related offences, in Canada. Specifically, if there is evidence of money laundering such documents would be used to lay an information and would be used in the subsequent pre-enquete in the private prosecution process. In consideration of the global reach of the flow of funds, and in particular the accumulation of corrupt wealth in the U.K. and the Taib's family connections to companies in the U.K., to the extent such documents evidence money laundering in the U.K., BMF may seek to use such documents in support of a private prosecution in that jurisdiction in addition to Canada.

10. In the event the documents are disclosed I will undertake not to utilize them for any purpose other than for the Canadian private prosecution or the U.K. private prosecution without first obtaining leave of the court for any other use.

11. I am advised by BMF's lawyers at Bennett Jones that as the laying of the information and pre-enquete process is a closed hearing, BMF also requires a sealing order over this matter and an order that the defendants be refrained from disclosing to anyone the existence of the action or Norwich order (if granted).

12. BMF anticipates that Mutang Urud will swear the information in support of the private prosecution. Mutang Urud is a Canadian citizen who was born in Malaysia on October 20, 1958 and is of Kelabit descent (the Kelabit are an indigenous people of Sarawak). He currently resides in Canada. Mutang Urud grew up in Long Napir, a village in the interior of Sarawak. In the late 1980s he assisted the indigenous Kelabit and Penan people in organizing the resistance against logging on their lands and subsequently founded and chaired the Sarawak Indigenous Peoples' Alliance. In

that time he also met Bruno Manser who later drafted the Declaration of the Peoples of the Springs which was signed by many indigenous representatives, including from Long Napir. The Declaration of the Peoples of the Springs appealed to Taib, then Chief Minister of Sarawak, to rescind the logging concessions which had been granted over indigenous lands without due consultation. Attached hereto and marked as **Exhibit "3"** is a copy of the Declaration of the Peoples.

13. Due to his political activities Mutang Urud was arrested by the Taib regime in March 1992 and kept in solitary confinement for one month. After his release, Mutang Urud left Sarawak and moved to Canada, where he first lived as a refugee until becoming a Canadian citizen in 2008. Mutang Urud has been closely associated with BMF ever since and has undertaken many activities in defence of Sarawak's indigenous peoples and the Borneo rainforest. In 1992, he met U.S. Senator Al Gore at the U.N. Rio Earth Summit and, in December 1992, he addressed the U.N. General Assembly in New York over these issues. As a Malaysian born in Sarawak, Mutang is a victim of Taib's corruption and any subsequent laundering of the assets derived from the corrupt activities of Taib and his family involving the resources taken from the indigenous persons of Sarawak.

### **III. Overview – Safe Haven Canada**

14. Since 2010, BMF has been investigating the business activities of Taib, his family and related companies. Taib is the current Governor, and former Chief Minister of Sarawak. One of BMF's focuses has been on the significant acquisition and development of Canadian real estate by Taib family members, and in particular, Jamilah and Taib's brother Onn Bin Mahmud ("**Onn**") who is discussed below. BMF has attempted to uncover the nature of these real estate transactions

and the origin of the money that has funded the rapid growth of Canadian Taib-related companies since 1983. BMF's extensive investigation in this regard was compiled and set out in BMF's report of 2016 entitled *Safe Haven Canada* ("**Safe Haven Report**") which was co-authored by Johanna Michel, deputy director of BMF, Bruce Bailey, an Ontario-based researcher, and myself. This detailed report is attached hereto as **Exhibit "4"**.

15. Much of the contents of the Safe Haven Report is reviewed herein and contains in some instances further detail than what is included herein. It also includes a table of contents, glossary and brief chronology. Further, information on the scope of the corruption in Malaysia, focusing on the Taib family and their international money-laundering scheme, can be found in my 2014 book *Money Logging: On the Trail of the Asian Timber Mafia*. See Exhibit 1 at paragraph 3.

16. During Taib's 33-year tenure as Chief Minister of Sarawak, 90% of the state's primeval tropical rainforest has been destroyed as a result of logging, the proliferation of palm oil plantations and flooding for hydro dams. Allegations of corruption, cronyism and conflicts of interest have followed Taib throughout his political career. This is detailed further in this affidavit. All the while, Taib and many of his closest family members, particularly his daughter Jamilah, have become extremely wealthy and acquired stakes in hundreds of companies around the world. I verily believe that the Taib family wealth is in the billions. At an electoral event in 2010, Taib himself stated: "I have more money than I can ever spend ...all my children are looked after."<sup>2</sup> Attached hereto as **Exhibit "5"** is a CD containing this video which is labelled as Video 1.

17. I verily believe, based on my investigation and on the information described herein, that the Taib family's rapid climb to become one of South East Asia's wealthiest families is as a result

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<sup>2</sup> Statement by Taib Mahmud at Rumah Johnaton Juna, Sarawak, 13 May 2010:  
<https://www.youtube.com/watch?v=QAAXLROEnUE>.

of corruption and the abuse of public office by Taib. Neither Taib, his spouse nor other of his family members were independently wealthy prior to Taib holding any official position in Malaysia. As described below, the Taibs have benefited from numerous timber licences, land leases and state contracts awarded to them in an obvious conflict of interest. For example, between 1990 and 2010, Taib family companies were granted land leases for at least 198,000 hectares of state land, worth several hundred million dollars, by the Sarawak state government at the direction of Taib when he was the minister in charge. Attached as **Exhibit "6"** is a summary chart created by BMF of the main companies linked to Taib that have been leased palm oil land in Sarawak. The chart listing all the palm oil leases linked to Taib is attached as **Exhibit "7"**.

18. In addition to the clear evidence linking the Sarawak timber licenses to the massive increase in wealth of many of Taib's family members, as well as linking Taib, his family members, and numerous companies around the world, I have obtained documents that confirm at least some of the offshore assets held by those companies are in fact held by Taib's family members in trust for Taib.

19. The following is a summary of certain key factors which support my strong belief that Jamilah and the Canadian Taib-related companies discussed herein, have and are laundering proceeds of corruption from Malaysia through the receipt of funds, directly or indirectly (through companies or nominees) from Taib and/or Onn:

- (a) Taib is a foreign official who was completely in charge of the state of Sarawak and responsible for all of the timber contracts and concessions. He provided such concessions to companies related to himself and his family. His corruption has been widely acknowledged and studied and is apparent on its face.

- (b) An NGO representative went undercover posing as an investor wishing to purchase a Sarawak-based company from Taib's first cousin, which company owned vast amounts of land granted to it by Taib, and were told, among other alarming things, that they would be required to pay 10% to Taib "offshore".
- (c) Jamilah, her husband and related companies have amassed an enormous real estate portfolio and such multi-million dollar purchases commenced when she was just 23 years old with no apparent independent source of wealth other than her father / Taib family.
- (d) Taib has admitted to providing Jamilah with money to start Sakto Development Corporation ("**Sakto**"), the main Canadian company which is at issue and discussed herein. He characterizes the money as a gratuity he received from a government source upon his resignation from the federal government prior to becoming Chief Minister. Jamilah however has admitted that Sakto's investors are located overseas, primarily in Malaysia.
- (e) Sakto, based in Ottawa and operated by Jamilah and her husband, for at least the time from 1983 to 1993, operated at constant losses. Despite these constant losses, Sakto's assets grew significantly as a result of the influx of at least CAD\$28.8 millions of dollars-worth of "shareholder loans". These shareholder loans are strongly suspected to have been funded by Taib and his family members, as Sean Murray, president of Sakto, and Jamilah's husband, has admitted that the shareholders were Jamilah and three of her family members, including Onn. The loans were interest free and as at 1993 none of them were repaid nor were any

repayment terms established as at that time. It is the influx of capital that I believe is the proceeds of Taib's corruption.

- (f) A whistleblower, Ross Boyert ("**Boyert**"), who was Taib's employee charged with managing Taib's wealth in the U.S. and who is now deceased, confirmed directly to me that Taib abused his position in government to obtain millions of dollars and that he has been laundering money through his family members and numerous companies including Sakto and Sakti (operating in the U.S. and described further herein).
- (g) Boyert also provided to me incriminating documents, albeit largely with respect to Taib's U.S. portfolio (Sakti) rather than Canada's (Sakto), which includes a shareholder document specifying that Sakti shares held by Jamilah and other family members were being held in trust for Taib himself. This document is attached hereto as **Exhibit "8"** and is discussed further in my affidavit.
- (h) Laundering money in Canada through Jamilah, related companies and other family members is consistent with Taib's pattern of laundering funds around the world. Taib has a company or familial connection to over 400 companies in 25 countries around the world. This is notwithstanding that Sarawak's constitution forbids the Chief Minister and the Governor from engaging in commercial activities. Attached as **Exhibit "9"** is a list of companies linked to Taib around the world that I am aware of.

20. Notwithstanding the extent of the information available to me, summarized above and particularized herein, that would support a private prosecution for the Canadian criminal offence

of money laundering, I believe that documents surrounding and particularizing the numerous real estate purchases/transfers, the payment of mortgages and loans will be important evidence to establishing any money laundering and what parties are participating in it. In particular, documents in possession of the defendants would and should include the source of the shareholder loans, the down-payments on properties, and mortgage/loan payments. Such defendants may also have information on the private intercompany loans which on their face appear to facilitate the movement of corrupt funds. Further, the accountants of Sakto, who are possibly the accountants for Sakto's related companies, can further confirm important ownership and financial information beyond the financial statements that were located to date.

21. This affidavit explains Taib's corruption in Malaysia and the subsequent accumulation of wealth by his families. This affidavit focuses on Canada and the U.K. in particular.

22. Based on the documents and information I have received and investigated over many years, I believe that Canada has been used by the Taib family as a safe haven to harbour some of their misappropriated and corrupt funds. I strongly believe that it is in the public interest that the requested disclosure be made so that this important evidence is considered and any offences of money laundering in Canada by Canadians can be pursued so that there is a potential for justice to subsequently be achieved in relation to decades of rampant and destructive corruption. Although BMF is itself not a victim of these crimes, it is integral to BMF's mission and existence to advocate for the protection of the forests and the people of Sarawak. BMF is motivated by its core mission and Charter, attached as Exhibit 2, and as such, paying our lawyers to pursue this application and any private prosecution is consistent with our mandate.

#### IV. Taib, Jamilah and Family

23. Taib was born in 1936 and is the oldest of 10 children. He attended law school in Australia on a scholarship in 1956 and returned to Malaysia in 1962 and in 1963 was sworn into office in Sarawak as Minister of Communications and Works. He was 27 years old at that time and had no business and no wealth. He became a minister in the Malaysian federal government in 1968. In 1970, Taib's uncle Rahman Ya'kub ("**Rahman**") became Chief Minister of Sarawak. In 1981, Taib took over this position from his uncle Rahman, who then assumed the office of Governor. Taib's wife, Laila Taib, with whom he had four children, died in 2009 and Taib remarried Ragad Waleed Alkurdi Taib in 2011.

24. Taib was the Chief Minister of the Malaysian state of Sarawak, on the island of Borneo, from 1981 until 2014. On February 28, 2014, Taib Mahmud resigned as Chief Minister of Sarawak and vacated his seat in the Sarawak State Assembly. On March 1, 2014, he was appointed as Governor of Sarawak by the Agong, the Malaysian King.

25. Jamilah, Taib's daughter, arrived in Canada from Malaysia to attend high school in Ottawa in the early 1980s. There, she met Sean Murray who became her husband. The couple attended Carlton University in Ottawa together and were married in 1987. Jamilah has a website for herself called "jamilahaibmurray.com". Her website indicates that she and Sean Murray support a number of charities including United Way, Scouts Canada, Plan International and Youville Centre. On the website Jamilah describes her background and the founder of Saktto. She states: "With the help of family and friends, we founded Saktto Corporation when I was in my early twenties." Attached hereto and marked as **Exhibit "10"** are copies of each page from "jamilahaibmurray.com".

26. Sean Patrick Murray is Jamilah's husband and the current president and CEO of Sakto. He also serves as co-founder of boutique London property company Ridgeford Properties and president of the Waterford Property Group. He also has numerous holdings in various other companies.

27. Sean Murray was born to well-known family from the up-market Rockcliffe Park community in Ottawa. He is the son of Tim Murray, who started prestigious architecture firm Murray & Murray which was involved in the construction of the city's international airport and the modernization of the Supreme Court of Canada building. Sean became a key part of the Taib family business shortly after marrying Jamilah Taib in 1987.

28. Sean and Jamilah started a development and management corporation together shortly after their marriage to manage the real estate holdings of Sakto, of which Jamilah was a director. Sean thereafter became another director of Sakto along with Jamilah and Onn in the early 1990s. Members of the Murray family have also found prominent places in the Taib family business. Sean Murray's cousin Christopher Murray acted as vice president of Sakto before moving to Ridgeford Properties in London. His elder brother Thady took over the presidency of a Sakto related company, City Gate International, based in the U.K. Sean's other cousin helps manage Sakto's rental properties in Ottawa.

29. Attached hereto and marked as **Exhibit "11"** is a copy of each page of Sakto's current website.

30. Onn is Taib's younger brother, and a founding director of Ottawa-based Sakto, along with Jamilah. Attached hereto as **Exhibit "12"** is a copy of the Ontario corporate form 1 notice for Sakto. Onn was born in 1949 and has acted as Taib's point person in establishing companies

internationally, including in Canada, Hong Kong and Australia. Onn had a key role in the takeover of Sarawak state-enterprises (such as CMS, discussed further below) by the Taib family and has also accumulated extreme wealth while conducting business for Taib.

31. BMF's investigation has shown that Onn has an interest in and is or was a director of at least 34 Malaysian companies worth at least several hundred million dollars. In particular, he is a director and the owner of Achi Jaya Holdings Sdn Bhd ("**Achi Jaya Holdings**"), a Malaysian company incorporated in 1983.<sup>3</sup> Achi Jaya Holdings is the ultimate parent company of the shipping agent Dewan Niaga (Sarawak) Sdn Bhd ("**Dewan Niaga**"), a former state enterprise taken over by Onn during his brother's tenure as Chief Minister.<sup>4</sup> Since 1981, Dewan Niaga controlled the timber exports to Japan, the main market of Sarawak timber, via monopolistic agreements with a shipping cartel from Japan, 46 Japanese shipping companies, and 6 Malaysian companies. In 1988, Onn became a director of Dewan Niaga, presumably at the same time that he acquired full control over the company. In 2013, Australian media reports accused Onn of avoiding tax on tens of millions of dollars in profits from Australian property deals. Attached hereto as **Exhibit "15"** is a sample media piece from the Sydney Morning Herald dated April 28, 2013 entitled *Billionaire's Decades of Profits-Spirited Away*.

32. The following is a chart of the primary Taib family members connected to Sakto's related Canadian companies ("**Sakto Group**"):

**Table 1: Taib Family connected to the Sakto Group**

Name	Date of Birth	Nationality	Known Role	Period
<b>Abdul Taib Mahmud ("Taib")</b>	21/05/1936	Malaysian	Sarawak Chief Minister (1981-2014) and Governor (since 2014)	Early 1980s

<sup>3</sup> Exhibit "13", Companies Commission of Malaysia, Corporate Information report on Achi Jaya Holdings.

<sup>4</sup> Exhibit "14", Companies Commission of Malaysia, Corporate Information report on Dewan Niaga.

Name	Date of Birth	Nationality	Known Role	Period
			Provided initial capital to Jamilah	
Laila Taib Chalecki	01/03/19Exhibit (deceased 29/04/2009)	Malaysian	Wife of Taib Sakto Group lender	1989-1996
Onn Mahmud ("Onn bin Mahmud")	02/12/1949	Malaysian	Brother of Taib Sakto Group founding director and shareholder; director Glowell Development Corporation Sakto Group lender	1983 – 2004
Jamilah Taib Murray ("Jamilah")	19/09/1960	Malaysian / Canadian	Daughter of Taib Sakto Group founding director and shareholder; president since 1987 Sakto Group lender	1983 – present
Mahmud Abu Bekir Taib ("Bekir")	13/11/1963	Malaysian	Son of Taib Sakto Group founding director Sakto Group lender	1983 – 1996
Sulaiman Abdul Rahman Taib ("Sulaiman")	31/05/1968	Malaysian	Son of Taib Sakto Group lender	1996
Sean Patrick Murray	17/01/1963	Canadian	Husband of Jamilah CEO and President	1987 – present

Sources: Industry Canada; Ontario Ministry of Consumer and Commercial Relations; Ottawa-Carleton Land registry; BMF 2012.

33. The following sets out what I believe to be are key dates and events regarding Malaysian politics and the Taib's rule over Sarawak. The characterization of these events are mine and based on my extensive research and involvement in this matter. As previously noted, further details of such events are set out in the book *Money Logging* and are as follows:

**1956** – Taib studied law at the University of Adelaide;

**1957** – The Federation of Malaya (today's "Peninsular Malaysia") was granted independence from British colonial rule;

**1962** – Taib returned to Sarawak with his wife, Laila, and daughter, Jamilah;

**1963** – Sarawak became part of the state of Malaysia; Taib became a minister in Sarawak;

**1968** – Taib began his ministerial career in the Malaysian federal government;

- 1970** – Rahman Ya'kub, Taib's uncle, became chief minister of Sarawak;
- 1980** – First organised protest by indigenous people against deforestation of Sarawak;
- 1981** – Taib became chief minister of Sarawak, while his uncle assumed the office of governor;
- 1983** – Jamilah graduates from Carleton;
- 1983** – Incorporation of the Sakto real estate company in Canada by Onn Mahmud on behalf of his brother Taib;
- 1983-1993** – Sakto companies receive \$28.8 million at a minimum in shareholder loans to keep real estate companies going;
- 1985** – Taib abolished the forestry ministry and assumed control of all logging concessions and plantation licences;
- 1987** – Incorporation of Taib's Sakti real estate company in California;
- 1989** – More than 4,000 indigenous inhabitants joined in new blockades against deforestation;
- 1993** – The Taib family embarked upon its "reverse takeover" of the state construction company Cahya Mata Sarawak (CMS);
- 2001** – The Taib family purchased Malaysia's fourth largest bank, RHB;
- 2011** – BMF was able to calculate the Taib family's stake in 14 large Malaysian companies at US\$1.46 billion;
- 2012** – BMF estimated the Taib family's assets at U.S. \$20 billion;
- 2014** – Taib resigned as chief minister after 33 years in office and was appointed governor of Sarawak;
- 2016** – The Sakto Companies real estate assets in Ontario exceed \$200 million.

## V. Corruption in the Taib Family and Malaysia

34. Corruption in Sarawak, specifically in the timber, construction and banking sectors, under the rule of Taib, has been a matter of public interest for close to three decades and the subject of numerous academic, journalistic and forensic studies. In addition to simply awarding contracts to close family members and companies related to himself, Taib's requirement of kickback payments in transactions involving the sale of government land was uncovered by a well-known NGO, Global Witness, who went undercover posing as an investor. This is discussed below.

### (i) The Timber Industry

35. In the early 1960s, a model of party financing was developing in Malaysia that would become the norm throughout many countries in Southeast Asia. The American economist, David Walter Brown, has estimated that between 1970 and 1999, over US\$25 billion in timber revenues were "unofficially appropriated" by timber concessionaires, heads of states, and their proxies and clients in Sarawak and Sabah, the other Malaysian state in Borneo that is situated next to Sarawak.<sup>5</sup> Of that amount, Sarawak has lost over US\$16 billion. This process played out through politicians handing out logging concessions to either their families or their preferred companies, and, in return, pocketing bribes, which were then used to finance their electoral campaigns, in addition to being used for personal purposes. Due to the lack of sources of funding for political parties in Sarawak and Sabah, those in office, through this scheme, have had a distinct advantage over their opponents. In Sarawak, whoever managed to gain control of the logging concessions was positioned to reap enormous profits and continue winning elections.<sup>6</sup> Brown ascertained that "a fantastic sum of timber rent" had been diverted toward "the personal gain of the chief minister

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<sup>5</sup> See p. 97 of Exhibit 1, *Money Logging*.

<sup>6</sup> See pp. 97-99 of Exhibit 1, *Money Logging*.

[Taib], his family and his close personal friends." <sup>7</sup> Attached hereto and marked as **Exhibit "16"** are pages from Brown's study, and a copy of the entire work will be available for the Court if needed.

36. Another U.S. researcher, Michael L. Ross, who is currently Professor of Political Science at the University of California, Los Angeles, came to similar conclusions when investigating the links between the timber market and the breakdown of state institutions in Sarawak. He found that Taib and his uncle Onn had used timber concessions not only to raise political campaign funds and to buy support at the community level but also "for personal and family enrichment."<sup>8</sup> Attached hereto and marked as **Exhibit "17"** are the relevant pages from Ross' study, and a copy of the entire work will be available for the Court at the hearing if needed.

37. During a power struggle between Taib and his uncle Rahman in March/April 1987, the Malaysian media which was controlled by each of them accused each other of corruption and cronyism in the granting of timber licenses. One day after Rahman made an attempt to oust Taib from power, Taib withdrew 25 concessions that had been controlled by his uncle's followers and subsequently granted them to his own followers. This was detailed in a report titled "*The Battle for Sarawak's Forests*", put together by the World Rainforest Movement and Sahabat Alam Malaysia.

38. During Taib's first six years in office, his family members and political allies received logging concessions for 1.6 million hectares. Additionally, his uncle's supporters were given concessions for 1.25 million hectares. Therefore, logging rights for 2.85 million hectares of tropical forest were in some way controlled by or tied to the two closely related politicians. The

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<sup>7</sup> David Walter Brown, *Why Governments Fail to Capture Economic Rent: The Unofficial Appropriation of Rain Forest Rent by Rulers in Insular South East Asia Between 1970 and 1999*, PhD University of Washington, 2001, p. 154, 181, 205, 313.

<sup>8</sup> Michael L. Ross, *Timber Booms and Institutional Breakdown in South East Asia*, Cambridge: Cambridge University Press, 2001, p. 153.

value of these logging concessions was enormous. It has been estimated that those held by Taib's uncle Rahman's supporters alone were worth US\$9 billion in 1987. Adding that to the value of concessions held by Taib's supporters, the timber reserves' value was in excess of US\$20 billion, all in the hands of a small number of beneficiaries.<sup>9</sup> These grants are summarized in a table created by Malaysian political scientist, Andrew Aeria, as Annex 6.1 to his 2002 London School of Economics Ph.D, entitled *Politics, Business, the State and Development in Sarawak, 1970 to 2000*, which is attached as **Exhibit "18"**. The thesis in its entirety is attached hereto as **Exhibit "19"**.

39. The latest and most comprehensive study on Sarawak politics by political scientist Faisal S. Hazis confirmed the earlier author's research results. Faisal, Senior Lecturer at the University of Malaysia Sarawak, saw the abuse of political power for personal gain as part of a political strategy: "Central to Taib's strategy in bolstering his position as the most powerful strongman-politician in Sarawak is to accumulate personal wealth. Emulating Rahman [his uncle], Taib disbursed timber concessions to his family members and cronies in order to consolidate his power." [...] "Apart from extracting the [state's] rich timber resources, Taib turned to business monopoly to further buttress his position. The privatization of profitable state enterprises from both the [state] and central governments facilitated the setting up of Taib's family-owned business conglomerate in Sarawak known as the CMS Group."<sup>10</sup> The pages from this study are attached hereto and marked as **Exhibit "20"**.

(ii) **The Construction Industry and Privatization of Cahya Mata Sarawak**

40. CMS started its business in 1974 as "Cement Manufacturers Sarawak Sdn Bhd" and originated from a joint venture between the state-owned Sarawak Economic Development

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<sup>9</sup> See Exhibit 19 p. 165, Aeria's doctoral thesis. See also pp. 110-111 of Exhibit 1, *Money Logging*.

<sup>10</sup> Faisal S. Hazis: *Domination and Contestation. Muslim Bumiputera Politics in Sarawak*, Singapore: Institute of Southeast Asian Studies, 2012, p. 191.

Corporation ("SEDC") and the Sabah Economic Development Corporation ("SEDCO") ("CMS"). This information is found in the 2015 report by the Bruno Manser Fund entitled "*Corruption Management Sarawak: Cahya Mata Sarawak (CMS) and Malaysia's Taib Family*". Attached hereto and marked as **Exhibit "21"** is a copy of this report.<sup>11</sup> CMS was the first cement producer of East Malaysia and the first company from Sarawak to be listed on the Kuala Lumpur Stock Exchange, in 1989.<sup>12</sup>

41. Between 1993 and 1996, CMS was privatized and underwent a major transformation. Through a series of "reverse takeovers", the former state company ended up in the hands of Taib's closest family members. The newly-privatized company was renamed Cahya Mata Sarawak (which translates to "The Light of Sarawak's Eyes"). Aeria, introduced earlier, described in his Ph.D. how, through a series of reverse takeovers and political manipulations, the Taib family managed to take over CMS and establish monopolies on cement production, steel production, timber shipping and stock-broking in Sarawak. This reverse takeover scenario was in reality a complicated process whereby CMS bought Taib family companies at inflated prices and paid for by means of a share swap, leaving the Taib family with majority holdings of a state enterprise.

42. According to Aeria, the restructuring of CMS began in 1993 when CMS purchased majority stakes in three highly profitable subsidiaries of state-owned SEDC. These subsidiaries were PPES Quarry, Steel Industries Sarawak and PCMS. Within the next three years, CMS bought two Taib family companies at artificially inflated prices "via cash and share swaps, which resulted in CMS being privatised to the [Taib] family via a reverse take-over."<sup>13</sup> Onn and Jamilah played a key role in this process: In 1996, CMS purchased a Malaysian investment holding company owned

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<sup>11</sup> Exhibit 21, Bruno Manser Fund, *Corruption Management Sarawak: Cahya Mata Sarawak (CMS) and Malaysia's Taib Family* (January 2015), online: [http://www.bmf.ch/upload/berichte/cms\\_report.pdf](http://www.bmf.ch/upload/berichte/cms_report.pdf).

<sup>12</sup> See Exhibit 19, p. 161 of Aeria's doctoral thesis.

<sup>13</sup> See Exhibit 19, p. 169 of Aeria's doctoral thesis.

by Onn and Jamilah called Concordance Holdings at the inflated price of MYR\$445.5 million (CAD\$140 million).<sup>14</sup> Aeria wrote on the Taibs' take-over of CMS: "Apart from cultivating cronyism and corruption and possible further rent-seeking efforts, such privatization deprives the State sector of lucrative sources of income and inter alia end up raising the tax burden of ordinary taxpayers."<sup>15</sup>

43. After the privatization occurred, Taib's brother, Onn, became Chairman of CMS and was superseded seven years later by Taib's younger son, Sulaiman. Since the mid-1990s, CMS has evolved from a single-product manufacturer of cement to Sarawak's largest infrastructure development group, benefiting from numerous public contracts. Today, the CMS group comprises over 40 companies involved in cement production, construction, road maintenance, trading and finance. Since CMS was privatized into the hands of the Taib family, public contracts worth over MYR\$4.9 billion (CAD\$1.54 billion) have been granted to CMS. Eleven members of the Taib family have been involved with CMS as shareholders, directors or members of the management team.<sup>16</sup> As of 2015, Taib's four children, including Jamilah, and previously his late wife Laila Taib Chalecki (who died in 2009), controlled at least 55% of the shares of CMS.<sup>17</sup>

44. Among some of the largest and most prestigious state contracts secured by CMS was the construction of the new Sarawak State Legislative Assembly Building, worth MYR\$295 million (US\$92 million) and the construction of the Borneo Convention and Exhibition Centre, valued at MYR\$250 million (US\$78 million). In 2003, CMS secured a 15-year contract to maintain all state roads, valued at MYR\$86 million/year, and on all federal roads in Sarawak, valued as

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<sup>14</sup> See Exhibit 19, p. 169-174 of Aeria's doctoral thesis.

<sup>15</sup> See Exhibit 19, p. 169 of Aeria's doctoral thesis.

<sup>16</sup> See Exhibit 21, Bruno Manser Fund, *Corruption Management Sarawak*.

<sup>17</sup> See Exhibit 21, Bruno Manser Fund, *Corruption Management Sarawak*.

MYR\$25 million/year.<sup>18</sup> A full list of the state contracts awarded to CMS between 1993 and 2013 can be found as Annex 4 to the BMF report titled "*Corruption Management Sarawak: Cahya Mata Sarawak (CMS) and Malaysia's Taib Family*" (attached previously as Exhibit 21).

**(iii) The Banking Industry and Acquisition of Bank Utama and RHB**

45. Bank Utama was incorporated in 1976 in Sarawak by two close associates of Taib's uncle, Rahman, and started operations in January 1977 after it received a banking licence by the Federal Minister of Finance. Following the 1987 political power struggle between Taib and his uncle, control of Bank Utama passed from the Rahman family to his nephew's family.<sup>19</sup> In 1996, Utama Banking Group ("**UBG**") was formed and Bank Utama became the commercial banking arm of the Taib family's CMS group. In 1997, UBG was listed on the Kuala Lumpur Stock Exchange.

46. In 2002, UBG merged with RHB bank, giving the Taib family the control over Malaysia's third largest bank. In 2007, UBG sold RHB for MYR\$1.14 billion (CAD\$ 360 million) to the Malaysian Employees' Provident Fund ("**EPF**"), a Malaysian government-owned company. Attached hereto as **Exhibit "22"** is a copy of an article titled "*Today is UBG's last trading day*", which describes this transaction.

47. In December 2010, the Taibs sold UBG for the amount of MYR\$465 million (CAD\$147 million) to a Seychelles-controlled entity and Jho Low, an individual who is today known to be a key figure of the Malaysian 1MDB corruption scandal, which I discuss later in my affidavit at paragraph 197.

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<sup>18</sup> See Exhibit 21, p. 8, Bruno Manser Fund, *Corruption Management Sarawak*.

<sup>19</sup> See Exhibit 19, p. 151-156 of Aeria's doctoral thesis.

(iv) **Regent Star and the Kick-Back Scheme**

48. Regent Star Company Ltd. ("**Regent Star**") is a Hong Kong company that was incorporated in 1983 by Shea Kin Kwok ("**Kwok**"), who is its director and shareholder. Regent Star was incorporated on the same day and at the same office address as Richfold Investment Limited ("**Richfold**"). Regent Star's certificate of incorporation and first annual return, which lists Kwok as a director and shareholder, are attached together as **Exhibit "23"**. Richfold's directors and shareholders are Onn and Kwok. Richfold is discussed in more detail further in this affidavit.

49. Regent Star became internationally known in 2007 when the Tokyo tax authorities uncovered the fact that nine Japanese shipping companies had paid over JPY¥1.1 billion (CAD\$13 million) to Regent Star and had deducted these payments from their taxes over a seven-year span. The Tokyo Regional Taxation authority found that these payments were "illegitimate expenses" or kickbacks, rather than "entertainment expenses", as they were so claimed by the shipping companies, that were paid to the Taib family to facilitate tropical hardwood exports from Sarawak to Japan. The Tokyo Regional Taxation Authority ordered the shippers to pay over JPY¥400 million (CAD\$4.8 million) in back taxes.

50. Taib reacted strongly to the Regent Star scandal with a personal statement in the Sarawak State Assembly on May 14, 2007, denying all allegations and threatening to sue Malaysian media that reported on the matter.<sup>20</sup> Subsequently, the Japanese shipping companies successfully appealed against the tax order with Japan's National Tax Tribunal. On July 23, 2008, Judge Junichi Kaneko came to the conclusion that the shippers had been compelled to make the payments to Regent Star under a 1983 brokerage agreement if they didn't want to risk losing access to Sarawak

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<sup>20</sup> Exhibit "24", Statement made to Sarawak State Assembly dated May 14, 2007.

timber and that the payments thus qualified as legitimate tax-deductible expenses.<sup>21</sup> A copy of this decision is attached as **Exhibit "26"** (translation from Japanese by BMF).<sup>22</sup>

51. Of significance, Richfold appears as mortgagee on a 1995 \$20 million mortgage registered on a Sakto property in Ottawa. Jamilah confirmed the indebtedness to Richfold, among others, in the schedule of terms to the mortgage. This is discussed further in paragraph 123 below.

52. Regent Star's only known business activity was to collect payments from Japanese companies that imported tropical hardwood from Sarawak while Taib was Chief Minister. Further, given that Onn was involved in some way with all of the entities involved in the scandal, from the negotiations with the Japanese timber carriers, to the directorship of Richfold and the loan of the funds to Sakto, it appears likely that Regent Star and Richfold were conduits used by the Taib family to conceal the flow of illicitly obtained funds from Japan via Hong Kong to Sakto, and ultimately its real estate holdings, in Canada. Following the issues that arose in 2007, Regent Star was deregistered. The application for deregistration is attached along with the Tokyo tax decision at Exhibit 26.

53. Onn's involvement in this kickback scheme scandal in my view is an issue pertinent to this motion. Onn is a director of "Sakto Development Corporation" (previously defined as Sakto) and Sakto Corporation, a related Sakto company defined later in my affidavit, in Canada and I believe is or was directly involved in the flow of corrupt funds into Canada.

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<sup>21</sup> Exhibit "25", Nikkan Mokuzaishi Shimbun, *Daily Timber News* (August 8, 2008).

<sup>22</sup> July 28, 2008, Tokyo Branch of National Tax Tribunal, Case No. Hei 200012.

## VI. Covert NGO Investigations and WikiLeaks Further Showing Corruption

54. Apart from the BMF, a number of other NGOs also observed and campaigned against the political situation and the obvious institutional corruption in Sarawak. Transparency International, a world renowned NGO with offices in over 100 countries, labelled the Bakun dam, a major hydropower project in Sarawak which flooded indigenous habitats under the Taib government, as a "monument of corruption".<sup>23</sup>

55. In 2013, Global Witness, a prominent international NGO that works to break the links between natural resource exploitation, conflict and corruption, launched a campaign against institutional corruption. The organization published an undercover investigative piece on their website, titled *Inside Malaysia's Shadow State*, consisting of an article and short film. As part of the piece, they released a video of a business meeting whereby a Global Witness individual posed as a potential investor seeking to buy a company that owned thousands of hectares in Sarawak. This video is on the USB key, previously attached as Exhibit 5, and is listed there as "Video 2 – Global Witness". Also attached as **Exhibit "28"** is a transcription of this video of the undercover meeting.<sup>24</sup>

56. The company that was the subject of the meeting was owned by Taib's first cousin, the daughter of Rahman, former Chief Minister of Sarawak, she indicated that she and her sisters (the "**Rahman Sisters**") had the authority to sell five thousand hectares of forest to clear for palm oil. The first cousin indicated that she had seven sisters who all owned multiple similar companies. Global Witness indicated that the sale price would pocket the Rahman Sisters a US\$16 million

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<sup>23</sup> Peter Bosshard, "The environment at risk from monuments of corruption" Transparency International, *Global Corruption Report 2005*, pp. 19-23. The pages from this report are attached as **Exhibit "27"** and a copy of the entire work will be available for the court at the hearing if needed.

<sup>24</sup> Global Witness (March 19, 2013), online: <https://www.globalwitness.org/en/campaigns/forests/inside-malaysias-shadow-state/>.

profit on land given to the Rahman Sisters by Taib in 2010 for "a token sum of just three hundred thousand dollars". Global Witness indicated in the film that leaked Malaysian Land Registry documents suggest that companies linked to Taib's family control owned nearly 200 thousand hectares of land in the area twice the size of Hong Kong with a market value of half a billion U.S. dollars. While negotiating with the Rahman Sisters the undercover Global Witness individual was offered an even larger piece of land totaling 32,000 hectares. The sister in the interview noted that Taib had given them the land. In my view, the Global Witness video shows the following: Tax fraud by evading Sarawak's real property gains tax using double invoicing; the requirement that a bribe be paid to Taib through an "offshore" Singapore bank in exchange for the sale of a company, owned by Taib's cousin; owning Sarawak land which had been granted to the company by Taib; the requirement to use nominees to circumvent property regulations, and the illegal appropriation of state land.

57. BMF's observations on corruption in Sarawak were also corroborated by cables sent by the U.S. embassy in Kuala Lumpur, Malaysia to the State Department in Washington. According to WikiLeaks, the U.S. embassy wrote to the State Department on October 13, 2006: "Taib and his relatives are widely thought to extract a percentage from most major commercial contracts - including those for logging - awarded in the state." "Embassy sources outside the government uniformly characterize [Taib] as highly corrupt."<sup>25</sup> In this regard, they noted the following:

They [the opposition party in Malaysia] questioned the state government's ongoing RM300 million (\$82 million) construction project to build a 27-storey state assembly building. The new structure will remain largely empty during the 349 days when the assembly is not in session. They said Sarawak's Chief Minister Taib Mahmud ensured the construction contract was awarded to Cahaya Mata, a large holding company that is majority-owned by Taib's family.

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<sup>25</sup> Exhibit "29", Public Library of US diplomacy: Confidential Section, Kuala Lumpur (October 13, 2006), online: [https://www.wikileaks.org/plusd/cables/06KUALALUMPUR1935\\_a.html](https://www.wikileaks.org/plusd/cables/06KUALALUMPUR1935_a.html).

Upon being awarded the construction contract for RM300 million, Cahaya Mata hired a subcontracting firm to complete the construction for RM220 million; Cahaya Mata (and the Taib family) pocketed the RM80 million (\$22 million) difference.

58. This correspondence uncovered by Wikileaks also noted comments from the opposition party, Democratic Action Party, politicians and Suhakam, the official name of Malaysia' human rights commission which reinforced what the U.S. embassy's Political Section Chief, Mark D. Clark, has heard from other Sarawak state leaders and national politicians. The document states, "By these accounts: [T]he Sarawak state government remains highly corrupt and firmly in the hands of its chief minister. The \$82 million state assembly building now under construction serves as perhaps the most obvious and extreme example of the self-enrichment of the state's chief minister and other senior government officials."<sup>26</sup>

59. In a recent assessment of transnational organized crime threats in East Asia and the Pacific, the United Nations Office on Drugs and Crime estimated that 50% of the timber produced in Sarawak was harvested illegally and that the timber sector was closely linked to corruption: "Weak forest governance and corruption related to Sarawak's timber industry have been widely criticized." Attached hereto and marked as **Exhibit "30"** (see page 93-95) is a copy of the United Nations Office on Drugs and Crime, "Chapter 8: Illicit Trade In Wood-Based Products From The Region To The World".<sup>27</sup>

## VII. BMF's Investigation

60. In 2009, BMF started a thorough investigation into the widely claimed corruption of Taib. The research was aimed at preparing BMF's "Stop Timber Corruption" campaign, which was

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<sup>26</sup> As referred to in Exhibit 29.

<sup>27</sup> Chapter in: *Transnational Organized Crime in East Asia and the Pacific. A Threat Assessment* (Vienna: UNODC, 2013).

launched in spring 2011. In the context of the campaign preparation, we closely co-operated with British journalist Clare Rewcastle, the editor of *Sarawak Report*, who I discuss below.

61. From 2009 there have been two distinct aspects to our investigation. First, I personally have spoken to a number of individuals, both within and outside Sarawak, to obtain their accounts of corruption, and of the Taib family's modus operandi for concealing and laundering the proceeds of corruption. Second, we have examined and compiled publically-available documents, in several jurisdictions, on company ownership, to both ascertain the nature and extent of the Taib family's international footprint, and to illustrate the manner in which the proceeds of corruption have been transferred and laundered internationally.

62. While we tried to base most of our research on official documents from public sources, we also drew on information from whistleblowers, such as former Taib family associates, business associates and government insiders, who were able to provide us information and documents on the Taib family's corruption, criminal endeavours and their modus operandi. Between June 2010 and March 2014, I personally met whistleblowers who were very close to the Taib family and, accordingly, well-informed on their endeavours. However, with the exception of Boyert, discussed below, I will keep the identities of the whistleblowers confidential. I verily believe such confidentiality is required in order to prevent physical harm or intimidation of such whistleblowers by the Taib network.

63. In June 2010, I personally met Boyert, a former Taib family aide, who had taken the Taib family to court in the United States over unfair dismissal. During this meeting, Boyert explained his 12-year service for the Taib family in the U.S. and provided us with numerous documents, which detailed the Taibs' multi-million-dollar investments in U.S. properties, and how these

investments were concealed from the public. Taib operated in the U.S. primarily via Sakti International Corporation ("Sakti"). In particular, Boyert gave us a document showing that Taib was the secret majority shareholder of Sakti, Boyert's former employer. The management of Sakti was taken over in 2006 by Jamilah's husband, Sean Murray, and through Sakto. Boyert is believed to have committed suicide in September 2010. However, much of the evidence that Boyert provided us with is particularised in court documents relating to his claim against Sakti. Boyert's role at Sakti and the information he disclosed to me are detailed further below in this affidavit in section VIII.

64. The second focus of the BMF's research into Taib family assets focused on investigating and compiling public documents on Taib family assets from official sources, such as company registries and land registries in Malaysia, Singapore, Hong Kong, Australia, Canada, the U.S. and the United Kingdom. As a result of our research, it became clear that Taib's children and a number of his siblings had become extremely rich since 1981, when Taib became Chief Minister. The companies controlled by the Taib family include former state-owned conglomerates, such as CMS (Sarawak's largest private company and one of the largest companies listed on the Kuala Lumpur stock exchange), and monopolies, such as Achi Jaya Holdings, which held a monopolistic control over the export of timber until at least 2007 through its subsidiary Dewan Niaga (see paragraph 31). While Taib ascribed his family's commercial success to his relatives' business acumen, it is widely appreciated in Sarawak, and in the international community, that the source of the family's wealth has been Taib's abuse of power and corruption since he took office in 1981.

65. By February 2011, we had identified 49 companies in 8 countries and offshore finance centres, that Taib's closest family members – namely his siblings, his children and his cousin, Hamed Sepawi – were known or suspected to legally or beneficially own, or otherwise control.

Attached as **Exhibit "31"** is a chart detailing these companies. We published the company names on a "black list of Taib's secret foreign assets" on the campaign page "www.stop-timber-corruption.org".

66. Further systematic research, for which we received assistance from various informers and researchers, both inside and outside Malaysia, enabled us to expand the list of companies in which Taib family members had a beneficial interest. By December 2011 the list consisted of 417 companies in 25 countries and offshore finance centers. BMF has also extracted official company documents for all of these companies. A chart listing these Malaysian companies and showing their relationships to individual Taib family members is attached hereto as **Exhibit "32"**.

67. Malaysia has an official company registry, "the Companies Commission" which provided incorporation and ownership information on all Malaysian companies. This allowed us in 2011 to calculate the net worth of the Taib family stake in 14 large Malaysian companies to be US\$1.46 billion. These companies are: Achi Jaya Holdings Sdn Bhd, Cahya Mata Sarawak Bhd, Custodev Sdn Bhd, KBE (Malaysia) Sdn Bhd, Lembah Rakyat Sdn Bhd, Naim Holdings Bhd, Perkapalan Damai Timur Sdn Bhd, Sarawak Cable Bhd, Sarawak Plantation Bhd, SIG Gases Bhd, Smartag Solutions Bhd, Ta Ann Holdings Bhd, Titanium Construction Bhd.

68. Further, a systematic appraisal of Malaysian company records in 2011 showed us that, in Malaysia alone (and as summarized in the chart attached above as Exhibit 32):

- (a) Taib had a personal interest in 19 companies;
- (b) His late wife Laila (deceased in 2009) had a personal interest in 24 Companies;
- (c) His daughter Jamilah had a personal interest in 90 companies;

- (d) His son Mahmud Abu Bekir Taib ("**Mahmud**") had a personal interest in 84 companies;
- (e) His younger son, Sulaiman Abdul Rahman Taib ("**Sulaiman**"), had a personal interest in 62 companies;
- (f) His youngest daughter, Hanifah Hajar Taib ("**Hanifah**"), had a personal interest in 106 companies; and
- (g) His brother, Onn, had a personal interest in 34 companies.

69. Further, according to the Sarawak constitution, the Chief Minister and the Governor "shall not hold any office of profit and shall not actively engage in any commercial enterprise".<sup>28</sup>

70. In my view, it seems abundantly clear that the large number of Taib associated companies exist for the purpose of laundering the proceeds of Taib's political and economic corruption.

71. In December 2011, BMF sent a letter to the Attorney General of Malaysia, to the Chief Commissioner of the Malaysian Anti-Corruption Commission ("**MACC**") and to the Inspector General of Police, which detailed our findings and requested the Malaysian judiciary to arrest and prosecute Taib and 13 of his family members for having conspired to form a criminal organization that aimed at illegally appropriating public funds from Sarawak by abusing Taib's public office and a number of related offences.<sup>29</sup> The letter was co-signed by fifteen NGOs from six countries, including Greenpeace International. While our letter was sent by registered mail, we never received a reply from the Malaysian authorities.

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<sup>28</sup> Exhibit "33", The Constitution of the State of Sarawak, s. 2(2) and s.6(5), pp.1-2.

<sup>29</sup> Exhibit "34", Letter dated December 13, 2011 to the Attorney General of Malaysia.

72. In June 2011, as a result of our campaign, the MACC announced that it had opened an investigation into Taib. The MACC and their investigation is detailed further in this affidavit (see section XIV(v)).

73. In September 2012, we summarized the findings of our research on the Taib family in the report "The Taib Timber Mafia: Facts and Figures on Politically Exposed Persons (PEPs) from Sarawak, Malaysia." This report is attached as **Exhibit "35"**.

74. I am not aware of any criminal investigation taking place in any country regarding Taib or his family members.

#### **VIII. Whistleblower Documents Obtained from Taib's Right Hand Man**

75. In addition to the numerous factors outlined herein, my belief that corrupt Malaysian funds are being laundered in Canada is based on an interview of Boyert and on reviewing the documents I obtained directly from him. As noted previously, Boyert was a whistleblower who worked closely for Taib in setting up his ventures in the United States (primarily in California) and who worked on transferring wealth to the United States on behalf of and in trust for Taib.

76. Boyert was hired in 1994 by Taib's youngest son, Sulaiman, to be a property manager in California and to generally take care of everything related to Sakti in the United States. Shortly after Boyert was hired, Sulaiman, who was living in San Francisco, moved back to Malaysia with his family. Over the next ten years, Boyert managed Sakti's properties in California and Seattle, organizing mortgages, negotiating with tenants and supervising renovations of various properties.

77. In 2005, Sulaiman had a series of career setbacks that resulted in Taib losing trust in him. In September of that year, Sean Murray took over responsibility for the Taib properties in the U.S.

A copy of a letter sent by Sean Murray to Boyert detailing this change in management was sent on September 14, 2005, and is attached as **Exhibit "36"**. In May 2006, Sulaiman resigned from his role as sole director of Sakti and informed Boyert that the shareholders had appointed Sean Murray as his replacement. A copy of a letter sent from Sulaiman to Boyert on May 27, 2006 and a letter sent from Sean Murray to Boyert on July 6, 2006, confirming Sulaiman's letter is attached together in Exhibit 36. This dismissal was made official in October 2006 when Boyert received a document from Taib's lawyers containing the signatures of all the Sakti shareholders in which they declared their approval of the nomination of Sean Murray as sole director. A copy of this document is attached hereto as **Exhibit "38"** is a copy of these shareholder declarations.

78. As a result of his dismissal from Sakti, Boyert filed a suit with the Superior Court of California in San Francisco against Sakti and the Taib family, alleging breach of contract, fraud and infringement of labour law. Included in his statement was a detailed description of the properties owned by the Taibs in the U.S. and the disguising of the ownership through offshore companies in the Caribbean and Channel Islands.<sup>30</sup>

79. Boyert provided several key documents to BMF that demonstrate Taib's family connections to Sakti. One such document is titled "Action by Unanimous Written Consent of the Board of Directors of Sakti International Corporation", signed April 8, 1988 ("**Unanimous Consent**"). This document was attached previously as Exhibit 8 and shows the issuing of one thousand Sakti shares between five people: Taib's two brothers, Onn and Arip, and three of Taib's children: Mahmud, Jamilah and Sulaiman. Although Taib's name did not appear on the share register, in the Unanimous Consent, it was noted that half of the total shares were held by the

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<sup>30</sup> **Exhibit "37"**, *Ross J Boyert v Sakti International Corporation Inc.*, Case Number CGC-07-460255, San Francisco Superior Courts, February 6, 2007.

various family members "in trust for Abdul Taib Mahumud". Specifically, the document states (the bold emphasis is added):

<u>Name</u>	<u>Number of Shares</u>	<u>Consideration</u>
Mahmud Taib	200 (100 of which to be held in trust for Abdul Taib Mahmud)	\$200
Onn Mahmud	400 (200 of which to be held in trust for Abdul Taib Mahmud)	\$400
Jamilah Taib	100	\$100
Arip Mahmud	200 (100 of which to be held in trust for Abdul Taib Mahmud)	\$200
Abdul Rahman Taib	100 (100 of which to be held in trust for Abdul Taib Mahmud)	\$100

I obtained a copy of this document and others proving Taib's ownership of Sakti during a meeting with Boyert and his wife on June 23, 2010 in Los Angeles.

80. In addition to confirming that Taib has been laundering corrupt money from Malaysia to his children, Boyert confirmed that it is well known among Taib family members that the origin of the name Sakto is "Sarawak Taib Ottawa" and that Sakti is "Sarawak Taib International".

81. Boyert also gave me a copy of a letter he sent directly to Taib in November 2006, after he was let go from Sakti. This letter was Boyert's attempt to settle the ongoing dispute between Murray, Sakti and Boyert. It is telling that Boyert addressed such a lengthy letter directly to Taib which detailed the status of Sakti assets and also its difficulties, as it implicitly demonstrates that Taib was the controlling mind behind Sakti. A copy of this letter is attached as **Exhibit "39"**.

82. Also in attendance when I met with Boyert was Clare Rewcastle Brown. Since 2010 Ms. Rewcastle has spent a considerable amount of time investigating corruption in Sarawak and

gathering evidence in that regard. Ms. Rewcastle and her efforts regarding Sarawak are detailed in the next section.

83. Boyert informed me and Ms. Rewcastle that since his filing of the court documents, he and his wife had been constantly stalked, followed and intimidated. He also stated that their phones and computers had been hacked. This is described in more detail in my book, *Money Logging* and also in the Canadian "Global News" show "16x9", which is discussed below in section XIV(iv) (Media Coverage in Canada). Boyert died in what is believed to be a suicide in September 2010.

#### **IX. Sarawak Report**

84. Ms. Rewcastle is an investigative journalist in London with a masters at the London School of Economics. She was born in the Malaysian Province of Sarawak to British parents. She moved to the U.K. when she was 8. She obtained a BA in History from Kings College, London University and a Masters in International Relations from the London School of Economics. In 1983 she joined the BBC World Service, moving to BBC News & Current Affairs TV where she worked as a Desk Producer until 1987. She then moved to SKY TV where she worked as an investigative reporter until joining Carlton/ITV London as a News Features Reporter in 1992. She also worked as a Political Correspondent and Consumer Affairs Correspondent for London Tonight until 2001. For some years she worked in a freelance capacity, specialising in media training and corporate films.

85. In 2010 Ms. Rewcastle founded Sarawak Report, an online news resource, which seeks to raise awareness of political corruption and deforestation in Sarawak. She also founded Radio Free Sarawak, an independent native language radio station that brings alternative news for 2 hours a day via shortwave to remote indigenous communities in Sarawak.

86. Ms. Rewcastle's reporting on Sarawak has won international recognition. In 2013, Radio Free Sarawak was awarded the International Press Institute's Free Media Pioneer Award. In July 2013, the New York Times described Ms. Rewcastle as "one of the most effective voices calling attention to deforestation in Malaysia". In May 2014, Radio Free Sarawak won the University of Queensland's Communication for Social Change Award.

87. The Sarawak Report website acts as an archive of all of the evidence Ms. Rewcastle has gathered since 2010. Such information has been shared with BMF or was in collaboration with BMF. An example of a recent Sarawak Report article regarding Taib's wealth in Ottawa and BMF's recent attempts in Canada to bring attention to this matter is attached hereto as **Exhibit "40"**.

88. Ms. Rewcastle has spoken to witnesses to, and victims of, corruption, regime insiders and whistleblowers, opposition politicians and lawyers in Sarawak. Ms. Rewcastle has confirmed to me and I verily believe, since it is entirely consistent with my own investigation, that several recurring themes have emerged. These are:

- (a) Corruption – including bribery, nepotism, fraud and extortion in the awarding of public contracts and offices;
- (b) Forced appropriations of land, and the sale of that land, for the personal benefit of Taib family members and associates;
- (c) Appropriation of state assets and resources, through a series of Taib-owned companies, with monopolies over concessions and public contracts;

- (d) Serious human rights violations, including: abuse of procedure in order to deny others freedom of speech and expression (denial of licences to form parties, societies or to print and broadcast); abuse of 'emergency powers' to persecute and imprison critics and opponents; subversion of the judiciary and racial discrimination against the majority ethnic and religious group in the state.
- (e) It also emerged that there is a frightening and unpleasant under-belly to all this abuse of power, which is the "gangster-ism" that has become a source of great fear throughout the state. People who oppose the regime tend not necessarily always to be arrested, but there is a pervasive awareness that they are the most likely in society to fall prey to the growing menace of thugs and gangsters, who have been executing the will of the logging and plantation companies throughout the state - and to encounter cruel and untimely ends, which will be inadequately investigated by the police.

89. Ms. Rewcastle is also involved in the reporting of this matter to the London Police, which is discussed in the following section.

#### **X. Canada and Sakto Group of Companies**

90. Since the Taib family started doing business in Canada in 1983 through Jamilah and Onn, various other Taib family members have been involved in at least 13 Canadian corporations, most of which operated or are operating in the real estate sector. A list of these Canadian corporations is in the table below (previously defined as the "**Sakto Group**") along with the directors of each corporation. The corporate profiles of these companies are attached hereto and marked together as **Exhibit "41"** with slip-sheet dividers separating each company.

Table 2: Canadian Corporations with Links to the Taib Family

Date of Incorporation	Country	Corporation Name	Corporation Number	Director(s)	Remarks	Exhibit 41 Tab letter
26-08-1983	Canada (Ottawa)	Glowell Development Corporation	1545868	T. Chou (1983-) Onn Bin Mahmud (1983-) P. Chou (1983-)	Dissolved 10-04-1993	a
29-08-1983	Canada (Ottawa)	Sakto Development Corporation Pte. Ltd. =Sakto Development Corporation from 17-05-1988	Ont CN: 569035 Can CN: 155207-4	Onn Bin Mahmud (1983-2004) Mahmud Taib (1983-?) Jamilah H. Taib (1983- present) Sean P. Murray (1992?- present) Margareth Anne Abdullah (?-1995) Laird J. Rasmussen (before 1995-present) Tanya Myers/Merkley/Caleta (1995-present)	Active Incorporated by David Chou	b
27-2-1984	Canada (Ottawa)	Achi-Pura Trading Limited	165029-7	Onn Bin Mahmud D. Chou	Dissolved on 29-05-1986	c
02-03-1984	Canada (Ottawa)	McHawtin Enterprises Corporation	165116-1	Onn Bin Mahmud D. Chou	Dissolved on 05-03-1996 (Still active in HK)	d
16-02-1984	Canada (Ottawa)	Noresdel Corporation	164864-1	Onn Bin Mahmud	Dissolved on 05-02-1996	e
08-12-1987	Canada (Ottawa)	Sakto Property Management Corporation = Orchid Corporation (from 21-01-1992) = City Gate International Corporation (from 13-05-1994)	746604 From 01-01-2008 : 1756169 (amalgamated)	Grant K. Dunn (1987) Sean Patrick Murray (1987- (P)) Jamilah Taib (1987- (S) Ci)	Amalgamated into City Gate International Corporation as per 01-01-2008	f
16-09-1993	Canada (Ottawa)	1041229 Ontario Inc.	Ont CN: 1041229	Sean Murray (Secretary) Laird J. Rasmussen Jamilah H. Taib (President)	Active	g
25-08-1997	Canada (Ottawa)	Sakto Corporation	340439-1 BN: 881961569 RC0001	Onn Bin Mahmud (1997-2004) Jamilah H. Taib (1997-) Sean Murray (1997-) Tany Myers/Merkley/Caleta	Active	h

Date of Incorporation	Country	Corporation Name	Corporation Number	Director(s)	Remarks	Exhibit 41 Tab letter
				(1997-present) Laird J. Rasmussen (1997-present)		
23-09-1997	Canada (Ottawa)	Sakto Investment Corporation = City Gate International corporation from 01-01-2008 (amalgamated)	3413772 BN= 887083426 RC0001	Jamilah H. Taib (1997-2007)	Amalgamated	i
10-11-1997	Canada (Ottawa)	1252339 Ontario Inc. = 1575 Carling Limited (from 27-02-2001)	1252339	Sean Murray (Secretary) Laird J. Rasmussen Jamilah H. Taib (President)	Active	j
29-05-2000	Canada (Ottawa)	Sakto Properties Limited Partnership	100612555	Sean Murray (2000-2008)	Dissolved 31-12-1008	k
04-04-2003	Canada (Ottawa)	Aberdeen Project Facilitators Inc.	1550966	Thady B. Murray (2003-present) S Terence G. Walker (2003-present) P	Active	l
20-06-2003	Canada (Ottawa)	Tower One Holding Corporation	2028542	Sean Murray (2003-present) P Jamilah Taib (2003-present) S	Active	m
20-06-2003	Canada (Ottawa)	Tower Two Holding Corporation	2028543	Sean Murray (2003-present) P Jamilah Taib (2003-present) S	Active	n
20.06.03	Canada (Ottawa)	Adelaide Ottawa Corporation	2028546	Sean Murray(2003-present) P Jamilah Taib (2003-present) S	Active	o
26-04-2006	Canada (Ottawa)	Sakto Management Services Corporation, amalgamated into 873443-7 Hawkhurst Island Holding Ltd (on 01-01-2014)	655948-4 BN=85820 4126RC00 01	Jamilah H. Taib (2006-present) Sean Murray (2006-present)	Amalgamated	p
14-07-2006	Canada (Ottawa)	Preston Building	2108122	Sean Murray (2006-present) P	Active	q

Date of Incorporation	Country	Corporation Name	Corporation Number	Director(s)	Remarks	Exhibit 41 Tab letter
		Holding Corporation		Jamilah Taib Murray (2006- present) S		
01-01-2008	Canada (Ottawa)	City Gate International Corporation (amalgamated from Sakto Investment Corporation and City Gate International Corporation) name change to Hawkhurst Island Holding Ltd (from 30-4-2013), then amalgamated into 873443-7 Hawkhurst Island Holding Ltd on 01-01-2014	446027-8	Jamilah Taib Murray Sean Murray	Amalgamated	r
01-10-2012	Canada (Ottawa)	Urban Sky Investments Ltd	832164-7	Sean Murray	Active	s
07-12-2012	Canada (Ottawa)	Centron Property Services Inc. = Waterford Property Group Ltd (from 25-03-2013)	2352843	Sean Murray	Active	t
26-03-2013	Canada (Ottawa)	Urban Sky Europe Ltd	847170-3	Sean Murray	Active	u
01-01-2014	Canada (Ottawa)	Hawkhurst Island Holding Ltd	873443-7	Sean Murray Jamilah Taib Murray	Active	v
14-12-2016	Canada (Ottawa)	Prime Median Holdings Inc.	1002180-6	Jamilah Taib Murray	Active	w

(i) **Sakto Development Corporation**

91. Sakto was incorporated on August 29, 1983. Sakto is the Taib family's principal business in Canada, around which the number of other companies that are part of the Sakto Group, as defined, have been formed. Sakto's founding directors are Onn, Jamilah, who was 23 years old at the time, and her younger brother, Mahmud, who was 20 years old at the time.<sup>31</sup> Currently, Sakto's directors are Jamilah, Sean Murray and two individuals from outside the family: Ottawa lawyer Laird J. Rasmussen and Tanya Caleta. Google searches of these respective names has identified Mr. Laird Rasmussen as a lawyer now retired from Borden Ladner Gervais who won the OBA's 2006 Award for Excellence in Real Estate. Attached and marked as **Exhibit "42"** is an internet page regarding Laird J. Rasmussen. A google search of Tanya Caleta did not have meaningful results other than confirmation of an involvement in Sakto.

92. I was able to locate Sakto financial statements for the years 1984 to 1993. These are analyzed later in this affidavit whereas this section provides an overview of Sakto and details some of the company's key purchases.

93. When the *Ottawa Citizen* newspaper ran a story featuring Jamilah in 1989, the author, Kathrin May stated: "The group of 10 or 12 investors who control Sakto – Taib-Murray doesn't say how many – are looking for a secure, long-term investment for their money. And someone they can trust to handle it for them." However, Jamilah did not specify who the investors were. May went on to describe the investors as: "from the Pacific Rim (Australia, Hong Kong and Malaysia) and rarely come to Ottawa, except the chairman who flies in from Malaysia twice a year for meetings." According to the article, Jamilah described the investors' motivation behind choosing

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<sup>31</sup> Attached after the first divider in Exhibit 41 are the Ontario corporate filings from 1983 and the current Federal corporate profile report.

Ottawa to invest their money: "They want a very careful investment, a sure thing, which is what the Ottawa market is like. The Toronto market moves too fast, too risky for them when they're so far away." A copy of this 1989 article is attached as **Exhibit "43"**.

94. It was not clear until 2014 who exactly were the investors in Sakto. In 2014, Sakto President Sean Murray wrote a "strictly confidential" letter to Paul Clarke, a staff reporter with the *Toronto Star* newspaper, stating the following: "To address the issue of ownership and involvement in the company, it is helpful to step back to 1983 when Sakto Development Corporation was founded with a purpose to acquire, develop and operate real estate. The shareholders were Jamilah Taib-Murray, and three other family members, including her Uncle Onn Bin Mahmud." I obtained a copy of this letter from Paul Clarke, and a copy of this letter is attached as **Exhibit "44"**. Sean Murray thus acknowledged in this letter that, since Sakto's beginnings, it had been controlled by the closest relatives of a Malaysian top official. Sean Murray removed any doubt about how Jamilah used the money given to her from Taib in his letter to Paul Clarke. Sean Murray stated in the letter that it was "correct to say that Jamilah Taib-Murray's father gave her a generous gift of money after she came to Canada early in the 1980s and was used for her own purposes, including the purchase of shares in Sakto Development Corporation." However, in the same letter, on behalf of Sakto, Sean Murray denied any connection to Taib himself, stating: "The shareholders did not include [Jamilah's] father, Abdul Taib Mahmud. He has never been an officer, director or shareholder in either company."

95. In 2011, Taib acknowledged in a video interview that he provided Jamilah with an undisclosed amount of money to start her business in Ottawa, claiming the money was from a gratuity he had received for resigning from the federal government in 1981. Taib stated in the interview: "I gave money to my daughter because I was resigning from Federal Government. I got

a gratuity and put that [of care] [-unintelligible-] for her, I gave some money to her to start a new business, it thrived [...].It is a property development." A copy of this 2011 video interview is on the USB, previously attached as Exhibit 5, and it is labelled Video 3 – Taib Video.

(a) **Sakto's Major Real Estate Purchases**

96. Immediately after its incorporation, Sakto got involved in major real estate transactions in Ottawa. This included a \$2.75 million purchase of multiple rental properties located on Walkley Road, Ottawa (the "**Walkley Road Properties**") and a \$4.65 million purchase of properties located on Beaverbrook Road, Varley Drive and Leacock Drive in Kanata (the "**Beaverbrook Properties**"), both in September 1983. While these properties were bought by Onn personally, they were subsequently transferred four months later to Sakto in January 1984 for the nominal amount of \$1. At that time, Onn was 35 years old and living in Malaysia. A copy of the transfer of the Beaverbrook Properties is attached as **Exhibit "45"** and a copy of the transfer of the Walkley Road Properties is attached as **Exhibit "46"**. In the executed transfer documents Onn affirms that he was acting as a trustee for Sakto.

97. In November 1986, several of the Beaverbrook properties were sold by Sakto for \$5.4 million (mortgaged for \$2.1 million) to 681222 Ontario Inc., a company registered to Peter Chou, one of the directors of Glowell Development Corporation.<sup>32</sup> As noted in Table 2, the directors of Glowell Development Corporation were Peter Chou, Titus Chou and Onn. That same day the properties were sold by 681222 Ontario Inc. to Beaverbrook-Valley Properties for \$5.9 million

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<sup>32</sup> Attached as **Exhibit "47"** is a copy of the Transfer N363615 dated November 7, 1986 which reflects the \$2.1 million mortgage.

(with a mortgage of \$3.0 million).<sup>33</sup> It is unclear what the purpose was of the immediate resale of the property at a difference of \$500,000 more.

98. Between 1993 and 1998, several loans were taken up against the Walkley Road Properties, as evidenced from Table 3 below. Attached as the Exhibits listed are the mortgage documents.

**Table 3: Mortgages on Walkley Road Properties**

Date (DMY)	Chargor	Chargee	Amount Mortgage CAD	Location	Source Instrument Number	Exhibit #
19/07/1985	Sakto Dev. Corp. Pte.	Guaranty Trust	900,000 (subsequently deleted)	Provost Street, Thorndale Street, Walkley Road <sup>34</sup>	Mortgage LT417573	49
08/10/1987	Sakto Development Corp. Pte. Ltd.	Guaranty Trust Co. of Canada	900,000 (subsequently deleted)	Provost Street, Thorndale Street, Walkley Road	Agreement LT529939	50
01/02/1988	Sakto Development Corp. Pte. Ltd.	Guaranty Trust Co. of Canada	868,339 (amending prior charge)	Provost Street, Thorndale Street, Walkley Road	Document General: LT546065	51
14/09/1994	Sakto Dev. Corp.	Royal Bank	5,000,000	Walkley Road properties and others	N879647 Loan	52

99. In 1998, Sakto received approval by the City of Ottawa to sell their Walkley Road Properties rental units.<sup>35</sup> It is unknown how much profit was generated from the sale.

100. The largest and most important property in Sakto's portfolio is the Preston Square property ("**Preston Square**"). The land for the subsequent construction of the various buildings in Preston Square was purchased between 1984 and 1998. Preston Square is a mixed-use commercial and residential development in Ottawa, Ontario, located near the city centre. It offers office space as

<sup>33</sup> Attached as Exhibit "48" is a copy of the Transfer N363616 dated November 7, 1986 which also reflects the \$3.0 million mortgage.

<sup>34</sup> 801-873 Provost Street, 816-829 Thorndale Street, 870-944 Walkley Road.

<sup>35</sup> 801-873 Provost Street, 816-829 Thorndale Street, 870-944 Walkley Road consists of 83 ground oriented rental row house units.

well as fully furnished residential rental suites. It consists of four separate buildings, including The Adelaide (17 Aberdeen St.), Tower I (333 Preston), Tower II (343 Preston) and Tower III (347 Preston). Preston Square was acquired by the Sacto Group in a series of transactions commencing in 1984:

- (a) 307-351 Preston Street: Sacto acquired from Mahoney Holdings Limited, on or about August 15, 1984. Purchase price of \$3,000,000, paid \$1,200,000 in cash and \$1,800,000 as a vendor mortgage;<sup>36</sup>
- (b) 353 Preston Street: 1252339 Ontario Inc. (renamed 1575 Carling Limited on February 27, 2001, directors Sean Murray and Jamilah Taib) acquired this property on or about June 5, 1998 with a purchase price of \$724,000, paid in cash to the vendor. One week later, the property was transferred to Sacto Corporation for \$690,909 (see Exhibit "55\_3");
- (c) 25-35 Aberdeen Street: Jamilah Taib (in trust) acquired this property on or about May 30, 1986 with a purchase price of \$925,000 with \$205,000 paid in cash and \$720,000 in a vendor mortgage;<sup>37</sup> and
- (d) 410 Rochester Street & 15 Aberdeen Street: Sacto acquired this property from Gilles Andre Roger Joseph and Lorraine Carol Ste-Marie, on or about December 21, 1989. Purchase price of \$1,290,000, with \$230,000 paid in cash and \$1,060,000 in a vendor mortgage.<sup>38</sup>

<sup>36</sup> Exhibit "53", Preston Street Documents: Transfer (Instrument NS254413) and Exhibit 55, mortgage (Instrument NS254414); Transfer (Instrument LT1125979) and transfer (Instrument LT1203600).

<sup>37</sup> Exhibit 53 "54", Transfer (Instrument N338643) and mortgage (Instrument N338644).

<sup>38</sup> Exhibit "54" "5", Transfer (Instrument N517627) and mortgage (Instrument N517628).

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well as fully furnished residential rental suites. It consists of four separate buildings, including The Adelaide (17 Aberdeen St.), Tower I (333 Preston), Tower II (343 Preston) and Tower III (347 Preston). Preston Square was acquired by the Sakto Group in a series of transactions commencing in 1984:

- (a) 307-351 Preston Street: Sakto acquired from Mahoney Holdings Limited, on or about August 15, 1984. Purchase price of \$3,000,000, paid \$1,200,000 in cash and \$1,800,000 as a vendor mortgage;<sup>36</sup>
- (b) 353 Preston Street: 1252339 Ontario Inc. (renamed 1575 Carling Limited on February 27, 2001, directors Sean Murray and Jamilah Taib) acquired this property on or about June 5, 1998 with a purchase price of \$724,000, paid in cash to the vendor. One week later, the property was transferred to Sakto Corporation for \$690,909 (see Exhibit 53);
- (c) 25-35 Aberdeen Street: Jamilah Taib (in trust) acquired this property on or about May 30, 1986 with a purchase price of \$925,000 with \$205,000 paid in cash and \$720,000 in a vendor mortgage;<sup>37</sup> and
- (d) 410 Rochester Street & 15 Aberdeen Street: Sakto acquired this property from Gilles Andre Roger Joseph and Lorraine Carol Ste-Marie, on or about December 21, 1989. Purchase price of \$1,290,000, with \$230,000 paid in cash and \$1,060,000 in a vendor mortgage.<sup>38</sup>

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<sup>36</sup> Exhibit "53", Preston Street Documents: Transfer (Instrument NS254413) and mortgage (Instrument NS254414); Transfer (Instrument LT1125979) and transfer (Instrument LT1203600).

<sup>37</sup> Exhibit "54", Transfer (Instrument N338643) and mortgage (Instrument N338644).

<sup>38</sup> Exhibit "55", Transfer (Instrument N517627) and mortgage (Instrument N517628).

(b) **BMF's Investigation into the Sakto Group's Financials**

101. Copies of Sakto's financial reports for its first ten years of operation were located by BMF at the University of Western Ontario Libraries in London, Ontario, in its microfiche collection and are publicly available. I discovered this by way of an internet search and subsequently contacted the University of Western library who sent me copies of the financial statements. From 1984 to 1986, the accountants of Sakto was Spicer MacGillivray Chartered Accountants. From 1987 until 1993, the accountants was Touche Ross, which merged with Deloitte Haskins in 1989, becoming Deloitte & Touche. The financial statements for the years 1984 to 1989 appear to be "Notice to Reader" (i.e. unaudited). From 1989 to 1993 Deloitte & Touche indicated that the financial statements are audited. Attached hereto as **Exhibit "56"** are the financial statements from 1984 to 1987 and attached hereto as **Exhibit "57"** are the financial statements from 1988 to 1993.

102. No financial statements were located for the years after 1993. Therefore, the analysis of the Sakto Group's financials is structured in two distinctive periods: September 1, 1983 to August 31, 1993, being the first ten years following the commencement of business; and the years following. In addition to the financial statements, it was possible to obtain mortgage and land transaction information for certain Sakto Group companies from publicly accessible land registry files, mainly from the Ottawa-Carleton land registry office. For the period following 1993 it is these sources, in addition to a number of miscellaneous public statements by company officials or associated businesses, that has been relied on by BMF.

103. Sakto's first annual report as of August 31, 1984 listed fixed assets of \$7.98 million, including buildings worth \$7.065 million, furniture and fixtures worth \$247,000 and \$555,000 in

land.<sup>39</sup> Sakto's financial statements show that, in its first three years of operations, the company purchased real estate for \$25 million - after the initial 1984 purchases (totalling \$7.9 million<sup>40</sup>), another \$3.1 million were spent in 1985<sup>41</sup> and \$14 million in 1986.<sup>42</sup> While the 1985 purchases appear to have been limited to the Preston Square land from Mahoney Holdings Ltd., most of the 1986 investments went into the \$13.8 million purchase of La Renaissance at 40 Landry Street, Ottawa, a rental building with 220 residential units that was converted to a condominium. After the sale of the Beaverbrook property in 1987 for \$4.18 million, Sakto focused from 1988 to 1990 on the development of Tower I at Preston Square, which cost another \$25.7 million.<sup>43</sup> In summary, between 1983 and 1993, Sakto bought and developed properties for \$50.8 million, while it sold properties for \$4.8 million.

104. From 1983 to 1993, there was only one year where Sakto made a profit. In 1987, when the sale of the Beaverbrook property generated an extraordinary gain of \$1.23 million, Sakto was able to compensate its operational loss (\$1.18 million) and realize a net profit of \$53,409.<sup>44</sup> In the first ten years of operation, Sakto accumulated a deficit of \$10.44 million.<sup>45</sup> The biggest net losses occurred in 1991 (\$2.54 million),<sup>46</sup> 1992 (\$2.07 million)<sup>47</sup> and 1993 (\$1.71 million).<sup>48</sup>

105. A large portion of Sakto's income during this period came from rental income, comprising 91.5% of the total revenue over the ten-year period. Revenues were largest in 1993

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<sup>39</sup> Exhibit 56, 1984 Sakto financials, p. 3.

<sup>40</sup> Exhibit 56, 1984 Sakto financials, p. 5.

<sup>41</sup> Exhibit 56, 1985 Sakto financials, p. 5.

<sup>42</sup> Exhibit 56, 1986 Sakto financials, p. 5.

<sup>43</sup> Exhibit 57, 1990 Sakto financials, p. 6, under "Properties under development".

<sup>44</sup> Exhibit 56, 1987 Sakto financials, p. 4.

<sup>45</sup> Exhibit 57, 1993 Sakto financials, p. 3.

<sup>46</sup> Exhibit 57, 1991 Sakto financials, p. 3.

<sup>47</sup> Exhibit 57, 1992 Sakto financials, p. 3.

<sup>48</sup> Exhibit 57, 1993 Sakto financials, p. 3.

(\$5.41 million),<sup>49</sup> 1992 (\$4.81 million)<sup>50</sup> and 1991 (\$4.62 million)<sup>51</sup> when rental income from the newly completed Tower I of the Preston Square property started to flow.

106. Sakto continued throughout this time to incur losses, as expenses grew quickly, due to higher interests on loans, depreciation and taxes. Over the first ten years of Sakto's business, Sakto spent \$43.9 million, which included 29.0% interest on loans (\$12.7 million), 22.3% on depreciation (\$9.8 million) and 17.8% on taxes (\$7.8 million). The remainder was accounted for by utilities (8.7%), salaries and wages (6.5%), repairs and maintenance (5.8%), management and professional fees 4.5%) and other expenses (5.4%).

107. Despite the ongoing operational losses, Sakto's assets (and liabilities) grew strongly in its first six years of operation, from \$7.98 million in 1984<sup>52</sup> to over \$40 million in 1990.<sup>53</sup> The explanation for this is a significant influx of capital, mainly from Sakto's shareholders. The chart below details Sakto's liabilities as of August 31, 1993.

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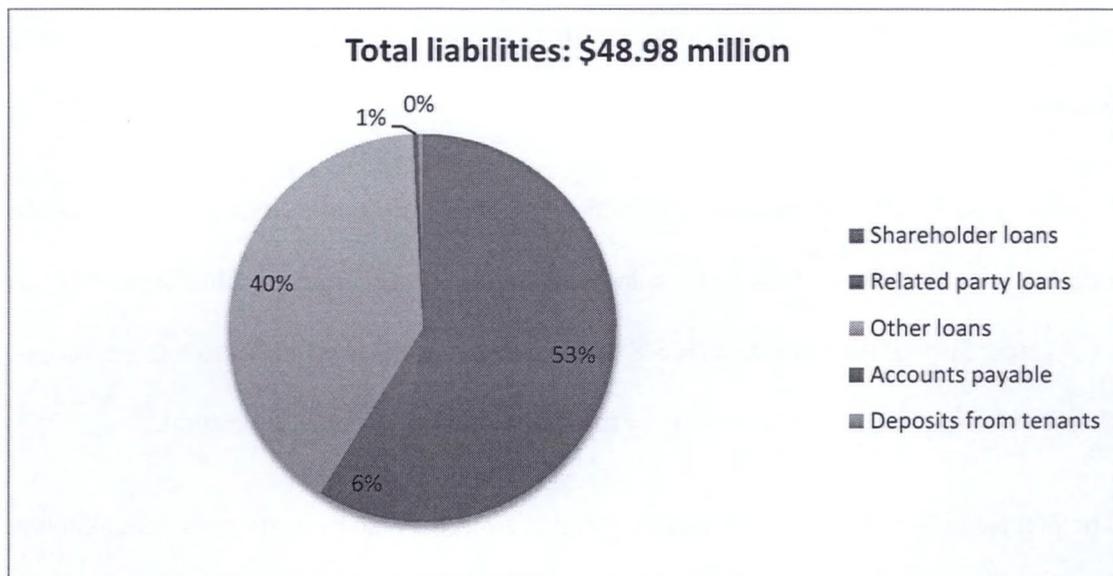
<sup>49</sup> Exhibit 57, 1993 Sakto financials, p. 3.

<sup>50</sup> Exhibit 57, 1992 Sakto financials, p. 3.

<sup>51</sup> Exhibit 57, 1991 Sakto financials, p. 3.

<sup>52</sup> Exhibit 56, 1984 Sakto financials, p. 3.

<sup>53</sup> Exhibit 57, 1990 Sakto financials, p. 3.



Source: Exhibit 4; BMF Safe Haven Report, p. 59. Information obtained from SDC financial statements, 1984-1993.

**(1) Reliance on Shareholder Loans: 1984-1993**

108. The basis upon which Saktto operated from 1984 - 1993 was by way of a significant influx of capital from its shareholders, which as Sean Murray admitted in his letter to the *Toronto Star*, was Jamilah and three other family members, including Onn (see paragraph 94 above). This capital influx allowed Saktto to prosper and grow despite its operational losses.

109. The shareholder loans were granted permanently and interest-free, as the financial statement from 1993 notes: "The shareholders have granted interest-free loans to the Corporation. Repayment terms have not been established for these loans."<sup>54</sup>

110. Over the ten-year period, Saktto shareholders invested at least \$29.8 million in Saktto. None of the loans were paid back during this period and the current status of the loans is unknown. The

<sup>54</sup> Exhibit 64, 1993 Saktto financials, p. 7.

largest shareholder loans were granted in 1988 (\$8.98 million),<sup>55</sup> 1984 (\$4.45 million)<sup>56</sup> and 1990 (\$3.95 million).<sup>57</sup>

111. As of August 31, 1993, the last date for which financial information is available, Sakto had outstanding loans of \$48.59 and \$0.4 million in other liabilities (accounts payable/deposits from tenants).<sup>58</sup> At least 59% of the liabilities (\$28.8 million) were loans owed to Sakto's shareholders, and another \$1.01 million had been invested by the Taibs in the form of share capital.<sup>59</sup>

112. The precise origin of this steady influx of funds from the shareholders remains unknown. However, Sean Murray has admitted that the shareholders are Jamilah's family members, including Onn and Jamilah, admitted to the Malaysian nationality and residence (apart from Jamilah) of the shareholders. It therefore appears likely that most of these funds would have originated from Malaysia. As to the only Canadian resident among the shareholders, Jamilah, it is unreasonable to believe and there is nothing in my investigation to suggest that she could have legally earned the funds necessary to regularly provide Sakto with millions of dollars in loans.

### (2) *Third Party Loans: 1984-1993*

113. An analysis of Sakto's loan structure shows that, apart from the direct shareholder loans, Sakto also obtained loans from third parties. Fifteen of these loans were mortgage loans, while the remaining two, both dating from 1990, were due to a related party, without interest or security, payable to a company related to one of the shareholders in Sakto.<sup>60</sup>

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<sup>55</sup> Exhibit 64, 1988 Sakto financials, p. 5.

<sup>56</sup> Exhibit 63, 1984 Sakto financials, p. 5.

<sup>57</sup> Exhibit 64, 1990 Sakto financials, p. 5.

<sup>58</sup> Exhibit 64, 1993 Sakto financials, p. 2.

<sup>59</sup> Exhibit 64, 1993 Sakto financials, p. 2.

<sup>60</sup> Exhibit 63, 1990 Sakto financials, p. 8.

114. While Sakto's financial statements do not provide information on the lenders, some inferences can be made from public records available at the land registry. According to the identified land transfers and debentures, Sakto took on mortgage loans both from vendors of properties (vendor mortgages) and from commercial lenders. However, it is not easy to match loans referenced in land registry records with the loans listed in the financial statements, as the dates and figures in the land registry documents differ from those in the financial statements. Further, some properties were purchased "in trust" for Sakto by third parties, increasing the difficulty of tracing the origin of these loans. Table 4 below lists all the loans detailed in the financial statements during this time period and Table 5 lists the mortgages registered by Sakto Group companies. The mortgages are attached as Exhibits to my affidavit and are referenced in the table accordingly. The mortgages in Table 5 have been matched with loans in Table 4 where possible.

**Table 4: Sakto loans from 1984-1993, according to financial statements**

#	First Mentioned	Initial Amount \$	Initial Interest Rate	Type	Security	Discharge
1	1984	1,242,551	18.25%	Mortgage	N/A	1986
2	1984	945,718	7.25%	Mortgage	N/A	after 1993
3	1984	483,883	8.50%	Mortgage	N/A	1986
4	1984	291,747	17%	Mortgage	N/A	1986
5	1984	229,762	8%	Mortgage	N/A	1986
6	1984	175,000	12.25%	Mortgage	N/A	1990
7	1985	1,732,331	8%	Mortgage	N/A	1988
8	1986	1,198,295	10%	Mortgage	N/A	1988
9	1986	8,174,083	12.75%	Mortgage	N/A	after 1993
10	1986	887,749	10.25%	Mortgage	N/A	1990
11	1986	1,635,000	0%	Mortgage	N/A	after 1993
12	1987	720,000	10%	Mortgage	N/A	1987
13	1989	7,147,222	Prime + .25%	Mortgage	Preston Square	after 1993
14	1990	1,988,578	14.5%	Mortgage	Preston Square	after 1993
15	1990	1,500,990	0%	Related party loan	None	after 1993
16	1990	583,071	0%	Related party loan	None	1990
17	1991	799,937	12%	Mortgage	N/A	after 1993

Source: Exhibit 56; Sakto Financial Statements 1984-1987 and Exhibit 57; Sakto Financial Statements 1987-1993/

**Table 5: Sakto Group mortgages from 1984-1993, according to land registry fillings**

Date	Amount \$	Interest	Lender	Type	Security	Source	Corresponding row in table 4	Exhibit #
02/09/1983	1,791,639	N/A	Campeau Corp.	Vendor mortgage	Beaverbrook	NS208412	#1	58
06/09/1983	976,053	N/A	Campeau Corp.	Vendor mortgage	Walkley Rd	N337563	#2	59
21/08/1984	1,800,000	8%	Mahoney Holdings Ltd	Vendor mortgage	Preston St 307-351(Tower I-II)	NS254414 NS254413	#7	60
02/07/1985	900,000	Prime +1%	Guaranty Trust Co. of Canada	Commercial lender mortgage	801-873 Provost St 816-829 Thorndale St 870-944 Walkley Rd	LT417573 LT529939 LT546065		49
20/05/1986	1,635,000	13%	Canada Mortgage and Housing Corporation	Assumed upon purchase	40 Landry St	N382311	#11	61
27/05/1986	8,174,588	12.75%	Toronto Dominion Bank	Assumed upon purchase	40 Landry St	N382312	#9	62
27/05/1986	1,200,000	10%	Monot Development Ltd	Vendor mortgage	40 Landry St	N337333	#8	63
02/06/1986	720,000	10%	Barbann Realities Ltd	Vendor mortgage	Aberdeen St 25-35 (The Adelaide)	N338643 N338644	#12	53
13/01/1989	20,000,000	24%	Royal Bank of Canada	Commercial lender debenture	307-351 Preston St 25-35 Aberdeen St	N474269	#13	64
24/12/1989	1,060,000	N/A	Gilles & Lorraine Ste-Marie	Vendor mortgage	15 Aberdeen St 410 Rochester St	NS17627 NS17628		54

Source: Ottawa-Carleton Land Registry.

115. As of August 31, 1993, \$19.8 million in loans (31% of total loans) were seemingly provided by third parties. Sakto's biggest commercial lender was the Royal Bank of Canada, which, based on a \$20 million debenture signed in 1989, had lent Sakto at least \$9.8 million. A copy of the debenture is attached as Exhibit 64, as cited in the table above.

**(c) Sakto: 1994 to present**

116. No general information on Sakto's revenues and expenses and the Sakto Group's profitability is available from public records after 1993. It is not known whether Sakto continued

its particular business model of consistent operational losses and a steady influx of and apparent reliance on shareholder loans to cover an ever increasing capital deficiency.

117. Land registry records do, however, show that companies within the Sakto Group had a number of leases registered for its Preston Square development, which must have created revenues. In particular, the Sakto Group (it is unknown which company specifically) signed a 10-year lease with the Ontario government for 102,000 square feet of office space in Tower III of the Preston Square development (353 Preston Street), starting on January 1, 2008. Another 7,521 square feet of office space was leased to the Ontario Government in Tower I and II. The price rates of these government leases are unknown. In the 2011 *Global News* investigatory piece on the Sakto Group (discussed further in paragraph 190), Infrastructure Ontario spokesperson Bill Moore stated at that time that the gross rent in Preston Square for the eleven Ontario government ministries that are located there is \$4.9 million a year.

(1) *Asset Growth*

118. Since 1994, Sakto Group's assets have grown strongly, with two marked increases: the May 2000 purchase by Sakto Corporation of a \$31.1 million property portfolio from O & Y Properties Inc. (land transfer attached as **Exhibit "65"**) and Sakto Corporation's \$120 million development of Preston Square, stages 2 to 4, between 2003 and 2007. The capital-intensive Preston Square development seems to have been partly funded by the \$33.5 million sale of three properties to Briq Nominee Inc. in 2006 (the three land transfers are attached as **Exhibit "66"**).

119. An informal appraisal by an Ottawa-based property appraiser concluded in 2014 that \$200 million "represents the bottom value of the potential value range" for the whole Preston Square Development. Other current Sakto Group assets include 1575 Carling Avenue, an 18,000 square

foot two-story office building owned by 1575 Carling Ltd. and City Gate's land on Howe Island. While the book value of these properties is unknown, it appears that Sakto Group's real estate holdings have a current market value of well over \$200 million.

(2) *Third Party Funding to the Sakto Group*

120. Based on the information available to me, for the period starting 1994 and up until the present, the Sakto Group has had access to funding from at least three different sources: 1) the Taib family, partially through two related offshore companies located in Hong Kong and Jersey; 2) the Royal Bank of Canada; and 3) Manulife Financial.

**Table 6: Sakto Group Mortgages, 1994-2016**

Date	Amount \$	Interest	Lender	Type	Security	Sakto Entity Charger (Debtor)	Source	Exhibit #
14/09/1994	5,000,000	N/A	Royal Bank	Commercial mortgage discharge document	Walkley Road & other properties	Sakto	N879647	
19/08/1996	20,000,000	N/A	Jamilah Taib	Related party mortgage	Preston Square / Walkley Road	Sakto	LT994558	67
19/08/1996	20,000,000	N/A	Jamilah Taib, In Trust	Related party mortgage	Preston Square / Walkley Road	Sakto	LT994559	68
27/08/1997	29,958,820	Prime + 10%	Sakto	Internal group mortgage	Preston Square / Walkley Road	Sakto Corporation	LT1069421 OC903343	69
28/05/1998	1,274,998	N/A	N/A	Assumed upon purchase	120 Robertson Road	City Gate International	LT1123804	70
17/12/1999	1,210,000	7.45 %	Sakto Investment Corp.	Internal group mortgage	120 Robertson Road	City Gate International	LT1256327	71
28/03/2000	1,205,261	7.45 %	Jamilah Taib (transferred from Sakto Investment)	Related party mortgage	120 Robertson Road	City Gate International	LT1272560	72
31/05/2000	11,450,773	N/A	N/A	Assumed upon purchase	Iris Street / Queensview Drive prop.	Sakto Corporation	LT1287175	73
19/09/2003	13,000,000	6.39 %	Manulife		333 Preston Street	Tower One Holding Corp.	OC248221 OC9032	74

Date	Amount \$	Interest	Lender	Type	Security	Sakto Entity Charger (Debtor)	Source	Exhibit #
							23	
14/04/2004	15,000,000	N/A	Manulife		17 Aberdeen Street	Adelaide Ottawa Corp.	OC3187 07 OC9032 69	75
03/02/2006	45,000,000	5.69 %	Manulife		343 Preston Street	Tower Two Holding Corp.	OC5606 22 OC9032 94	76

Source: Ottawa-Carleton Land Registry.

121. No information is available on the full amount of loans granted to the Sakto Group by its shareholders, the Taib family, after 1994. According to the available mortgage records, it seems clear that related party funding played a very important role in the continued growth of the Sakto Group companies.

122. In August 1996, Sakto registered two mortgages of \$20 million each on the Preston Square as well as the Walkley Road properties. One was registered to Jamilah in her personal capacity and one to Jamilah "in trust". The loans would be repayable upon demand, the interest determined "from time to time" (subject to a maximum of the Royal Bank of Canada Prime Rate plus 5%). It is not clear why there were two mortgages registered for the same amount and on the same date, although it is possible they represented cross-obligations.

123. The mortgage registered "in trust" (attached as Exhibit 69, as previously cited in Table 6 above) indicates that Jamilah was acting on behalf of a group of family investors and Taib-family-related offshore companies who had concluded a financial agreement with her and the Sakto Group on December 31, 1995. The mortgage provisions state that the term "indebtedness" as a standard charge term of the mortgage meant "that all monies and liabilities, whether direct or indirect, absolute, contingent, now or hereafter owing, by Sakto Development Corporation (Sakto), to the parties of the Second Part named in an agreement dated the 31<sup>st</sup> day of December,

1995 between Jamilah H. Taib, of the First Part, Onn Bin Mahmud, Laila Taib, Mahmud Taib, Rahman Taib, Sogo Holdings Ltd. and Richfold Investment Limited, of the Second Part and Sakto of the Third Part (the Agreement) and owing to any other person who, with the consent of Jamilah H. Taib, lend money to Sakto and become parties to the Agreement." Although 1041229 Ontario Inc. is also a borrower under the mortgage, there is a "non-recourse" clause that states that Jamilah shall not commence any action to enforce against it any covenant contained in the mortgage to pay the principal sum.

124. This loan reveals that Laila Taib, Taib's wife, was a Sakto Group lender, together with their two sons, Mahmud (age 32 in 1995) and Rahman (age 27 in 1995), and Onn, Taib's brother. The lenders were Taib's closest family members. It is unclear how Laila Taib, who had no independent income of her own, could have legally earned a share of the \$20 million that was lent to Sakto.

125. Approximately one year later, the two \$20 million mortgages were discharged. On August 27, 1997, a mortgage of \$28,958,820, was registered on the same properties as the past \$20 million mortgages. The named mortgagor is "Sakto Corporation" and the mortgagee is "Sakto Development Corporation".

**(3) Funding by Richfold Investment Limited, Hong Kong**

126. As noted in paragraph 122 above, the \$20 million loan indicated that Richfold and Sogo Holdings Ltd. ("**Sogo**"), two Taib family-related companies, were "lenders" to Ottawa based Sakto.

127. As noted earlier in my affidavit, Richfold was a company incorporated in Hong Kong in 1983. Out of the share capital of HK\$50,000, Onn held 49,999 shares at HK\$1. One share was held by Kwok, a Hong Kong resident. Onn and Kwok were the company's only directors and

shareholders until 2007, when the company was deregistered in the wake of a kick-back scandal regarding Richfold's closely related company, Regent Star. This kick-back scheme is described above in section V(iv) above. A copy of the application for deregistration of Richfold is attached as **Exhibit "77"**.

128. The \$20 million mortgage was secured on Sakto's properties in 1996 by Jamilah "in trust." The amount lent by Richfold in respect of this mortgage to Sakto remains unknown. It is unclear if and when the loan was paid back to Richfold. Apart from its involvement in the funding of the Sakto Group, no other business activity is known for Richfold.

(4) *Funding by Sogo Holdings Ltd., Jersey*

129. Sogo is a Jersey company incorporated in 1989. The directors of Sogo are unknown. Between 1991 and 1999, it was operated by BT Trustees (Jersey) Limited, a subsidiary of Bankers Trust. In 1998, Sogo had a share capital of US\$12, eight shares of \$1 each were held by Bankers Trust (Cayman) International Ltd, and the other four shares of \$1 were held by BT Trustees (Jersey) Ltd.<sup>61</sup> Since the takeover of Bankers Trust by Deutsche Bank in 1999, Sogo has been administered by Deutsche Bank International.<sup>62</sup> Copies of the annual returns from 1989 – 2002 are attached as **Exhibit "78"**, and 2015- 2017 are attached as **Exhibit "79"**.

130. As noted above, Sogo was one of six lenders of a \$20 million mortgage secured on Sakto's properties in 1996 by Jamilah "in trust". The amount lent by Sogo to Sakto remains unknown. It is unclear if and when the loan was paid back to Sogo.

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<sup>61</sup> See Exhibit 79 Sogo Holdings Limited Annual Return for 1998 (see p. 2) and 2000 (see p. 2).

131. Sogo was also connected to the Taib family's American real estate group, Sakti, based in San Francisco. In 1996/1997, faxes were exchanged between BT Trustees (Jersey) and Sakti's Californian lawyers, Brand Farrar Dziubla, regarding "the transfer of Sakti International Holdings Inc. to the above company [Sogo Holdings Ltd]". It remains unclear from the available records if such a transfer was ever carried out. These faxes were provided to me by Boyert and are attached as **Exhibit "80"** to this affidavit.

132. In 2007, Boyert, a former key employee of Sakti in the U.S., who is a whistleblower that I discuss above, alleged in court filings that all of Sakti's shares were held by Sogo. In reply, the Taib family company denied the allegation and (falsely) claimed that it had no knowledge or information about Sogo.<sup>63</sup> Boyert's role at Sakti and as a whistleblower is discussed further in this affidavit in section VIII. The action against Sakti was initiated by Boyert after his termination from Sakti. The court files, including the complaint, answer to complaint and answer are attached as **Exhibit "81"** to this affidavit.

**(d) The Royal Bank of Canada Loans**

133. RBC was Sakti's most important commercial lender for the development of the first phase of Preston Square between 1989 and 1991. On January 13, 1989, RBC secured a \$20 million debenture on the Preston Square properties (see Exhibit 82, as previously cited in Table 5). The RBC lent several million dollars to Sakti (\$9.8 million by 1993) until 1995 when the debenture was discharged.<sup>64</sup> A mortgage of \$5 million had been registered by the RBC on Sakti's Walkley Road properties in September 1994, which was subsequently discharged on May 19, 1995.<sup>65</sup>

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<sup>63</sup> Exhibit 81, *Ross J Boyert v Sakti International Corporation Inc., A et al*, Complaint, February 6, 2007 and Answer to Complaint filed by Defendant, May 10, 2007, San Francisco Superior Courts, Case Number CGC-07-460255.

<sup>64</sup> Exhibit "82", Discharge, Instrument No. (N474269).

<sup>65</sup> Exhibit "83", Discharge dated May 19, 1995, Instrument No. (N934648).

134. It is evident by the discharges that Sakto managed to pay off at least \$14.8 million in loans to RBC. According to Sakto's financial statements the influx of such capital could only have come from shareholder loans. Information from RBC is required to establish any connection between Taib and the payment of such loans.

(e) **The Manulife Financial Mortgages**

135. Manulife Financial, a globally active Canadian insurance company and financial services provider, has been the Sakto Group's main commercial lender since 2003, when the development of the Preston Square's Tower II and III began. Between 2003 and 2006, Manulife registered three separate mortgages totaling at least \$73 million on the Preston Square development. The principal amounts are \$13 million, \$45 million and \$15 million for 333 Preston Street, 343 Preston Street and 17 Aberdeen Street, respectively.

136. The property titles for Preston Square refer to multiple loans for the same amounts. This is because there are two sets of mortgages for each amount:

- (a) One set of the mortgages accrues interest at a commercial rate (averaging 6% per annum) and has fixed repayment terms and dates (three mortgages attached as **Exhibit "84"**); and
- (b) the other set of mortgages accrues interest at a high interest rate of 20% interest per annum (three mortgages attached as **Exhibit "85"**) and is repayable upon demand.

137. Each mortgage is cross-guaranteed by other members of the Sakto Group. Therefore, while there are five separate loan instruments registered on title for one single loan, each is actually referring to the same loan. A full list of the mortgage structure is produced below:

Table 7: Manulife Loans

A) Lower Rate Mortgages					
Instrument	Principal	Interest rate	Maturity	Secured on	Owned by
OC248221	\$13,000,000	6.39% per annum	October 1, 2013	333 Preston Street Ottawa	Tower One Holding Corporation
OC903247	\$15,000,000	5.69% per annum	March 1, 2020	17 Aberdeen Street Ottawa	Adelaide Ottawa Corporation
OC903294	\$45,000,000	5.69% per annum	December 1, 2021	343 Preston Street Ottawa	Tower Two Holding Corporation

B) High Interest Mortgages					
Instrument	Principal	Interest rate	Maturity	Secured on	Owned by
OC903234	\$13,000,000	20% per annum	Payable on Demand	333 Preston Street Ottawa	Tower One Holding Corporation
OC903263	\$15,000,000	20% per annum	Payable on Demand	17 Aberdeen Street Ottawa	Adelaide Ottawa Corporation
OC903317	\$45,000,000	20% per annum	Payable on Demand	343 Preston Street Ottawa	Tower Two Holding Corporation

**Summary of Manulife mortgages secured on Sakto Group properties:**

Lower Rate Mortgages:	CAD \$73 million
Higher Rate Mortgages:	<u>CAD \$73 million</u>
Total	CAD\$146 million

Source: Ferguson & Mak LLP Report Re: Sakto Corporation (Taib Family and Preston Square, Ottawa), January 24, 2014. This report is attached and marked as Exhibit "86".

138. BMF questioned the purpose of the two sets of mortgages for each property and the unusually high interest rate of 20% for the second set. In May 2014, Manulife's then executive vice president and general counsel, Stephen Sigurdson, responded as follows:

The additional mortgages that you questioned are, in fact, collateral mortgages, which Manulife and other commercial lenders use to provide additional collateral security to the lender. There was no advance of additional money to the borrower with these collateral mortgages *above the original amounts originally lent to the borrower* and no obligation to lend more in the future. The stated interest rates in collateral mortgages are often high on their face, but the

borrower does not pay or owe these amounts. These mortgages frequently state that they are payable upon demand, as a convenient, short hand method of securing other obligations to the lender. A high, nominal rate of interest and the demand feature, in effect, tie-up equity in a property – *i.e.* the value in the real estate above amounts owed on the first mortgage – so that it is not available as security for loans to other parties. [*Emphasis added*]

139. A copy of the letter sent by BMF to Manulife on April 28, 2014 is attached as **Exhibit "88"** and a copy of Sigurdson's letter is attached as **Exhibit "87"**.

140. Sigurdson further described Manulife's loans to Sakto Group in the May 2014 letter as follows:

Our commitment to responsibility extends to all Anti-Money Laundering requirements, including those relating to Politically Exposed Foreign Persons... We also check third parties in whom or with whom we invest against commercially available lists of Politically Exposed Foreign Persons (PEFP). Those on the list appear not for any wrongdoing, but affirmative matches require a higher level of due diligence and confirmation, which becomes part of the investment evaluation process.

141. A report by a forensic accountant was performed to assist BMF in their review of the Manulife loans and to assist in the inquiry made to Manulife noted above. In this report (attached previously as Exhibit 86), the opinion of the forensic accountant was that the financing structure of the Preston Square development is not commonly encountered in Canadian real property development and management.

142. Further information is required from Manulife in order to determine the connection between Taib and the payment of the original loans with Manulife.

(ii) **City Gate International**

143. Sakto Property Management Corporation was incorporated in 1987 by Jamilah and Murray. In 1991, the name was changed to Orchid Corporation, and operated under that name until

1994, when it was re-named City Gate International ("**City Gate**"). A copy of the articles of incorporation and articles of amendment from 1987-2007 are attached as **Exhibit "89"**. In 2008, Sakto Investment Corporation (a company incorporated on September 23, 1997 by Jamilah as the sole director) was amalgamated into City Gate. In or around 2014, City Gate changed its name to Hawkhurst Island Holding Ltd. ("**Hawkhurst**"). A copy of the certificate of amendment for the name change is attached as **Exhibit "90"**. Also attached at Exhibit 90 is the current Federal corporation information report for Sakto Investment Corporation. Shortly thereafter, Hawkhurst closed down in May 2015. A copy of Hawkhurst's current Federal corporation information report is attached as **Exhibit "91"**, which evidences the discontinuance of the company. I believe that Hawkhurst closed down due to the public exposure of City Gate's ties to the Taib family by *Sarawak Report* and BMF's "Stop Timber Corruption" campaign.

144. Ontario land registry records show that in 1998, City Gate purchased a commercial property on 120 Robertson Road, Ottawa, for \$2.6 million. A copy of this transfer is attached as **Exhibit "92"** to this affidavit. The Robertson Road property was held until 2006 when it was sold to Briq Nominee Inc. as part of a larger transaction involving several properties, the sale of which totalled \$33.5 million.

145. From 2001 to 2011, City Gate was the ultimate parent company of Ridgeford Properties Ltd. ("**Ridgeford**"), a U.K. real estate developer incorporated in 1996 and directed by former Sakto Vice President Christopher Murray, a cousin of Sean Murray. The annual returns for Ridgeford for the years 2011, 2012 and 2013 are attached as **Exhibit "93"** and the annual return

for 2001 is attached as **Exhibit "94"**.<sup>66</sup> I obtained a copy of the annual returns for Ridgeford as they were publically available at Companies House, the U.K.'s public company registry.

146. Previously on its website, Ridgeford said it was a "sister company" of Sakto Corporation. A screenshot of this prior website page is attached as **Exhibit "95"**. Today, its shares are held by Urban Sky Developments Ltd., another member of the Sakto Group. Ridgeford is discussed further in section XII (The U.K. Connection).

(iii) **Sakto Corporation**

147. "Sakto Corporation", distinct from Sakto Development Corporation, which has been defined as Sakto, was founded on August 25, 1997. The directors at that time were Onn, Jamilah, Sean Murray, Tanya Myers and Laird J. Rasmussen. While Onn resigned in 2004, the other directors remain on the board.<sup>67</sup>

148. Immediately after the incorporation of Sakto Corporation, Sakto transferred ownership of multiple Ottawa properties, including Tower I of Preston Square, part of the remaining Preston Square lands (which were yet to be developed) and the Walkley Road properties, to Sakto Corporation. The property transfer was for no consideration and described by the involved parties as "Transfer by beneficial owner to trustee for same beneficial owner." A copy of this transfer of August 27, 1997 is attached as **Exhibit "96"**. On the same day, Sakto registered a \$29.96 million mortgage on the newly transferred properties in its favour, payable on demand. A copy of the registered mortgage is attached as Exhibit 69, as previously cited in Table 6 above, paragraph 120.

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<sup>66</sup> The returns refer to City Gate as the majority shareholder at page 4 in the 2001 return and page 11 in the 2011 return.

<sup>67</sup> Sakto Corporation's current Federal corporation information report was attached previously as Exhibit 41 as noted in Table 2, paragraph 90 in this affidavit.

149. Soon after incorporation, Sakto Corporation was involved in major property transactions and a number of related party transactions with other Taib family entities. In September 1997, Sakto Corporation bought a condominium on 596 Queen Elizabeth Drive for \$400,000 ("payable on demand") from Jamilah. A copy of the land transfer is attached as **Exhibit "97"**. On May 31, 2000, Sakto Corporation purchased properties for \$31.1 million from O & Y Properties Inc., consisting of 5 parcels of land with their own property identification numbers ("PINs"). A copy of that land transfer was previously attached as Exhibit 65. Two of those properties/PINs were sold to Briq Nominee Inc. in 2006 for a collective \$33.5 million. The sale occurred over three transactions, and copies of the three land transfers evidencing the sale of those properties was previously attached as Exhibit 66, as previously cited in paragraph 118.

150. Between 2003 and 2006, Sakto Corporation also granted loans to Ridgeford in the U.K. These loans are revealed in Ridgeford's financial reports during that time. These loans are discussed further in section XI.

**(iv) Other Sakto Group Companies**

151. There are a number of companies that were incorporated by Jamilah and Sean Murray with the purpose of owning a single asset. These companies are all currently active. With the exception of 1575 Carling Ltd., a company holding a property at 1575 Carling Street, Ottawa, all the companies relate to Preston Square.

**Table 8: Sakto Group Single Asset Companies in Canada**

Date of Incorporation	Name of Company	Directors	Corporation Number	Corporate Profile Report Exhibit #
10/11/1997	1575 Carling Ltd	Jamilah Taib, Sean Murray	1252339 (Ontario)	98
20/06/2003	Tower One Holding	Jamilah Taib, Sean Murray	2028542 (Ontario)	99

	Corporation			
20/06/2003	Tower Two Holding Corporation	Jamilah Taib, Sean Murray	2028543 (Ontario)	<b>100</b>
20/06/2003	Adelaide Ottawa Corporation	Jamilah Taib, Sean Murray	2028546 (Ontario)	<b>101</b>
14/07/2006	Preston Building Holding Corporation	Jamilah Taib, Sean Murray	2108122 (Ontario)	<b>102</b>

Source: Province of Ontario, Ministry of Government Services

152. The numbered company 1041229 Ontario Inc. was incorporated on September 16, 1993. The directors are Jamilah, Sean Murray and Laird Rasmussen. In 1994, 1041229 Ontario Inc. received a 1/1,000,000 interest in a vacant plot at Preston Square (the place where Tower II was subsequently constructed). The reason given for the land transfer was that it was "a conveyance of property to complete a severance." A copy of this transfer is attached as **Exhibit "103"**. Two years later, the company was a borrower, in addition to Sakto, to a \$20 million mortgage made by Jamilah, in trust. This "loan" is described above at paragraph 123.

153. In 2010/2011, three further companies were incorporated for what appears to be the purpose of the transfer and closing of other Sakto Group companies. These transactions appear to have been an attempt to rebrand the Sakto Group and conceal its connection to the Taib family. The basis for this belief is the fact that in 2010/2011 links between the Sakto Group and the Taib family were publically exposed by *Sarawak Report* and BMF's "Stop Timber Corruption" campaign. The newly formulated companies are Urban Sky Investments Ltd. ("**Urban Sky**"), Urban Sky Europe Ltd. and Waterford Property Group Ltd. ("**Waterford**").

154. The principal place of business for all three companies is the same as the Sakto Group's (333 Preston Street, Ottawa), and they all have Sean Murray as their only director and Jamilah

Taib Murray's name no longer appears in official company records. See Table 9 below for information on these three companies.

**Table 9: Companies Incorporated After Exposure of Sakto's Ties to Taib Family**

Date of Incorporation	Name of Company	Directors	Corporation Number	Corporate Profile Report Exhibit #
10/10/2012	Urban Sky Investments Ltd	Sean Murray	8321647	104
26/03/2013	Urban Sky Europe Ltd	Sean Murray	8471703	105
07/12/2012	Waterford Property Group Ltd	Sean Murray	2352843 (Ontario)	106

155. Urban Sky soon became the new parent company of Ridgeford, replacing City Gate, which had been heavily exposed as a Taib family endeavour (see Ridgeford's annual return from 2013, previously attached as Exhibit 93). Urban Sky Europe Ltd may, as the company name suggests, also be a holding company for assets in Europe, but no further information on the company has been found.

156. It appears that Waterford had also been incorporated for an intended rebranding of Sakto. However, the rebranding exercise seems to have been undertaken half-heartedly. Waterford is running an almost identical website to the Sakto Group, showing the same properties but failing to mention any connection to Sakto. Despite its recent incorporation in 2012, Waterford's website states: "Privately owned and operated, Waterford is a real estate development, management and investment firm with a history rich in growth since 1983." A screenshot of the website is attached as **Exhibit "107"**. The properties shown on the website are all owned by the Sakto Group.

## XI. The Sakti Group, USA

157. The Taib family's real estate business in the U.S. started in September 1987 with the incorporation of Sakti. A copy of the Sakti's articles of incorporation are attached as **Exhibit "108"**. The company's purpose was to purchase and administer real estate in California, with its initial directors being two of Taib's brothers, Onn and Arip Mahmud, and Taib's son, Mahmud. One hundred percent of the 1000 shares at US\$1 were held by Taib's two brothers, his two sons, and his daughter Jamilah. Remarkably, and as previously noted, a company document dated April 8, 1988, provided by Boyert, stated that 500 shares (50% of the share capital) were being held "in trust for Abdul Taib Mahmud", which made Taib the controlling shareholder of Sakti (see previous Exhibit 8 at paragraph 79).

158. In 1991, three new "single asset companies" were set up for properties in Seattle, WA. W.A. Everett Inc. and W.A. Boylston Inc were registered in California, while Wallysons Inc. was incorporated in Washington State (Tumwater). In 1993, the three Californian companies (Sakti, W.A. Everett and W.A. Boylston) were integrated into a new holding company, Sakti International Holdings ("**Sakti Holdings**"), which was registered in California.

159. Sean Murray was involved with Sakti (and then Sakti Holdings) in the early 1990s and commissioned his brother-in-law Nicholas Caragianis, an Ottawa-based architect, to perform some construction work on 260 California Street, a 55,000 square foot historic building in San Francisco's financial district, which the Taibs had purchased in 1988 for US\$13.25 million. Other Taib family acquisitions included a residential building at 43 Presidio Street, San Francisco, and the purchase of the Abraham Lincoln Building, an 11-storey office tower in Seattle for US\$17.1 million in December 1991.

160. Between the end of 1994 and 2006, Sakti's (and later, Sakti Holdings) operations were run by Boyert. From 2006 until its dissolution in 2014, Sakti Holdings was directed and managed by Sakto Group and its key executives, Jamilah, Sean Murray and Lee Gartley.

161. Another Sakti-related entity is a company called Wallysons Inc. ("**Wallysons**"). Wallysons is the owner of the Abraham Lincoln Building in Seattle. Wallysons is of particular political interest as the company is currently renting its entire premises to the Federal Bureau of Investigation (FBI). In 1998, Wallysons managed to secure itself a long-term rental contract from the U.S. Government's General Services Administration ("**GSA**") for the FBI's Northwestern Regional Headquarters. As of June 2016, Washington State records list Rahman (Sulaiman) Taib as Wallysons' Chairman/Director and Sean Murray as President, Secretary and Treasurer. Its registered company address is 333 Preston Street, Suite 910, Ottawa – the Sakto Group's headquarters.

162. A January 2017 report by the United States Government Accountability Office on high-security space leased from foreign owners lists "Sakto Corporation" as the entity to which the annual rent of \$3,515,233 is being paid for the 130,000 square foot FBI building. A copy of this report is attached as **Exhibit "109"**.<sup>68</sup> The report further states:

GSA's lease of space for the FBI field office in Seattle may be an example of GSA leasing high-security space from a beneficial owner who is a politically exposed person. Our review found that the FBI field office in Seattle is ultimately owned by the Taib family of Malaysia through a series of domestic and foreign companies. Advocacy groups such as Global Witness allege that the Taib family has profited from corrupt practices in Malaysia. The lease was executed by Wallyson's, a Washington state corporation, which is owned by Sakti International, a California corporation. According to a Dun & Bradstreet report in GSA's leasing file, Sakti International Corporation is 100 percent financed by the Taib family of Malaysia. Furthermore, according to a 2008

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<sup>68</sup> Exhibit 109, p. 16.

document in the GSA leasing file, Sakto International, located in Canada, is the parent company of Sakti International Corporation. The lease was signed by Rahman Taib – the president, secretary, and chief financial officer of Wallyson's – who is also the son of the former chief minister of Sarawak, Malaysia.<sup>69</sup>

We found no evidence that the family has been indicted or convicted of wrongdoing that would disqualify them from leasing to the government. (...) GSA and FBI officials said that they are not concerned about the ownership of the FBI field office in Seattle. According to GSA, "as long as the lessor performs according to the contract, additional concerns about ownership would not be raised."<sup>70</sup>

163. I am not aware of any U.S. money laundering investigations or criminal actions against Taib or Taib related entities.

## **XII. The U.K. Connection**

164. In the course of our investigation into the Taib family's overseas assets, we also learned about the existence of Ridgeford, referred to previously. Ridgeford is a London-based property developer, directed by Canadian-born Christopher Murray, the cousin of Sean Murray. Ridgeford stated on a now-removed page on its website that it was the "sister company" of the Ottawa-based Sakto Corporation.<sup>71</sup> On Ridgeford's current website, Sean Murray is listed as "Chairman of Ridgeford Properties Ltd and President and Chief Executive Officer of Sakto Corporation (Sakto) a Canadian controlled private corporation". Attached hereto and marked as **Exhibit "110"** are copies of certain main pages of "Ridgeford.com".

165. Ridgeford has a U.K. parent company called Ridgeford Developments Limited, which in turn is held by Urban Sky (75%) and Christopher Murray (25%). Ridgeford was incorporated on October 24, 1996. Companies House research on Ridgeford Properties showed that, from 2001 to 2011, Ridgeford Properties was a wholly-owned subsidiary of City Gate. As noted earlier in my

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<sup>69</sup> Exhibit 109, p. 25.

<sup>70</sup> Exhibit 109, p. 25-26.

<sup>71</sup> See prior Exhibit 95.

affidavit, City Gate is a Canadian company where Jamilah and Sean Murray are directors. For a period between November 4-18, 1996, Ridgeford was known as "City Gate Property Management (London) Limited", the implication being that Ridgeford was intended to be a subsidiary of the Canadian parent company.<sup>72</sup>

166. According to the report and financial statements, Ridgeford's assets in real estate, debtors and cash amounted to £33.3 million in 2012. Its main lender was an offshore trust in the British Virgin Islands, Tess Investments Ltd. ("Tess"), from which it received £14.3 million in unsecured loans and a £2.7 million secured loan, while another £1.95 million loan had come from City Gate (see page 19).<sup>73</sup> The annual returns are available in the public Companies House U.K. database.

167. Set out in Table 10 below is a summary of Ridgeford's current and historic shareholders.

**Table 10: Shareholders of Ridgeford**

From	Shareholder	Jurisdiction	Number of Shares	Total Number of Issued Shares
October 26, 1996 (Incorporation)	Astar Properties Limited	BVI	99	100
	Tagus Investments Limited	BVI	1	
August 7, 2001	Astar Properties Limited	BVI	(100)	100
	City Gate	Canada	100	
July 1, 2011	Christopher Murray		34	134
March 20, 2013	City Gate	Canada	(100)	134
	Urban Sky	Canada	100	
March 26, 2013	Urban Sky	Canada	(100)	134
	Christopher Murray		(34)	
	Ridgeford Developments Limited	U.K.	134	

Source: Salamanca Group – Project Sparrow Report, May 30, 2014, Exhibit 112

<sup>72</sup> Exhibit "111", Certificate of Incorporation on Change of Name, City Gate Property Management (London) Limited, dated December 18, 1996.

<sup>73</sup> See prior Exhibit 94, Ridgeford Financial report, up to March 2012, pages 6, 16 and 17; see also the spreadsheet in Salamanca the Salamanca Group Report (annex 1) introduced below and attached as Exhibit "112" together with the report.

168. As part of our ongoing investigation into the Taib family, we submitted a report to the City of London Police with the help of the U.K. law firm Stephenson Harwood LLP on June 23, 2014. A copy of this report is attached as **Exhibit "113"**. The aim of this report was to present the London Police with evidence that Ridgeford was involved in laundering the proceeds of overseas corruption. The case was later transferred to the National Crime Agency ("NCA"). Since January 2015, BMF has contacted the NCA on numerous occasions, to provide additional evidence on Ridgeford and inquire as to any updates on the case. The NCA declined to share the status of their assessment of the allegations made against Ridgeford.

169. I believe that Ridgeford is connected to Tess due to the fact that Tess provided it with start-up capital and several million pounds in loans. Tess was incorporated in the British Virgin Islands one day before the incorporation of Ridgeford in the U.K., on October 23, 1996.<sup>74</sup> Tess's registered address is identical to that of Ridgeford's original shareholders: Tagus Investments and Astar Properties.<sup>75</sup> According to Australian Companies documents, a company called Astar Properties Limited was until recently a shareholder in Sitehost Pty Ltd, the operator of the Hilton hotel in Adelaide, Australia, along with Taib's four children.<sup>76</sup>

170. Tess is not referred to until Ridgeford's 2003 financial statements, although it appears to have provided funding from the time of Tess' incorporation. The 1998 financial statements (the first set filed at Companies House after incorporation) indicates that there were "other loans (secured)" in the amount of £5,163,636. As this loan was secured, a charge was registered at Companies House, and the only charge registered at that time was in favour of "Tess Investments Limited care of 80 Brook Street, Mayfair, London". The charge indicates that it was provided by

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<sup>74</sup> Attached hereto as **Exhibit "114"** is the British Virgin Islands Financial Services Commission Profile on Tess Investments Limited and related corporate filings.

<sup>75</sup> **Exhibit "115"**, British Virgin Islands Financial Services Commission Profile on Astar Properties Ltd dated 26 May 2010.

<sup>76</sup> **Exhibit "116"**, ASIC Company Extract on Sitehost Pty Ltd dated March 25, 2010.

Ridgeford against 23, 24, 25 Berners Mews and 50-57 Newman Street, London, in favour of Tess, on May 1, 1997. A copy of the charge is attached as **Exhibit "117"**.

171. As of March 2012, Ridgeford was financed by unsecured loans from Tess (£13.68 million) and City Gate (£1.95 million).<sup>77</sup> BMF retained the Salamanca Group, to review Taib's U.K. connection and the transactions of the U.K. Taib-related companies. Salamanca Group is a business intelligence and investigations company that was engaged by BMF in respect of Taib's U.K. connections. The Salamanca Group concluded that the non-commercial nature of these loans is suggestive of a co-equivalence of interest and likely ownership between Ridgeford, City Gate and Tess. The Salamanca Group Report is attached previously as Exhibit 112.

172. Sakto Corporation also loaned money to Ridgeford between 2003-2006. According to Ridgeford's financial reports, the highest year-end balance owing from Ridgeford to Sakto was £2,055,060 (2004)<sup>78</sup> and the lowest was £585,153 (2003).<sup>79</sup> The loan was repayable on demand, not secured and carried an interest rate of 6%.

173. Salamanca Group prepared a detailed analysis of the loan balances with Tess, Sakto Corporation and City Gate for all of Ridgeford's reporting periods. A copy of this chart is attached together with the Salamanca Report at Exhibit 112. Salamanca concluded that Ridgeford was dependent on these non-bank financings for a significant portion of its funding, and that in most years, a minimum of more than 50% of funding came from non-bank financing, but in many years this was closer to 80%.<sup>80</sup>

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<sup>77</sup> Exhibit 94, Report and Financial Statements for Ridgeford for year ended March 31, 2012, pp.17-19.

<sup>78</sup> Exhibit "118", Report and Financial Statements for Ridgeford Properties Limited for year ended March 31, 2004, p.11.

<sup>79</sup> Exhibit "119", Report and Financial Statements for Ridgeford Properties Limited for year ended March 31, 2003, p. 11.

<sup>80</sup> Exhibit 112, Salamanca Report, p. 6.

174. Ownership and financial links between Ridgeford and the Taib family through Tess, City Gate and Sakto Corporation are further supported by the fact that the company was reorganized in 2010, following the public allegations made by BMF in their "Stop Timber Corruption" campaign. This resulted in the change of Ridgeford's parent company in 2013 from City Gate to Urban Sky (as discussed above),<sup>81</sup> another company registered at Sakto's headquarters in Ottawa and directed by Sean Murray.<sup>82</sup> As a result of this reorganization, Jamilah's name is no longer listed in any public record associated with Ridgeford.

### XIII. Australia - Sitehost Pty Ltd

175. Sitehost Pty Ltd ("**Sitehost**") is an Australian proprietary company incorporated in 1993 and currently registered in Blacktown (NSW), Australia.<sup>83</sup> Its main asset is the Hilton hotel in the city centre of Adelaide, South Australia, with a current book value of AUD\$59.1 million. In 2016, Sitehost's revenues amounted to AUD\$36.0 million. A copy of Sitehost's financial statements and report for 2016 is attached as **Exhibit "120"**. Formally, Sitehost is not part of the Sakto Group but is closely connected to it by virtue of common directors and shareholders. The company's directors are Jamilah, Sean Murray and Australian lawyers Gary Patrick Doherty and John Antoine Kiosoglous.<sup>84</sup> A google search of Gary Patrick Doherty revealed that he is an experienced lawyer practicing in New South Wales. Attached and marked as **Exhibit "121"** is a print out of a web-page regarding Mr. Doherty. A Google search for John Antoine Kiosoglous did not reveal anything meaningful.

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<sup>81</sup> Exhibit 94, Ridgeford 2013 Annual Return, as previously cited in paragraph 155.

<sup>82</sup> Exhibit 104, Urban Sky corporate profile report, as previously cited in Table 9.

<sup>83</sup> ASIC Company Extract on Sitehost Pty Ltd dated March 25, 2010, previously cited in footnote 77 as Exhibit 116.

<sup>84</sup> See Exhibit 116.

176. Until February 2017, Sitehost's share capital amounted to AUD\$10,000,001 with its shareholders being the four Taib children, Jamilah (\$3.8 million), Sulaiman (\$1.9 million), Hanifah (\$1.9 million), and Mahmud (\$1.9 million), plus Norstar Overseas S.A. (\$0.5 million), an offshore company registered in the British Virgin Islands.<sup>85</sup> Norstar Overseas S.A. was formerly named "Astar Properties Ltd.", previously defined, and is identical to the holding company that held 99% of the shares of Ridgeford from 1996-2001 prior to their transfer to City Gate. On February 27, 2017, on the occasion of a general meeting of the members of Sitehost held at Sakto's offices in Ottawa, Sitehost bought back the 500,001 shares held by Norstar Overseas S.A. for a purchase price of AUD \$ 1,075,000. Subsequently, the 500,001 shares were cancelled and the shareholder capital reduced to AUD\$9,500,000. The relevant documents regarding this transaction are attached at **Exhibit "120"**. I verily believe that the sole purpose of this transaction was to reduce Sitehost's public connection to an offshore entity in the British Virgin Islands which was exposed by a BMF investigation in 2015.

177. A 2015 investigation by BMF showed that Sitehost was founded in November 1993 by Malaysian timber and construction tycoon Ting Pek Khiing who had major business interests in Sarawak. A copy of BMF's report, titled "The Adelaide Hilton Case: How a Malaysian politician's family laundered \$30 million in South Australia" is attached as **Exhibit "122"**. In January 1994, five Taib family members – the wife of Taib (Laila Taib) and his four children – acquired AUD\$9.5million in Sitehost shares with funds whose origin is unclear.

178. In February 1994, Sitehost took up an unsecured loan of AUD\$20.75 million from a non-bank lender, Golborne Pty Ltd. (later Fordland Pty Ltd.) with a shadow structure in the Isle of Man, a known offshore jurisdiction. As of December 31, 2014, AUD\$18.5 million were still owed

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<sup>85</sup> See Exhibit 116.

to Fordland. This unsecured multi-million-dollar loan, which has not been repaid after 20 years, suggests a co-equivalence of interest and ownership between Fordland and Sitehost. In other words, it is believed that the lending company is, like Sitehost, controlled by the Taib family. Attached hereto and marked as **Exhibit "123"**, is a copy of financial statements and reports for the financial year 2014, which was obtained from the Australian Securities & Investments Commission. On December 13, 2015, the AUD\$18.5 million loan was transferred to Atquevale Limited, a company registered in an unknown jurisdiction, for the same terms and conditions. A copy of Sitehost's financial statements and report for 2016 is attached as **Exhibit "120"**. I verily believe that the sole purpose of this loan transfer was to further conceal and launder funds of unknown origin following the exposure of Sitehost's finances by BMF's 2015 investigation.

179. I am not aware of any investigations or criminal actions against Taib or Taib related entities in Australia. On October 16, 2015, BMF (together with the Bob Brown Foundation) made a submission to an Australian Senate Inquiry into Foreign Bribery and Corruption regarding alleged money-laundering by the Taib family in Australia. On May 6, 2016, the Senate Economics Reference Committee accepted our submissions. However, due to the dissolution of the Australian Parliament on May 8, 2016 ahead of federal elections, the Senate enquiry was stalled and has not been continued since. Relevant documents from this submission are attached hereto and marked as **Exhibit "124"**.

#### **XIV. Other Efforts Made by BMF to Uncover Information and Report to the Authorities**

##### **(i) Correspondence with RCMP and FINTRAC**

180. On June 1, 2010, BMF wrote to the director of Financial Transactions and Reports Analysis Centre of Canada ("**FINTRAC**"), Ms. Jeanne M. Flemming, to notify FINTRAC of the

possible money laundering that has occurred by the Sakto Group and their connection to the Taib family. BMF also asked FINTRAC to launch a formal investigation into Sakto under the Canadian anti-money laundering legislation.

181. On July 1, 2011, BMF sent a copy of a letter to FINTRAC that was originally sent to the Prime Minister at the time, Stephen Harper, on the issue of laundering and investment of Malaysian corruption proceeds in Canada. Copies of both letters sent by BMF to FINTRAC are attached as **Exhibit "125"**. On August 8, 2011, Denis Meunier, the Deputy Director of Financial Analysis and Disclosures Directorate, responded to BMF and acknowledged receipt of the letter. Mr. Meunier assured BMF that any information volunteered by organizations concerning suspicions of money laundering is analyzed and assessed by FINTRAC. The letter additionally pointed out that FINTRAC does not have the mandate to undertake money laundering investigations or to freeze assets. Finally, it was acknowledged that FINTRAC is prohibited from making public the fact that it has disclosed financial intelligence to police in relation to a particular case. A copy of this letter is attached as **Exhibit "126"**.

182. The same letter that was sent to FINTRAC on July 1, 2011 was also sent to William J. S. Elliott, Commissioner of the Royal Canadian Mounted Police ("**RCMP**"). On July 26, 2011, the RCMP responded to BMF's letter, acknowledged receipt and stated that the RCMP does not normally confirm or deny the existence of any ongoing criminal investigations. Copies of both letters are attached as **Exhibit "127"**.

183. In early April 2013, I requested the RCMP for a meeting on the occasion of my stay in Ottawa at the time. I received a reply from Martin Bédard, Staff sergeant, NCO in charge, International Anti-Corruption Unit, on April 4, 2013, stating that he was unavailable for a meeting

but that I could provide him with information. On September 19, 2013, I sent the RCMP a number of documents linking Jamilah and Sakto to Richfold and Regent Star in Hong Kong. A copy of the email I sent to Martin Bédard is attached as **Exhibit "128"**.

184. Another attempt to contact the RCMP was made in February 2017 through Bruce Bailey, BMF's representative in Ontario. He received a phone call from Sheldon Landry of the RCMP on February 6, 2017, from which it became clear that the RCMP would not investigate the Taib family/Sakto case further, as the RCMP prioritized other cases which they thought were more likely to lead to prosecution. A copy of the email sent by Mr. Bailey on February 6, 2017 is attached as **Exhibit "129"**.

(ii) **OECD National Contact Point Request for Review**

185. On January 2, 2016, BMF filed a complaint/request for review against Sakto Group based on the OECD Guidelines for Multinational Enterprises (the "Guidelines") with the National Contact Point ("NCP") for the OECD in Canada. The request for review dated January 2, 2016 is attached hereto as **Exhibit "130"**. Canada's NCP is an interdepartmental committee chaired by Global Affairs Canada (GAC). The role of the NCP is to promote awareness of the OECD Guidelines for Multinational Enterprises as they relate to the social, economic and environmental impacts of their activities on the societies in which they work. The NCP will offer a forum for discussion and assist the business community, employee organizations and other parties concerned to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances through dialogue-facilitation. The NCP Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognized standards. The countries adhering to the Guidelines, including Canada, have a binding

commitment to implement them. While participation in the NCP mechanism remains voluntary, actions or decisions by either party that do not reflect participation in good faith in an NCP dispute resolution process will be made public in the NCP Final Statement and will have consequences. Such consequences can include the withdrawal of Government of Canada trade advocacy support.

186. On October 25, 2016, the NCP responded to BMF with a "Draft Initial Assessment", which stated that the Guidelines applied to the Canadian companies listed in the request for review, the issues raised were material to the Guidelines and substantiated, and that the request for review merited further examination. Attached hereto as **Exhibit "131"** is a copy of NCP's response dated October 25, 2016.

187. However, following some interim correspondence between BMF and the NCP, on March 21, 2017 the NCP wrote to BMF to inform me that the NCP would not be acting on the matter. Accompanying this letter was a draft Final Statement that contained no comment of substance which was a stark comparison to the Draft Initial Assessment. BMF's counsel, Bennett Jones LLP wrote to the NCP on BMF's behalf on March 23, 2017, April 5, 2017 and May 9, 2017 expressing concern for the delay in the process and the inconsistency related to the Draft Initial Assessment and the Draft Final Assessment. The NCP wrote to BMF on March 30, 2017 regarding its concern for confidentiality in the process. On April 5, 2017 BMF issued a press release regarding BMF's campaign and the NCP process. Following this, on May 26, 2017 the NCP responded to Bennett Jones and BMF that it was in the process of finalizing the draft of its Final Statement. Attached hereto and marked as **Exhibit "132"** are copies of each correspondence referred to in this paragraph.

(iii) **Access to Information Requests**

188. On March 31, 2017, Bennett Jones LLP, acting on behalf of BMF, sent a request made pursuant to the *Access to Information Act* to Global Affairs Canada ("GAC"). The request was for any documents in the possession of GAC and/or the NCP relating to or involving the Sakto Group or any of its affiliates and the documents or arguments that they or their lawyers presented to the NCP. GAC responded on April 11 acknowledging receipt of the request.

189. On May 9, 2017, Bennett Jones LLP, acting on behalf of BMF, sent a request made pursuant to the *Access to Information Act* to the RCMP and the Department of National Defence. The request was in relation to any information relating to or involving the donation of land for training by Sakto Corporation or any of its affiliates to the RCMP/Department of National Defence. This request was based off of information found on Sakto Corporation's website, which stated that Sean Murray donated properties to the Canadian Forces for specialty training. Attached hereto as **Exhibit "133"**, as a group of documents, are copies of the access to information requests and responses.

(iv) **Media Coverage in Canada**

190. In December 2011, Canada's CTV Global News station released an investigative television program called "16x9" on the Taib family called "Family Trees". The program highlighted the massive property portfolio of the Sakto companies in Canada, the U.K. and the U.S. and discussed the death of whistleblower Boyert. A copy of the episode is attached in video format on the USB key previously attached as Exhibit 5 and is labelled as Video 4, 16x9 Family Trees.

191. Recently, on April 10, 2017, the newspaper the *Ottawa Citizen* covered the press conference held by BMF on Parliament Hill the week earlier, where BMF publically released the

Safe Haven Report on Sakto and the Taib family. The article explains the content of the report, the accusations made against the Taib family and the role Sakto has played in the Ottawa real estate landscape. A copy of that article is attached as **Exhibit "134"**.

192. The CBC has also reported on this matter in an article dated March 31, 2017 which is attached hereto as **Exhibit "135"**. There has been various other media coverage in Canada and examples of such coverage is also attached at Exhibit 134.

(v) **Malaysian Anti-Corruption Commission Investigation**

193. The MACC is a Malaysian government agency operating under the office of the Prime Minister. Its mandate is to investigate and prosecute corruption in the public and private sectors.

194. In 2011, the MACC opened an investigation into Taib, concerning in particular the logging concessions in Sarawak. It is highly unusual for such an investigation to be launched into an active head of a state government. However, this investigation has never been officially concluded. On June 10, 2014, Paul Low, Minister in the Prime Minister of Malaysia's Department, stated in a written statement in Parliament, upon questions by Tanjong MP Ng Wei Aik, that the MACC investigation against Taib Mahmud continued on the instruction of the Attorney-General's Chambers.<sup>86</sup>

195. In February 2014, the *Malaysian Insider* reported that MACC had failed to find Taib guilty of alleged abuse of power, as the approval of land and logging areas were made by Taib's senior ministers or the Sarawak cabinet rather than Taib himself. Under Section 23 of the *Malaysian Anti-Corruption Commission Act 2009*, any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate commits an offence. The article

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<sup>86</sup> Exhibit "136", *Malaysiakini*, "Low: Taib no royal, graft probe continues," (12 June 2014).

also stated the investigation papers on the cases were still open as Attorney General Tan Sri Abdul Gani Patail had directed the team to secure more solid evidence.<sup>87</sup>

196. It is unclear if Taib is still under investigation by the MACC. However, it must be noted that Attorney General Abdul Gani Patail has since been forced to resign by Prime Minister Najib Razak in July 2015 while investigating the 1MDB corruption scandal that involved the Prime Minister (see next section). Given the current political situation in Malaysia, it is highly unlikely that Taib will be charged for corruption unless there is a change of government.

(vi) **The 1MDB Scandal**

197. The 1MDB scandal is an ongoing political scandal occurring in Malaysia. In 2015, Malaysia's Prime Minister, Najib Tun Razak, was accused of channeling over RM2.67 billion (nearly US\$700 million) from 1MDB, a government-run strategic development company, to his personal bank accounts. Much of the funds moved to the U.S. via the Prime Minister's step-son in addition to personal bank accounts of the Prime Minister. The Department of Justice is actively investigating and has frozen over US\$1 billion of such funds. Other countries such as Switzerland, Hong Kong and Singapore are investigating and some have similarly frozen assets. Sarawak Report and Ms. Rewcastle, noted earlier, played a role in the breaking of the 1MDB scandal because a whistleblower provided Ms. Rewcastle with thousands of incriminating documents regarding Prime Minister Razak.

198. One of the transactions reportedly made with misappropriated 1MDB funds in December 2010 was the acquisition of UBG, a Taib family company, for the amount of 465 Malaysian Ringgit (CAD \$146 million), by Jho Low, the mastermind behind the 1MDB scandal. According

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<sup>87</sup> Exhibit "137", "No proof of power abuse as Sarawak ministers had approved land for his kin, say sources" *Malaysian Insider* (February 24, 2014).

to the Malaysian financial weekly newspaper *The Edge Malaysia*, this transaction was undertaken to placate Taib following a number of controversial deals Jho Low had undertaken.<sup>88</sup>

199. I disclose this widely publicized scandal to bring to the courts attention the current political situation in Malaysia and the resulting difficulties in attempting to obtain justice for corruption from the Malaysian government particularly since the MACC is currently under the leadership of the Prime Minister's Office.

#### **XV. Related Developments**

200. In the spring of 2012, the BMF obtained compelling evidence as to the laundering of the proceeds of corruption in the timber business in Malaysia by a Politically Exposed Person (PEP). While the case did not involve Taib Mahmud – but, rather, his colleague from the neighbouring Malaysian state of Sabah, Chief Minister Musa Aman – it exposed a connection between the Malaysia's timber sector and international banks, such as HSBC and UBS.

201. On May 25, 2012, the BMF lodged a complaint against UBS with the Swiss authorities under the Swiss criminal code, in respect of the alleged laundering of over US\$90 million in corruption proceeds through the bank's Hong Kong and Singapore subsidiaries. On August 29, 2012, Switzerland's Attorney-General opened a criminal case against UBS, which is still active.

202. In 2013, I also met with a team of U.S. investigators in New York (two officers from the FBI, and one IRS) to brief them on the BMF's findings on Taib corruption.

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<sup>88</sup> Exhibit "138", "The UBG deal: Why Jho Low teamed up with Taib and later had to buy him out with 1MDB money" *The Edge Malaysia* (April 3, 2015).

**XVI. Full and Frank Disclosure**

203. I have been advised by Lincoln Caylor and Maureen Ward, my lawyers at Bennett Jones LLP, that I am required to make full and frank disclosure of all facts (including those that may not benefit our case which may be in favour of anyone directly affected by this order) when seeking this type of order. I confirm that this affidavit presents what I believe to be full and frank disclosure of the facts available to me in this matter. I should specifically draw this Honourable Court's attention to the following matters.

- (a) Since June 2010, BMF has repeatedly alerted FINTRAC and a number of government agencies, including the Royal Canadian Mounted Police, the Ministry of Finance, the Ministry of Justice, the Ministry of Foreign Affairs and the Prime Minister's Office that the Sakto Group might be involved in money laundering on behalf of the Taib family.
- (b) Despite such efforts, I am not aware of any formal or active investigations regarding the Taib entities discussed herein.
- (c) The draft order includes a request that I be at liberty to use information and documents disclosed in this matter in other jurisdictions should it be appropriate to do so. Subject to this Court's approval, I will share information recovered from this application with counsel in the U.K., as well as the RCMP in Canada. In addition, the information and documents may be used to support a private criminal prosecution in Canada.
- (d) It is unclear if the MACC is still investigating Taib.

- (e) Jamilah and Sean Murray have denied in response to BMF's campaign that their wealth is attributable to Taib's corruption. They have an active business life as evidenced by their internet profile (see Exhibit 10, "jamilahaibmurray.com") and state that they contribute to a number of charities.
- (f) Sean Murray wrote in response to the Global News' 16x9 show referred to earlier the following: "[W]e have no interest in being interviewed in the press about ourselves, our business, our relatives or about Malaysian politics [..] You will understand that Jamilah and I find these statement about ourselves and our business false, highly defamatory and very damaging. We therefore have no interest in encouraging public discussion of them and we will take very seriously and will react strongly to their publication in mainstream media [...]" A copy of this letter is attached as **Exhibit "139"**.
- (g) In October 2014, prior to the publishing of my book *Money Logging*, Mishcon de Reya, a U.K. law firm acting for Taib, wrote to my publisher, Bergli Books, and to Amazon, requesting them not to publish and distribute my book. Copies of these letters are attached as **Exhibit "140"**. The letter stated in part: "From the information available (...) it is evident that the Book is based on an entirely false and highly damaging premise. The one extract you have provided is littered with defamatory statements of the most serious nature. (...) As to the generality of the allegation that our client is corrupt, this again is entirely untrue and an allegation of the utmost serious nature. While it is unclear what 'evidence' the Book as a whole intends to rely upon to support such an allegation, you are now on notice that it is

expressly denied. Our client is not corrupt and has not engaged in any unlawful business."

#### **XVII. Summary of Motives**

204. It is in an integral part of BMF's Charter and mandate to advocate for the protection and well-being of primeval forests and indigenous communities, including and especially Sarawak's forests and those inhabiting it. As such, investigating and exposing political corruption and financial crimes which exploit and harm the people and environment of Sarawak is an important part of BMF's work. Given the deleterious effects of state corruption and crime not only in Malaysia but in Canada and the U.K., calling for a private prosecution into the financial dealings of the Taib family is consistent with and integral to the mandate of BMF.

#### **XVIII. Cost to Comply with Order**

205. I confirm that I have been advised by Bennett Jones LLP that the defendants shall be compensated for photocopying costs incurred in complying with any order. I therefore confirm that BMF undertakes to compensate the RBC, TD Bank, Manulife and Deloitte for their reasonably incurred photocopying costs of producing such documentation.

#### **XIX. Order Requested**

206. A detailed disclosure request will be submitted to the court in advance of the motion. As noted in my overview and relief sought section at the beginning of this affidavit, I seek this information to determine whether there is a basis for a private prosecution against possibly Jamilah, Murray, Canadian-based Taib related corporations and others unknown to me for the Canadian criminal offence of money laundering. I verily believe that documents surrounding and particularizing the numerous real estate purchases/transfers, and the payment of mortgages and

- 86 -

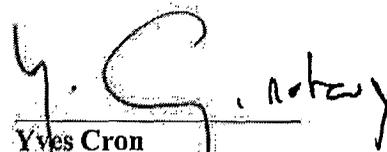
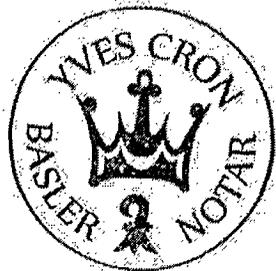
loans will be important evidence to establishing any money laundering and what parties are participating in it. In particular, documents in possession of the defendants would and should include the source of the shareholder loans, the down-payment on properties, mortgage payments, shareholder loans and large payouts of loans. Further, the accountants for Sakto and Sakto related entities can further confirm important ownership and financial information beyond the financials that were located to date.

207. I swear this affidavit in support of obtaining disclosure orders from RBC, TD Bank, Manulife and Deloitte for the purposes set out herein and for no other or improper purpose.



**Lukas Straumann**

Read, understood, subscribed and affirmed to before me this day of 27th June 2017 (twenty-seventh June two thousand and seventeen) at Basel, Canton of Basel-Stadt, Switzerland.



Yves Cron  
Notary Public

AR 53/2017

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

NP/ke

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

- - - - -

This is the Cross-Examination of LUKAS STRAUMANN on his  
Affidavits sworn the 27th day of June, 2017 and the 21st  
day of August, 2017, taken at the offices of WEIRFOULDS,  
Suite 4100, TD Bank Tower, 66 Wellington Street, Toronto,  
Ontario, on the 9th day of January, 2018.

- - - - -

HIGHLIGHTING ADDED

APPEARANCES:

LINCOLN CAYLOR	)	-- for the Applicants
MAUREEN WARD	)	
NINA BUTZ	)	
(Articling Student)		
MARIE-ANDREE VERMETTE	)	-- for Jamilah Taib
ANASTASIJA SUMAKOVA	)	Murray, Sean Murray,
DUNCAN FRASER	)	Sakto Development
		Corporation, Sakto
		Corporation, City Gate
		International
		Corporation, Urban Sky
		Investments Ltd.,
		Urban Sky Europe Ltd.,
		1041229 Ontario Inc.,
		1575 Carling Limited,
		Hawkhurst Island
		Holding Ltd., Adelaide
		Ottawa Corporation,
		Preston Building
		Holding Corporation,
		Tower One Holding
		Corporation, Tower Two
		Holding Corporation,
		Waterford Property
		Group Ltd., Prime
		Median Holdings Inc.,
		Ridgeford Properties
		Limited, Ridgeford
		Developments Limited,
		Wallysons Inc. and
		Sitehost Pty Limited
JUNIOR SIRIVAR		-- for the Respondents,
		Royal Bank of Canada
		and Toronto-Dominion
		Bank
STACEY DANIS		-- for the Respondent,
		Manulife Insurance
JED BLACKBURN	)	-- for the Respondent,
CONRAD LEE	)	Deloitte & Touche
(articling student)		
ALSO PRESENT:		
Bruce Bailey		
Mutang Urud		

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1 -- upon convening at 10:00 a.m.

2 -- upon commencing at 10:02 a.m.

3 LUKAS STRAUMANN, affirmed

4 CROSS-EXAMINATION BY MS. VERMETTE:

5 1. Q. Good morning, Mr. Straumann.

6 A. Good morning. Sorry.

7 2. Q. Thank you. Mr. Straumann, my name  
8 is Marie-Andree Vermette and I represent a number of  
9 individuals and corporations, and I won't go through  
10 the list, but they are in the documents that we  
11 served in this proceeding.

12 So, Mr. Straumann, you are the executive  
13 director of the Bruno-Manser-Fonds?

14 A. Correct.

15 3. Q. And that is one of the applicants in  
16 this case?

17 A. Yes.

18 4. Q. And if that is fine with you I will  
19 refer to the Bruno-Manser-Fonds throughout as "BMF".  
20 It is just shorter.

21 A. Fine.

22 5. Q. So, you are a Swiss citizen?

23 A. Yes.

24 6. Q. You were born in Switzerland?

25 A. Yes.

1 7. Q. Grew up in Switzerland?

2 A. Yes.

3 8. Q. And you went to university in both  
4 Switzerland and Spain?

5 A. Yes.

6 9. Q. You obtained a Master's degree in  
7 history?

8 A. Yes.

9 10. Q. And a Ph.D in history?

10 A. Yes.

11 11. Q. From Zurich University?

12 A. Yes.

13 12. Q. And that was in 2005?

14 A. As far as I remember, yes.

15 13. Q. So you are a historian by training?

16 A. Correct.

17 14. Q. And the year before you got your  
18 Ph.D. you became executive director of BMF?

19 A. I became...yes, in 2004. June,  
20 2004.

21 15. Q. And that is the position that you  
22 still hold today?

23 A. Yes.

24 16. Q. And as the executive director of BMF  
25 you swore two affidavits in this proceeding?

1 A. Yes.

2 17. Q. And the first one, which is at tab B  
3 of volume 1 of your motion record, was sworn on June  
4 27th, 2017. If you look on page 13, the date...page  
5 13. No, 13, the big numbers in the right-hand  
6 corner.

7 A. Correct.

8 18. Q. And that affidavit has 140 exhibits?  
9 If you look, volume 7...

10 A. Yes, I presume. Yes, 140.

11 19. Q. And it is included in seven volumes?

12 A. Yes.

13 20. Q. And your second affidavit is a  
14 supplementary affidavit, and it was sworn on August  
15 the 21st, 2017.

16 A. Correct.

17 21. Q. And this one has only one exhibit.

18 A. Correct.

19 22. Q. And you are here today, Mr.  
20 Straumann, pursuant to a Notice of Examination that  
21 we served on December 18, 2017?

22 A. Yes.

23 23. Q. And I gave you a copy of the Notice  
24 of Examination.

25 A. Yes.

1 24. MS. VERMETTE: So, we will mark it as  
2 the first exhibit.

3

4 --- EXHIBIT NO. 1: Notice of Examination of Lukas  
5 Straumann

6

7 BY MS. VERMETTE:

8 25. Q. And, Mr. Straumann, if you look on  
9 the second page of this document, the list of all  
10 the parties that we represent are listed at the  
11 bottom of the page. Do you see that?

12 A. I do see it, yes.

13 26. MS. VERMETTE: So, I understand,  
14 Counsel, that Mr. Straumann is not being  
15 tendered as an expert in this case?

16 MR. CAYLOR: Correct.

17

18 BY MS. VERMETTE:

19 27. Q. And I take it, Mr. Straumann, that  
20 you have never been qualified in court as an expert,  
21 in the past?

22 A. No.

23 28. Q. You have never been qualified as an  
24 expert in corruption?

25 A. No.

1 29. Q. You have never been qualified as an  
2 expert in money laundering?

3 A. No.

4 30. Q. Okay. Mr. Straumann, we are going  
5 to give you a copy of the Notice of Application in  
6 this case. And that Notice of Application was  
7 issued on December the 20th, 2017? It is on the  
8 second page.

9 A. Correct.

10 31. MS. VERMETTE: So, we will mark that as  
11 the second exhibit.

12

13 --- EXHIBIT NO. 2: Notice of Application

14

15 BY MS. VERMETTE:

16 32. Q. So, in the Notice of Application  
17 that we just gave to you, Mr. Straumann, could you  
18 please go to paragraph 1, which is on page 4? And  
19 in that paragraph you request a number of things,  
20 and starting on the fifth line you request:

21 "...Financial, customer and other  
22 information with respect to transactions,  
23 loans and mortgages, which information  
24 relates to Abdul Taib Mahmud, Jamilah Taib  
25 Murray, Sean Murray, Onn Bin Mahmud and any

1 corporations owned or controlled by these  
2 individuals, collectively the 'Taib  
3 entities'..."

4 A. Correct.

5 33. Q. So, that is what you request?

6 A. Yes.

7 34. Q. And, can I have the endorsement? I  
8 am going to give you a copy of the Endorsement of  
9 Justice Myers in this case, dated August 22, 2017.

10 MR. CAYLOR: August 21st.

11 35. MS. VERMETTE: No, the...

12 MR. CAYLOR: Oh, I...

13 36. MS. VERMETTE: ...it was heard August  
14 21st, the date of the...

15 THE DEPONENT: Yes, correct.

16 37. MS. VERMETTE: ...decision is August  
17 22nd.

18 THE DEPONENT: Correct.

19

20 BY MS. VERMETTE:

21 38. Q. And you are familiar with this  
22 decision?

23 A. I am sorry?

24 39. Q. You are familiar with this decision?

25 A. I am familiar, yes.

1 40. MS. VERMETTE: So, we will mark it as  
2 the next exhibit.  
3

4 --- EXHIBIT NO. 3: Endorsement of Justice Myers, dated  
5 August 22, 2017  
6

7 BY MS. VERMETTE:

8 41. Q. And if you go to the second page of  
9 that decision, please?

10 A. M'hmm.

11 42. Q. Okay, so the...at the very first  
12 line on this page, on page 2, Justice Myers says:  
13 "...The plaintiffs claim that some or all  
14 of Mr. Taib, his family members and their  
15 corporations, whom they define as 'The  
16 Sakto Group', have committed crimes in  
17 Canada relating to the possession and  
18 laundering of funds here that were  
19 illegally obtained by Mr. Taib abroad..."

20 And Mr. Taib is Abdul Mahmud Taib. Is that how you  
21 understand the reference here?

22 A. Correct.

23 43. Q. Yes. And so...

24 A. And his family members.

25 44. Q. Yes, but...

1                   A.           This is how the court has...how the  
2 judge has summarized this.

3   45.               Q.           Yes, I just make this clarification  
4 because earlier in the paragraph the judge does  
5 refer to Mr. Abdul Mahmud Taib, and then later on he  
6 just says "Mr. Taib", and because I just read the  
7 end of the paragraph, just wanted to clarify that  
8 Mr. Taib...

9                   A.           Is the same person.

10   46.              Q.           ...is Abdul Mahmud Taib. Okay.

11                   A.           Correct.

12   47.              Q.           So, here in this paragraph Mr.  
13 Justice Myers refers to the defined term "Sakto  
14 Group", and in your Notice of Application that we  
15 just looked at, we have the defined term "Taib  
16 Entities".

17                   A.           Correct.

18   48.              Q.           So, are these two defined terms  
19 referring to the same list of people, or  
20 incorporations, or are there differences between  
21 these two defined terms?

22                   MR. CAYLOR:        I don't think the witness  
23 can comment on what Justice Myers meant.  
24 But...

25   49.              MS. VERMETTE:     No, Justice Myers says,

1 "Whom they define as the Sakto Group, the  
2 plaintiffs". Second line on page 2.

3 MR. CAYLOR: You want this witness'  
4 evidence as to whether Justice Myers is  
5 referring, when he says "Sakto Group", it  
6 is the same defined term in the Notice of  
7 Application?

8 50. MS. VERMETTE: Justice Myers says that  
9 the plaintiffs, who you represent, defined  
10 as Sakto Group, the people who have  
11 committed crimes in Canada, and I am just  
12 asking, are we talking about the same  
13 things, when you earlier referred to the  
14 Sakto Group before Justice Myers, and now  
15 the Notice of Application you refer to "The  
16 Taib Entities".

17 MR. CAYLOR: And, I am sorry, what is  
18 the question then?

19 51. MS. VERMETTE: The question is, are the  
20 Sakto Group, as you defined it before  
21 Justice Myers, and the Taib Entities as you  
22 defined it in the Notice of Application,  
23 the same thing, or are there differences  
24 between those two defined terms?

25 MR. CAYLOR: I think there was a

1 difference that came between the Statement  
2 of Claim that would have been before  
3 Justice Myers and the Notice of Application  
4 that wasn't, if I have got that correct.  
5 Is that right?

6 52. MS. VERMETTE: So, can we...so, we were  
7 obviously not before Justice Myers. We  
8 don't know how you defined the Sakto Group,  
9 so can I ask you maybe to check and get  
10 back to us on that?

11 MR. CAYLOR: We will check it, and  
12 either...it is either in our factum or it  
13 is set out in the affidavit, but we will  
14 confirm with you the way it was presented  
15 to him, Justice Myers. U/T

16 53. MS. VERMETTE: So, what I want to know  
17 is whether the Sakto Group, as it was  
18 presented to Justice Myers, is the same as  
19 the Taib Entities in paragraph 1 of the  
20 Notice of Application.

21 MR. CAYLOR: We will let you know. U/T

22 54. MS. VERMETTE: Thank you.

23

24 BY MS. VERMETTE:

25 55. Q. So, going back, Mr. Straumann, to

1 the Notice of Application, paragraph 1, the  
2 definition of Taib Entities, as you will see in the  
3 first paragraph, includes Abdul Taib Mahmud and  
4 also, among others, Onn Bin Mahmud. Do you see  
5 that?

6 A. Yes.

7 56. Q. And you know, Mr. Straumann, that  
8 WeirFoulds does not represent these two individuals?

9 A. Yes.

10 57. Q. Okay, and now if I can ask you to go  
11 to the decision of Justice Myers that we marked as  
12 an exhibit, I think as Exhibit 4.

13 MS. SUMAKOVA: Exhibit 3.

14 58. MS. VERMETTE: Exhibit 3, sorry.

15

16 BY MS. VERMETTE:

17 59. Q. And if you could please go to  
18 paragraph 36 on the last page? So, in that  
19 paragraph Justice Myers orders that:

20 "...The motion be adjourned pending service  
21 of the application record on the defendants  
22 and the Sakto Group, as defined by the  
23 plaintiffs..."

24 That is the first sentence in the paragraph.

25 A. Correct.



1 BY MS. VERMETTE:

2 66. Q. Okay, Mr. Straumann, as we have seen  
3 from the decision of Justice Myers, BMF first sought  
4 to obtain a Norwich Order in this proceeding,  
5 exparte, before Justice Myers on...

6 A. Yes.

7 67. Q. ...in August, 2017?

8 A. Correct.

9 68. Q. And you were made aware that when a  
10 party makes a motion exparte or without notice, that  
11 party is required to make full and fair disclosure  
12 of all material facts?

13 A. Correct.

14 69. Q. And that is referred to in your  
15 affidavit?

16 A. Yes.

17 70. Q. And so I take it your affidavit...I  
18 take it your affidavit...in your supplementary  
19 affidavit were your best attempt at making full and  
20 fair disclosure of all material facts?

21 A. Yes.

22 71. Q. And BMF hasn't filed any additional  
23 evidence after the hearing before Justice Myers in  
24 August?

25 MR. CAYLOR: That is correct.

1 BY MS. VERMETTE:

2 72. Q. And in this proceeding, and in your  
3 affidavit, Mr. Straumann, you make very serious  
4 allegations of wrongdoing.

5 A. Yes.

6 73. Q. And you make, among other things,  
7 allegations of corruption in Malaysia?

8 A. Yes.

9 74. Q. And allegations of money laundering  
10 in Canada?

11 A. Yes.

12 75. Q. And you will agree with me, Mr.  
13 Straumann, that when you make serious allegations  
14 like this due diligence is required?

15 A. Correct.

16 76. Q. And it is required because  
17 allegations of wrongdoing can have serious  
18 consequences for the people who are the subject of  
19 those allegations?

20 A. Yes.

21 77. Q. So, it is important to take steps to  
22 ensure that all statements are correct and accurate?

23 A. Correct. I agree.

24 78. Q. Okay, Mr. Straumann, I want to talk  
25 to you now about Mr. Ross Boyert.

1 A. Good.

2 79. Q. So, Mr. Boyert...well, Mr. Boyert is  
3 no longer with us right now.

4 A. Yes.

5 80. Q. That is correct?

6 A. Yes.

7 81. Q. But he was a former employee of two  
8 U.S. corporations Sakti Corporation and Wallyson's  
9 Inc.?

10 A. Correct.

11 82. Q. And he committed suicide in October,  
12 2010?

13 A. Yes.

14 83. Q. And you talked about Mr. Boyert in a  
15 number of places in your affidavits, and we will get  
16 to that, but first if you could please go to volume  
17 3 in the motion record, tab 37?

18 MR. CAYLOR: 37?

19 84. MS. VERMETTE: 37, yes.

20

21 BY MS. VERMETTE:

22 85. Q. And if you go to page 127, and I am  
23 using the big page numbers at the top.

24 A. M'hmm.

25 86. Q. So you see that this document...

1 MS. WARD: Page 927?

2 87. MS. VERMETTE: Page 927, yes.

3 MS. WARD: Thank you.

4

5 BY MS. VERMETTE:

6 88. Q. And so you see that this is a  
7 complaint for damages that Mr. Boyert filed in the  
8 Superior Court of the State of California?

9 A. Yes.

10 89. Q. And that is a complaint against  
11 Sakti International Corporation Inc. and Wallyson's  
12 Inc.?

13 A. Yes.

14 90. Q. And some does.

15 A. Okay.

16 91. Q. I will refer to Sakti International  
17 Corporation as just "Sakti", and Wallyson's Inc. as  
18 just "Wallyson's".

19 A. Yes.

20 92. Q. Okay, and if you go to page 924, a  
21 few pages before, just to confirm the filing date of  
22 this document. The document that was filed in court  
23 on February 6th, 2007?

24 A. Yes.

25 93. Q. And Mr. Boyert gave you a copy of

1           this document when you met with him?

2                           A.       No.

3    94.                   Q.       No? So, how did you get this  
4           document?

5                           A.       These documents are online, and I  
6           received them from the internet from the San  
7           Francisco Superior Courts, online, from online court  
8           records.

9    95.                   Q.       Did you receive this document before  
10           you met with Mr. Boyert?

11                          A.       I don't know. I can't...I have no  
12           recollection if I obtained these documents before or  
13           after.

14   96.                   Q.       Were you aware of this lawsuit  
15           before you met with Mr. Boyert?

16                          A.       Yes.

17   97.                   Q.       And do you remember...so, I take it  
18           you read this document before this proceeding was  
19           commenced?

20                          A.       Before this proceeding here...

21   98.                   Q.       In Ontario, yes.

22                          A.       Correct.

23   99.                   Q.       Yes. And the general nature...there  
24           are various allegations in the document, but the  
25           general nature of the claim is a claim for wrongful

1 dismissal?

2 A. Yes.

3 100. Q. And if you could please go to page  
4 929?

5 A. Yes.

6 101. Q. We see in paragraph 12 that Mr.  
7 Boyert says in this document that he was hired in  
8 December, 1994.

9 A. Yes.

10 102. Q. And if you go to paragraph 27 on  
11 page 934...

12 A. Yes.

13 103. Q. ...you see that Mr. Boyert says that  
14 he was terminated in January, 2007?

15 A. Yes.

16 104. Q. And going back to paragraph 19 on  
17 page 932. So, having read this document before you  
18 know that Mr. Boyert also claimed that he had an  
19 unwritten agreement under which was entitled to  
20 one-half the value of the net proceeds of the future  
21 sale of the two buildings owned by Sakti and  
22 Wallyson's? If you want to read it...

23 A. I am not sure if I understood you  
24 right now. I mean, you are referring to what is  
25 being stated in paragraph 19?

1 105. Q. Yes, and if you look at the end, at  
2 line 19 on the page.

3 A. M'hmm.

4 106. Q. So, it says:  
5 "...As incentive for Boyert to remain an  
6 employee of both Sakti and Wallyson's,  
7 Rahman..."

8 And Rahman is the son of Taib?

9 A. Correct.

10 107. Q. It continues:  
11 "...Rahman offered Boyert the  
12 responsibility to manage all aspects of  
13 both operations..."

14 And then skipping a few words:

15 "...with additional compensation in the  
16 form of (a) commission fees..."

17 But what I was referring to in my question is (b):

18 "...One-half the value of the net proceeds  
19 of any future sale of 260 California..."

20 Which I understand is a building owned by Sakti. Is  
21 that your understanding as well?

22 A. Yes. Formerly owned by Sakti

23 108. Q. And continuing on paragraph 19:  
24 "...And one-half the value of the net  
25 proceeds of any future sale of the Third

1 Avenue building..."

2 A. Yes.

3 109. Q. And that is the building in Seattle?

4 A. Correct.

5 110. Q. And my understanding is that it is  
6 owned by Wallyson's?

7 A. Correct.

8 111. Q. So, Mr. Boyert was alleging the  
9 right to receive those...an agreement under which he  
10 would have the right to receive those proceeds?

11 A. Yes, as laid out here.

12 112. Q. Yes, and is your understanding that  
13 this alleged agreement was oral, not written?

14 A. I have not seen any document  
15 that...I have not seen any...among the documents  
16 that Boyert gave us that we also provided you, I  
17 have not seen any such an agreement.

18 113. Q. So, Mr. Straumann, this document,  
19 this complaint filed in Court by Mr. Boyert does not  
20 mention Taib anywhere in it.

21 A. Could you repeat the question again,  
22 please?

23 114. Q. This document, the complaint that  
24 Mr. Boyert filed in court, it does not refer to  
25 Abdul Taib Mahmud anywhere in it.



1           company, and Rodin Mass is a shareholder of  
2           Wallyson's. We have not been able to ascertain this  
3           statement. We have not found any information on  
4           Rodin Mass.

5                         So, I would say the allegations put forward  
6           by Ross Boyert, they are connected to allegations of  
7           money laundering. I don't see anything of  
8           corruption, but I see a money laundering element  
9           implicitly being mentioned here.

10       118.                 Q.        So you are saying, Mr. Straumann,  
11           that because Mr. Boyert says that hold companies  
12           owned shares, this is an allegation of money  
13           laundering?

14                         A.        No. I think it is normal that  
15           companies can be owned by other companies.

16       119.                 Q.        That is right.

17                         A.        But, I mean, this court case, and  
18           now...actually, now that we are talking about this,  
19           I remember having...I can now confirm that I have  
20           seen this document before I met with Boyert, because  
21           what struck me about Mr. Boyert's allegation was,  
22           first of all, that he mentioned the Taib family  
23           members as being the shareholders and the directors  
24           of Sakti, and that was new information which we  
25           didn't have at the time, because until then

1 basically that had been disputed.

2 So first we know that Sakti is a Taib  
3 family entity, being owned and controlled by  
4 brothers, siblings and children of Taib Mahmud. And  
5 the link between the siblings and the children, it  
6 is Taib himself. He is not in the documents. He is  
7 in one document as the shareholder for whom shares  
8 are being held in trust.

9 120. Q. We will get to that, but my  
10 question...

11 A. Okay.

12 121. Q. ...Mr. Straumann was, in this  
13 document there is no allegation of corruption or  
14 money laundering.

15 A. In this document there is no  
16 allegation of corruption or money laundering, but  
17 this document has helped us, as part of the  
18 circumstantial evidence, to reconstruct what we  
19 think is a complex web of offshore structures and  
20 money laundering structures.

21 122. Q. But you mentioned the paragraph  
22 about Sogo Holdings.

23 A. Correct.

24 123. Q. And Rodin Mass.

25 A. Correct.

1 124. Q. And I believe in your affidavit you  
2 do note that these allegations were denied in  
3 Sakti's defence?

4 A. Correct.

5 125. Q. So you actually have no evidence  
6 that Sogo Holdings is, in fact, a shareholder of  
7 Sakti Holdings?

8 A. Correct. However, we know that  
9 there was correspondence in 1996 and 1997 between  
10 Sakti and Sogo Holdings, and BT trustees, Bankers  
11 Trust formerly, now Deutsche Bank, if Sakti should  
12 become...if Sakti shares should be transferred to  
13 Sogo Holdings in Jersey. We don't know if that was  
14 ever executed, but there has been correspondence  
15 already in 1996 and 1997.

16 126. Q. The correspondence...

17 A. I believe...

18 127. Q. The correspondence.

19 A. ...two faxes.

20 128. Q. And it is in the record?

21 A. It is in the record.

22 129. Q. And as you said you don't know  
23 whether the transaction actually happened?

24 A. Correct.

25 130. Q. Okay, so I want to take you now to

1 three references in the complaints, and that is in  
2 relation to Mr. Boyert's allegation in this action  
3 that no money was infused in either Sakto or  
4 Wallyson's. Do you remember reading that in the  
5 complaint?

6 MR. CAYLOR: I am sorry, I closed the  
7 brief.

8 131. MS. VERMETTE: So, we are tab number  
9 3...

10 THE DEPONENT: Which complaint are you  
11 referring to?

12 MR. CAYLOR: Sorry...

13 132. MS. VERMETTE: I am talking about this  
14 document.

15 THE DEPONENT: Yes, yes.  
16

17 BY MS. VERMETTE:

18 133. Q. So, let me take you to the  
19 references. So, if you could please go to paragraph  
20 17 on page 930.

21 A. Okay.

22 134. Q. So, starting at line 20 on that  
23 page. At the end of that line it says:

24 "...Between September..."

25 Do you see that?

1 A. Between September?

2 135. Q. Yes.

3 A. Yes.

4 136. Q. So, it reads:

5 "...Between September, 1995 and December,  
6 1997, Boyert was able to obtain five  
7 separate loans for 260 California, to keep  
8 the construction and leasing activity  
9 going, despite Sakti informing Boyert that  
10 no additional equity capital or investment  
11 funds would be provided, either for the  
12 renovation or to acquire new properties..."

13 A. Correct.

14 137. Q. Okay, and so the next paragraph on  
15 the next page, paragraph 18, and if you look at line  
16 16...

17 A. M'hmm.

18 138. Q. ...it says:

19 "...At this time Boyert, because Wallyson's  
20 would not invest money of its own, secured  
21 100 percent construction financing without  
22 equity capital..."

23 Do you see that?

24 A. Yes.

25 139. Q. And then last reference, next page,

1 paragraph 19, line 16...well, let's start at the  
2 beginning of the paragraph:

3 "...With 260 California and the Third  
4 Avenue building both in financial straits  
5 for the reasons above described, Boyert and  
6 Rahman met in April, 1999 to discuss the  
7 manner in which to address them. Rahman  
8 repeatedly told Boyert there was no cash to  
9 be infused into either Sakti or Wallyson's.  
10 Bankruptcy was not an option and suggested  
11 borrowing from Boylston..."

12 A. Boylston, yes.

13 140. Q. So, as I said, Mr. Boyert alleges in  
14 this action that there was no money being infused in  
15 Sakti and Wallyson's.

16 A. Between December, 1994 and February,  
17 2007, correct, as I understand.

18 141. Q. And all the documents we get from  
19 this...

20 A. Oh, sorry, between September, 1994,  
21 yes.

22 142. Q. And with all the documents that you  
23 got from Mr. Boyert, did you see any infusion of  
24 capital in Sakti or Wallyson's?

25 A. Not after 1990...December 1994. But

1 the initial shareholding capital, and the initial  
2 amount of money that was used to purchase real  
3 estate worth several thousand million U.S. dollars,  
4 it must have come from somewhere, and part of it  
5 came from Mr. Taib's son.

6 143. Q. So you, of course, have no evidence  
7 of what you are saying right now, because Mr. Boyert  
8 was not an employee of Sakti at that time.

9 A. Correct.

10 144. Q. So there is no document supporting  
11 what you are saying.

12 A. Well, I am a bit surprised that  
13 now...I will have to check back on that with you. I  
14 mean, because as you are aware it is 2,000 pages of  
15 documents we got from Boyert. And I think there  
16 are...if we go through these documents, which you  
17 have a copy of, I think there are shareholder loans  
18 from...there are loans coming in from Taib family  
19 members...

20 145. Q. There are no loans coming from Taib  
21 family members.

22 A. I would dispute that.

23 146. Q. ...respecting Wallyson's.

24 A. I think this is a question we could  
25 still clarify, but...

1 147. Q. Well, Mr. Straumann...

2 A. Not between December, 1994  
3 and...Wallyson's, I know that the firm Wallyson's  
4 got loans from Taib family members, from Jamilah  
5 Taib's brother.

6 148. Q. And documents showing that are not  
7 in your motion record?

8 A. They are among the documents we  
9 supplied you in response to your request to inspect  
10 documents.

11 149. Q. Well, those documents are not in the  
12 record. Mr. Boyert provided you with numerous  
13 documents, correct?

14 MR. CAYLOR: And just so the witness  
15 understands your point, which I agree with,  
16 is that the record is the...when counsel  
17 refers to the record she is talking about  
18 the motion record we filed before Justice  
19 Myers.

20 THE DEPONENT: Yes, not among these  
21 ones, correct.

22 MR. CAYLOR: And the point she is making  
23 is that the records you are now referring  
24 to were supplied after that.

25 THE DEPONENT: Correct.

1 150. MS. VERMETTE: Okay.

2

3 BY MS. VERMETTE:

4 151. Q. So, Mr. Boyert, as you mentioned,  
5 Mr. Straumann, provided you with numerous documents.

6 A. Correct.

7 152. Q. And that was in June, 2010?

8 A. In June, 2010 I received from him  
9 maybe 100 pages, and more documents were provided  
10 later on.

11 153. Q. Okay. And among those numerous  
12 documents you have only attached a few to your  
13 affidavit.

14 A. Correct.

15 154. Q. And there is this document about the  
16 shares that we will come back to and there are the  
17 pleadings in the litigation, and the letter to Taib,  
18 but there is nothing else.

19 A. Well, we filed the court action in  
20 Ontario, so we submitted all the documents that we  
21 felt would be relevant for a court action in  
22 Ontario. So because of the jurisdiction being in  
23 Ontario, that is what we filed. But, of course, all  
24 these documents, you requested to see these  
25 documents and we provided you these documents.

1 155. Q. That is right.

2 A. We are not sure...I mean, the  
3 question is...okay.

4 156. Q. But presumably you have included in  
5 your affidavit in this Ontario proceeding the  
6 documents that you thought supported your position  
7 the most.

8 A. We submitted those documents that  
9 made a connection between the United States, Sakti,  
10 and Sakto in Canada.

11 157. Q. Mr. Boyert, aside from his exchanges  
12 with Sean Murray, had no documents about Sakto and  
13 its operations.

14 A. Not that I know of, or that I  
15 recollect now, but, I mean, the documents he gave  
16 us, like, the letters that Mr. Murray had written to  
17 him. But I don't think he had any separate  
18 documents on Sakto, correct.

19 158. Q. And so if there was a document in  
20 those that Mr. Boyert provided that showed  
21 corruption, kickbacks and money laundering, I  
22 presume you would have attached that to your  
23 affidavit?

24 A. We only...I don't think...I mean, we  
25 attached all the documents that connected Sakto to

1 Sakti, and that connected Sakti back to the Taib  
2 family.

3 159. Q. So you...

4 A. But we could not...I mean, we...it  
5 is a very extensive...it is a very big body of  
6 documents and it requires...if you want to go  
7 through them in detail it requires months, or years.  
8 So, we took those documents that we thought  
9 supported the case, correct.

10 160. Q. Okay.

11 A. But we did not withhold any document  
12 we linked to Sakto that...I mean, in terms of full  
13 and frank disclosure that would not have...that  
14 would have said anything else. If...am I correct?  
15 Am I clear? Sorry.

16 161. Q. I understand.

17 A. I understand you are implying that  
18 we withheld some documents.

19 162. Q. I am not implying that you are  
20 withholding documents. I am saying that if there  
21 were good documents you attached to them to your  
22 affidavit.

23 A. There are more documents which we  
24 could not attach because this is an Ontario case.  
25 It is not a U.S. case. If we went to court in the

1 U.S. we would have attached them, like the loans  
2 from Jamilah's brother to Wallyson's. We did not  
3 attach them.

4 163. Q. Well, I have...again, I haven't seen  
5 these documents. I am not here to give evidence,  
6 but those documents are not in the record, and I am  
7 not sure what restrictions you are referring to  
8 about not filing documents in Ontario. Maybe your  
9 counsel can throw light on that because I don't  
10 understand what restrictions there would be.

11 MR. CAYLOR: I don't think I understand  
12 the witness to be referring to  
13 restrictions. It is just the focus on the  
14 case in Ontario is not Sakti, it is Sakto.

15 164. MS. VERMETTE: That is right.

16 MR. CAYLOR: Yes.

17

18 BY MS. VERMETTE:

19 165. Q. Okay, so Mr...going back to what we  
20 were discussing earlier, that Mr. Boyert alleges  
21 that no cash was being infused in the time period  
22 referred to in the pleading in Sakti and Wallyson's.  
23 And he refers throughout the pleading, and I can  
24 give you examples but you may remember. He refers  
25 throughout the pleadings to various loans that he

1           obtained from various financial institutions...

2                   A.       Correct.

3   166.           Q.       ...for the two companies.

4                   A.       Yes.

5   167.           Q.       Yes. Okay. If you could please go  
6                   back to your affidavit at tab B, volume 1. And go  
7                   to page 44, please. Okay, paragraph 75. You say in  
8                   the last sentence:

9                           "...As noted previously, Boyert was a  
10                           whistleblower who worked closely for Taib  
11                           in setting up his ventures in the United  
12                           States, primarily in California, and who  
13                           worked on transferring wealth to the United  
14                           States on behalf of, and in trust for  
15                           Taib..."

16                   Well, we just saw that Mr. Boyert said that there  
17                   was no money coming to the United States, so, Mr.  
18                   Straumann, I am putting to you that there is no  
19                   evidence in the record showing that Mr. Boyert  
20                   worked on transferring the wealth to the United  
21                   States.

22                           A.       Yes. It should say...it should read  
23                           "worked on generating wealth in the United States".

24   168.           Q.       Okay. Thank you. And you are  
25                   aware, Mr. Straumann, that Mr...in response to Mr.

1 Boyert's complaint, Sakti and Wallyson's brought a  
2 cross-complaint against Mr. Boyert?

3 A. Correct.

4 169. Q. But this is not mentioned anywhere  
5 in your affidavit.

6 A. The cross-complaint is among the  
7 exhibits. It is on record. We have provided it.

8 170. Q. But we will go look at that in just  
9 one second, but do you agree with me that you do not  
10 say anywhere in the body of your affidavit that  
11 Sakti and Wallyson's brought a cross-complaint  
12 against Mr. Boyert?

13 A. Actually, in section 78 we say:  
14 "...As a result of his dismissal Boyert  
15 filed a suit with the Superior Court of  
16 California against Taib family..."

17 Included in the statement was a detailed description  
18 of the properties owned by Taib and so on. And  
19 Exhibit 37...and then you go to Exhibit 37 and the  
20 whole...

21 171. Q. Exhibit 37 is Mr. Boyert's complaint  
22 only.

23 A. It is Mr. Boyert's complaint only.

24 I...

25 172. Q. So, the document...

1                   A.       In my understanding, the response  
2                   also had been there, but I may be wrong.

3   173.               Q.       Okay. So, but we will get to that.  
4                   My question was not whether the document is an  
5                   exhibit, because we will go there. My question is,  
6                   is in the text of your affidavit, do you say  
7                   anywhere that there was a cross-complaint?

8                   A.       No. Not that I am aware of.

9   174.               Q.       Okay. So, I am going to ask you to  
10                  turn two documents at the same time, because we will  
11                  compare them. The first one is volume 5 of your  
12                  motion record, and that is what I think you had in  
13                  mind, volume 5, tab 81. Tab 81.

14                         So, the first document starting at page  
15                         1720 is, again, Mr. Boyert's complaint. Do you see  
16                         that?

17                   A.       Yes.

18   175.               Q.       And then if you go to page 1741 we  
19                   have the verified answer of defendant Sakti  
20                   International Corporation and Wallyson's Inc. to  
21                   verify the complaint for damages, and then  
22                   ":cross-complaint". Do you see that?

23                   A.       Correct. Yes.

24   176.               Q.       And on page 1740 it says that this  
25                   was filed on May 10th, 2007.

1 A. Yes.

2 177. Q. Okay. So, keep this open please,  
3 and then can you please take our responding motion  
4 record. Your blue book. It is just there, Mr.  
5 Straumann.

6 MR. CAYLOR: I guess, Counsel, you put  
7 to my friend...or, my witness, that the  
8 body of the affidavit doesn't refer to what  
9 you just took him to, but you might take  
10 the witness to paragraph 132, to be fair to  
11 him, as it is not a memory test, of course.  
12 Where it say, "In reply, the Taib  
13 Family..."

14 THE DEPONENT: Correct.

15 MR. CAYLOR: "...denied the allegation,  
16 and (falsely) claimed that it had no  
17 knowledge or information about Sogo".

18 178. MS. VERMETTE: That is all in the  
19 defence. In the cross-complaint Mr. Boyert  
20 is accused of misappropriation of funds and  
21 self-dealings and all of that, as we will  
22 see. And so this is not mentioned in the  
23 affidavit. The accusation...the  
24 allegations against Mr. Boyert.

25

1 BY MS. VERMETTE:

2 179. Q. Okay, so if you could keep,  
3 please...

4 A. Sure.

5 180. Q. ...this open at 1741, and then go to  
6 our blue responding motion record, tab C. So, this  
7 is also the verified answer of Sakti International  
8 and Wallyson's in the cross-complaint. Do you see  
9 that?

10 A. Yes.

11 181. Q. Okay, so in this document, if you  
12 can go, please, to page 19...

13 A. I am sorry...

14 182. Q. Sorry, 35.

15 A. I am sorry, but page 16 in the blue  
16 document...

17 183. Q. Yes.

18 A. ...does not have the same stamp as  
19 the page 1741, which says "filed on May 10th, 2007".  
20 Is there a reason why this stamp is missing?

21 184. Q. So we...as mentioned in the  
22 affidavits in our record, this document comes from  
23 the response to the request to inspect. So, we got  
24 this document from the document you provided to us.  
25 And that is paragraph 4 of the affidavit of Kimberly

1 Campbell, which is...so, it is the only thing I can  
2 say.

3 My understanding is that the documents are  
4 identical.

5 A. Okay.

6 185. Q. If you...you know, if you find any  
7 identical...except I am going to point that out, but  
8 if you have any different information, please let me  
9 know.

10 So, if you could please go to page 19 of  
11 the document.

12 A. Yes.

13 186. Q. Oh, sorry, I meant page 35, using  
14 the numbers at the top.

15 A. Okay.

16 187. Q. And that is page 19 of the defence.  
17 You see that?

18 A. Yes.

19 188. Q. So, in...yes, you are seeing the  
20 problem now.

21 A. Okay, I see the problem.

22 189. Q. So, okay, in our responding motion  
23 record you will see there is a page 19, and that is  
24 the end of the defence portion of the document, you  
25 see?

1 A. Yes.

2 190. Q. And then you turn the page and that  
3 is when the cross-complaint starts, you see?

4 A. Right, yes.

5 191. Q. And the cross-complaint part is not  
6 included in your motion record.

7 A. Yes. Let me see...yes, that is  
8 correct.

9 192. Q. But then...

10 A. However...

11 193. Q. ...you include the answer...

12 A. However, it becomes clear from the  
13 numbering of pages that the document is not  
14 finished, and it becomes clear from the title that  
15 there is a cross-complaint, but it is not part...it  
16 is not in the record. Correct.

17 194. Q. It is not in the record, and we  
18 don't know from your affidavit either what the  
19 cross-complaint was about.

20 A. Yes, but your clients would know,  
21 because they filed the cross-complaint.

22 195. Q. My client was not before Justice  
23 Myers. Okay. And we will come back to the  
24 cross-complaint, but if you go to page 1762 in your  
25 record, you have the verified answer of Ross Boyert

1 to Sakti International Corporation and Wallyson's  
2 Inc.'s cross-complaint. So, we have the answer  
3 there?

4 A. Yes.

5 196. Q. Okay. And again, Mr. Straumann,  
6 this document, this answer of Mr. Boyert does not  
7 mention Taib.

8 A. No.

9 197. Q. And if you look on page 1763...

10 A. Yes.

11 198. Q. ...paragraph 14, Mr. Boyert says  
12 that his direct supervisor was Rahman, and that he  
13 was subject to Rahman's direction in all matters in  
14 connection with the corporation. Do you see that?

15 A. Yes.

16 199. Q. And also this answer, this document  
17 does not contain any allegation of corruption or  
18 money laundering.

19 A. No.

20 200. Q. Okay. So, I want now to go back to  
21 the cross-complaint in our blue record, starting on  
22 page 36.

23 A. Okay.

24 201. Q. So, even though it is not in your  
25 record you did read the cross-complaint before the

1 litigation in Ontario was commenced?

2 A. Yes.

3 202. Q. And so you were aware of the  
4 allegations of Sakti and Wallyson's that Mr. Boyert  
5 abused his position of trust and engaged in acts of  
6 self-dealing?

7 A. Yes.

8 203. Q. If you could please go to page 38?  
9 So paragraph 15 at the bottom, it says:

10 "...Over the year Boyert abused his  
11 position of trust and confidence, and  
12 engaged multiple acts of self-dealing  
13 without the knowledge or approval of the  
14 president or board of directors of Sakti  
15 and Wallyson's respectively. The full  
16 extent of this pattern of self-dealing is  
17 not presently known but includes the  
18 following..."

19 And you have read this list before that follows from  
20 A to M?

21 A. I...yes. I presume I have read it,  
22 yes.

23 204. Q. And you see that the first few  
24 paragraphs talk about Mr. Boyert having improperly  
25 caused himself to be paid additional compensation?

1 A. Yes.

2 205. Q. And if you go to page 40, paragraph  
3 I, there is an allegation that:

4 "...Mr. Boyert improperly caused Sakti to  
5 pay the lease on a luxury car for his  
6 personal use, paid for auto insurance,  
7 repair work, gas purchases and car  
8 washes..."

9 Do you see that?

10 A. Yes.

11 206. Q. And in J there is an allegation  
12 about having:

13 "...Sakti paying for trips to Las Vegas for  
14 Mr. Boyert and his wife..."

15 A. Correct.

16 207. Q. And the expenses included:

17 "...lodging, dining, spa treatments and  
18 shows..."

19 A. Yes.

20 208. Q. And in paragraph K the other  
21 allegation is that:

22 "...Mr. Boyert caused Sakti to pay for work  
23 at his home..."

24 A. Yes.

25 209. Q. And in L the allegation is that he:

1                    "...caused Sakto pay thousands of dollars  
2                    in medical expenses..."

3                    A.            Yes.

4            210.            Q.            And again, you don't mention any of  
5                    that in your affidavit.

6                    A.            No. Well, I understand that this  
7                    has not been tested. I mean, there has not been a  
8                    court decision, so it is an allegation.

9            211.            Q.            Same for Mr. Boyert.

10                    A.            We could also say this allegation is  
11                    showing there was a serious lack of governance and  
12                    compliance within Sakti, and we could summarize it  
13                    in this way, but I am not denying that it is not  
14                    being in the record here, because this record is  
15                    about Sakto, not about Sakti. The case is about  
16                    Sakto. So, that may be...we could also talk about  
17                    the Safe Haven report.

18            212.            Q.            Well, this is my  
19                    cross-examination...

20                    A.            Sorry.

21            213.            Q.            ...Mr. Straumann. And you do rely  
22                    heavily on Mr. Boyert in many cases in your  
23                    affidavit. Correct?

24                    A.            We rely on documents provided by Mr.  
25                    Boyert, yes.

1 214. Q. You also rely on statements made by  
2 Mr. Boyert that are not supported by any documents.

3 A. Yes.

4 215. Q. And so Mr. Boyert's alleged  
5 fraudulent behaviour is certainly relevant to his  
6 credibility?

7 A. Sorry, that was a question or a  
8 statement?

9 216. Q. That was a question.

10 A. If it is relevant...yes, it is  
11 relevant. I mean, can you please repeat this  
12 question exactly for me?

13 217. Q. You said that the alleged fraudulent  
14 behaviour of Mr. Boyert is relevant to the question  
15 of his credibility.

16 A. It could be relevant.

17 218. Q. And the fact that he may be a  
18 disgruntled employee is relevant to the question of  
19 his credibility.

20 A. It could be relevant.

21 219. Q. Okay. So, as you mentioned, Mr.  
22 Straumann, you provided us with a lot of documents  
23 which have been provided to you by Mr. Boyert. And  
24 one of them, and that was in response to paragraph 5  
25 of our request to inspect. So, one of them and I am

1 showing this to you, is a brief called "Exhibits to  
2 Mediation Brief of Sakti International Corporation  
3 and Wallyson's Inc."

4 MR. CAYLOR: Sorry, Counsel, is this  
5 something new?

6 220. MS. VERMETTE: This is something new but  
7 this is, as I just mentioned, part of what  
8 you provided us in response to our request  
9 to inspect, and that was in response to  
10 paragraph 5, and under the tab M, just for  
11 your own reference.  
12

13 BY MS. VERMETTE:

14 221. Q. Mr. Straumann, do you remember...

15 A. I am sorry, tab M...

16 222. Q. I am referring to the way the  
17 documents...

18 A. Okay.

19 223. Q. ...were provided to us. So, do you  
20 remember...well, backing up. Have you reviewed all  
21 the documents over the years that Mr. Boyert  
22 provided to you?

23 A. Not thoroughly. We are  
24 currently...I mean, we have to provide them to you,  
25 and I have started looking into them, but I am not

1 familiar with the documents Mr. Boyert provided, to  
2 the extent that I am familiar with the documentation  
3 on Sakto.

4 224. Q. Okay. And this document that I just  
5 provided to you, do you want to take just a minute  
6 to see whether you remember having seen this  
7 document before or not?

8 A. M'hmm. Tab A, or...

9 MR. CAYLOR: That whole brief?

10 225. MS. VERMETTE: That whole brief. This  
11 is...we added the tabs, but if you look at  
12 the second page, so the title of this  
13 document is "Exhibits to Mediation Brief of  
14 Sakti and Wallyson's". The second page has  
15 an index with exhibits from A to L, and  
16 just for the purpose of facilitating the  
17 review we added the tax, but this was part  
18 of what you provided.

19 THE DEPONENT: Yes, I have seen some of  
20 these documents, but I have...I could...I  
21 have not...I can't testify to every word of  
22 these documents, but I have seen them. I  
23 mean, the general gist I know.

24 226. MS. VERMETTE: Okay. So, I am going to  
25 ask that this document be marked as the

1 next exhibit.

2 MS. WARD: Exhibit 4.

3 227. MS. VERMETTE: Exhibit 4.

4

5 --- EXHIBIT NO. 4: Exhibits to Mediation Brief for Sakti  
6 and Wallyson's, letter A through L

7

8 BY MS. VERMETTE:

9 228. Q. Okay, so as I mentioned, this is  
10 exhibits to a mediation brief, and if you look at  
11 the index you see that this document filed by Sakti  
12 includes documents on the issue of self-dealing.

13 A. Yes.

14 229. Q. And so you see, for instance, the  
15 index refers to a spreadsheet of unauthorized meal  
16 expenses, a spreadsheet of unauthorized credit card  
17 purchases, and also a spreadsheet of total  
18 unauthorized gym expenses. You see that in the  
19 index?

20 A. Yes.

21 230. Q. Okay. And so I want to take you to  
22 tab C in this brief.

23 A. M'hmm.

24 231. Q. And do you remember...sorry, tab E.  
25 Do you remember, Mr. Straumann, seeing allegations

1           that Mr. Boyert falsified expenses receipts with  
2           respect to personal meals?

3                   A.           What page are you referring to?

4           232.           Q.           Sorry, on tab E.

5                   A.           Tab E.

6           233.           Q.           If I can get you to just look at the  
7           second page of this one here. You have it? So, it  
8           is a signed declaration of...

9                   A.           Cheryl D. Orr.

10          234.           Q.           That is right.

11                   A.           "...I, Cheryl D. Orr, declare as  
12          follows..."

13          235.           Q.           And she says in the first paragraph  
14          she is an attorney licensed to practice law in  
15          California. Do you see that?

16                   A.           Yes.

17          236.           Q.           And in paragraph 3:  
18                   "...While I was still at the Carlton firm I  
19                   occasionally dealt with Ross Boyert, who  
20                   managed the building on behalf of the  
21                   Carlton firm's landlord, Sakti  
22                   International Corporation Inc. I have been  
23                   shown certain meal expense documentation, a  
24                   true and correct copy of which is attached  
25                   hereto as Exhibit A, that purports to show

1                   that on dates and at locations contained  
2                   therein, I had a series of meals with Mr.  
3                   Boyert.

4                                 In fact, I did not have a meal with  
5                   Mr. Boyert on any of these occasions, or  
6                   ever, nor did I ever meet with him at any  
7                   of the restaurants listed in Exhibit A..."

8                   So, do you remember reading this declaration before?

9                                 A.           I remember reading either this  
10                  declaration or a very similar declaration by someone  
11                  else, but I remember this allegation being brought  
12                  against Mr. Boyert.

13           237.                 Q.           Okay, and if you could please go to  
14                  tab F, you actually have a very similar declaration.  
15                  I won't read it, but a very similar declaration of  
16                  Sue Moon Pon. Do you see that?

17                                 A.           Yes.

18           238.                 Q.           And do you remember in addition to  
19                  the allegations about the meals, seeing allegations  
20                  about the unauthorized gym expenses?

21                                 A.           Yes.

22           239.                 Q.           And if you could please go to tab K,  
23                  and we have a series of gym invoices that were filed  
24                  by Sakti.

25                                 A.           Yes.



1                   Canada is based on an interview of Boyert,  
2                   and on reviewing the documents I obtained  
3                   directly from him..."

4                   And so you are talking about money laundering in  
5                   Canada in this sentence, correct?

6                   A.       Yes. In analogy to what is  
7                   happening in California.

8       247.           Q.       Okay. So, because you have said  
9                   earlier that...

10                  A.       Yes.

11       248.           Q.       ...there were no documents provided  
12                  by Mr. Boyert about the operations or financing of  
13                  Sakto. Or Canadian corporations.

14                  A.       Correct. However, Sakti was taken  
15                  over by Sakto in 2007. And Wallyson's was also  
16                  taken over by Sakto in 2007, so what happened in the  
17                  U.S. prior to 1994, all the funds brought in were  
18                  subsequently to January, 2007, being administered  
19                  from Canada, from Ontario.

20       249.           Q.       Yes, but we...you said earlier, Mr.  
21                  Straumann, that Mr. Boyert was not there prior to  
22                  1994, and so cannot in an interview, or in these  
23                  documents, give you evidence of what happened with  
24                  Sakti and Wallyson's before he was an employee of  
25                  these companies.

1                   A.       Well, he had documents going back to  
2                   the incorporation of Sakti in 1987, then the setting  
3                   up of Sakti International Holdings. So, part of the  
4                   documents he provided us went further back than when  
5                   he was employed in 1994. So...because he held the  
6                   company records.

7                   250.               Q.       But you...the only document that you  
8                   have included in the record that precedes his  
9                   employment, and we will get to that, is the document  
10                  dated 1988 about the shares. I think it is...is it  
11                  8...which is Exhibit 8, tab 8.

12                  A.       I presume this is correct.

13                  251.               Q.       If I am wrong you will let me know?

14                  A.       Yes. I don't think this is the only  
15                  document. I mean, this is the only document we...       U/T

16                  MR. CAYLOR:       The witness is looking at  
17                  tab 8.

18                  THE DEPONENT:     Yes. Tab 8.

19                  252.               MS. VERMETTE:     Yes.

20

21 BY MS. VERMETTE:

22                  253.               Q.       This is the only document...my  
23                  question was this is the only document you have  
24                  attached that precedes Mr. Boyert's employment.

25                  A.       Which we have attached.

1           254.                   Q.           Yes.

2                           MR. CAYLOR:        In the motion record.

3                           THE DEPONENT:     In the motion record.

4                           Yes.

5

6           BY MS. VERMETTE:

7           255.                   Q.           So, Mr. Straumann, when Mr. Boyert  
8                           gave you all these documents that you received and  
9                           provided to us in response to our request to  
10                          inspect, you knew that for the most part they were  
11                          not his documents, they were the corporation's  
12                          documents?

13                           A.           Yes.

14           256.                   Q.           And you also knew, because Mr.  
15                          Boyert told you, that he had signed a settlement  
16                          agreement with Sakti and Wallyson's?

17                           A.           I beg your pardon?

18           257.                   Q.           Mr. Boyert had signed a settlement  
19                          agreement with Sakti and Wallyson's in which he was  
20                          supposed to return the documents?

21                           A.           I am not aware that he...I don't  
22                          think he told us. I am not sure. The settlement  
23                          agreement...I mean, my understanding was basically  
24                          that he had filed a complaint and then he retracted  
25                          the complaint. But the settlement agreement, if

1           this is...I am not sure how it ended up, to be  
2           honest.

3           258.           Q.       Okay.

4                    A.       I am not aware of this clause.

5           259.           Q.       Leaving aside the settlement  
6           agreement...

7                    A.       Yes.

8           260.           Q.       ...were you aware that Mr. Boyert  
9           had agreed to return all the company documents to  
10          Sakti and Wallyson's?

11                   A.       I was not aware, but I was aware  
12          that these were company documents by Sakti, but I  
13          was not aware of the dealings between Mr. Boyert and  
14          Sakti regarding these documents.

15                    Mr. Boyert told me that he had fought Sakti  
16          in court, and then that the documentation had  
17          disappeared, and then that he had made copies of  
18          that documentation. And which he then submitted,  
19          but the exact details between Sakti and Mr. Boyert I  
20          don't know.

21          261.           Q.       But you know that many of these  
22          documents were not his personal documents?

23                    A.       Correct. Internal company  
24          documents. Yes.

25          262.           Q.       And you didn't have the consent of

1 Sakti and Wallyson's to receive a copy of these  
2 documents?

3 A. No.

4 263. Q. And you published a number of these  
5 documents on the internet.

6 A. I am not sure.

7 264. Q. Okay.

8 A. I know that Sarawak report published  
9 a whole set of documents, but I am not sure if BMF  
10 published these documents prior to Sarawak Report  
11 publishing them. But the whole set of documents was  
12 published by Sarawak report.

13 265. Q. So, but you say you may not have  
14 published them prior to Sarawak Report. Did you  
15 publish them after Sarawak Report did?

16 A. I am not sure if we published the  
17 documents, but definitely we referred to all these  
18 documents, and we published content based on the  
19 documents on our...in the internet, and also in my  
20 book I used these documents to make a case.

21 266. Q. Okay. Just on this point, if you  
22 could please go to your Money Logging book at tab  
23 1...in volume 1, tab 1.

24 A. Okay.

25 267. Q. And page 40 of the book.

1 A. Yes.

2 268. Q. And so the second paragraph under  
3 "Grief and Tears", the two last sentences:

4 "...We then went to Menlo Park, where Ross  
5 kept duplicates of all Sakti company  
6 documents in a rented storage room. We  
7 copied the most important documents, and  
8 would soon publish them on the internet..."

9 A. Correct. But, I mean, these were  
10 published by Sarawak Report, not by BMF. So, the  
11 "we", Clare Rewcastle and myself met Boyert there.  
12 Bruno-Manser-Fonds did not publish these documents.  
13 Not that...I mean, not that I am aware of.

14 269. Q. Okay. But you do refer to them, as  
15 you said, in some of your publications. Some of  
16 the...BMF's publications and your book?

17 A. I refer to these documents, yes,  
18 also in the source index in the book. Yes.

19 270. MS. VERMETTE: Maybe we should take the  
20 morning break, okay?

21 MR. CAYLOR: Sure.

22

23 --- upon recessing at 11:15 a.m.

24 --- A BRIEF RECESS

25 --- upon resuming at 11:28 a.m.

1 LUKAS STRAUMANN, resumed

2 CONTINUED CROSS-EXAMINATION BY MS. VERMETTE:

3 271. Q. Okay, Mr. Straumann, would you  
4 please go to paragraph 77 of your affidavit on page  
5 44? The big volume one.

6 A. Yes.

7 272. Q. You have the smaller version. Okay,  
8 so in that paragraph, first sentence, you state:

9 "...In 2005 Sulaman had a series of career  
10 setbacks that resulted in Taib losing trust  
11 in him..."

12 Just to clarify, Sulaman and Rahman are the same  
13 person?

14 A. Yes.

15 273. Q. And as we have said earlier, Rahman  
16 Sulaman is Taib's son?

17 A. Yes.

18 274. Q. And you made the statement that I  
19 just read as if you were privy to the relationship  
20 between the father and the son, but you actually  
21 don't know them, do you?

22 A. No.

23 275. Q. You have never talked to Mr. Taib or  
24 Rahman?

25 A. No.

1 276. Q. Okay. Could you please go to page  
2 20 at paragraph 18 of your affidavit? Okay, so in  
3 this paragraph you state:

4 "...In addition to the clear evidence  
5 linking the Sarawak timber licences to the  
6 massive increase of wealth of many of  
7 Taib's family members, as well as linking  
8 Taib, his family members and numerous  
9 companies around the world, I have obtained  
10 documents that confirm at least some of the  
11 offshore assets held by those companies  
12 are, in fact, held by Taib's family members  
13 in trust for Taib..."

14 So you state that in that paragraph.

15 A. Yes. It should read I have obtained  
16 one document.

17 277. Q. That is correct. And that is what  
18 you...the information you provided in response to  
19 our request to inspect?

20 A. Correct.

21 278. Q. And that one document, I understand  
22 from your response to the request to inspect, is the  
23 document at tab 8. Volume 1, tab 8.

24 A. Correct.

25 MS. WARD: How is this the response

1 to...this document is not in response...  
2 279. MS. VERMETTE: No, the request to  
3 inspect says that the documents refer...in  
4 paragraph 18 of the affidavit, are the  
5 document at Exhibit 8, and you can see that  
6 in the response to the request to inspect,  
7 tab B of our responding motion record,  
8 paragraph 1 of the response.

9

10 BY MS. VERMETTE:

11 280. Q. Okay, and so we have referred to  
12 this document a couple of times earlier today  
13 without going to it, but that is the document. And  
14 it is dated, you see on the second page of the  
15 document, April 8th, 1988.

16 A. Yes.

17 281. Q. And so again, that was before Mr.  
18 Boyert's employment at Sakti?

19 A. Yes.

20 282. Q. Okay, so this document, as you state  
21 in your affidavit, appears to suggest that some  
22 shares of Sakti were held, at least at that time, in  
23 trust for Taib?

24 A. Yes.

25 283. Q. In its court case...so, sorry. This

1 document was provided to you by Mr. Boyert?

2 A. Yes.

3 284. Q. And in its court case, and the  
4 complaint, and the answer that we looked at earlier,  
5 Mr. Boyert does not say anywhere that they were  
6 shares held in trust for Taib?

7 A. No.

8 285. Q. He mentions the shareholders of the  
9 corporations. He doesn't talk about any shares  
10 being held in trust.

11 A. Correct.

12 286. Q. And this document at Exhibit 8, tab  
13 8, only talks about shares being held in trust.

14 A. Yes.

15 287. Q. It doesn't talk about assets of  
16 Sakti being held in trust.

17 A. Well, my understanding is that the  
18 shareholder is an asset holder through the shares he  
19 holds in the company. If...

20 288. Q. A share is an asset of the  
21 shareholder, correct?

22 A. A share is...if you have 50 percent  
23 ownership in the company, and the company has a  
24 building, as a shareholder you have an asset there.

25 289. Q. You know, Mr. Straumann, that the

1 company's assets is the company's assets. It is not  
2 the shareholder's asset. You understand how  
3 corporations work?

4 A. Yes.

5 290. Q. So, what I just said about a  
6 company's asset not being a shareholder's asset is  
7 correct?

8 A. It is correct, yes.

9 291. Q. So, going back to paragraph 18 of  
10 your affidavit. So, you have corrected that it  
11 should have been only one document that is being  
12 referred to, and you say in the third line:

13 "...I have obtained documents..."

14 Which is the one at Exhibit 8:

15 "...that confirm that at least some of the  
16 offshore assets held by those companies  
17 are, in fact, held by Taib's family members  
18 in trust for Taib..."

19 And, Mr. Straumann, this statement is incorrect,  
20 because this document at Exhibit 8 does not show any  
21 assets being held in trust.

22 A. Unless you lift the corporate veil.

23 292. Q. But you are not talking in paragraph  
24 18 about lifting the corporate veil.

25 A. Yes, but I have obtained one

1 document that confirms that one company that holds  
2 offshore assets is majority owned by...

3 293. Q. It is actually not...

4 A. We could...I mean, we can argue how  
5 to formulate this differently, but the fact is...and  
6 what I mean is that Taib family members are holding  
7 shares in trust for their father, or for their  
8 brother.

9 294. Q. But...

10 A. And the company, Sakti International  
11 Corporation, is holding assets. So, I mean, you may  
12 be right that the assets are being held by Sakti,  
13 and Sakti's shares are being held in trust for Taib.

14 295. Q. And you say Taib is a majority  
15 shareholder. He is actually not. Only under this  
16 document, Exhibit 8, he would hold 50 percent, not  
17 50 percent plus one.

18 A. 50 percent, correct. Yes.

19 296. Q. Okay, when you met with Mr. Boyert,  
20 Mr. Straumann, and you also met with his wife at the  
21 same time in California, you mentioned earlier that  
22 Clare Rewcastle Brown was with you.

23 A. Yes.

24 297. Q. And it was in June, 2010?

25 A. Yes.

1       298.           Q.       And Ms. Rewcastle Brown met with the  
2                   couple a second time a few months later?

3                   A.       Yes.

4       299.           Q.       But you were not present for that  
5                   second meeting?

6                   A.       No.

7       300.           Q.       And you are aware that Ms. Rewcastle  
8                   Brown made a video of parts of her interviews with  
9                   Mr. and Mrs. Boyert?

10                  A.       Yes.

11       301.           Q.       And you have seen this video before?

12                  A.       Yes.

13       302.           Q.       It is on the internet?

14                  A.       Yes.

15       303.           Q.       And Ms. Rewcastle Brown says at the  
16                   beginning of the video that she had been seeking Mr.  
17                   Boyert for weeks, and eventually tracked him down  
18                   through his bankruptcy lawyer. Does this accord  
19                   with your recollection of how you found Mr. Boyert?

20                  A.       Yes. Actually, Mr. Boyert contacted  
21                   BMF and The Borneo Project, a San Francisco-based  
22                   NGO prior to that. Maybe a year prior. And I  
23                   didn't give it much attention, actually. It was the  
24                   first time. He called BMF maybe one year before all  
25                   this. And there was this strange voice on the

1           answering machine, and I had other issues to do, so  
2           I didn't call back.

3                       And then later he contacted The Borneo  
4           Project, an NGO based in Berkeley. And I understand  
5           that he also met some of The Borneo Project staff.

6                       Somehow, then, this information got to Ms.  
7           Rewcastle. But by then Boyert had moved. I think  
8           he had lost his house, and that is how she spent a  
9           lot of time to look for him, and through the lawyers  
10          she found him.

11          304.           Q.        Okay.

12                       A.        But he was the one who reached out.

13                       MR. CAYLOR:        Just answer the question.

14                       THE DEPONENT:       Okay, sorry.

15

16          BY MS. VERMETTE:

17          305.           Q.        Okay, could you please go to  
18           paragraph 80 of your affidavit, page 46?

19                       A.        Okay.

20          306.           Q.        In paragraph 80 you state:

21                       "...In addition to confirming that Taib has  
22           been laundering corrupt money from Malaysia  
23           to his children, Boyert confirmed that it  
24           is well known..."

25                       And then you continue talking about the names Sakto

1 and Sakti. But what I am interested in is the first  
2 part of the paragraph.

3 So, you are saying in that paragraph that  
4 Mr. Boyert confirmed to you that Taib had been  
5 laundering corrupt money from Malaysia to his  
6 children?

7 A. Yes.

8 307. Q. But Mr. Boyert did not provide any  
9 document or evidence supporting this?

10 A. No. But that was what he was  
11 convinced of. I mean, that is what he said.

12 308. Q. And as we mentioned before, there is  
13 no mention of Taib or corruption or money laundering  
14 in the court case that Mr. Boyert commenced...

15 A. Correct.

16 309. Q. ...in California. So, the first  
17 record we have of Mr. Boyert making this sort of  
18 allegation is when he meets with you and Ms.  
19 Rewcastle Brown.

20 A. I think he made that allegation to  
21 The Borneo Project as well, prior to meeting us.  
22 But, yes.

23 310. Q. And The Borneo Project is working  
24 with BMF on these issues? Or, what is the  
25 relationship with BMF?

1                   A.       The Borneo Project is a  
2 Berkeley-based organization that has been working on  
3 in Sarawak for over 20 years, so we know them, and  
4 they informed us about this.

5   311.            Q.       Okay.

6                   A.       So, it is just an American NGO  
7 working in the same place as us.

8   312.            Q.       Okay. By the time that you and Ms.  
9 Rewcastle Brown met with Mr. Boyert and his wife,  
10 however, their mental health was questionable?

11                  A.       Yes.

12   313.            Q.       And could you please go to your  
13 book, your Money Logging book at tab 1, page 37 of  
14 the book? So, page 37, fourth paragraph, you write  
15 in the book:

16                   "...As we talked with Ross Boyert, Clare  
17 and I both felt a growing concern about the  
18 health of the former Taib employee.  
19 Suddenly he expressed serious doubt whether  
20 it had, indeed, been he who had negotiated  
21 the rental contract with the FBI for the  
22 big Taib building in Seattle. He asked  
23 'Was I really the decisive person in that  
24 deal with the FBI, or did the negotiations  
25 actually take place at a higher level

1 without me being informed? It is feasible  
2 that the U.S. government made a secret deal  
3 with Taib. Who is really behind the FBI,  
4 the CIA and the U.S. government? Are they  
5 secretly under Taib's control'?..."

6 So, Mr. Boyert said that to you?

7 A. Yes.

8 314. Q. And you say in the next paragraph  
9 that:

10 "...Real and imaginary situations were  
11 becoming mixed up in [Mr. Boyert's]  
12 mind..."

13 A. Yes.

14 315. Q. And in the video we referred to  
15 earlier, Ms. Rewcastle Brown makes similar comments,  
16 and she says that:

17 "...Mr. and Mrs. Boyert had lost their  
18 ability to decide what was real and what  
19 was not..."

20 Do you agree with that comment?

21 A. Could you please repeat that?

22 316. Q. She says:

23 "...They had lost their ability to decide  
24 what was real and what was not..."

25 A. I would not sign it like this. I

1 would not fully agree to that, but definitely some  
2 kind of paranoia was being part of what is...their  
3 perception.

4 317. Q. Okay. Could you please go to page  
5 41 of your book? I am not going to read it, but you  
6 say there that Ms. Rewcastle Brown and you found  
7 someone to pay for a security company for the  
8 Boyerts?

9 A. Yes.

10 318. Q. And you also say on that same page  
11 that Mr. Boyert, however, later dismissed that  
12 security company because he suspected that the  
13 security personnel might turn out to be a new  
14 threat.

15 A. Yes.

16 319. Q. And in the third full paragraph on  
17 that page you say:

18 "...We drew up a plan to bring the Boyerts  
19 over to Europe for a holiday, to  
20 recuperate, and to establish contacts with  
21 opposition figures from Malaysia..."

22 A. Yes.

23 320. Q. It continues:

24 "...But at the decisive moment Ross refused  
25 to board the aircraft and to leave the

1 U.S.A. He had suddenly lost his trust in  
2 Clare Rewcastle, and began to suspect that  
3 because of her prominent brother-in-law,  
4 the British government or some other dark  
5 agency might be behind her..."

6 A. Yes.

7 321. Q. It continues:

8 "...Ross was trapped in his paranoia and  
9 could no longer find a way out..."

10 A. Correct.

11 322. Q. So that paragraph is accurate?

12 A. The paragraph is accurate.

13 323. Q. And you, in the next paragraph you  
14 report that:

15 "...Two months after your visit Mr. Boyert  
16 was admitted to a psychiatric hospital..."

17 A. Yes.

18 324. Q. And that was after a suicide  
19 attempt?

20 A. Yes.

21 325. Q. And Ms. Rewcastle Brown says in her  
22 video that Mr. Boyert had taken pill, and had  
23 crashed his car, and he had left a note saying that  
24 his wife and daughter would be safer without him.  
25 Is that your information as well? Do you know?

1                   A.        I have no other information because  
2                   I was not there.

3       326.           Q.        Okay.  And you know, however, that  
4                   Ms. Rewcastle Brown went to visit Mr. Boyert in the  
5                   hospital?

6                   A.        Yes.  I think she did.

7       327.           Q.        It is in the video?

8                   A.        Yes.

9       328.           Q.        And so that was just after his  
10                  suicide attempt?

11                  A.        Yes.

12       329.           Q.        And Ms. Rewcastle Brown says that:  
13                   "...Mr. Boyert was in a locked mental ward  
14                   with suspected paranoid schizophrenia..."  
15                  Is that your information as well?

16                  A.        I don't...I have no...I have the  
17                  same source of information because I was not there.

18       330.           Q.        And so despite that Mr. Boyert was  
19                  in the locked mental ward just after a suicide  
20                  attempt, Ms. Rewcastle Brown proceeded to do another  
21                  interview with him?

22                  A.        Yes.  I guess she did.  Yes, she  
23                  did.  She did.

24       331.           Q.        And in the video we see Mr. Boyert  
25                  with his face full of bruises.  Do you remember

1           that?

2                   A.       Yes. I remember that.

3   332.           Q.       And a few weeks later, as we said  
4           earlier, Mr. Boyert committed suicide.

5                   A.       Yes.

6   333.           Q.       Okay, could you please go to volume  
7           3 of your motion record at tab 39, please? Okay,  
8           and if you go to page 953...

9                   A.       Yes.

10   334.           Q.       So, this is a letter written by Mr.  
11           Boyert.

12                   A.       Yes.

13   335.           Q.       And he provided you with a copy of  
14           this document?

15                   A.       Yes.

16   336.           Q.       And on page 953 we see the letter is  
17           dated November 20, 2006?

18                   A.       Yes.

19   337.           Q.       And it is addressed to Chief  
20           Minister Dato Pehin Tan Haji?

21                   A.       Yes.

22   338.           Q.       So, Mr. Boyert was certainly not on  
23           a first name basis with the Chief Minister?

24                   A.       No. Not that I know of.

25   339.           Q.       No. And as we saw earlier in Mr.

1 Boyert's complaint, he says he was terminated in  
2 January, 2007. Do you remember seeing that?

3 A. Yes.

4 340. Q. And so this letter was written  
5 before he was terminated.

6 A. Well, I understand that between  
7 probably the end of 2005 and January, 2007 it was  
8 already being made clear to Boyert that he was  
9 terminated, but he challenged that. Because he  
10 said...actually he got a phone call from Sean  
11 Murray. The first thing he got was a phone call  
12 from Sean Murray in which he was informed he would  
13 be terminated, apparently because Taib Mahmud Taib  
14 had decided that Sakti should be managed from other  
15 one, by Sean Murray.

16 And then as I understand it, and according  
17 to my recollection, Boyert challenged that decision  
18 and said, "Sean Murray, you have no authority to  
19 terminate me because this company is being run by  
20 Sulaman, or Rahman". And then it took quite a long  
21 time until this decision by the shareholders, signed  
22 by all shareholders, arrived, which formally  
23 terminated Boyert's mandate with Sakti.

24 So, I understand between...I think we have  
25 to find the exact date, but the end of 2005 and

1           January, 2007. There was a year during which the  
2           termination procedure was under way, and that letter  
3           to...that letter has to be read in that context.

4           341.           Q.           Okay, so if you...we will come back  
5           to that letter. If you can go back to tab 37, that  
6           is Mr. Boyert's court complaint.

7           A.           Yes.

8           342.           Q.           And so if you can please go to page  
9           933?

10          A.           Yes.

11          343.           Q.           Okay, so if you look at paragraph 24  
12          at the bottom of the page...

13          A.           Yes.

14          344.           Q.           ...to paragraph 27...

15          A.           Yes.

16          345.           Q.           ...my understanding, based on this,  
17          and also the letter that we were looking at, is that  
18          Mr. Murray was replacing Rahman as Mr. Boyert's  
19          boss, basically, Not that Mr. Boyert was being  
20          terminated. And as we see in paragraph 27 Mr.  
21          Boyert himself says he was terminated on January 9,  
22          2007 during a meeting with Mr. Murray.

23          A.           Correct.

24          346.           Q.           So, we can agree he was terminated  
25          in January, 2007?

1 A. Yes.

2 347. Q. Okay, so going back to tab 39,  
3 please. So, this letter dated November, 2006 was  
4 written as we just discussed, before the  
5 termination, and obviously it was written before Mr.  
6 Boyert sued Sakti for wrongful dismissal?

7 A. Correct.

8 348. Q. So, if you can keep that open,  
9 because we will come back to that, but go to your  
10 affidavit, tab 1, page 46, paragraph 81.

11 So, the first sentence, I think it is just  
12 the confusion that we just cleared up.

13 A. Okay, "...Boyert...he sent to Taib  
14 in November, 2006 after he was let go from Sakti..."  
15 Yes, I mean, in November, 2006 within this..."at  
16 this meeting Murray terminated Boyert's employment".  
17 Yes, I am fine with...

18 349. Q. So, we agree that Mr. Boyert...

19 A. Yes.

20 350. Q. ...was terminated January, 2007, but  
21 there was uncertainty as to who was in charge prior?

22 A. Sure, yes.

23 351. Q. We can agree on that?

24 A. Yes.

25 352. Q. Okay.

1                   A.       My understanding is that actually  
2 Boyert challenged that decision, and he didn't  
3 accept instructions from Murray.

4   353.            Q.       He asked for written resolutions of  
5 the board of directors?

6                   A.       That is my understanding, yes.

7   354.            Q.       Okay.

8                   A.       Okay, yes, we could...this paragraph  
9 81, I agree with that, your interpretation.

10   355.           Q.       Okay. So, going back to the letter  
11 to Taib at tab 39. So, this is a long letter. It  
12 has 17 pages.

13                   A.       M'hmm.

14   356.            Q.       And then there is a three-page index  
15 that follows that.

16                   A.       Yes.

17   357.            Q.       And the index summarizes or sets out  
18 the binders of documents that were sent with the  
19 letter.

20                   A.       Yes.

21   358.            Q.       Okay, if you could please go to page  
22 954, which is the second page of the letter. So,  
23 the second paragraph, he says:

24                   "...The following facts and circumstances  
25 of the last 12 years are accompanied by the

1                   two supporting binders..."

2                   And so what Mr. Boyert does in this letter is to  
3                   explain what he has done over the years while  
4                   working for Sakti and Wallyson's?

5                   A.           Yes.

6           359.           Q.           And if you go to page 969, the third  
7                   paragraph from the bottom, the three last line, Mr.  
8                   Boyert writes:

9                   "...I do not believe that you would  
10                   countenance the bullying behaviour I have  
11                   been subjected to, and I thank you for the  
12                   time you took to read this partial story of  
13                   the last 12 years. There is so much more  
14                   to tell..."

15                   You see that?

16                   A.           Yes.

17           360.           Q.           So, clearly in writing this long  
18                   letter saying what he has been doing over 12 years,  
19                   Mr. Boyert did not think that Taib already knew  
20                   about all of this?

21                   A.           Well, that is an interpretation  
22                   which I don't share. Actually, I thought that at  
23                   least once Taib visited California, and inspected  
24                   Sakti, and my interpretation of the letter is that  
25                   Boyert wanted to show his achievements, and he

1            appealed to the ultimate boss of the endeavour.

2            361.            Q.            And so this...you say you know Mr.  
3            Taib went once. Obviously you were not there, so  
4            that is information that Mr. Boyert gave to you?

5                       A.            That is information that is in the  
6            documents that Boyert gave us, and that you have a  
7            copy of.

8            362.            Q.            But that is not in the record?

9                       A.            It is not in the record.

10          363.            Q.            Okay. In your affidavit, if you  
11          could please go to page 44, you have a heading in  
12          the middle of the page and in that heading you refer  
13          to Mr. Boyert as "Taib's right-hand man".

14                     A.            Yes.

15          364.            Q.            But you don't have any evidence that  
16          Mr. Boyert worked with Taib?

17                     A.            He was the...he worked with the  
18          company of which Taib held 50 percent of the shares.

19          365.            Q.            But he was not taking any  
20          instructions from Taib.

21                     A.            He was taking instruction from  
22          Taib's son.

23          366.            Q.            From Rahman?

24                     A.            From Rahman.

25          367.            Q.            So, he may be Rahman's right-hand

1 man.

2 A. Well, the question is who is behind  
3 Rahman, and where did Rahman get his money from?

4 368. Q. Well, Mr. Straumann, right-hand man  
5 has a meaning. Would you say that someone could be  
6 somebody else's right-hand man if they have maybe  
7 seen them once in 12 years, and don't communicate?

8 A. Taib aide. You could also say Taib  
9 aide instead of right-hand man.

10 369. Q. Well, you are saying that you can be  
11 someone's aide if you see them once in 12 years?

12 A. Yes.

13 370. Q. So that is your interpretation of  
14 this word?

15 A. Well, aiding in generating wealth,  
16 and in looking after his company. That is clearly  
17 an aide.

18 371. Q. Okay. Aside from this letter at tab  
19 39, there is no other evidence in the record of  
20 communications between Mr. Boyert and Taib?

21 A. Not that I know of.

22 372. Q. And also, you are not aware of any  
23 response to this letter?

24 A. No.

25 373. Q. Okay. In the letter...could you

1 please go back to the letter at tab 39? You have it  
2 there? Yes. Okay. In...could you please go to  
3 page 969? So, the first paragraph on that page, Mr.  
4 Boyert writes:

5 "...If you go to www.zillow.com and call up  
6 our home at 128 Heather Drive, Atherton,  
7 California, you will see that there is no  
8 such home. If you look at the aerial, the  
9 house is visibly there, but the outline  
10 shows that we have been excluded from the  
11 community. This, a national website with  
12 over 65 million homes listed..."

13 So, in this letter to the Chief Minister of  
14 Malaysia, Taib...sorry, not Malaysia, Sarawak, Mr.  
15 Boyert is suggesting that his house was  
16 intentionally removed from an aerial map?

17 A. I don't understand this paragraph.

18 374. Q. You don't understand. I suggest to  
19 you, Mr. Straumann, that this paragraph shows that  
20 Mr. Boyert had paranoia and mental health issues  
21 already in 2006, before being terminated.

22 A. I am not in a position to judge  
23 that, because I did not meet him then.

24 375. Q. Okay. Okay, going back to your  
25 affidavit, please, page 20.

1 MS. WARD: Of the record or of the  
2 affidavit?

3 376. MS. VERMETTE: Of the record.  
4

5 BY MS. VERMETTE:

6 377. Q. Okay, so paragraph 19. You see in  
7 paragraph 19 that:

8 "...The following is a summary of certain  
9 key factors which support my strong belief  
10 that Jamilah and the Canadian Taib-related  
11 companies discussed herein have and are  
12 laundering proceeds of corruption from  
13 Malaysia..."

14 And one of the key factors that you list in  
15 subparagraph (f) on page 22 is Ross Boyert, correct?

16 A. Yes.

17 378. Q. And in that paragraph (f), you  
18 describe Ross Boyert as Taib's employee.

19 A. Yes.

20 379. Q. And that is incorrect. He was not  
21 Taib's employee. He was Sakti's employee or  
22 Wallyson's employee.

23 A. Sakti was holding 50 percent and  
24 shares of Sakti, and...I mean, formally speaking you  
25 can say Sakti's employee, but Sakti being a...he was

1 Taib's...he was a Taib's family employee, to be on  
2 the safe side.

3 380. Q. He was Sakti's employee and  
4 Wallyson's employee.

5 A. Well, he was.

6 381. Q. Yes, he was. And you say,  
7 continuing the same sentence, that:

8 "...Mr. Boyert was charged with managing  
9 Taib's wealth in the U.S...."

10 And again, he was not doing that. He was property  
11 manager for Sakti and Wallyson's.

12 A. No, but Sakti and Wallyson's are  
13 Taib's wealth, because he is the 50 percent  
14 shareholder of this company, and the rest is being  
15 held by his children.

16 382. Q. Well, we actually don't know that.  
17 But there is a document dated 1988 that may mean  
18 that, but it is still 50 percent, even if that is  
19 correct.

20 A. M'hmm.

21 383. Q. So, he was managing, really, the  
22 assets of Sakti and Wallyson's.

23 A. He was managing Taib family wealth  
24 in the U.S.

25 384. Q. That is your interpretation.

1 A. Yes.

2 385. Q. Do you have any documents in which  
3 there is mention of personal assets of Taib that Mr.  
4 Boyert had?

5 A. I understand that Mr. Boyert implied  
6 that the Presidio Avenue mansion in San Francisco  
7 was Taib's personal mansion, but as far as I know it  
8 was being held through Rahman or through Sakti. But  
9 that was his mansion in San Francisco.

10 386. Q. Rahman was staying in that house.

11 A. I don't know. I have...

12 387. Q. So you don't...so the answer is you  
13 don't know?

14 A. Well...

15 MR. CAYLOR: Do you have evidence that  
16 Rahman was staying there, or you lead that  
17 evidence?

18 388. MS. VERMETTE: It is...I am asking the  
19 question.

20 MR. CAYLOR: No, you put it to him as if  
21 he was staying there.

22 389. MS. VERMETTE: Well, I think it is in  
23 the documents. I will provide it. But I  
24 am asking the question.

25 THE DEPONENT: The question is if Rahman



1 Taib abused his position in government to  
2 obtain millions of dollars, and he has been  
3 laundering money through his family members  
4 and numerous companies, including Sakto and  
5 Sakti..."

6 And so I am suggesting to you, Mr. Straumann, that  
7 it was impossible for Mr. Boyert to have any direct  
8 knowledge about anything happening at the government  
9 level in Malaysia.

10 A. Well, apart from reading newspapers  
11 and...I think Boyert came...I mean, Boyert came to  
12 the...that was the conclusion that Boyert had come  
13 to after 12 years of service for this family. And  
14 after having had to report secretly to offshore  
15 addresses in Singapore, and Rahman making it clear,  
16 "Please don't let anyone know that I hold these  
17 assets". And even when they were negotiating for  
18 Wallyson's they didn't want anyone to know when they  
19 were applying for loans. They didn't want to  
20 disclose the ownership structure, so definitely  
21 there were attempts, strong attempts of concealment,  
22 and there is evidence of these attempts of  
23 concealment within the Boyert documents.

24 So, Boyert made his personal conclusion,  
25 and...but we can't prove if this was a correct

1 conclusion, yes or no. But that was his conclusion  
2 as having worked for this company, and for this  
3 family for 20 years.

4 395. Q. You will agree with me, Mr.  
5 Straumann, that there are many reasons why someone  
6 may want to keep their investment confidential, and  
7 that has nothing to do with money laundering.

8 A. Yes, but in the case of the Taib  
9 family, the big question is how did they become so  
10 rich in such a short time? And we shouldn't forget  
11 they are politically exposed persons.

12 396. Q. But Mr. Boyert couldn't have an  
13 answer to that question, because he was just a  
14 property manager in California, wasn't he?

15 A. He was a property manager in  
16 California who had a lot of insight into this  
17 family, and in the end fell out with the family.  
18 But I think we should just take it as what it is.  
19 It is Ross Boyert's...well, the conclusion he came  
20 to after 12 years of service.

21 397. Q. Okay, now, Mr. Straumann, I want to  
22 talk about the Global Witness video that you  
23 referred to in your affidavits.

24 A. Yes.

25 398. Q. And we sent to your counsel



1 28 to your affidavit.

2

3 --- EXHIBIT NO. 6: Blackline document, memorandum,  
4 transcript by Bennett Jones

5

6 403. MS. VERMETTE: And so as I mentioned in  
7 my e-mail to your counsel yesterday, I  
8 would ask for an undertaking that you  
9 review the changes and let us know if you  
10 disagree with any of the changes that were  
11 made.

12 MR. CAYLOR: We will give you that  
13 undertaking.

U/T

14 404. MS. VERMETTE: Thank you very much.

15

16 BY MS. VERMETTE:

17 405. Q. Okay. So, in the Global Witness  
18 video...you may actually want, Mr. Straumann, to  
19 open the transcript that is actually in your record  
20 because we will use it. And it is in volume 3, tab  
21 28.

22 A. Okay. I just have to say that  
23 I...the transcript has been made by Bennett Jones.

24 406. Q. Yes.

25 MR. CAYLOR: She is going to ask you

1 questions about it.

2 THE DEPONENT: Okay, sure.

3 407. MS. VERMETTE: No, no, I understand. I  
4 understand that the transcript was prepared  
5 by Bennett Jones.

6 THE DEPONENT: Good.

7

8 BY MS. VERMETTE:

9 408. Q. And again, there are no big  
10 substantive changes. It is just to clarify certain  
11 things. Okay. So, in the Global Witness video  
12 there are a number of people that are interviewed in  
13 that video, that appear in that video.

14 A. Yes.

15 409. Q. Yes. And including two cousins of  
16 Taib.

17 A. Correct.

18 410. Q. And the two cousins of Taib in the  
19 video are the daughters of Taib's uncle, Rahman.

20 A. Correct.

21 411. Q. Another Rahman.

22 A. Yes.

23 412. Q. So in that part of the examination  
24 when I refer to Rahman I will be talking about the  
25 uncle, not the son.

1                   A.        Correct.  Yes, that is why Sulaman  
2                   is the son and Rahman is the uncle.

3    413.            Q.        But Mr. Boyert, I think, was calling  
4                   Sulaman on a daily basis, Rahman.

5                   A.        Correct.  Actually, he was using the  
6                   name Rahman in the U.S. and using the name  
7                   Sulaman...he is more known as Sulaman in Malaysia.

8    414.            Q.        Okay.  So now we are talking about  
9                   Rahman the uncle, Taib's uncle.

10                  A.        Correct.

11   415.            Q.        Okay.  And Rahman used to be  
12                  Sarawak's Chief Minister just before Taib.

13                  A.        Correct.

14   416.            Q.        And in your book you describe a long  
15                  conflict that took place between Taib and his uncle,  
16                  Rahman.

17                  A.        Correct.

18   417.            Q.        And this conflict arose out of  
19                  Rahman's attempt to return to power after Taib  
20                  became Chief Minister?

21                  A.        Yes.

22   418.            Q.        But that attempt failed?

23                  A.        Correct.

24   419.            Q.        Could you please go to your book at  
25                  tab 1 of volume 1, the Money Logging book at page

1 120? Okay, three lines from the bottom you write:

2 "...Wreaking revenge on his uncle became  
3 one of Taib's principal obsessions in the  
4 years that followed..."

5 A. Yes.

6 420. Q. And:

7 "...He missed no chance to chastise his  
8 uncle whose talent and charisma he had  
9 envied throughout his life, and even  
10 arranged for Rahman, who had the reputation  
11 of living the life of a "bon viveur", to be  
12 spied on making sure that his life became  
13 utter hell..."

14 A. Yes.

15 421. Q. So, you say in your book that this  
16 situation went on for more than 20 years?

17 A. Yes.

18 422. Q. And we will come to what happened a  
19 little bit later on, but during that time there were  
20 certainly no good family relationships between Taib  
21 and his uncle?

22 A. Yes.

23 423. Q. Okay. If you could please go to  
24 page 121?

25 A. Between Taib and his uncle

1 personally. I don't know to what extent that  
2 referred to all of the family members, but between  
3 the two men, and then later on there was a public  
4 reconciliation.

5 424. Q. Yes, so that is what we are going to  
6 look at. Page 121, please.

7 A. Yes.

8 425. Q. So, the second full paragraph on  
9 that page you talk about this reconciliation. You  
10 write:

11 "...It was not until more than 20 years  
12 later on Rahman's 80th birthday in January,  
13 2008, that public reconciliation occurred  
14 between Taib, who was still Chief Minister,  
15 and his uncle, who had long since ceased to  
16 represent any form of political threat..."

17 A. Yes.

18 426. Q. Then:  
19 "...'blood is thicker than water' said  
20 Rahman in a speech before more than a  
21 thousand guests at his birthday celebration  
22 in the Hilton Hotel in Kuching. He then  
23 went so far as to grovel publicly and to  
24 announce that Taib was 'someone whom I have  
25 always loved'. Taib played along and

1 refrained from speaking..."

2 A. Yes.

3 427. Q. So, that is...so, your position or  
4 allegation that there was a reconciliation between  
5 the two men is based on the facts set out in that  
6 paragraph?

7 A. On the...yes, it was reported quite  
8 widely in the news in Malaysian at the time. Yes.

9 428. Q. You were not there?

10 A. I was not there.

11 429. Q. No. Okay. Can we go back to your  
12 affidavit, please, page 38? Okay, so at the top of  
13 the page we have paragraph 56 that is continuing  
14 from the previous page. And the seventh line from  
15 the top on page 38, you say:

16 "...In my view the Global Witness video  
17 shows the following..."

18 And then you list a few things.

19 A. M'hmm.

20 430. Q. Yes? Sorry, you have to say yes or  
21 no because "m'hmm", for the record...

22 A. Yes.

23 431. Q. ...doesn't work.

24 A. Yes. Sorry, yes.

25 432. Q. So, the first thing that you mention

1 is tax fraud by evading Sarawak's real property  
2 gains tax using double invoicing.

3 A. Yes.

4 433. Q. So, stopping there, none of the  
5 suggestion in the video about having two sets of  
6 agreements involved Taib, correct?

7 A. I am sorry, I couldn't...

8 434. Q. Involved the...the suggestion in the  
9 video about having two sets of agreements do not  
10 involve Taib?

11 A. They involve his family members.

12 435. Q. They involve the cousins.

13 A. The cousins, yes.

14 436. Q. And a prospective purchaser.

15 A. Yes.

16 437. Q. Taib would not be a party to these  
17 agreements.

18 A. He would be a party insofar as  
19 controlling...I mean, if you look at how Global  
20 Witness proceeded, they approached the  
21 administration on the...which is under Taib, because  
22 he is the Chief Minister, and said that they would  
23 want to buy land.

24 So, public officials directed them and  
25 said, "You have to go through the cousins". And

1           then when they approached the cousins, the cousins  
2           told them how this deal was going to be made.

3                       So, Taib is being implied by controlling as  
4           the Minister for state planning and natural  
5           resources, how lands are being distributed.

6   438.           Q.       So, the government doesn't have...

7                       A.       But a single deal in the end does  
8           not personally imply him.

9   439.           Q.       And just to be clear, the transcript  
10          that you have at tab 28 says, in the first box.

11                   MR. CAYLOR:       I think she wants you on  
12          this spreadsheet.

13   440.           MS. VERMETTE:       Yes.

14                   THE DEPONENT:       Okay.

15   441.           MS. VERMETTE:       Let's use the version  
16          that is in evidence for the moment.

17

18   BY MS. VERMETTE:

19   442.           Q.       The first box, fifth line from the  
20          bottom:

21                   "...Although we approached the government  
22          directly, officials sent us to members of  
23          Taib's own family..."

24                   MR. CAYLOR:       Sorry, Counsel, which page  
25          are you at?

1 443. MS. VERMETTE: Sorry, page 802. Sorry.  
2 The first page.

3 THE DEPONENT: Yes, I can see where  
4 it...also, "We approached government  
5 directly. Officials sent us to members of  
6 Taib's own family". Correct.

7 444. MS. VERMETTE: Okay.  
8

9 BY MS. VERMETTE:

10 445. Q. So, we don't have more information  
11 on this interaction about officials...about this...

12 A. We don't.

13 446. Q. We don't. And...

14 A. I am sure Global Witness has more  
15 information, but we don't.

16 447. Q. You don't. And, of course, the  
17 government was not selling land.

18 A. No.

19 448. Q. And the saving on tax that would  
20 have occurred had there been two sets of agreements,  
21 would have been savings on the part of the cousins?

22 A. Yes.

23 449. Q. There would have been no savings for  
24 Taib?

25 A. No.

1 450. Q. Okay. A related point that you make  
2 in paragraph 56, and sorry, in your affidavit. I  
3 think you still have it open at the right page. So,  
4 we just talked about tax fraud that you mentioned in  
5 that paragraph, and then we will come back to the  
6 other points, but the very last point in that  
7 paragraph is the requirement to use nominees to  
8 circumvent property regulations. Sorry, not the  
9 last point, the...

10 A. M'hmm.

11 451. Q. So, you see that in the paragraph?

12 A. Yes.

13 452. Q. Okay. So, again, the suggestion  
14 about using a nominee in the video does not involve  
15 Taib?

16 A. No.

17 453. Q. And, in fact, the use of nominee was  
18 to allow a foreign purchaser, a non-Malaysian  
19 purchaser, to circumvent a requirement that 51  
20 percent of the shareholdings be held by Malaysians?

21 A. Correct.

22 454. Q. Okay, going back to your affidavit,  
23 you say...another thing that you say that the Global  
24 Witness video shows is...the second thing you  
25 mention is:

1) "...The requirement that a bribe be paid to  
2) Taib through an offshore Singapore bank in  
3) exchange for the sale of a company owned by  
4) Taib's cousin..."

5) Do you see that?

6) A. What section is that in?

7) 455. Q. So, it is page 38.

8) A. Yes.

9) 456. Q. And the paragraph 56. So, if you  
10) start at the end of paragraph 56 it is the fifth  
11) line. "The requirement..."

12) A. Yes.

13) 457. Q. You see that?

14) A. I think there is...it should  
15) read...I don't...I don't think that the video shows  
16) that the bribe should be paid through the offshore  
17) bank, but the requirement that the bribe be paid to  
18) Taib in exchange for the sale of a company. But I  
19) think we should cut that through an offshore  
20) Singapore bank.

21) 458. Q. Okay, that is one correction. And I  
22) suggest to you also, Mr. Straumann, that there was  
23) no suggestion that in the proposed transaction with  
24) the cousins that there be a bribe paid. And you can  
25) look at the transcript if you want.

1) A. Yes. I think that refers to a  
2) different...there are two deals being described, and  
3) the deals with the cousins, there is no mention that  
4) a bribe is being paid in that respect. Correct.

5 459. Q. Okay. So, there is something else  
6) to be corrected in paragraph 56.

7 A. So, it is he paying this...yes.

8 460. Q. Okay. And just before going to the  
9 other transaction that is discussed in the video, I  
10 just want to point out, if you could please go to  
11 page 21 of your affidavit.

12 A. I beg your pardon?

13 461. Q. Page 21 of your affidavit.

14 MR. CAYLOR: Are we finished that one?

15 462. MS. VERMETTE: For the moment. I will  
16 go back to it, but...

17 MR. CAYLOR: Sorry, I was looking at the  
18 witness.

19 463. MS. VERMETTE: Oh.

20 MR. CAYLOR: I thought he had something  
21 to say about that.

22 464. MS. VERMETTE: Sorry. Page 2. Page 21.

23 THE DEPONENT: Yes.

24 465. MS. VERMETTE: Page 21.

25

1 BY MS. VERMETTE:

2 466. Q. So, we have, again, a similar  
3 allegation in paragraph (b), when you talk about a  
4 purchase of a company from Taib's first cousin.  
5 They were told to be required to pay 10 percent to  
6 Taib offshore, and so I am suggesting to you that  
7 the same corrections have to be made here, that  
8 there was no discussion of offshore and the  
9 requirement to pay 10 percent was not with respect  
10 to the proposed transaction with the cousins.

11 A. Correct. There were two deals: One  
12 with the cousins, and one with...yes.

13 467. Q. Okay.

14 A. That is correct.

15 468. Q. Okay. So, let's go to the  
16 transcript that is in the record at tab 28. I think  
17 you have it under your affidavit...

18 A. Yes.

19 469. Q. ...Mr. Straumann. Yes. Okay, so  
20 the other transaction, the person on the video who  
21 he talks about another potential transaction is  
22 called Huang Luong Ong.

23 A. Yes.

24 470. Q. Yes. Okay. And if you could please  
25 go to page 804.

1 A. Yes.

2 471. Q. And the ninth box from the bottom,  
3 the one that says, "Is this your uncle?" Do you see  
4 that?

5 A. Yes.

6 472. Q. Okay, so the transcript reads:  
7 "...Global Witness: Is this your uncle?..."

8 Mr. Ong:

9 "...Yes..."

10 Global Witness:

11 "...How many uncles you got..."

12 Mr. Ong:

13 "...From my wife's side, they are from a  
14 big family..."

15 A. Yes.

16 473. Q. Global Witness:  
17 "...But then behind that is the Chief  
18 Minister..."

19 A. Yes.

20 474. Q. Mr. Ong says "yes". Global Witness:  
21 "...Okay, and will he ever surface..."

22 Mr. Ong:

23 "...No, never. It is like this. I award  
24 you this licence. In return you grateful  
25 to me. Maybe he say I give you a

1 percentage..."

2 So, first of all, if...you recognize that Mr. Ong  
3 says "maybe", correct?

4 A. Yes.

5 475. Q. And then he says:

6 "...Maybe he say I give you a

7 percentage..."

8 We don't know who the "he" is.

9 A. Now, I feel a bit uncomfortable,  
10 because we are not seeing the video, which is, see,  
11 this transcript here. Actually, did you...your  
12 corrections of the transcript, did they...

13 476. Q. You can look at them. There are  
14 no...

15 A. Okay.

16 477. Q. ...substantive changes.

17 A. "Maybe he says I give you..."

18 "Maybe he say I give you a percentage", yes.

19 478. Q. So, I just say...first of all he  
20 says, "Maybe", and you said yes, because it is in  
21 the transcript.

22 A. Yes.

23 479. Q. And second of all, we don't know who  
24 the "he" is.

25 A. Well, we presume it is Taib, the

1 Chief Minister...

2 480. Q. Well, Taib is not...

3 A. ...because it has been talked about  
4 the Chief Minister before.

5 481. Q. Okay. But it says, "Maybe he say I  
6 give you a percentage". Taib is not giving a  
7 percentage.

8 A. It doesn't make sense, does it?

9 482. Q. That is my point.

10 A. He would take a percentage, not give  
11 a percentage.

12 483. Q. So, we don't know who the "he" is.

13 A. It is a conversation. That they  
14 talk about the Chief Minister:

15 "...Behind that is Chief Minister, yes.

16 Okay, will he ever surface? "He" is Chief  
17 Minister. No, never. It is like this. I  
18 awarded this licence..."

19 I mean, I would understand that this would also be  
20 the Chief Minister, but...

21 484. Q. And you will also agree with me that  
22 Mr. Ong's English is not a...we have seen the video.  
23 English is not his first language.

24 A. I presume it is not. It would be  
25 Mandarin or...more than presume? He was struggling

1 talking, and we can see in the transcript there are  
2 words clearly that are missing from the sentences.

3 A. I have not met Mr. Ong.

4 485. Q. No, but you have seen the video.

5 A. Yes.

6 486. Q. You rely on this video.

7 A. Yes. I presume he is not...I don't  
8 know what language he was brought up with, but it  
9 would...I mean, it would be a Chinese, either  
10 Mandarin or Cantonese or whatever. Presumably.

11 487. Q. Okay, so we have your interpretation  
12 of that sentence. Okay, the transcript continues  
13 the very last box on page 804. Global Witness:

14 "...Okay, so he would look for a percentage  
15 from the licence..."

16 Mr. Ong:

17 "...Yes..."

18 Global Witness:

19 "...And how will that get paid, though? To  
20 the nominee..."

21 Mr. Ong:

22 "...The existing owner will pay him up..."

23 Global Witness:

24 "...So he gets paid upfront..."

25 Mr. Ong:

1                    "...Yes, one go..."

2                    Global Witness:

3                    "...What kind of percentage are we looking  
4                    for? I think I know..."

5                    Mr. Ong:

6                    "...Probably 10 percent. He is selling for  
7                    \$230,000,000..."

8                    And then it continues. And that is where the 10  
9                    percent comes from?

10                    A.            Yes.

11                    488.            Q.            And he says again, "Probably 10  
12                    percent".

13                    A.            Yes.

14                    489.            Q.            So he doesn't know?

15                    A.            Maybe there is not a fixed  
16                    percentage.

17                    490.            Q.            And as you have said...as you said  
18                    before, there is no mention in there of payment  
19                    through an offshore bank.

20                    A.            There is no mention, yes. It could  
21                    be in cash.

22                    491.            Q.            We don't know, yes.

23                    A.            We don't know.

24                    492.            Q.            Okay, so could you please go to page  
25                    810? So, that is the very last page of this

1 transcript. And that is at the end of the video,  
2 and then the fourth paragraph on that page says that  
3 Mr. Ong told Global Witness:

4 "...I have never been appointed by Hii Yii  
5 Peng as his solicitors. I have no  
6 knowledge of how Hii Yii Peng obtained the  
7 asset, or that there is a kickback. Your  
8 allegations are untrue and not within my  
9 knowledge to answer..."

10 A. M'hmm.

11 493. Q. So, Mr. Ong confirms there that he  
12 doesn't know. He says, "I have no knowledge".

13 A. Yes.

14 494. Q. And you don't refer in your  
15 affidavit to the fact that Mr. Ong provided this  
16 information to Global Witness about the video.

17 A. No.

18 495. Q. Okay. Could you please go back to  
19 page 38 of your affidavit? So, going back to the  
20 list of things that you say the video shows, in  
21 paragraph 56.

22 A. Yes.

23 496. Q. The two last things that we haven't  
24 talked about yet is owning Sarawak land, which had  
25 been granted to the company by Taib. And the other

1 one in that paragraph is at the end, the illegal  
2 appropriation of state land. So, you see that in  
3 paragraph...

4 A. Yes.

5 497. Q. ...56? Okay. Okay, could you  
6 please now go to tab 1 of the Money Logging book,  
7 page 237? Okay, so the very...the last four  
8 paragraphs on page 237, you discuss what is shown in  
9 the Global Witness video.

10 A. M'hmm.

11 498. Q. Okay. You have to say...

12 A. Yes. Yes.

13 499. Q. Thank you.

14 A. Sorry.

15 500. Q. Okay, so you write in that  
16 paragraph:

17 "...Early in 2011 Ample Agro..."

18 And Ample Agro was the company of the cousins,  
19 right?

20 A. Yes.

21 501. Q. It continues:

22 "...Ample Agro had received a concession  
23 from Taib to clear 5,000 hectares of rain  
24 forest in the Tekoyong District, and to use  
25 the land as an oil palm plantation until

1 2071..."

2 A. Yes.

3 502. Q. It continues:

4 "...It had paid roughly \$330,000 U.S.  
5 dollars for the rights, and had also agreed  
6 to an annual lease at roughly \$1 per  
7 hectare. Although that part of the forest  
8 had been used by Indigenous Iban  
9 communities for more than 100 years, the  
10 Taib government denied them any rights at  
11 all over the forest, which had been  
12 classified as state-owned land..."

13 So, you wrote that? You wrote that in the book?

14 A. Yes.

15 503. Q. Yes. Okay, so just to clarify, we  
16 see from this information in your book that the  
17 sister's company, in fact, did not own the land,  
18 right?

19 A. Correct.

20 504. Q. It was state-owned land.

21 A. It is a lease, yes.

22 505. Q. Yes. So they had this...those  
23 rights to use the land as an oil palm plantation and  
24 a lease...

25 A. A 60-year lease, yes.

1 506. Q. Yes. Okay. And they had received  
2 this right for the oil palm plantation from the  
3 government?

4 A. Yes.

5 507. Q. And they had paid 330,000 U.S.  
6 dollars for those rights?

7 A. Yes.

8 508. Q. And they were also under the lease  
9 paying an annual rent?

10 A. Yes.

11 509. Q. And even though you say in this  
12 paragraph that the land had been used by the Iban  
13 community, there was no recognition by the  
14 government, or by the courts, of other rights over  
15 this particular piece of land...of Indigenous rights  
16 over this particular piece of land?

17 A. Not that I know of, but land and  
18 survey is very intransparent, so you would not just  
19 obtain that kind of information. It is not public.  
20 It is being withheld from public scrutiny.

21 510. Q. But you are not aware of...

22 A. Of any recognition.

23 511. Q. ...Indigenous rights over that  
24 specific piece of land?

25 A. Yes.

1 512. Q. So, there was no illegal  
2 appropriation of land then?

3 A. Well, I mean, the question is how do  
4 you define illegal appropriation?

5 513. Q. I define it as something that is  
6 illegal, and if the state was owned by the land and  
7 there were no recognized...other recognized rights  
8 over the land, then there was no illegal  
9 appropriation of land.

10 A. Yes, but if a Minister gives a piece  
11 of land to his closest family members at an  
12 absolutely underrated price, is that legal?

13 514. Q. That is not for me to answer, but do  
14 you have any expert evidence that this price was  
15 actually too low?

16 A. If it is important we can obtain  
17 that evidence.

18 515. Q. But you don't have it in the record?

19 A. Well, actually, we rely on Global  
20 Witness having done a very serious investigation  
21 there, and Global Witness is recognized as an NGO  
22 with very credible...with very high credibility.

23 So, 330,000 U.S. dollars for 5,000  
24 hectares, you can calculate it is 66 U.S. dollars  
25 per hectare would be a very cheap price, wouldn't

1           it? So, I would confirm here this is way too low,  
2           and way below what it is worth.

3       516.           Q.       And, Mr. Straumann, you are not a  
4           timber exportation expert, or no palm planation.

5           A.       I am not, but this is common sense.

6       517.           Q.       Okay. In your book you do say that  
7           court in Malaysia have recognized Indigenous land  
8           rights in a number of cases.

9           A.       Correct.

10      518.           Q.       And I don't think we need to turn it  
11           up, but you refer to the fact that more than 200  
12           Indigenous land rights claims have been filed in  
13           court since 2001. Does that sound...

14           A.       Correct.

15      519.           Q.       ...correct? Yes. And could you  
16           please go to page 245 of your book, at tab 1? Just  
17           so that you have the reference, the last full  
18           paragraph, last sentence, you write:

19                   "...The courts decide more often than not  
20                   in favour of the Indigenous communities..."

21           A.       Where is that?

22      520.           Q.       Page 245, the last full paragraph,  
23           last sentence.

24           A.       "The courts decide more often than  
25           not in favour of the Indigenous communities." Yes.

1 521. Q. That is right?

2 A. That book was written in 2014. Now,  
3 unfortunately, we are seeing this practice has been  
4 a bit reversed by the Federal Court in Malaysia, but  
5 I don't want to go into details there.

6 522. Q. But they are...sorry. But they are  
7 still deciding, at least, some cases, I would take  
8 it, in favour of the Indigenous communities?

9 A. Correct.

10 523. Q. Correct. So, the courts in Malaysia  
11 can and do rule against the government in some  
12 cases?

13 A. In some cases, yes. But not in many  
14 cases.

15 524. Q. But here at page 245 you said more  
16 often than not.

17 A. Well, the question is, is this  
18 against the government? And, I mean, because we  
19 have to make the distinction between the State  
20 Government and the Federal Government. And we have  
21 had a situation where many cases being in favour of  
22 Indigenous communities were upheld by...in the past  
23 were upheld by the federal courts, but this is  
24 changing, because more federal money is being placed  
25 in Sarawak.

1                   In some cases...I mean, I would stand by  
2 what is written here. I don't want to challenge  
3 anybody.

4           525.           Q.           And I believe in your book, and  
5 maybe somewhere else you said that the State of  
6 Sarawak reserved the right to deal with the timber  
7 resources and all of that, so here we would really  
8 be talking about something that goes against the  
9 interests of the State as opposed to the Federal  
10 Government?

11                   A.           Correct.

12           526.           Q.           Okay. Now, Mr. Straumann, I want to  
13 talk. We turn to the Japanese tax decision. And  
14 this relates to the company Regent Star.

15                   A.           Yes.

16           527.           Q.           And Regent Star was a company  
17 incorporated in Hong Kong?

18                   A.           Correct.

19           528.           Q.           And can you please go to your book  
20 again, page 108?

21                   A.           Page?

22           529.           Q.           108.

23                   A.           108, yes.

24           530.           Q.           Okay. So, in the third paragraph on  
25 that page you are talking about Taib's brother, Onn.

1 A. Yes.

2 531. Q. And you state:

3 "...Having completed his business in  
4 Canada, Onn's next port of call was on the  
5 other side of the Pacific, namely in Hong  
6 Kong, where he set up the Regent Star  
7 company on 22 November, 1983..."

8 A. Yes.

9 532. Q. It continues:

10 "...It was destined to become the chief  
11 clearing house for timber kickbacks paid  
12 into the Taib empire..."

13 A. Yes.

14 533. Q. And you see there that you have a  
15 footnote in support of the serious allegation in  
16 that paragraph?

17 A. Yes.

18 534. Q. Okay. And if you go to...keep your  
19 finger at page 108, but if you go to page 280 of the  
20 book, you see that footnote 2 refers to the  
21 Certificate of Incorporation of Regent Star?

22 A. Yes.

23 535. Q. And there is nothing else referred  
24 in that footnote?

25 A. Correct.

1 536. Q. Okay. And you have included the  
2 Certificate of Incorporation of Regent Star in your  
3 record.

4 A. Yes.

5 537. Q. And we can turn it up if you want,  
6 but Onn's name does not appear anywhere in this  
7 document.

8 A. Correct.

9 538. Q. Mr...so, Onn is neither a  
10 shareholder nor a director of Regent Star?

11 A. Correct.

12 539. Q. So, the Certificate of Incorporation  
13 that you cite in footnote 2 doesn't support at all  
14 the statement in the book that Onn set up the Regent  
15 Star company on November 22nd, 1983.

16 A. The document supports the setting up  
17 of Regent Star on the 22nd of November, 1983.

18 540. Q. But not by Onn.

19 A. Onn was the directing mind.

20 541. Q. You have absolutely no evidence of  
21 that, Mr. Straumann.

22 A. I know he was the directing mind.  
23 He set up two companies the same day, same place,  
24 same office.

25 542. Q. But he did not set up Regent Star.

1 MR. CAYLOR: Let him finish.

2 THE DEPONENT: He was the directing mind  
3 behind the setting up of...because Shea Kin  
4 Kwok was his employee.

5

6 BY MS. VERMETTE:

7 543. Q. Again, you have no evidence that...

8 MR. CAYLOR: Let him finish. Let him  
9 finish. He is trying to answer your  
10 question.

11 THE DEPONENT: Shea Kin Kwok, you know  
12 that on the same day the Richfold  
13 investment was set up at the same place,  
14 and Shea Kin Kwok had one share, and Onn  
15 had all the other shares.

16 So, Shea was his business partner,  
17 but he was acting upon instruction by Onn.  
18 That is my allegation.

19

20 BY MS. VERMETTE:

21 544. Q. Okay, and do you have any document  
22 to support your allegation that Mr. Kwok was an  
23 employee of Onn, as opposed to a business partner,  
24 or a co-shareholder or a co-director?

25 A. I don't have any supporting

1 document.

2 545. Q. And you don't have any supporting  
3 document either that Onn was involved in any way in  
4 setting up Regent Star.

5 A. There is quite strong circumstantial  
6 evidence that...I mean, Regent Star and Richfold  
7 Investment are twin companies set up the same date  
8 by the same person, Shea Kin Kwok and Onn. And it  
9 is...I mean, you have to apply common sense here.  
10 Regent Star was set up as a shell company.

11 546. Q. How do you know that?

12 A. This is very classic in money  
13 laundering. I mean, you don't want the money to be  
14 paid to the Chief Minister's daughter. You need  
15 someone else to receive the money, so you put his  
16 business partner, his employee, in front. But at  
17 the same time they set up these two companies, and  
18 it is obvious that Onn was the directing mind.

19 547. Q. It is obvious without any document  
20 to support it?

21 A. We should subpoena Shea Kin Kwok and  
22 let him come here and testify.

23 548. Q. Well, it is up to you, Mr.  
24 Straumann. So, again, you have no evidence, no  
25 documents showing that Onn was involved in setting

1 up Regent Star?

2 A. I have no document supporting that,  
3 correct. But he was the directing mind.

4 549. Q. You have no evidence that Onn was  
5 the directing mind of Regent Star.

6 MR. CAYLOR: Other than what he has  
7 already told you.

8

9 BY MS. VERMETTE:

10 550. Q. So you are saying they were...

11 A. We have a structure in place. We  
12 have a structure in place. Onn is the director of  
13 Dewa Niaga Sarawak, with whom all the Japanese  
14 shippers have an agreements. So, all the Japanese  
15 shippers, they have to pay money to a Hong Kong  
16 company, who happens to be the company of Onn's  
17 business partner, and then later on we have money  
18 flowing from Richfold Investments, a twin company,  
19 to Canada, again, being received by Onn, who is a  
20 shareholder and director of Sakto.

21 So, we have Onn at all...we have him in  
22 Sarawak, we have him in Hong Kong records, and we  
23 have him in Canada on record.

24 So, he is the link between all this. So,  
25 it is very obvious...that is very much a classic in

1 money laundering. But, of course, we need access to  
2 the bank records to show how the funds were flowing.  
3 That is why we need to know which one it was.

4 551. Q. You think it was...

5 A. One of the reasons why.

6 552. Q. Yes. You are not asking for bank  
7 records of Regent Star. You won't get records of  
8 Regent Star here in Canada.

9 A. Yes, but we want bank records of  
10 Sakto, because Sakto received money from Richfold.

11 553. Q. But you have no evidence of any  
12 transfer of funds between Regent Star...sitting here  
13 today you have no evidence of transfer of funds  
14 between Regent Star and Richfold?

15 A. No, we don't.

16 554. Q. No, you don't,

17 A. But we have a structure which is a  
18 classic in money laundering, and all money  
19 laundering is about is to create an appearance of  
20 legitimacy.

21 555. Q. And again.

22 A. That is what it is all about.

23 556. Q. And again, Mr. Straumann, as you  
24 told me at the beginning of this examination, you  
25 are not an expert in money laundering.

1                   A.       Well, in a certain way I have become  
2                   an expert. After seven years of investigation...and  
3                   I am a certified fraud examiner, by the way. And I  
4                   am a historian. Historians are trained to research  
5                   exactly this kind of thing.

6   557.            Q.       Historians are qualified in making  
7                   findings of money laundering?

8                   A.       Historians are qualified in  
9                   researching...doing painstaking source research, and  
10                  combining, and then trying to establish the truth.  
11                  So, we are trying to find out the truth, nothing  
12                  else.

13   558.            Q.       Yes. And we have seen today that  
14                   you have made a lot of mistakes in your research,  
15                   and reporting your research.

16                  A.       Some minor...we have made some  
17                  corrections, and I am happy that you brought them  
18                  up. Then we can...because, I think our common  
19                  endeavour should be to establish the truth.

20   559.            Q.       Okay, so...I am all in favour of the  
21                   truth. So, Onn Mahmud was a director and  
22                   shareholder of Richfold, just to clarify.

23                  A.       Correct.

24   560.            Q.       Another Hong Kong company.

25                  A.       Correct.

1 561. Q. But he was not a director and  
2 shareholder of Regent Star?

3 A. Correct.

4 562. Q. And you have no evidence in this  
5 record that Richfold and Regent Star did any  
6 business together, or exchanged money?

7 A. No.

8 563. MS. VERMETTE: Okay. Why don't we break  
9 for lunch now and come back at 2:00, if  
10 that works for everybody?

11

12 --- upon recessing at 12:55 p.m.

13 --- A LUNCHEON RECESS

14 --- upon resuming at 1:59 p.m.

15

16 LUKAS STRAUMANN, resumed

17 CONTINUED CROSS-EXAMINATION BY MS. VERMETTE:

18 564. Q. Now, Mr. Straumann, can you please  
19 go to page 35 of your affidavit?

20 A. Yes.

21 565. Q. And in paragraph 49 you talk about  
22 the decision of the Tokyo Regional Taxation  
23 Authority.

24 A. Correct.

25 566. Q. And in the second sentence in that

1 paragraph you state:

2 "...The Tokyo Regional Taxation Authority  
3 found that these payments were  
4 'illegitimate expenses', or kickbacks,  
5 rather than 'entertainment expenses', as  
6 they were so claimed by the shipping  
7 companies that were paid to the Taib family  
8 to facilitate tropical hardwood exports  
9 from Sarawak to Japan..."

10 A. Yes.

11 567. Q. So, in that sentence you put the  
12 words "illegitimate expenses" and "entertainment  
13 expenses" in quotes, but I understand that you do  
14 not have a copy of the decision of the Tokyo  
15 Regional Taxation Authority.

16 A. Yes. Actually, we had tried to  
17 obtain a copy of the Regional Tax Authority's  
18 decision, but according to Japanese privacy  
19 legislation, it is not possible for third parties to  
20 access those copies.

21 568. Q. So the quotation marks refer to  
22 what?

23 A. Quotation marks refer to the Japan  
24 Times report, and actually, in the tab 26 we have  
25 the National Tax Tribunal decision, and the National

1 Tax Tribunal decision also refers to the original  
2 decision, that the agency took the original action  
3 decided, pages 779 to 784. And I think...I found  
4 this sentence a bit confusing here. The Tokyo  
5 Regional Tax...according to my understanding, the  
6 Tokyo Regional Taxation Authority found that these  
7 payments were entertainment expenses. It is not  
8 illegitimate expenses rather than entertainment  
9 expenses. I mean, these were...because the relevant  
10 law here is article 61 of the Japanese Measures law.

11 569. Q. If I can interrupt. I agree with  
12 you. I agree with you...

13 A. Yes.

14 570. Q. ...that the court, the first...with  
15 the first decision, the Tokyo Regional Taxation  
16 Authority decision did find that those payments were  
17 entertainment expenses under Japanese law.

18 A. Correct.

19 571. Q. So, that would need to be  
20 corrected...

21 A. Yes. That has been corrected.

22 572. Q. ...back on 49.

23 A. Yes.

24 573. Q. Okay. So, as...so, you refer to a  
25 Japan Times article, so the only things you know

1 about the actual ruling are what is referred to in  
2 the National Tax Tribunal decision, or what was  
3 reported in foreign media?

4 A. Correct.

5 574. Q. Okay. In paragraph 50 of your  
6 affidavit, which should be before you, on page 35,  
7 you refer to the fact that Taib made a statement in  
8 the Sarawak State Assembly in May, 2007, denying the  
9 allegations.

10 A. Correct.

11 575. Q. And the...if you can go to volume 2  
12 of your motion record.

13 A. Volume 2.

14 576. Q. At tab 24, please. So, that is the  
15 statement you refer to in paragraph 50 of your  
16 affidavit?

17 A. Correct.

18 577. Q. And could you please go to page 735?  
19 And at the bottom of page 735 in paragraph 6.3, the  
20 last three lines, you see that Taib says:

21 "...The Sarawak government and the Chief  
22 Minister have no knowledge of Regent Star,  
23 and have not received any remuneration or  
24 other payments from the alleged Hong Kong  
25 company called Regent Star, or any agent of

1 the Japanese shipping companies to Regent  
2 Star, as alleged. The Sarawak government  
3 and myself, as the Chief Minister, are  
4 totally unaware of such payments..."

5 So...

6 A. Correct.

7 578. Q. ...Taib made that declaration in the  
8 State Assembly?

9 A. Yes. He did.

10 579. Q. So, as you mentioned there was a  
11 subsequent decision by the National Tax Tribunal  
12 because the Tokyo Regional Taxation Authority's  
13 decision was appealed?

14 A. Correct.

15 580. Q. And the National Tax Tribunal  
16 reversed the decision of the Tokyo Regional Taxation  
17 Authority?

18 A. Correct.

19 581. Q. And you have already referred to the  
20 decision, which is at tab 26 of your record.

21 A. Correct.

22 582. Q. And volume 3. And that is an  
23 unofficial English translation that BMF prepared?

24 A. Yes. We commissioned that with a  
25 professional translator in Japan.

1 583. Q. Okay. And we can see on page 743  
2 that the date of the decision is July 23rd, 2008?

3 A. Page 743. 23rd of July, 2008.  
4 Correct.

5 584. Q. Yes. And you will agree with me,  
6 Mr. Straumann, that because there are so many words  
7 that are redacted, sometimes it is difficult to  
8 understand the meaning of certain passages of that  
9 decision?

10 A. Correct.

11 585. Q. And sometimes there are many words  
12 missing in one sentence?

13 A. Yes.

14 586. Q. And I take it that the original  
15 decision that you received in Japanese also had  
16 those redactions, those...

17 A. Yes.

18 587. Q. Yes. Okay, if you could please go  
19 in that decision to page 772? Do you see in the  
20 middle of the page paragraph B?

21 A. Yes.

22 588. Q. And then the last four lines, it  
23 says:

24 "...Therefore, as stated in (a) above, the  
25 brokerage commission of the present case is

1 acknowledged to have been paid as  
2 consideration for services provided on the  
3 basis of the agreement..."

4 A. Yes.

5 589. Q. It continues:

6 "...Thus, it cannot be said that it was  
7 paid with the objective of facilitating  
8 business relations through deepening  
9 intimacy with 'blank'..."

10 A. Yes.

11 590. Q. That is what the tribunal found.

12 A. Yes.

13 591. Q. And ultimately in paragraph (d) on  
14 the same page, the tribunal finds that the payments  
15 of the brokerage commission of the present case do  
16 not satisfy the necessary conditions of  
17 entertainment expenses.

18 A. According to article 61 of the  
19 Measures law.

20 592. Q. That is right.

21 A. Yes. Correct.

22 593. Q. And then in the next paragraph, they  
23 revoke the Authority's decision.

24 A. Correct.

25 594. Q. Okay, if you could please go back to

1 volume 2 of your motion record? And at tab 25...it  
2 is the last tab. So you have included as an exhibit  
3 to your affidavit this article that was published in  
4 the Daily Timber News on August 8, 2008?

5 A. Correct.

6 595. Q. And it is entitled "Total victory of  
7 NFA puts an end to controversy over transport  
8 brokerage fee. Revision disposition requiring  
9 additional tax payments as rescinded".

10 A. Correct.

11 596. Q. And the NFA, is your understanding  
12 that that refers to the Japanese shipping companies?

13 A. Correct. Nanyozai Freight  
14 Agreement, the cartel of the nine shipping  
15 companies.

16 597. Q. Okay. And this article reports on  
17 the decision of the National Tax Tribunal that we  
18 just looked at.

19 A. Yes.

20 598. Q. And so did you see this article in  
21 August, 2008, shortly after it was published?

22 A. Yes.

23 599. Q. So you became aware of the National  
24 Tax Tribunal decision at about that time, in August,  
25 2008?

1 A. Yes.

2 600. Q. And the penultimate paragraph in

3 this article summarizes the decision. It states:

4 "...On the 28th of last month, the National

5 Tax Tribunal ruled to rescind the Tokyo

6 Regional Taxation Bureau's revision

7 disposition, stating that 'The brokerage

8 fees were paid according to a contract, and

9 cannot be deemed to be entertainment

10 expenses. Regent Star exists in actuality

11 and provides legitimate brokerage

12 services'..."

13 A. Yes.

14 601. Q. And that is consistent with your

15 understanding of the decision?

16 A. Yes. I mean, my understanding of

17 the decision is...I mean, we look at the facts. We

18 look at the applicable law, and we look at the legal

19 consequence. So, the facts are acknowledged. So...

20 602. Q. Sorry, the facts are?

21 A. Acknowledged.

22 603. Q. Acknowledged, okay.

23 A. So, no one disputed the facts.

24 Based on the 1981 agreement and the 1983 agreement,

25 payments were made by all Japanese timber importers

1 to Regent Star in Hong Kong. These payments...no  
2 one disputed these payments.

3 Now, the controversy has been what these  
4 payments mean with reference to Japanese  
5 legislation. And Japanese legislation has quite a  
6 narrow understanding of what kickbacks are, or what  
7 corruption means. And...

8 604. Q. Mr. Straumann, what is your  
9 knowledge of Japanese legislation?

10 A. Well, knowledge is what I see here  
11 in the judgment by Judge Junichi, on the 23rd of  
12 August, because the law is referred to in this  
13 judgment.

14 MR. CAYLOR: Just let him finish his  
15 answer. You asked what his understanding  
16 is, and he is trying to tell you.

17 THE DEPONENT: And basically the legal  
18 questions were, were these payments made on  
19 a voluntary basis, or were they obliged to  
20 make these payments?

21 The second point was to whom were  
22 these payments made? Were they made to a  
23 public official, or were they made to  
24 someone else?

25 Now, basically defence...the

1           appellant here said, "We were compelled to  
2           make these payments, otherwise we would  
3           have been put out of business". And Regent  
4           Star used strong-arm tactics that were also  
5           tested.

6

7           BY MS. VERMETTE:

8           605.           Q.           I am sorry, Mr. Straumann. Okay,  
9           you have to show me in the decision...

10           MR. CAYLOR:       Let him finish, and you can  
11           come back and test his evidence.

12           606.           MS. VERMETTE:       Well, I am...okay, I will  
13           just put him on notice. Everything you  
14           have said so far, I am saying it is not in  
15           the decision. So, you will have to come  
16           back...

17           THE DEPONENT:       Sure.

18           607.           MS. VERMETTE:       ...and tell me where it  
19           is in the decision.

20           THE DEPONENT:       Okay. The first point,  
21           the appellants argued, "we were compelled  
22           to make these payments". The second point  
23           is...the argument was, "We did not  
24           entertain these public officials, but we  
25           paid to a company that actually exists",

1 even though there is no...there was no...it  
2 was admitted that there was no substantial  
3 business at the address of the headquarters  
4 of Regent Star.

5 And we can go through the court  
6 decision in detail.

7

8 BY MS. VERMETTE:

9 608. Q. That is all we have, so yes.

10 A. Okay, sure.

11 609. Q. So, tell me where the tribunal found  
12 that the parties were compelled to make payments, as  
13 opposed to just doing what they agreed to in the  
14 contract.

15 A. Yes. Okay, let's...let's go  
16 through...okay, you agree that the payments were  
17 made, that this is part of...well, it is on record,  
18 and no one disputed that these payments were being  
19 made.

20 And just to make a point here. We talk  
21 about the world's largest exporting nation of  
22 tropical timber for 20 years.

23 610. Q. Okay, let...

24 A. We talk about the main market  
25 receiving the tropical timber, so it is a

1 substantial...

2 MR. CAYLOR: She hasn't asked you a  
3 question. She wants you to go through the  
4 decision...

5 THE DEPONENT: Okay, yes.

6 MR. CAYLOR: ...and just highlight for  
7 her the basis for the answer you have  
8 given.

9 THE DEPONENT: Yes. I will just...okay.  
10 Okay, on page 753, the interpretation of  
11 laws and regulations. Basically three  
12 conditions need to be met. First  
13 paragraph, "interpretation of laws and  
14 regulations", line 7, it says:  
15 "...In order for said expenditure to  
16 correspond to entertainment expenses, three  
17 conditions need to be met. The other party  
18 of the expenditure must be someone  
19 concerned with the business. The objective  
20 of the expenditure must be to facilitate  
21 business relations by deepening intimacy  
22 with the concerned business party, and the  
23 form of action must be to entertain,  
24 regale, provide hospitality, return a  
25 favour or engage in other similar

1                   behaviour..."

2                   So, that is the legal...that is how the  
3                   Japanese law defines entertainment  
4                   expenses.

5                   But it also says whether or not the  
6                   objective of the expenditure is to  
7                   entertain should be determined by overall  
8                   judgment of the concrete circumstances,  
9                   such as the motive, amount made, and the  
10                  effect of the expenditure. So, that is the  
11                  legal base.

12                  Then the different contracts are  
13                  referred to. On page 757, on top, you have  
14                  mentioned the three different contracts  
15                  that were made, and these contracts were  
16                  also acknowledged by Taib Mahmud in his  
17                  speech at the State Assembly, so...

18

19 BY MS. VERMETTE:

20 611.            Q.        No, Taib Mahmud says he doesn't know  
21                  about Regent Star, so he doesn't...he cannot know  
22                  about these contracts.

23                  A.        I object.

24 612.            Q.        Okay, show me in the statement  
25                  where...

1                   A.       Yes. In tab 24, Taib's vote for the  
2 State Assembly, on page 734, section 4(2), he says:

3                   "...From documents obtained by my  
4 solicitors, which I only saw very recently  
5 in December of 1981, an agreement was  
6 signed between the Japanese shipping cartel  
7 operating with the Nanyozai Freight  
8 Agreement and Dewan Niaga Sarawak, which,  
9 at the time, was holding on by SEDC, a  
10 state company..."

11                   So, basically he acknowledges that agreement. And  
12 in the next paragraph he says:

13                   "...The agreement was signed in Tokyo on  
14 26th of December, 1981, and was stated to  
15 be 'For the purpose of securing a smooth  
16 operation of the transportation of logs  
17 produced in Sarawak, Malaysia, and shipped  
18 there to Japan, and also securing stable  
19 freight rates. A further agreement was  
20 signed between all individual members of  
21 the shipping cartel and Dewan Niaga  
22 Sarawak, Sdn Bhd in Tokyo in 1983..."

23                   MR. CAYLOR:       Just try and read a little  
24 slower.

25                   THE DEPONENT:     I am sorry.

1 MR. CAYLOR: That is just fine, but just  
2 going forward, maybe you can read slower.

3 THE DEPONENT: So, the existence of this  
4 contracts has been...

5 613. MS. VERMETTE: Okay.

6 THE DEPONENT: ...acknowledged. Now, on  
7 page 759 in the first paragraph, under (b),  
8 I understand that this is a document  
9 provided by the shipping companies. They  
10 are saying:

11 "...Difficulties were experienced during  
12 the previous negotiations in 1994, and the  
13 negotiations in 1992, because the other  
14 party made severe demands regarding share  
15 and brokerage amounts..."

16 So severe demands were made. And under  
17 (c):

18 "...During negotiations in 1992, Regent  
19 Star demanded concessions from NFA with  
20 Archipelago's aggressive strong-arm tactics  
21 by refusing to undertake agent operations,  
22 to which NFA had no countermeasures, and  
23 ultimately had to make concessions..."

24 Now...

25 MS. WARD: Major concessions.

1 THE DEPONENT: Major concessions. This  
2 is basically the demands brought to NFA by  
3 Archipelago, and Archipelago is the  
4 shipping company that was controlled by  
5 Taib's brother, Onn Mahmud.

6

7 BY MS. VERMETTE:

8 614. Q. So, but that talks about  
9 negotiations.

10 A. Yes. Now, there is more to come.

11 On page 762, on top, letter (b):

12 "...During the last five years brokerage  
13 commission has been increasing in price,  
14 even though [this should be log shipping]  
15 is declining..."

16 615. Q. Sorry, what? What...

17 MR. CAYLOR: Is that just a blank there?

18 THE DEPONENT: Yes. On page 762, the  
19 first paragraph, first line.

20

21 BY MS. VERMETTE:

22 616. Q. Yes.

23 A. It reads:

24 "...During the last five years the  
25 brokerage commission has been increasing in

1 price, even though 'blank' is declining.  
2 As a result the percentage of 'blank'  
3 accounted for by commissions, which was  
4 'blank' in 1991, has reached 'blank' in  
5 1996..."

6 So, we see that there is...the brokerage commission  
7 is being increased, and it is a problem for the  
8 shipping companies.

9 617. Q. So, where does it say the problems  
10 of the shipping company?

11 A. This is my interpretation.

12 618. Q. Yes, because there are lots of words  
13 missing in that paragraph.

14 A. And...okay, then if we go to page  
15 779, appendix 2, "Assertions of the Parties".

16 619. Q. Yes.

17 A. And I think that is the clearest  
18 part of the whole judgment, because there is not  
19 much...

20 620. Q. But, Mr. Straumann, those are  
21 assertions of the parties. Those were not found by  
22 the tribunal.

23 A. Well, but the appellant...I mean,  
24 the tribunal followed the appellant's argument.

25 621. Q. No. If you look in the decision,

1 page 753. So, you see at the top, section 2, it is  
2 called, "The points at issue and the assertions of  
3 the parties".

4 A. Yes.

5 622. Q. And it refers to appendix 2. And  
6 then section 3 of the decision is "Conclusions".  
7 So, those are the conclusions of the tribunal. The  
8 tribunal didn't endorse, or found that all the  
9 assertions of the parties were necessarily facts.  
10 The tribunal made its own conclusions in the  
11 conclusions section of the decision.

12 And so far what you have referred to in the  
13 actual decision of the tribunal doesn't show that  
14 the companies were compelled to make payments, and  
15 it doesn't show that payments went to anyone else in  
16 Regent Star.

17 A. Well, the tribunal did not make a  
18 statement on if they were compelled, yes or no.

19 623. Q. That is right.

20 A. According to what I have seen, but  
21 the argument of the appellants was that they were  
22 compelled.

23 624. Q. Yes, but that is not what the  
24 decision found. The decision found as summarized in  
25 the article that you attached at tab 25, that:

1                    "...The brokerage fees were paid according  
2                    to a contract, and cannot be deemed to be  
3                    entertainment expenses. Regent Star exists  
4                    in actuality, and provides legitimate  
5                    brokerage services..."

6                    That is what the tribunal found.

7                    A.            I just wanted to get back to page  
8                    782, what the appellant, the shipping company said.  
9                    I mean, on the right column, "Form of Action".  
10                    Second paragraph. The shipping company said:

11                    "...However, the brokerage commissions of  
12                    the present case are expenses directly  
13                    required for economic transactions, for  
14                    engaging in 'blank', and were paid  
15                    compulsorily under 'blank' of 'blank'..."

16                    So they were saying...basically, the shipping  
17                    company said they were compelled to make these. It  
18                    was an obligation, they had to.

19                    625.            Q.            Well, they had...

20                    A.            There was no way out for them.

21                    626.            Q.            They had an obligation, we know,  
22                    under an agreement.

23                    A.            Yes. But what kind of agreement is  
24                    that if you have to agree with the Chief Minister's  
25                    brother that you will pay to his business partner in

1 Hong Kong a fee for every log that you import? I  
2 think it is an illegal agreement.

3 627. Q. And I think it is nowhere even in  
4 the assertions of the parties. Show it to me if it  
5 is there.

6 A. What exactly?

7 628. Q. That they were compelled to pay  
8 something to the brother of the Chief Minister.

9 A. Well, they were compelled to Regent  
10 Star, and as we discussed earlier, Regent Star  
11 was...Onn Mahmud was the right...the directing mind  
12 behind setting up Regent Star.

13 629. Q. So what you just said in that is not  
14 in the decision.

15 A. The decision establishes the fact  
16 that payments were made over a period of 24 years,  
17 to an agent in Hong Kong, which had no other  
18 business activity than accepting...I mean...

19 630. Q. No, no. The article says...we will  
20 go back to it again. That:

21 "...Regent Star exists in actuality, and  
22 provides legitimate brokerage services..."

23 The decision doesn't say it doesn't do anything and  
24 its only purpose in life is to cash payments.

25 A. I mean, brokerage services that are

1 considered to be legitimate under Japanese tax law.  
2 It is not a criminal case. It is not a money  
3 laundering case. I mean, if you had looked at this  
4 same situation under Canadian criminal law, I am  
5 sure they would have been sentenced. But this is a  
6 tax...purely a tax case on Japanese legislation, on  
7 the Measures law. That is all it is.

8 631. Q. Well, thank you for your legal  
9 opinion on Canadian law, but this decision of the  
10 Japanese...the National Tax Tribunal finds that  
11 these payments are not illegal, correct?

12 A. Are not in contravention of the  
13 Measures law.

14 632. Q. And they don't find them to be  
15 illegal under Japanese law.

16 A. Well, they haven't ordered the  
17 criminal investigation. It is not the criminal  
18 court. It is the tax court.

19 633. Q. There is no finding in Japan as far  
20 as you know, that the payments made by the Japanese  
21 shipping companies are illegal.

22 A. There is no such finding, correct.

23 634. Q. Thank you. Can you please go in our  
24 responding motion record, at tab D? So, this is an  
25 article from The Sun Daily, entitled "Taib withdraws

1 suit against Malaysiakini".

2 A. Yes.

3 635. Q. And you have seen this article  
4 before this litigation?

5 A. I have not seen this article, but I  
6 have seen similar articles. For instance, one  
7 published in Malaysiakini on 4th of January, 2012,  
8 which I have here.

9 636. Q. Okay. I think this article is  
10 referred to in footnote 125 of The Safe Haven Canada  
11 report, just for information, but it doesn't matter.

12 A. Okay. Then I have seen it before.

13 637. Q. So, Malaysiakini is an online news  
14 portal in Malaysia?

15 A. Correct.

16 638. Q. And this article refers to the fact  
17 that Taib had sued Malaysiakini for defamation after  
18 it had published articles suggesting that Taib had  
19 received kickbacks from the Japanese shipping  
20 companies?

21 A. Correct.

22 639. Q. And the article also says that Taib  
23 withdrew his action for defamation after  
24 Malaysiakini made an apology in open court?

25 A. Correct.

1           640.           Q.           And the apology addressed the  
2           allegation of kickbacks, and if you could just go to  
3           page 58, the second page of the article, the fifth  
4           paragraph. And that is a quote from the apology.

5           A.           Yes.

6           641.           Q.           It states:

7           "...We understand that the Tokyo Regional  
8           Taxation Bureau has since reversed its  
9           decision on this issue, which renders the  
10          imputation of kickbacks wholly unfounded,  
11          and so without basis.

12                    We therefore acknowledge that the  
13          articles relating to the kickbacks were  
14          erroneously published. No such imputation  
15          was purposely intended. The articles were  
16          published merely to keep Malaysians abreast  
17          of news reports in the foreign media.

18                    We regret any such unintended  
19          insinuation and undertake to refrain from  
20          publishing any further news reports, or  
21          statements about the plaintiff in relation  
22          to kickbacks paid to offshore Hong Kong  
23          company, Regent Star..."

24          So you see that?

25          A.           I do see that.

1       642.               Q.       Do you remember reading that in  
2                           2012?

3                           A.       Yes.  However, there...I mean, it is  
4                           not factually correct what it is here.  Because the  
5                           Tokyo Regional Taxation Bureau has not reversed its  
6                           decision.  The National Tax Tribunal reversed that  
7                           decision.

8       643.               Q.       That is correct.  But that is a  
9                           quote from the apology, so they may have been  
10                          mistaking the apology in terms of the correct  
11                          tribunal.

12                         A.       And I have to add to that that The  
13                          Japan Times did not retract their article.  Only  
14                          Malaysiakini retracted an article, and Taib Mahmud  
15                          had threatened to sue The Japan Times in his  
16                          statement in the State Assembly, in 2007, which he  
17                          did not do.

18       644.               Q.       Did Japan Times publish an article  
19                          about the National Tax Tribunal...

20                         A.       Correct.

21       645.               Q.       ...decision?

22                         A.       They published an article about the  
23                          Regional Taxation Bureau's original decision, and  
24                          about...which found these payments to be  
25                          entertainment expenses.  And they have not retracted

1           that article.

2   646.           Q.       Now, my question is, did it later  
3           publish an article saying that the Tokyo Regional  
4           Taxation Bureau decision had been reversed by the  
5           National Tax Tribunal?

6           A.       I don't know because I am not a  
7           regular reader of The Japan Times.

8   647.           Q.       Okay. So, Mr. Straumann, a kickback  
9           is an illegal payment, right? There are no legal  
10          kickbacks.

11          A.       If there is...may I make another  
12          comment on that retraction? I mean, it is important  
13          to know that Malaysiakini's correspondent had died,  
14          Tony Tien (phon.), in 2009, and he had independently  
15          ascertained with shipping companies in Sarawak, with  
16          industry sources in Sarawak, that actually payments  
17          had been made. But Malaysiakini had failed to  
18          document that properly, so when he died they had no  
19          position to defend themselves legally.

20   648.           Q.       And so you...

21          A.       Just as a comment.

22   649.           Q.       ...you are giving us information of  
23          a dead Malaysian journalist, and you got this  
24          information...and is there any written evidence of  
25          that?

1 A. Yes. I have it here.

2 650. Q. No.

3 A. Okay.

4 651. Q. It is not in the record.

5 A. Can we take it on the record?

6 652. Q. Okay. Could you please go to volume

7 3 of your motion record, tab 35? Okay, this is a

8 report of BMF called "The Taib Timber Mafia".

9 A. Yes.

10 653. Q. And it was published in

11 September...September, 2012, or...

12 A. Yes.

13 654. Q. And you were involved in the

14 preparation of this report?

15 A. Yes.

16 655. Q. And you reviewed it before it was

17 published?

18 A. Yes.

19 656. Q. Okay, can you please go to page 884?

20 884, yes.

21 A. Yes.

22 657. Q. Okay, so the first paragraph under

23 the heading reads:

24 "...In 2007 a scandal exposed by the

25 Japanese Tax Authorities revealed that tens

1 of millions of U.S. dollars had been paid  
2 in secret. Illegal kickbacks by Japanese  
3 shipping companies exporting Timber from  
4 Sarawak.

5 The money was paid directly to Hong  
6 Kong companies linked to the Chief  
7 Minister's brother, Onn Mahmud, the  
8 Japanese cartel..."

9 and then you talk about the Malaysian company, Dewa  
10 Niaga. So, we dealt earlier, before lunch, about  
11 the issue of Onn Mahmud, but what I want to point  
12 out, Mr. Straumann, is that you do not refer in this  
13 report, to the fact that the decision, the 2007  
14 decision was reversed in 2008.

15 A. No, but I am...yes. I don't. We  
16 don't.

17 658. Q. Okay, if you could please go to 887?  
18 Just to say the same statement is repeated at the  
19 bottom of the page in 2007, a scandal. And so  
20 again, you don't refer to the 2008 decision there.

21 MR. CAYLOR: The witness isn't with you  
22 yet.

23 659. MS. VERMETTE: Sorry?

24 MR. CAYLOR: The witness is not yet with  
25 you.

1 660. MS. VERMETTE: Oh, sorry.

2 THE DEPONENT: Sorry.

3 661. MS. VERMETTE: Sorry, page...

4 MR. CAYLOR: Page 887.

5 THE DEPONENT: Yes.

6

7 BY MS. VERMETTE:

8 662. Q. I am just pointing out that the last  
9 paragraph, you will see, Mr. Straumann, you  
10 basically repeat the same statement as we saw  
11 earlier in this report.

12 A. Yes.

13 663. Q. And again, you don't refer to the  
14 National Tax Tribunal decision reversing the Tokyo  
15 Regional Taxation Bureau's decision.

16 A. Yes. But we refer to the reversing  
17 in the affidavit, in section 50 on page 35.

18 664. Q. Yes, I am dealing now with  
19 publications of BMF.

20 A. Okay.

21 665. Q. Okay. And if you could please go to  
22 our responding motion record at tab E? This is a  
23 press release of BMF.

24 A. Yes.

25 666. Q. Yes. And dated February 16, 2014.

1 A. Correct.

2 667. Q. And it is entitled

3 "Bruno-Manser-Fonds alleges police report against

4 Taib family over laundering of timber kickbacks in

5 Canada".

6 A. Correct.

7 668. Q. And you were involved in the

8 preparation of this press release?

9 A. Yes.

10 669. Q. Okay, and the third paragraph,

11 again, you refer to the decision of 2007 of the

12 Tokyo Tax Authorities.

13 A. Correct.

14 670. Q. But you do not mention that this

15 decision was revised in 2008.

16 A. Correct.

17 671. Q. And this press release is still on

18 your website.

19 A. Correct.

20 672. Q. Okay, if we go to your Money Logging

21 book, it is at tab 1.

22 A. Volume 1.

23 673. Q. Volume 1, yes, at page 108. So,

24 this book was published in 2014?

25 A. Yes.

1 674. Q. So, six years after the decision of  
2 the National Tax Tribunal?

3 A. Yes.

4 675. Q. And last paragraph on page 108, you  
5 say:

6 "...More than 20 years later tax  
7 authorities in Tokyo found that the  
8 shipping companies that had exported  
9 tropical timber from Sarawak to Japan had  
10 paid sums to Regent Star, running into  
11 millions. The conditions for timber  
12 exporters were clear. Without kickbacks to  
13 Regent Star, there would be no export  
14 permit..."

15 A. Yes.

16 676. Q. So you refer to kickbacks, while the  
17 payments were found to be legitimate...legitimate  
18 payments.

19 MR. CAYLOR: Well, I think he had only  
20 agreed as far as the tax authorities go,  
21 when you put it to him.

22 MS. WARD: Entertainment expenses is the  
23 defined term that was being addressed.

24 677. MS. VERMETTE: Yes, but you cannot have  
25 Mr. Straumann...

1 BY MS. VERMETTE:

2 678. Q. You cannot have a legal kickback. A

3 kickback is, by definition, illegal.

4 A. I am not sure about this, but...

5 679. Q. So each time you use the word

6 kickback in the material, or in BMF's publications,

7 you intend to convey the impression that these

8 payments are legal?

9 A. I think these payments are illegal

10 under Malaysian law. But there is no justice.

11 680. Q. And you are not a lawyer in

12 Malaysia?

13 A. I am not a lawyer in Malaysia, but

14 we know lawyers in Malaysia.

15 681. Q. And we don't have their evidence

16 here. But these payments were found to be legal in

17 Japan.

18 A. These payments were found not to be

19 entertainment expenses under Japanese tax laws.

20 682. Q. And so they could be made.

21 A. They could be deducted from the tax.

22 683. Q. And again, there has been no finding

23 anywhere in the world that these payments are

24 illegal?

25 A. Not yet.

1 684. Q. If you could please go to your  
2 affidavit, paragraph 50 on page 35. Sorry, we have  
3 covered that already in our discussion. Volume 6,  
4 please. Sorry. Okay, so this is a complaint...oh,  
5 sorry, tab 113. This is a report to the City of  
6 London police that was filed on behalf of BMF?

7 A. Correct.

8 685. Q. And it is dated June 23rd, 2014.

9 A. Correct.

10 686. Q. And if you go to page 2165, the  
11 first paragraph states:

12 "...This report presents evidence amounting  
13 to a prima facie case that Richford  
14 Properties Limited, a limited company,  
15 incorporated in the U.K. may be concerned  
16 in laundering the proceeds of overseas  
17 corruption..."

18 A. Correct.

19 687. Q. And if you go to page 2167, please,  
20 paragraph 7 says:

21 "...The evidence assembled highlights  
22 evidence that ATM..."

23 And "ATM" is Abdul Taib Mahmud?

24 A. Correct.

25 688. Q. So:

1 "...the evidence assembled highlights  
2 evidence that Taib has misused the control  
3 over timber concessions to..."

4 And then if you turn the page and look at 7.4:

5 "...Received bribes from Japanese timber  
6 exporters via Hong Kong companies  
7 controlled by ATM's brother, Onn Mahmud.  
8 This arrangement was exposed by an  
9 investigation by the Japanese tax  
10 authorities in 2007..."

11 So, first of all as we discussed before lunch, Onn  
12 Mahmud did not control...or you don't have evidence  
13 that Onn Mahmud controlled Regent Star.

14 A. You said we established that. I  
15 disagree. Onn Mahmud controlled Regent Star.

16 689. Q. That is your personal opinion.

17 A. Yes.

18 690. Q. And there is nothing else outside  
19 what is in the motion record on which you rely for  
20 that. That you haven't said already in your  
21 affidavit, or in some of the reports?

22 A. No.

23 MR. CAYLOR: We include in that your  
24 exchange earlier today.

25 691. MS. VERMETTE: Yes. Or what we said

1                   today. Okay.

2

3           **BY MS. VERMETTE:**

4           692.           Q.           And in that paragraph, in that  
5                   complaint to the London police, you don't refer to  
6                   the 2008 decision of the National Tax Tribunal.

7                   A.           Sorry, no, I don't.

8           693.           Q.           And you qualify the payment as  
9                   bribes.

10                  A.           Yes.

11           694.           Q.           And no decision has found that these  
12                  payments were bribes, correct?

13                  A.           No.

14           695.           Q.           And you also say, if you look at 7,  
15                  that it is Taib receiving bribes, and again, from  
16                  the Japanese timber exporters. Again, there is no  
17                  document that shows that Taib received bribes from  
18                  the Japanese timber exporters.

19                  A.           Sorry, where do I say that Taib  
20                  received bribes?

21           696.           Q.           If you look at the introductory  
22                  paragraph 7.

23                  A.           "ATM has misused his control over  
24                  timber concessions to..."

25           697.           Q.           "To receive bribes".

1                           A.       Yes.

2       698.                Q.       Okay. Mr. Straumann, I now want to  
3                           talk about the complaint that BMF filed with the  
4                           National Contact Points for the OECD...

5                           A.       Yes.

6       699.                Q.       ...in Canada. And so you can take  
7                           volume 7. And your complaint is at tab 130. So can  
8                           you just confirm that that is the complaint that...

9                           A.       Yes.

10      700.                Q.       ...BMF filed...

11                           A.       Yes, the OECD complaint, correct.

12      701.                Q.       And that is a complaint against what  
13                           you call the Sakto Group in that document?

14                           A.       Yes.

15      702.                Q.       And that complaint is based on the  
16                           OECD guidelines for multinational enterprises?

17                           A.       Correct.

18      703.                Q.       And that was...and the date of that  
19                           complaint is January 2, 2016?

20                           A.       Correct.

21      704.                Q.       So, on page...if you can go to page  
22                           2480.

23                           A.       Yes.

24      705.                Q.       So, on page 2480 and page 2481, you  
25                           list all the companies that you say are part of the

1 Saktó Group.

2 A. Yes.

3 706. Q. And so there is a significant  
4 overlap between that list and the corporations  
5 against which you are seeking...about which you are  
6 seeking information in this Ontario proceeding?

7 A. Yes.

8 707. Q. And if you go, please, to page 2488.  
9 So, in section 7 of your complaint you include what  
10 you call the request by the complainants.

11 A. Yes.

12 708. Q. And there are seven different  
13 requests that are listed in the letter.

14 A. Yes.

15 709. Q. And we won't...I won't go over all  
16 of them but there is the request for financial  
17 information, information about beneficial ownership,  
18 related-party transactions, and other requests.

19 A. Yes.

20 710. Q. And there is a lot of overlap, will  
21 you agree, between what you requested in this  
22 complaint, and what you are requesting in this  
23 proceeding?

24 A. Correct.

25 711. Q. And after you filed this complaint

1 with the National Contact Point, that I will call  
2 NCP...

3 A. Yes.

4 712. Q. ...you...BMF issued a press release  
5 about the fact that it lodged a complaint.

6 A. Correct.

7 713. Q. And this press release is still on  
8 your website?

9 A. Yes.

10 714. Q. If you can go now to tab 131. So,  
11 on October 25, 2016, or at least that is the date of  
12 the draft, the NCP sent you this draft initial  
13 assessment for your review?

14 A. Yes.

15 715. Q. So, was there a cover letter coming  
16 with that?

17 A. I think there was a cover e-mail or  
18 cover letter, yes.

19 716. Q. Okay. It is not here, but if you go  
20 to tab 132...

21 A. Yes.

22 717. Q. So, tab 132...we will come back to  
23 that, but this is, at that tab, a draft final  
24 statement that has been sent to you for your review?

25 A. At tab?

1 718. Q. 132.

2 A. Yes.

3 719. Q. Okay. But there is a cover letter  
4 at that tab?

5 A. Yes.

6 720. Q. And so the...if you go to page 2505,  
7 that is the cover letter, and...

8 A. Yes.

9 721. Q. ...the last paragraph on that page  
10 reads:

11 "...Please note that the draft final  
12 statement is considered confidential  
13 communication, and not a public  
14 document..."

15 A. Yes.

16 722. Q. It continues:

17 "...This document may not be shared, the  
18 content communicated, or the draft  
19 distributed. We would ask that there be no  
20 external commentary until the final  
21 statement has been released publicly by the  
22 NCP. Once the NCP is in receipt of  
23 comments from the parties, we will review  
24 and consider the comments, and endeavour to  
25 issue the final statement shortly

1                   thereafter..."

2                   A.        Yes.

3        723.           Q.        So, the first part about  
4                   confidentiality appears to be standard language, and  
5                   so is it fair for me to assume, Mr. Straumann, that  
6                   similar language would have been included in the  
7                   cover letter enclosing the draft initial assessment?

8                   A.        Well, actually, we voluntarily  
9                   committed to confidentiality at the beginning of  
10                  these proceedings. I mean, it is a facilitation  
11                  proceeding. It is a non-litigation...it is just  
12                  media facilitation between parties.

13       724.           Q.        M'hmm.

14                  A.        So we lodged a complaint, and at the  
15                  first meeting we voluntarily committed to  
16                  confidentiality. And we kept the confidentiality  
17                  until the point when we found out that the NCP was  
18                  not respecting due conduct with reference to the  
19                  proceedings.

20       725.           Q.        And respecting what conduct? Due?

21                  Oh...

22                  A.        Due. Yes, proper.

23       726.           Q.        D-U-E. Okay.

24                  A.        Proper conduct.

25       727.           Q.        Okay, so you knew that...

1                   A.       So, because...I mean, you will note  
2                   that the draft final statement we were sent on the  
3                   21st of March, 2017, differs strongly from the final  
4                   statement we received in July, 2017, after we had  
5                   to...after our lawyers contacted the NCP that they  
6                   could not work like this.

7       728.           Q.       Okay. So, we will go over the  
8                   documents, Mr. Straumann.

9                   A.       Yes.

10       729.           Q.       So, okay. So, whether or not there  
11                   was similar language in the cover letter enclosing  
12                   the draft initial assessment, you just said that you  
13                   were aware that you had a confidentiality...

14                   A.       We have committed to confidentiality  
15                   on a voluntary basis.

16       730.           Q.       Okay. So that was...a draft initial  
17                   assessment was at tab 131. Tab 132 was the draft  
18                   final statement, and if you go, please, to page  
19                   2508, as you pointed out, the final statement is  
20                   different from this one, the ultimate final  
21                   statement, but in this draft the National Contact  
22                   Point concludes that:

23                   "...An offer of good offices to the parties  
24                   would not contribute to the purpose and  
25                   effectiveness of the OECD guidelines, and

1 considers the matter closed..."

2 A. Correct.

3 731. Q. Okay. Please go to page 2510. This  
4 is a letter from Bennett Jones, BMF's counsel...

5 A. Yes.

6 732. Q. ...dated March 23rd, 2017. And as  
7 you stated, Mr. Straumann, in this letter you take  
8 issue with the draft final statement.

9 A. Correct.

10 733. Q. And page 2511, in the second  
11 paragraph, it is acknowledged that...in the second  
12 sentence, that:

13 "...BMF is aware of the NCP's guidelines  
14 with respect to confidentiality..."

15 A. Correct.

16 734. Q. And:  
17 "...transparency as well..."

18 Okay, if you could please go to page 2520? So, this  
19 is a letter from the NCP to you, dated March 30th,  
20 2017?

21 A. Yes.

22 735. Q. And so you received that letter?

23 A. We did receive that letter, yes.

24 736. Q. And in that letter, Mr. McMullen is  
25 drawing your attention to a specific section of the

1 procedures of the NCP.

2 A. Correct.

3 737. Q. And that relates to maintaining  
4 confidentiality, among other things?

5 A. Correct.

6 738. Q. And it states that:  
7 "...Undertaking public campaigns related to  
8 a case during the proceedings is considered  
9 a confidentiality breach..."

10 A. Correct.

11 739. Q. And so then Mr. McMullen says:  
12 "...The NCP review has not yet concluded in  
13 this specific instance. Until then these  
14 undertakings remain in place. The draft  
15 initial assessment and draft final  
16 statement are products of the NCP and not  
17 the parties, and should not be made public  
18 without our consent. At this time our  
19 consent will not be forthcoming..."

20 A. Correct.

21 740. Q. So, you read that letter when you  
22 received it?

23 A. Yes.

24 741. Q. And would you please go to page  
25 2514, please? So, even though it is before in the

1 motion record, it comes later in the chronology  
2 because it is dated April 5th, 2017?

3 A. Correct.

4 742. Q. Correct? Yes. So, that is another  
5 letter from Bennett Jones?

6 A. Correct.

7 743. Q. And in the first paragraph it says:  
8 "...BMF is not interested in engaging in  
9 what has now become an open-ended process  
10 in respect of the amended final  
11 statements..."

12 A. Correct.

13 744. Q. And you are asking that the NCP  
14 close the case and issue a final statement within 30  
15 days?

16 A. Yes.

17 745. Q. And so you were no longer interested  
18 in proceeding with your complaint?

19 A. Correct.

20 746. Q. And on the second...on page 2515,

21 Bennett Jones advises the NCP that:

22 "...BMF has posted the draft initial  
23 assessment and the draft final statement on  
24 its website..."

25 A. Correct.

1 747. Q. And that is true, that is what you  
2 did?

3 A. Yes.

4 748. Q. And when you did that you knew that  
5 you didn't have the consent of the NCP?

6 A. I think it was the same day,  
7 so...but I...yes.

8 749. Q. No, we saw in the letter dated March  
9 30th, that it said that their consent will not be  
10 forthcoming, in terms...

11 A. Yes.

12 750. Q. So you knew because of the March  
13 30th letter that you didn't have the consent of the  
14 NCP to publish their draft documents?

15 A. Correct.

16 751. Q. And you had undertaken at the  
17 beginning of the proceeding to keep the proceeding  
18 and the documents confidential until the end?

19 A. I am not sure if we said  
20 confidential until the end, but...I mean, the  
21 confidentiality commitment was given under the  
22 impression that there would be good faith from all  
23 involved parties. And we did not...we felt  
24 compelled to go public because the NCP did not  
25 follow the guidelines as the OECD are showing. I

1 mean, they...you saw the draft initial assessment,  
2 which was quite material, and said our...so at page  
3 4, section 4 in the draft initial assessment, on the  
4 tab 131, drafted the 25th of October, it says:

5 "...BMF's complaint is material and  
6 substantial..."

7 Okay, I am...what was the question? Sorry.

8 752. Q. The question was that you decided to  
9 post the documents in breach of your  
10 confidentiality...

11 A. Yes.

12 753. Q. ...undertaking.

13 A. Yes.

14 754. Q. And you are saying it is because  
15 your view was that the NCP had not followed...

16 A. Correct.

17 755. Q. ...the procedure?

18 A. Yes.

19 756. Q. And so...

20 A. We were let down.

21 757. Q. You felt let down?

22 A. Yes.

23 758. Q. And so because it was your view that  
24 they didn't follow procedure, you felt justified in  
25 taking matters in your own hands and just putting

1           that on the internet?

2                   A.       Yes.

3   759.           Q.       Okay.  Could you please go to page  
4           2522?  That is a press release of BMF?

5                   A.       Correct.

6   760.           Q.       And it is dated April 5th, 2017?

7                   A.       Yes.

8   761.           Q.       And that is about the sending of the  
9           Bennett Jones letter that we just looked at?

10                  A.       Correct.

11   762.           Q.       And in that letter you...sorry, in  
12           this press release you say that the letter requests  
13           that various statements be made about Sakto by the  
14           NCP?

15                  A.       Correct.

16   763.           Q.       And...but again, with this press  
17           release you are breaching the confidentiality of the  
18           proceeding.

19                  A.       Well, yes.  Actually, there had been  
20           a press conference on either the 30th or the 31st of  
21           March, by BMF and other NGOs on Parliament Hill, to  
22           deal with how the NCP treats complaints by  
23           complainants.

24   764.           Q.       Complaints, plural, or just your  
25           complaint?

1                   A.        No, not just our complaint, but it  
2                   had been...I mean, other NGOs had filed complaints  
3                   before us.

4       765.           Q.        Okay.

5                   A.        So...

6       766.           Q.        And this press release, and the  
7                   draft initial assessment and the draft initial final  
8                   statement are still on your website?

9                   A.        I presume they are, yes.

10      767.           Q.        So, can we go now to your  
11                   supplementary affidavit, the small...

12                   A.        Yes.

13      768.           Q.        ...small book. And you swore this  
14                   affidavit on August 21, 2017? That is on the first  
15                   page.

16                   A.        Yes.

17      769.           Q.        And that is the same date as the  
18                   hearing before Justice Myers, correct?

19                   A.        Yes.

20      770.           Q.        And that affidavit deals with the  
21                   final statement of the NCP?

22                   A.        Yes.

23      771.           Q.        And the final statement was  
24                   released...well, it is at tab 8, right?

25                   A.        Yes.

1 772. Q. And that was released, or it is  
2 dated July 11, 2017?

3 A. Yes.

4 773. Q. So by the time you swore your first  
5 affidavit in...on June 27th, 2017, the final  
6 statement had still not been issued by the NCP?

7 A. Correct.

8 774. Q. And the NCP was still expecting you  
9 to maintain confidentiality until the issuance of  
10 the final statement?

11 A. Well, I mean, we had gone public on  
12 the 30th of March, 2017, so all of this was already  
13 on the website.

14 775. Q. So, from your...

15 A. So, if you go public once then it is  
16 in the public domain.

17 776. Q. So from your perspective it didn't  
18 matter?

19 A. Yes.

20 777. Q. So, in the final statement, the NCP  
21 decided that it would not make an offer of  
22 facilitated...that is in paragraph 4:

23 "...It will not make an offer of  
24 facilitated dialogue to the parties because  
25 of actions taken by the parties during the

1 process..."

2 A. Correct.

3 778. Q. And it said that it was closing the  
4 case.

5 A. Correct.

6 779. Q. And the final statement speaks for  
7 itself, but it contains criticisms of both parties.

8 A. Correct.

9 780. Q. And with respect to BMF, it  
10 criticizes...what it says is:

11 "...BMF's breach of confidentiality..."

12 A. Correct.

13 781. Q. And also in paragraph 28, ninth line  
14 in that paragraph, the NCP says, after referring to  
15 an April 3rd, 2017 news release of BMF, it says:

16 "...It is the NCP's opinion that these  
17 public statements reveal a misuse of the  
18 NCP process to seek actions clearly outside  
19 the mandate granted to the NCP by the OECD  
20 guidelines. In the NCP's view the  
21 confidentiality breach accompanied by the  
22 significant involvement during the review  
23 process of legal counsels representing both  
24 parties was contrary to the spirit and  
25 intent of the NCP system as a whole..."

1 A. Correct.

2 782. Q. And in going back, in paragraph 23  
3 of the final statement...

4 A. Yes.

5 783. Q. ...in the seventh line in that  
6 paragraph, the NCP states that:

7 "...The parties had a longstanding and  
8 adversarial history..."

9 A. I don't see that statement...in  
10 paragraph 23?

11 784. Q. Yes, seventh line.

12 A. "Two parties with a longstanding and  
13 adversarial history". Correct.

14 785. Q. And do you agree with this  
15 characterization of the relationship between the  
16 parties?

17 A. "Longstanding and adversarial  
18 history". Well, I don't disagree with it. Yes,  
19 okay.

20 786. Q. BMF has never communicated directly  
21 with Jamilah Taib Murray?

22 A. Good question. Not that I remember.

23 787. Q. And same for Sean Murray?

24 A. I don't remember. Yes, I don't  
25 think we did. Yes.

1 788. Q. And same for Sakto Corporation, or  
2 Sakto Investment Corporation?

3 A. Well, actually, we never approached  
4 it directly, but they were repeatedly approached by  
5 journalists on basically allegations made by BMF,  
6 and so they sent to journalists. And we knew from  
7 these letters that they were not interested in  
8 discussing issues relating to their businesses.

9 789. Q. Okay. Could you please go to volume  
10 3, tab 35? And...

11 A. Well, actually, I mean, while...

12 MR. CAYLOR: She is asking a question.

13 But is there something to correct or add to  
14 a question that she has already asked you?

15 THE DEPONENT: It is to correct.

16 Actually, we were in talks with the lawyers  
17 in London, Mishcon de Reya, when we  
18 published a report on their Australian  
19 business Sitehost. We sent them a letter  
20 and asked the lawyers to comment. And  
21 prior to the publication of my book they  
22 sent letters...legal letters to my  
23 publisher, and to Amazon, but not to us.  
24 Not to me. But I sent...we sent them  
25 before, when we published the Sitehost

1 report, we sent them a letter to Mishcon  
2 who was saying they were representing  
3 Jamilah and Sean.  
4

5 BY MS. VERMETTE:

6 790. Q. Okay, and the letter about your  
7 book, it is in your record, page 40. The  
8 one...sorry, tab 140, if you want to look at it. My  
9 understanding from that letter is that that was sent  
10 on behalf of Taib, not Jamilah Taib Murray.

11 MR. CAYLOR: You mean to Taib.

12 791. MS. VERMETTE: No, the lawyers who sent  
13 the letter...

14 MR. CAYLOR: Oh, I see.

15 792. MS. VERMETTE: ...to Amazon that you  
16 just referred to, Mr. Straumann.

17 MR. CAYLOR: They were lawyers for Mr.  
18 Taib as opposed to...

19 793. MS. VERMETTE: That is my recollection  
20 of the letter.  
21

22 BY MS. VERMETTE:

23 794. Q. Yes, so tab 140, the first paragraph  
24 you see, Mr. Straumann, that they say that they act  
25 for Taib.

1                   A.       Yes. But they had been acting for  
2 Sean and Jamilah before this.

3       795.           Q.       Okay, but for this letter...

4                   A.       For this specific letter they were  
5 acting for Taib, yes.

6       796.           Q.       Thank you. Okay, so we were at  
7 volume 3, tab 35.

8                   A.       Yes.

9       797.           Q.       And so if you can go page 897? So,  
10 this report is on your website?

11                   A.       Yes.

12       798.           Q.       So this is a page on Jamilah Taib  
13 Murray?

14                   A.       Yes.

15       799.           Q.       And you published her date of birth?

16                   A.       Yes.

17       800.           Q.       Her passport number?

18                   A.       Yes.

19       801.           Q.       And the name of her children?

20                   A.       Correct.

21       802.           Q.       And if you go to page 906...

22                   A.       Yes.

23       803.           Q.       ...you do the same thing for Mr.  
24 Sean Murray.

25                   A.       Correct.

1 804. Q. And if you go to page 915...

2 A. Yes.

3 805. Q. ...you see number 54, 55, 56?

4 A. Yes.

5 806. Q. Those are the children of Jamilah  
6 Taib Murray and Sean Murray?

7 A. Correct.

8 807. Q. And you published their dates of  
9 birth?

10 A. Correct.

11 808. Q. Can you please go in volume 1 to tab  
12 4?

13 A. Okay.

14 809. Q. Okay, so this is the Safe Haven  
15 Canada report of BMF?

16 A. Yes.

17 810. Q. Again, available on your website?

18 A. Correct.

19 811. Q. And on the cover page of this report  
20 we have Jamilah Taib Murray's home address?

21 A. Correct.

22 812. Q. Could you please go to page 170?

23 A. Yes.

24 813. Q. And again, the paragraph in the  
25 middle of the page you repeat again in this report

1 Jamilah Taib Murray and Sean Murray's home address  
2 in Ottawa?

3 A. Correct.

4 814. Q. And there is a picture of their  
5 house right there?

6 A. Yes.

7 815. Q. And on page 169 there is a map of  
8 Ottawa showing where their house is located.

9 A. Yes. All their private properties  
10 in Ottawa.

11 816. Q. Okay, so as we have seen, the NCP  
12 issued its final statement on July 11th, 2017.

13 A. Yes.

14 817. Q. That is the same date that you  
15 issued your Statement of Claim in this matter. I am  
16 showing it to you.

17 A. Okay.

18 818. Q. So the date is on the second page,  
19 Mr. Straumann. So you see it is dated July 11th,  
20 2017?

21 A. M'hmm.

22 819. MS. VERMETTE: Okay, we will mark the  
23 Statement of Claim as Exhibit 7.

24

25 --- EXHIBIT NO. 7: Statement of Claim dated July 11, 2017

1 BY MS. VERMETTE:

2 820. Q. So, were you waiting for the final  
3 statement before issuing the Statement of Claim?

4 A. No.

5 821. Q. No? So, that is a coincidence?

6 A. Yes.

7 822. Q. Okay, can you go to our responding  
8 motion record, tab F, in the blue book?

9 A. Okay. So at tab F we have another  
10 press release of BMF dated September 19, 2017.

11 A. Yes.

12 823. Q. And that press release is about  
13 Justice Myers' decision in this case?

14 A. Yes.

15 824. Q. And the title of the press release  
16 is, "Toronto court to hear money laundering case  
17 against Sarawak governor's daughter".

18 A. Correct.

19 825. Q. And you are aware, Mr. Straumann,  
20 that the court is not going to hear a money  
21 laundering case? You will only have a money  
22 laundering case if you proceed with the criminal  
23 prosecution.

24 A. Yes.

25 826. Q. So, you jumped a stage here.

1                   A.       Well, but the Norwich Pharmacal  
2                   order is being sought in view of a potential  
3                   prosecution.

4       827.           Q.       That is right, but what is going to  
5                   be heard is the request for a Norwich order, not the  
6                   money laundering case.

7                   A.       Yes, but without...yes. Okay. I  
8                   mean, that is a question of semantics, how you  
9                   define it. In the end this is a money laundering  
10                  case.

11       828.           Q.       But this is not what the court is  
12                  going to hear, at this point.

13                  A.       The court is...it is a pre-action  
14                  Norwich Pharmacal for disclosure order being sought.

15       829.           Q.       That is right.

16                  A.       But the action is...okay.

17       830.           Q.       Okay, so the press release, the  
18                  first sentence you repeat what we just talked about.  
19                  The money...that a sealed money laundering case will  
20                  be heard, and we just talked about that. But you  
21                  say that the court...the judge ruled that the case  
22                  will be heard in public.

23                  A.       Correct.

24       831.           Q.       But, of course, it was BMF who had  
25                  sought to have the case heard in the absence of the

1 public in the first place.

2 A. Correct.

3 832. Q. And at the bottom of page 63 there  
4 is a link to a video of yourself?

5 A. Correct.

6 833. Q. And in that video you talk about the  
7 case?

8 A. Yes.

9 834. Q. You also ask for donations?

10 A. Yes.

11 835. Q. Could you please go to page 64? So,  
12 there is a heading in the middle of the page,  
13 "Failure of public prosecutors to become active".

14 A. Yes.

15 836. Q. And then the press release states:  
16 "...BMF is going to court against the Taib  
17 family because of the failure of public  
18 prosecutors in Canada to investigate and  
19 charge Sakto for money laundering..."

20 A. Correct.

21 837. Q. It continues:  
22 "...Since 2010 BMF has repeatedly alerted  
23 FINTRAC, the RCMP, and the Canadian  
24 government over the suspected flow of  
25 proceeds of crime from Sarawak to

1 Ottawa..."

2 A. Correct.

3 838. Q. The next paragraph says:

4 "...In 2011 the RCMP replied to BMF that  
5 the RCMP does not normally confirm or deny  
6 the existence of any criminal  
7 investigation..."

8 A. Correct.

9 839. Q. Okay. So, but the RCMP in this case  
10 has done more than just reply...sending you a letter  
11 in 2011, correct?

12 A. I don't know.

13 840. Q. Okay. So, let's go to volume 7 of  
14 your...

15 A. I mean, what are you referring to?

16 841. Q. Yes, we are...

17 A. Okay.

18 842. Q. ...going there. Tab 129.

19 A. Okay.

20 843. Q. So this is an e-mail from Bruce  
21 Bailey to you, dated February 6th, 2017.

22 A. Yes.

23 844. Q. And you describe Mr. Bailey in your  
24 affidavit as BMF's representative in Ontario.

25 A. Correct.

1 845. Q. And that e-mail, Mr. Bailey is  
2 reporting to you about a call that he had with an  
3 RCMP officer?

4 A. Yes.

5 846. Q. Mr. Sheldon Landry. And so Mr.  
6 Bailey says...well:

7 "...I got a longish call from Sheldon  
8 Landry from the RCMP today. What to say?  
9 I think he is a sincere guy who is trying  
10 hard to be communicative [and then there is  
11 a big] BUT we talked about several things  
12 from his frustration with dealing with a  
13 variety of corruption cases, to lack of  
14 investigative tools, to work he has done in  
15 Indonesia with their anti-corruption  
16 agency.

17 However, when all is and was said  
18 and done, his problem [meaning the RCMP's  
19 problem] is that there is no proof of  
20 violation of the law which would allow the  
21 RCMP to prosecute a case. My response was  
22 that we appreciate that problem..."

23 So, from that e-mail the RCMP did look at your case.

24 MR. CAYLOR: Other than the e-mail, do  
25 you have anything?

1 THE DEPONENT: I don't have anything  
2 else. I mean, yes...I mean, what do you  
3 want? What are you...  
4

5 BY MS. VERMETTE:

6 847. Q. I want the application to be  
7 dismissed. No, I am asking you...so, the RCMP from  
8 that e-mail told Mr. Bailey that their view was that  
9 there was no proof of violation of the law that  
10 would allow the RCMP to prosecute a case. That is  
11 what the e-mail says, correct?

12 MR. CAYLOR: She is asking you, does the  
13 e-mail say that?

14 THE DEPONENT: Well, the e-mail says  
15 there is no profitable violation of the  
16 law, which would allow the RCMP to  
17 prosecute the case. Yes.  
18

19 BY MS. VERMETTE:

20 848. Q. And so to counter that conclusion or  
21 make the statement, they had to have a look to what  
22 you provided to them, at least some of the things  
23 you provided to them.

24 A. Well, I presume they would.

25 849. MS. VERMETTE: Okay. Maybe we can take

1 a quick break. I may have about 20 minutes  
2 left. I am not sure. Off the record.

3

4 --- upon recessing at 3:21 p.m.

5 --- A BRIEF RECESS

6 --- upon resuming at 3:32 p.m.

7

8 LUKAS STRAUMANN, resumed

9 CONTINUED CROSS-EXAMINATION BY MS. VERMETTE:

10 850. Q. Okay, Mr. Straumann, could you

11 please go to volume 3, tab 34? We are now going to

12 talk about the investigations of the Malaysian

13 Anti-Corruption Commission.

14 A. M'hmm.

15 851. Q. And I will refer to that commission

16 as "MACC".

17 A. Okay.

18 852. Q. So, at tab 34 we have a letter that

19 BMF sent to MACC on December 13, 2011.

20 A. Correct.

21 853. Q. And if you go to page 868, you refer

22 at the end of the letter to a number of exhibits.

23 A. Yes.

24 854. Q. And the exhibits contain additional

25 information that you were bringing to the attention

1 of MACC?

2 A. Yes.

3 855. Q. And if you can, please go back to  
4 page 860.

5 A. Yes.

6 856. Q. In the first paragraph you are...the  
7 letter is requesting:

8 "...The immediate arrest and criminal  
9 prosecution of Chief Minister Taib and 13  
10 members of his family..."

11 A. Correct.

12 857. Q. And on page 861 we have the list of  
13 names...

14 A. Yes.

15 858. Q. ...of the people you are seeking the  
16 arrest?

17 A. Correct.

18 859. Q. And just after the list of names you  
19 mention in the letter that MACC had announced on  
20 June 9th, 2011, that it had opened a formal  
21 investigation into Taib?

22 A. Yes.

23 860. Q. So there was already an  
24 investigation by the time you sent your letter in  
25 December?

1 A. Correct.

2 861. Q. And on page 862...

3 A. Yes.

4 862. Q. ...the sixth paragraph. Again, you  
5 refer to the Japan tax issues, but you do not refer  
6 to the National Tax Tribunal decision of 2008.

7 A. Correct.

8 863. Q. And in your affidavit you say that  
9 you did not receive a reply to this letter.

10 A. Correct.

11 864. Q. Okay. Could you please go to volume  
12 7, tab 137? So, there is no date on this document,  
13 but your table of contents indicates that this is an  
14 article from Malaysian Insider, dated February 24,  
15 2014. Do you want to check that, or does that sound  
16 right?

17 A. Dated 20...

18 865. Q. February 24, 2014.

19 A. Okay.

20 866. Q. And this article reports on the MACC  
21 investigation.

22 A. Yes.

23 867. Q. And the first paragraph states:

24 "...A MACC probe failed to nail Sarawak  
25 Chief Minister Taib for alleged abuse of

1 power over large tracts of lands in logging  
2 areas, which were given to his relatives,  
3 as the approvals were made by two senior  
4 state ministers, sources said..."

5 A. Correct.

6 868. Q. So, in this particular  
7 investigation, because I understand there were more  
8 than one, but in this particular investigation the  
9 Chief Minister was found not to have abused his  
10 power because of the procedure that was followed in  
11 those cases?

12 A. Well, according to this article,  
13 yes. The team discovered that...on the next page,  
14 2570, it says:

15 "...the team discovered that Taib did not  
16 make decisions to evade running afoul of  
17 the law, but he had delegated his authority  
18 under two ministers who, on separate  
19 occasions, had given the approvals..."

20 869. Q. Yes.

21 A. So his underlings gave the land to  
22 his relatives.

23 870. Q. But that was found not to have  
24 constituted an abuse of power? That is what the  
25 first paragraph of the article says.

1                   A.        Yes, what a...this is what the  
2                   article says, yes.

3                   871.                Q.        Yes.    And so in your affidavit, Mr.  
4                   Straumann, you have made a number of allegations of  
5                   abuse of power and conflict of interest.

6                   A.        Yes.

7                   872.                Q.        But you actually do not know the  
8                   internal procedures that were followed to grant  
9                   specific licences and contracts.

10                  A.        I don't, but I know the result.

11                  873.                Q.        You have not included in the record  
12                  any evidence of the internal processes that is  
13                  followed by the Sarawak government in granting  
14                  licences and contracts.

15                  A.        Correct.

16                  874.                Q.        And go to page 2571 in the same  
17                  article.  So, this part of the article gives more  
18                  information about the investigation.  And you see on  
19                  the second paragraph, second full paragraph, it says  
20                  that the investigation started sometime in 2009?

21                  A.        Yes.

22                  875.                Q.        Do you have any information that  
23                  contradicts this, that the investigation started as  
24                  early as 2009?

25                  A.        No.

1 876. Q. Okay.

2 A. It was publicly acknowledged in  
3 2011, but I have no other information than this.

4 877. Q. And so this paragraph reads:  
5 "...Sometime in 2009 the MACC set up the  
6 team of 30 following information received  
7 and obtained from blogs on Taib's alleged  
8 misuse of power for illegitimate private  
9 gain. Over the period about 10  
10 investigation papers were opened, and even  
11 private forensic accounting experts were  
12 roped in to trace documents and the money  
13 trail..."

14 So now, and this is a quote:

15 "...'The team checked about 500 files, but  
16 the probe did not meet the desired  
17 results', the source added..."

18 Do you see that?

19 A. Yes.

20 878. Q. So, this article reports on  
21 significant efforts that were made by MACC in the  
22 investigation. Would you agree with that?

23 A. Yes.

24 879. Q. But they did not uncover anything  
25 that could lead to a prosecution?



1 A. Yes.

2 886. Q. And there is also a discussion in  
3 the article about the fact that Taib did not gain  
4 immunity from investigation when he was appointed  
5 Governor of Sarawak.

6 A. Correct.

7 887. Q. And these statements were made in  
8 2014?

9 A. Yes.

10 888. Q. And to your knowledge, has MACC  
11 taken any action since then?

12 A. I have no knowledge about MACC  
13 action since then.

14 889. Q. And in your affidavit you state  
15 that:

16 "...It is unclear whether MACC is still  
17 investigating Taib..."

18 A. Yes.

19 890. Q. But you also say, and maybe you can  
20 go in your affidavit to paragraph 74, page 44. So,  
21 paragraph 74 you state:

22 "...I am not aware of any criminal  
23 investigation taking place in any country  
24 regarding Taib or his family members..."

25 Does that include Malaysia?

1                   A.       Well, yes, because, I  
2                   mean...basically my understanding is that MACC never  
3                   formally closed the investigation, but it is dead  
4                   anyway, I would say.

5       891.           Q.       So given that nothing has happened  
6                   for a number of years now, to use your term, it is  
7                   very likely that it is dead? Is that...

8                   A.       I would...I don't know.

9       892.           Q.       No.

10                  A.       Maybe it is half dead, maybe it is  
11                  just a marketing tool that the Prime Minister keeps  
12                  against Taib. I don't know.

13       893.           Q.       So you don't know whether it is  
14                  closed or not?

15                  A.       No, I don't know.

16       894.           Q.       Okay. Okay, so...

17                  A.       We don't see any activity.

18       895.           Q.       Okay. Thank you. Okay, aside from  
19                  the letter that you sent to MACC, BMF also wrote  
20                  letters to a number of authorities in a number of  
21                  countries about the allegations in this case.

22                  A.       Yes.

23       896.           Q.       And that was starting approximately  
24                  in 2010?

25                  A.       Or 2011, maybe.

1 897. Q. Okay.

2 A. Yes.

3 898. Q. And I want to go over some of  
4 that...

5 A. Yes, 2010, 2011, that period.

6 899. Q. Okay. I will go over with you some  
7 of that correspondence, and we will start with the  
8 U.K. So, volume 6, please, tab 113.

9 Okay, we saw that earlier that is BMF's  
10 report to the City of London police?

11 A. Yes.

12 900. Q. And it mainly concerns Richford  
13 Properties?

14 A. Correct.

15 901. Q. And you can keep that open, but then  
16 if you go to your affidavit, page 83. So, in  
17 paragraph 168 there you say...you refer to that  
18 report to the London police, and you say in that  
19 paragraph that the case was later transferred to the  
20 National Crime Agency?

21 A. Correct.

22 902. Q. And you also say that since January,  
23 2015 BMF has contacted the National Crime Agency on  
24 numerous occasions, to provide addition evidence and  
25 ask for updates?

1 A. Correct.

2 903. Q. And you say that the NCA declined to  
3 share the status of their assessment of the  
4 allegations made against Richford.

5 A. Yes. We provided you the  
6 correspondence with the NCA in its entirety.

7 904. Q. That is right. Well, I have  
8 correspondence. So, three years have passed since  
9 your detailed complaint to the London police, or  
10 more than three years?

11 A. Yes.

12 905. Q. And the London police has not taken  
13 action based on your complaint?

14 A. Not that we know of.

15 906. Q. And even after you provided  
16 additional evidence to the National Crime Agency, to  
17 your knowledge there has not been government action  
18 based on your complaint and the information you  
19 provided?

20 A. Correct.

21 907. Q. And there has been no prosecution in  
22 the U.K.?

23 A. No.

24 908. Q. Okay. In your...the Money Logging  
25 book, tab 1, page 261, the very last paragraph on

1 this page, you say that BMF also exchanged  
2 correspondence with the British Foreign and  
3 Commonwealth Office?

4 A. Correct.

5 909. Q. That was in 2011?

6 A. Yes.

7 910. Q. And their response was that they  
8 were going to keep a watch on the MACC  
9 investigation?

10 A. Correct.

11 911. Q. And to your knowledge, no action has  
12 been taken by the British Foreign and Commonwealth  
13 Office since 2011?

14 A. Correct.

15 912. Q. Okay. So, moving to Australia, in  
16 your book, 261...

17 A. Yes.

18 913. Q. ...page 261, in the last full  
19 paragraph on the page, you refer to correspondence  
20 exchanged with the Australian Department of Foreign  
21 Affairs, and the Australian Federal Police?

22 A. Correct.

23 914. Q. And that was in 2011 as well? I  
24 mean, if you look at the footnote. We can go to the  
25 footnote.

1 A. It was all around that period.

2 915. Q. Okay. So, but the footnotes all  
3 included specific dates.

4 A. 28...yes, September, 2011, October,  
5 2011, yes.

6 916. Q. Okay. And you say in that

7 paragraph:

8 "...The Australian Department of Foreign  
9 Affairs and the Australian Federal Police  
10 emphasized that they took the  
11 implementation of the U.N. convention  
12 against corruption very seriously, but that  
13 there wasn't sufficient evidence in the  
14 Taib case for them to act. They requested  
15 that Bruno-Manser-Fonds provide hard  
16 evidence that Taib real estate in Australia  
17 had, indeed, been financed out of the  
18 proceeds of corruption..."

19 A. Correct.

20 917. Q. And in the absence of that kind of  
21 evidence they didn't take action?

22 A. Correct.

23 918. Q. And in Australia you also later made  
24 a submission to the Senate Inquiry into foreign  
25 bribery?

1 A. Correct.

2 919. Q. And we can look at it. It is in  
3 volume 7, tab 124. So, that was your submission to  
4 the Senate Inquiry?

5 A. Correct.

6 920. Q. And it is dated October 16, 2015?

7 A. Correct.

8 921. Q. And in terms of specific companies  
9 mentioned in it, it relates to the Sitehost company?

10 A. Correct.

11 922. Q. And could you please go to 2448?

12 A. Yes.

13 923. Q. So, this is the letter that you  
14 received in response?

15 A. Yes.

16 924. Q. And it just acknowledges receipt of  
17 your submission?

18 A. Correct.

19 925. Q. And you say in your affidavit that  
20 because the Australian parliament...there was a  
21 dissolution of the Australian parliament because of  
22 an election in May, 2016, so the inquiry did not  
23 continue?

24 A. Correct.

25 926. Q. But you didn't hear anything further

1 about your submission, I take it?

2 A. No. Actually, last month we were  
3 invited to make a statement, because there will be a  
4 new bill, criminal finance bill, or something like  
5 that. But we have not made any submission.

6 927. Q. That is a separate submission?

7 A. That is a completely new...

8 928. Q. Okay.

9 A. It is not an inquiry. It is just a  
10 new legislation going into place, so they asked for  
11 a comment.

12 929. Q. Okay.

13 A. But also by the same committee.

14 930. Q. Okay. Okay, Germany. Volume 3,  
15 please, tab 35.

16 A. Yes.

17 931. Q. Page 912. So, the very last entry  
18 on that timeline on this page says that:

19 "...BMF sent a letter to the German  
20 Chancellor..."

21 A. Correct.

22 932. Q. "...in June, 2011".

23 A. Yes.

24 933. Q. Asking the government to:

25 "...investigate Taib's close business ties

1 with Deutsche Bank..."

2 A. Correct.

3 934. Q. Okay, now you can actually keep that  
4 open because we will come back, but in the Money  
5 Logging book, tab 1, page 262...

6 A. Yes.

7 935. Q. ...in the second paragraph you  
8 state, the second sentence:

9 "...The Federal Ministry of Finance  
10 launched an inquiry into the business  
11 relationship between Deutsche Bank and the  
12 Taib family to determine if it was in  
13 compliance with German regulations against  
14 money laundering. However, BaFin, the  
15 Federal Financial Supervisory Authority  
16 entrusted with this inquiry also concluded  
17 that there was no basis for it to  
18 intervene..."

19 A. Correct.

20 936. Q. And that conclusion was...I have  
21 from the footnote March 8, 2012. And...

22 A. Yes. So, 31, footnotes 31 and 32 on  
23 page 298.

24 937. Q. Yes, okay.

25 A. I have to add that BaFin, as bank

1 regulator, they look at these issues from a  
2 regulatory law standpoint, not from a criminal law  
3 standpoint.

4 938. Q. Okay. And if you go to page 197,  
5 still in the Money Logging book, in the first full  
6 paragraph on that page you give more detail on the  
7 BaFin's examination.

8 A. Correct.

9 939. Q. And that paragraph reads:  
10 "...Following questions addressed by the  
11 Bruno Manser Fund to the German government  
12 in 2011, BaFin...took a close look at  
13 Deutsche Bank's relations with the Taib  
14 family. Its examination dealt with  
15 'compliance with the due diligence duties  
16 laid down in the anti-money laundering law'  
17 and also 'the internal security measures  
18 set up by the financial institute'.

19 BaFin concluded that there were 'no  
20 grounds' for action by the regulatory  
21 authorities..."

22 A. Correct.

23 940. Q. So that is accurate?

24 A. That is accurate.

25 941. Q. And you are not aware of any other

1           action taken in Germany since 2012?

2                           A.       No.

3   942.                Q.       Okay. So now your home country,  
4                           Switzerland.

5                           A.       Yes.

6   943.                Q.       In your book, page 199. So you say  
7                           in the first paragraph that you wrote to...

8                           A.       Micheline Calmy-Rey, the Swiss  
9                           foreign minister.

10   944.                Q.       Yes, and that was in, I believe,  
11                           March, 2011?

12                           A.       Correct.

13   945.                Q.       And you asked that any assets that  
14                           Taib might have in Switzerland be frozen?

15                           A.       Correct.

16   946.                Q.       And she responds, and you talk about  
17                           that in the next paragraph. And she says that:  
18                           "...It is not going to work..."

19                           But she forwards your letter to FINMA, which is the  
20                           Swiss Financial Market Supervisory Authority?

21                           A.       Correct.

22   947.                Q.       And if we can go to volume 7.

23                           A.       1 to 7?

24                           MR. CAYLOR:       No, volume 7.

25   948.                MS. VERMETTE:     So, tab 125.

1) THE DEPONENT: Tab 125, yes.

2)

3) BY MS. VERMETTE:

4) 949. Q. So, on page 2456, the first full  
5) paragraph, you say that...fourth line, that:

6) "...FINMA informed you in May, 2011 of an  
7) ongoing investigation on possible Taib  
8) assets in Swiss banks..."

9) So, you see that?

10) A. Yes.

11) 950. Q. So, I haven't seen any reference to  
12) correspondence about FINMA informing you of an  
13) ongoing investigation. Was that...

14) A. In the affidavit.

15) MR. CAYLOR: Just let her ask the  
16) question.

17)

18) BY MS. VERMETTE:

19) 951. Q. Sorry, how did FINMA inform you of  
20) this?

21) A. I think FINMA sent us a letter, but  
22) in retrospect I am not sure if this was just a  
23) standard letter, or if it was a real...I haven't  
24) looked at the letter for a long while, so I would  
25) have to consult it to let you know. But...

1 952. Q. So, is it fair to say it is not  
2 clear in your mind now that there was necessarily an  
3 investigation: it may just have been a standard  
4 letter that they sent to everybody who sent a  
5 complaint?

6 A. Well, actually, following this we  
7 made a complaint...actually, when Taib's  
8 daughter-in-law, Shahnaz, who went to court against  
9 her husband, Bekir, in a divorce case...I mean, she  
10 produced evidence in court that said there was money  
11 in Switzerland being held by Swiss banks of the Taib  
12 family.

13 So, we used that to inform public  
14 prosecutors in Switzerland, and they looked into  
15 these, and then they came back and said, "We have  
16 not been able to identify any Taib funds currently  
17 being held", but there were two family members had  
18 assets in Switzerland, but these bank accounts had  
19 been closed down in the...probably 1990s.

20 953. Q. Okay. So...

21 A. So that is what we got. No ongoing  
22 investigation.

23 954. Q. Okay, so just to close the loop on  
24 that. So, if you can keep that open, but go in the  
25 Money Logging book, page 201.

1 A. Oh, yes, Shahnaz's testimony.

2 955. Q. That is what you were referring to,  
3 and we will come back to that. Just to point out  
4 that this was in 2013.

5 A. Yes.

6 956. Q. And so in the letter that we were  
7 looking at at tab 25, this talks about 2011.

8 A. Yes. Correct.

9 957. Q. So, in the letter...I am just trying  
10 to understand your answer. In the letter you say  
11 that FINMA informed you...

12 A. Yes.

13 958. Q. ...of an investigation, but you  
14 appear now to have doubts. I am not sure. What is  
15 your answer?

16 A. Honestly, I have to dig out that  
17 letter, because FINMA usually never they make these  
18 kinds of comments, so I wonder if I misinterpreted  
19 that letter based on my understanding back in 2011  
20 of these kinds of things.

21 959. Q. Okay. But in any event, as you  
22 said, since 2011 you haven't heard anything from  
23 FINMA?

24 A. No.

25 960. Q. Okay. So, now, page 201 of the book

1 that we were looking at. And this talks about the  
2 testimony given by Taib's daughter-in-law in her  
3 divorce proceeding, as you were saying?

4 A. Correct.

5 961. Q. And so that paragraph reads:

6 "...Shahnaz's testimony also sent  
7 shockwaves through Switzerland. However,  
8 her accusations could not be  
9 substantiated..."

10 A. Correct.

11 962. Q. And:

12 "...An examination carried out by the  
13 office of the Swiss Attorney General in  
14 2013 showed that only one of the Swiss  
15 banks mentioned by Taib's daughter-in-law  
16 had had a business relationship with the  
17 Taib family. Their bank accounts had  
18 already been closed in 1999. Contrary to  
19 the Muss Aman case, the Swiss prosecutors  
20 did not open a criminal investigation and  
21 ordered not to proceed with the matter..."

22 A. Correct.

23 963. Q. So, that is accurate? And to your  
24 knowledge, no other action was taken in Switzerland?

25 A. No.

1 964. Q. Okay, now the United States. Okay,  
2 volume 3, tab 34. No, sorry, tab 35, and page 913.  
3 So, that is your timeline in this document, which is  
4 the Taib Timber Mafia report of BMF?

5 A. Correct.

6 965. Q. Okay. And so the August 24, 2011  
7 entry refers to a letter to FBI director Robert  
8 Mueller?

9 A. Correct.

10 966. Q. And in that letter BMF called on the  
11 FBI to cut ties with Taib-owned Wallyson's Inc?

12 A. Correct.

13 967. Q. And the...and you asked the FBI to  
14 suspend the rental contract for the Abraham Lincoln  
15 Building in Seattle, which is owned by Wallyson's?

16 A. Correct.

17 968. Q. And you did not receive a response  
18 from Mr. Mueller?

19 A. No.

20 969. Q. And then down on the same page, the  
21 December 12th, 2011 entry, it states that you  
22 forwarded a copy of your letter to MACC to both  
23 Secretary of State Hillary Clinton, and FBI's  
24 director Robert Mueller?

25 A. Correct.

1 970. Q. And you did not receive a response  
2 from either Hillary Clinton or Mr. Mueller?

3 A. No.

4 971. Q. Okay, then in your Money Logging  
5 book at tab 1, page 243. So you refer to Mr.  
6 Mueller in your book as well. You see in that  
7 section?

8 A. Page?

9 972. Q. Pages 243 and 244.

10 A. Yes.

11 973. Q. So, Mr. Mueller, in fact, is or was  
12 on your list of what you called "Taib's foreign  
13 helpers"?

14 A. Yes.

15 974. Q. And the fifth line from the end of  
16 the page, on page 243, you state in the book:

17 "...At the end of 2011 in the context of  
18 its stop timber corruption campaign, the  
19 Bruno Manser Fund published a blacklist in  
20 the format of a wanted poster, with the  
21 names of 30 individuals from nine countries  
22 who were accused of providing financial,  
23 technical or other services to Taib, and  
24 thereby of having supported or legitimized  
25 the despot's regime..."

1 And...

2 A. Yes.

3 975. Q. ...so that is accurate?

4 A. Yes.

5 976. Q. And in the last paragraph, the last  
6 full paragraph on page 244, you say:

7 "...The most prominent American to make its  
8 way onto the list of Taib's helpers was the  
9 former FBI director, Robert Mueller..."

10 A. Right.

11 977. Q. It continues:

12 "...Mueller's name was included because of  
13 the FBI's decision to close their eyes to  
14 the corruption of the Malaysian despot when  
15 moving their Seattle head office into a  
16 building belonging to the Taib family..."

17 And then:

18 "...Mueller was written to on this subject  
19 on numerous occasions, but his office has  
20 never provided a reply..."

21 A. Yes.

22 978. Q. So, you put Mr. Mueller's face on a  
23 wanted poster.

24 A. Correct. I mean, wanted poster.

25 This is not an official wanted poster, but it is

1 just...this is what we call a name and shame  
2 campaign.

3 979. Q. And that it said "wanted" on the  
4 poster.

5 A. He was not in office when the FBI  
6 moved into that building. But that was a campaign  
7 tool, yes.

8 980. Q. And despite your letters to Mr.  
9 Mueller, he did not take action?

10 A. No.

11 981. Q. And as far as you know the FBI is  
12 still in that building in Seattle?

13 A. Correct.

14 982. Q. Okay, now in your affidavit, please,  
15 page 94, paragraph 202.

16 A. He didn't complain about being on  
17 the list.

18 983. Q. Well, he didn't respond to your  
19 letters.

20 A. No.

21 984. Q. Okay. Paragraph 202, you say in  
22 this paragraph that:

23 "...In 2013 [you] met with the team of U.S.  
24 investigators in New York, two officers  
25 from the FBI and one from the IRS, to brief

1) them on BMF's findings on Taib

2) corruption..."

3) A. Correct.

4) 985. Q. And after...nothing ensued from that  
5) meeting?

6) A. Not that I know.

7) 986. Q. Okay. And if you can go to page 80  
8) in your affidavit, paragraph 162, you refer in that  
9) paragraph to a report dated January, 2017 by the  
10) United States Government Accountability Office.

11) A. Correct.

12) 987. Q. And that is a report on high  
13) security space leased from foreign owners.

14) A. Yes.

15) 988. Q. And the report refers to the FBI's  
16) building in Seattle, owned by Wallyson's.

17) A. Correct.

18) 989. Q. And you quote from the report in  
19) paragraph 162, but I just want to take you to the  
20) end of the quote on page 81, five lines from the  
21) top.

22) A. Correct. Yes.

23) 990. Q. The report says:

24) "...We found no evidence that the family  
25) has been indicted or convicted of

1                   wrongdoing that would disqualify them from  
2                   leasing to the government..."

3                   A.        Correct.

4           991.        Q.        And:  
5                   "...GSA officials said that they are not  
6                   concerned about the ownership of the FBI  
7                   field office in Seattle.  According to GSA,  
8                   'as long as the lessor performs according  
9                   to the contract, additional concerns about  
10                  ownership would not be raised'..."

11                  A.        Correct.

12           992.        Q.        And as you have said, the FBI is  
13                   still there.

14                  A.        Yes.

15           993.        Q.        And in paragraph 163 of your  
16                   affidavit you say that you:

17                   "...are not aware of any U.S. money  
18                   laundering investigation or criminal  
19                   actions against Taib or Taib-related  
20                   entities..."

21                  A.        Correct.

22           994.        Q.        And this has not changed since you  
23                   swore your affidavit?

24                  A.        No.

25           995.        Q.        Now turning to Canada.  We are going

1 to go back in volume 7 to tab 125. So, page 2452.

2 A. Yes.

3 996. Q. On June 17th, 2010 you write to  
4 FINTRAC.

5 A. Correct.

6 997. Q. And FINTRAC is the Financial  
7 Transactions and Reports Analysis Centre of Canada?

8 A. Yes.

9 998. Q. And in the fourth paragraph of your  
10 letter you ask FINTRAC to launch a formal  
11 investigation against Sakto under the Canadian  
12 Anti-Money Laundering legislation.

13 A. Yes.

14 999. Q. And I understand you don't receive a  
15 response from FINTRAC to this letter, but you  
16 received one later on?

17 A. Yes.

18 1000. Q. Okay. So, then next page...well,  
19 page 2454. You sent to FINTRAC a copy of your  
20 letter of the same date, July 1st, 2011, to Prime  
21 Minister Stephen Harper.

22 A. Correct.

23 1001. Q. And the letter to the Prime Minister  
24 is on page 2455?

25 A. Correct.

1 1002. Q. And in addition to FINTRAC you sent  
2 a copy of this letter to the RCMP and others?

3 A. Correct.

4 1003. Q. And on page 2456, fourth full  
5 paragraph from the top, you state in the letter:

6 "...In particular, we would be grateful if  
7 the Canadian government could inform the  
8 public if FINTRAC or any other official  
9 Canadian body is investigating Taib assets  
10 in Canada, and what results a possible  
11 probe has yielded. We would also be  
12 interested in knowing how the Canadian  
13 government intends to deal with the assets  
14 of politically exposed persons from foreign  
15 countries in Canada..."

16 A. Yes.

17 1004. Q. So that was your request?

18 A. Correct.

19 1005. Q. And now at tab 126 you have the  
20 response from FINTRAC.

21 A. Yes.

22 1006. Q. And in the second paragraph they  
23 say:

24 "...I want to assure you that any  
25 information volunteered by persons or

1) organizations concerning their suspicions  
2) of money laundering is analyzed and  
3) assessed by FINTRAC in accordance with the  
4) Proceeds of Crime Money Laundering and  
5) Terrorist Financing Act..."

6) A. Correct.

7) 1007. Q. And then:

8) "...I would like to point out that FINTRAC  
9) does not have the mandate to undertake  
10) money laundering or terrorist financing  
11) investigations or to freeze assets.

12) Rather, once statutory requirements are  
13) met, FINTRAC must disclose financial  
14) intelligence to investigative bodies such  
15) as the RCMP, to assist them in their  
16) work..."

17) A. Yes.

18) 1008. Q. And they say that also:

19) "...They don't make public the fact that  
20) they do or do not disclose financial  
21) intelligence..."

22) A. Correct.

23) 1009. Q. So, they assure you that they do  
24) assess and analyze information provided to them.

25) A. Yes.

1) 1010. Q. Okay. At tab 127 a letter from the  
2) RCMP, and they respond to their request that there  
3) be a public statement as to whether there is an  
4) investigation. And they say the RCMP does not  
5) normally confirm or deny the existence of any  
6) criminal investigation.

7) A. Correct.

8) 1011. Q. Okay, if you can go to the Money  
9) Logging book at page 261. So, the third  
10) paragraph...it is not in the record, but you say in  
11) your book that you did receive, as well, a letter  
12) from James Flaherty, the Canadian Minister of  
13) Finance at the time.

14) A. Correct.

15) 1012. Q. In 2011?

16) A. Yes.

17) 1013. Q. And do you know if he was responding  
18) for the Prime Minister?

19) A. I think he was.

20) 1014. Q. And you say in that paragraph that  
21) Mr. Flaherty thanked you for the information and  
22) said that:

23) "...Canada was actively involved in  
24) international initiatives to combat  
25) corruption..."

1 A. Correct.

2 1015. Q. And until you contacted the RCMP  
3 again in 2013, and we will get to that, nothing else  
4 happened in Canada that you are aware of?

5 A. No.

6 1016. Q. Okay. So...

7 A. I mean, this e-mail contact that we  
8 talked about before...

9 1017. Q. The e-mail from Bruce Bailey?

10 A. Yes.

11 1018. Q. It was 2017.

12 A. Yes. I mean, that is the last  
13 knowledge we have.

14 1019. Q. Okay.

15 A. We have no knowledge what went on in  
16 between.

17 1020. Q. Okay. So, in volume 7, tab 128.  
18 Okay, so before Mr. Bailey's contact with the RCMP  
19 in 2017, there is another contact and, if you go to  
20 page 2469 starting at the first e-mail in the chain,  
21 this is an e-mail from Martin Bedard to you, dated  
22 April 4, 2013.

23 A. Yes.

24 1021. Q. And so you were in Ottawa at that  
25 time, at some point in April, 2013?

1) A. Correct.

2) 1022. Q. And you contacted the RCMP to  
3) request a meeting?

4) A. Yes.

5) 1023. Q. Mr. Bedard says in his e-mail that  
6) he could not meet you.

7) A. Correct.

8) 1024. Q. But he invites you to forward  
9) additional information if you have anything else.

10) A. Correct.

11) 1025. Q. He also says in the second sentence:  
12) "...I understand that our organization sent  
13) you a response letter concerning the same  
14) allegations..."

15) A. Correct.

16) 1026. Q. Do you know if he is referring to  
17) the letter at tab 127?

18) A. Yes. Correct. This is the only  
19) letter we got.

20) 1027. Q. Okay. And so going to page 2468, a  
21) few months later, September, 2013, you do send  
22) additional information to Mr. Bedard of the RCMP?

23) A. Correct.

24) 1028. Q. And I understand that nothing  
25) followed from this e-mail?

1 A. Correct.

2 1029. Q. And then the next...as far I  
3 understand, the next contact with the RCMP was the  
4 call with Mr. Bailey?

5 A. Maybe...I am not sure. Maybe there  
6 was an attempt to contact him in between, but we  
7 never met them, or we never got any material  
8 information, so if there was a contact in between,  
9 which I doubt, it wouldn't have been substantive.

10 1030. Q. Okay. And again, the call with Mr.  
11 Bailey and Officer Sheldon Landry is set...Mr.  
12 Bailey summarizes his call in the e-mail at tab 129?

13 A. Correct.

14 1031. Q. Okay. If you can go to page 95 of  
15 your affidavit? So you summarize your contacts with  
16 the Canadian authorities in paragraph 2 and 3(a)  
17 and...well, (a)?

18 A. Correct.

19 1032. Q. And then in (b) you say that despite  
20 your efforts you are not aware of any formal or  
21 active investigations regarding the Taib entities  
22 discussed herein in the affidavit?

23 A. Correct.

24 1033. Q. And that is actually the truth, not  
25 for only Canada but other countries, with the

1 possible exception of MACC, that we discussed  
2 earlier? Meaning that you are not aware of any  
3 formal active investigation regarding the Taib  
4 entities in any...

5 A. Correct.

6 1034. Q. So, ultimately none of the  
7 complaints that you have made to the various  
8 authorities have resulted in a prosecution?

9 A. Correct.

10 1035. MS. VERMETTE: Okay, those are all my  
11 questions, Mr. Straumann.

12 THE DEPONENT: Okay, thank you.

13 1036. MS. VERMETTE: Thank you very much.

14

15 CROSS-EXAMINATION BY MR. SIRIVAR:

16 1037. Q. Mr. Straumann, I am the lawyer for  
17 the Royal Bank of Canada and the Toronto-Dominion  
18 Bank. I just have a few questions.

19 A. Sure.

20 1038. Q. Can I take you to paragraph 101 of  
21 your affidavit? It is found in volume 1, I believe,  
22 of your motion record, page 58 of the record. Do  
23 you have that?

24 A. Yes.

25 1039. Q. Paragraph 101 is under a section

1 titled "BMF's investigation into the Sakto Group's  
2 financials", and then the paragraphs that follow  
3 that for some number of pages describe both the  
4 investigation that I understand you undertook, as  
5 well as what you were able to determine as a result  
6 of that investigation. Is that correct?

7 A. Correct.

8 1040. Q. And as I understood your evidence  
9 earlier in response to questions by Ms. Vermette,  
10 you have been investigating what you call the Sakto  
11 Group for some seven years now?

12 A. Correct.

13 1041. Q. And am I correct that the  
14 information you outline at paragraphs 101  
15 essentially through to paragraph 137, which relate  
16 to what you found in the financials, was undertaken  
17 at some point in time in that seven-year  
18 investigation?

19 A. Correct.

20 1042. Q. And focusing for the moment on  
21 paragraph 101, the first part of the investigation,  
22 if I can put it that way, was in conducting internet  
23 searches that led you to Sakto's financial reports  
24 for the first 10 years of its existence. Is that  
25 correct?

1 A. Correct.

2 1043. Q. And what you did was you essentially  
3 Googled the Sakto Group, surfed the internet and  
4 found that their financial statements for this  
5 period of time were housed at the University of  
6 Western Ontario in London, Ontario?

7 A. Correct.

8 1044. Q. And if I understand correctly, you  
9 then physically went to the University of Western  
10 Ontario and obtained these records, or asked for  
11 them. Is that fair?

12 A. I asked for them and they sent them.

13 1045. Q. Fair enough. And what you got back  
14 was information that allowed you to conclude, first  
15 of all, who the accountants for Sakto were during  
16 the relevant time period?

17 A. Correct.

18 1046. Q. And you obtained physical copies of  
19 the financial statements that you append as Exhibits  
20 56 and 57 to your affidavit, correct?

21 A. Correct.

22 1047. Q. And the second part of your  
23 investigations was undertaken because you weren't  
24 able to find financials for the period of time after  
25 1993, as you say in the first sentence at paragraph

1 102 of your affidavit, correct?

2 A. Correct.

3 1048. Q. And so what you did was you  
4 undertook searches of public land registries to make  
5 a determination as to information that might be of  
6 assistance to you in your investigation, correct?

7 A. Correct.

8 1049. Q. And having searched the land  
9 registries, you...particularly in Ottawa, you were  
10 able to find a number of documents that allowed you  
11 to discern where the Sakto Group, as you call them,  
12 had various relationships with financial  
13 institutions, including my clients, the Royal Bank  
14 and the Toronto-Dominion Bank, correct?

15 A. Correct.

16 1050. Q. And if we go to the e-mail that Ms.  
17 Vermette took you to just a little while ago, which  
18 is found at tab 1...Exhibit 128 of your affidavit.  
19 And I am going to focus on the e-mail that is at  
20 page 2468 of the record.

21 A. Yes.

22 1051. Q. This is the e-mail from you to Mr.  
23 Bedard of the RCMP, in which you are responding to  
24 provide him with information on his invitation in  
25 relation to the fruits of your investigation,

1 correct?

2 A. Correct.

3 1052. Q. And what you say to Mr. Bedard in  
4 the first paragraph of that e-mail, which is dated  
5 the 19th of September, 2013, is that you are getting  
6 back to him in regards to your earlier communication  
7 on what you characterize as suspected money  
8 laundering of corruption proceeds by the Malaysian  
9 Taib family in Canada, correct?

10 A. Correct.

11 1053. Q. And so what you are doing here is  
12 you are giving Mr. Bedard of the RCMP the fruits of  
13 your investigation, so as to allow the RCMP to make  
14 an assessment of whether or not to do something  
15 about it, correct?

16 A. Correct.

17 1054. Q. And what...you provide Mr. Bedard  
18 with are a number...the covering e-mail, which is  
19 self-explanatory, and summarizes some of the things  
20 that your investigation has found, correct?

21 A. Correct.

22 1055. Q. And you append specific documents to  
23 the e-mail so he can have a review of the source  
24 documents themselves, correct?

25 A. Yes.

1 1056. Q. And the goal here is to inform the  
2 RCMP, or to provide the RCMP with the information  
3 you believed was supportive of your conclusions that  
4 there may have been money laundering occurring in  
5 Canada, correct?

6 A. Yes.

7 1057. Q. And, by this point in time the  
8 institution that you were concerned about in  
9 relation to where the money laundering may have  
10 occurred were the Royal Bank of Canada, the  
11 Toronto-Dominion Bank and the other respondents in  
12 this proceeding, correct?

13 A. Yes.

14 1058. Q. And now, if you go to the second  
15 last paragraph in your e-mail of September 19th,  
16 2013 to Mr. Bedard, which is found at page 2469 of  
17 the record.

18 A. Yes.

19 1059. Q. After having given him a summary of  
20 the findings of your investigation, at least the  
21 salient findings of your investigation, you say:

22 "...Finally, we would also like to provide  
23 you with the financial reports of Sakto  
24 Development Corporation's first 10 years of  
25 operation, 1984 to 1993, that are proving

1                   that despite constant losses the company  
2                   continuously built up its assets, which  
3                   reached over 40,000,000 dollars in the  
4                   early 1990s. We will send you these  
5                   documents with a separate e-mail..."

6                   So, I gather those are the same financials that you  
7                   obtained from the University of Western Ontario,  
8                   correct?

9                   A.        Correct.

10        1060.        Q.        And so you sent those financial to  
11                   the RCMP because you believed they should have them  
12                   and look at them and see if they will come to the  
13                   same conclusions that you were coming to, correct?

14                   A.        Yes.

15        1061.        Q.        In addition you say, in the last  
16                   paragraph of that same e-mail:

17                   "...We believe that the Sakto Development  
18                   Corporation is still involved in the  
19                   laundering of illicit Taib family assets,  
20                   and are currently working on the analysis  
21                   of the corporation's more recent mortgages  
22                   and loans, which we will provide within the  
23                   next weeks..."

24                   And those are the fruits of the second part of your  
25                   investigation that you and I talked about, that you

1 are referring to in paragraph 102 of your affidavit,  
2 correct?

3 A. Well, that is basically what is  
4 summarized in the Safe Haven Canada report in  
5 Exhibit 4, yes.

6 1062. Q. Right. But what I am getting at is  
7 you were able to get the information with respect to  
8 the mortgages...

9 A. Yes.

10 1063. Q. ...and loans from your review...

11 A. Yes.

12 1064. Q. ...of the land registries, correct?

13 A. Yes.

14 1065. Q. Right. And so the information that  
15 you outline in paragraphs 101 to 107 of your  
16 affidavit, dated June 27...

17 A. Yes.

18 1066. Q. ...of 2017 is information you had at  
19 least as early as September the 19th, 2013, correct?

20 A. Can you repeat the question, please?

21 1067. Q. You...yes...

22 A. We are summarizing what we had...in  
23 September 19, 2013, we had some information, like  
24 the financial statements, but the land registry  
25 research was ongoing.

1 1068. Q. Fair enough. Fair enough.

2 A. So that part of the land mortgage  
3 information and so on, we only...I mean, it is a  
4 very long tedious procedure to research that.

5 1069. Q. Fair enough. All of the financial  
6 information that you described in paragraph 101, so  
7 those are the statements from 1984 to 1993...

8 A. Yes.

9 1070. Q. ...you had all of those.

10 A. Correct.

11 1071. Q. Because you were going to send them,  
12 correct.

13 A. Correct.

14 1072. Q. Right. And the fruits of your  
15 investigation, as outlined in paragraph 102, which  
16 is the products of the land registry...

17 A. Yes.

18 1073. Q. ...you are...if I understand the  
19 distinction you are making, you may not have had all  
20 of them, but you certainly had some of them because  
21 you make reference to them in the e-mail to Mr.  
22 Bedard on September the 19th, 2013.

23 A. Correct.

24 1074. Q. But in any event...as it relates to  
25 the land registry, those are all publicly available

1 searches that you could have undertaken at any time,  
2 correct?

3 A. Yes.

4 1075. Q. Now, you then, at some point in  
5 time, retain a forensic accounting...a litigation  
6 and forensic accounting firm by the name of Ferguson  
7 & Mak, LLP?

8 A. Correct.

9 1076. Q. Correct? And at some point...well,  
10 on the 24th of January, 2014, they provided you with  
11 a report?

12 A. Correct.

13 1077. Q. And so I gather they were retained  
14 at some point prior to the 24th of January, 2014?

15 A. Yes.

16 1078. Q. And they were provided with the  
17 financial reports that you and I were just talking  
18 about, correct?

19 A. I mean, we took them on specifically  
20 to look into the Manulife mortgages, because during  
21 the land registry research we found that there were  
22 two sets of...I mean, there is mortgages at somewhat  
23 unusually high interest rates, and we did not know  
24 how to interpret these facts. So, that is why we  
25 commissioned Ferguson & Mak to provide us an answer

1           what could these...I mean, how many mortgages were  
2           there, really, and what could this basically mean in  
3           terms of financing these properties.

4                   MR. CAYLOR:       He wants to know if you  
5                   gave them the financials.

6   1079.           MR. SIRIVAR:       Yes.

7

8   BY MR. SIRIVAR:

9   1080.           Q.       My simple question was what you gave  
10           them, not what you asked them to do.

11                   A.       I don't think we gave them the  
12           financial statements.

13   1081.           Q.       So, let's go to...

14                   A.       But I can't exclude it. I can't for  
15           sure exclude it, either.

16   1082.           Q.       Okay. So, let's then go to Exhibit  
17           86 to your affidavit dated June the 27th, 2017.

18                   A.       Sure.

19   1083.           Q.       Do you have that, sir?

20                   A.       Yes. I do.

21   1084.           Q.       And so this is the report that you  
22           ultimately obtained from Ferguson & Mak, correct?

23                   A.       Correct.

24   1085.           Q.       And just a couple of preliminaries.  
25           It is dated the 24th of January, 2014, correct?

1 A. Correct.

2 1086. Q. And in the second paragraph under  
3 the heading, "Introduction", what the author states  
4 is that he understands that this report will be used  
5 by Bruno-Manser-Fonds for purposes of contemplating  
6 litigation. And he then states:

7 "...We further understand that this report  
8 may also be shared with law enforcement and  
9 regulatory authorities..."

10 Correct?

11 A. Correct.

12 1087. Q. Now, if you flip down to pages 9 and  
13 10, he has a heading on page 1830 of the record,  
14 that is titled "Relating party funding". Do you see  
15 that there?

16 A. Yes. "E, related party funding".

17 1088. Q. "E, related party funding", was the  
18 heading...

19 A. Correct.

20 1089. Q. ...correct? And under that heading  
21 he does discuss, as he does throughout the report,  
22 the Manulife mortgages, and answers the questions  
23 that you asked. But if you look at the third  
24 paragraph, which starts with the words, "I further  
25 note..."

1 A. Yes.

2 1090. Q. He states:

3 "...I further note that a mortgage was  
4 registered in favour of Jamilah Taib in  
5 trust, on certain Preston Square  
6 properties, on or about August 19th,  
7 1996..."

8 And then there is a footnote that says:

9 "...See mortgage instrument LT994559..."

10 Do you see that there?

11 A. Yes.

12 1091. Q. So, he is presumably footnoting a  
13 specific mortgage instrument that you provided as a  
14 result of the investigations you had undertaken from  
15 the land registry, correct?

16 A. Correct.

17 1092. Q. It then says:

18 "...The mortgage was charged to Sakto  
19 Development Corporation, with interest to  
20 be determined from time to time, subject to  
21 a maximum of the Royal Bank of Canada prime  
22 rate plus five percent..."

23 As I read that, that mortgage instrument relates to  
24 what was a Royal Bank of Canada mortgage, correct?

25 A. I think reference is being just made

1 to the interest rate, to the Royal Bank of Canada  
2 prime rate, but I am not sure. Because the  
3 mortgage...we have this mortgage here as  
4 Exhibit...is it 68?

5 MR. CAYLOR: Is that where you want to  
6 us to look at the mortgage or...

7 1093. MR. SIRIVAR: Yes, we are going to look  
8 at the mortgage. My only question is  
9 whether...

10 MR. CAYLOR: Just wait.

11 1094. MR. SIRIVAR: ...we are in Sakto's.

12 MR. CAYLOR: He doesn't want you to look  
13 at the mortgage.

14 1095. MR. SIRIVAR: No, no you can look at the  
15 mortgage if it will assist you answering my  
16 question. I don't want to preclude you  
17 from doing that.

18

19 BY MR. SIRIVAR:

20 1096. Q. My question was simply for you to  
21 confirm that in addition to Manulife documents, that  
22 the forensic accountants were also provided with the  
23 documents that you had discerned from mortgages, or  
24 other lending relationships with other financial  
25 institutions, including the Royal Bank of Canada.

1 MR. CAYLOR: Do you recall if  
2 they...what group of documents you gave to  
3 them at this time for this report?

4 THE DEPONENT: Well, I mean, we provided  
5 them some documents and other documents  
6 they researched by themselves. What is  
7 your question exactly? If we provided them  
8 the mortgage document, the Royal Bank of  
9 Canada mortgage?

10

11 BY MR. SIRIVAR:

12 1097. Q. Yes, I don't want to make this any  
13 more complicated than it is. Really, from my  
14 perspective, it was simple and I apologize if I have  
15 made it more complicated in the way I have asked.

16 A. Okay, I am sorry.

17 1098. Q. Let me try it again.

18 A. Sorry.

19 1099. Q. If you go to page 1831, which is the  
20 very next page of the report...

21 A. Yes.

22 1100. Q. ...look at the second last paragraph  
23 under the heading "E", where it says, "Jamilah  
24 Taib". Do you see that there?

25 A. Yes.

1 1101. Q. It says:  
2 "...Jamilah Taib signed the 1989 Royal Bank  
3 debenture on behalf of Sakto Development  
4 Corporation..."

5 So, you would agree with me there that they are, at  
6 least in that instance, referring to a debenture  
7 from the Royal Bank...

8 A. Yes.

9 1102. Q. ...as opposed to Manulife. Correct?

10 A. Yes.

11 1103. Q. So, in their possession they had  
12 mortgage and other loan documents from financial  
13 institutions other than Manulife, correct?

14 A. Yes.

15 1104. Q. And given that, as you describe at  
16 paragraph 102, one of the things you were doing in  
17 relation to your investigations, was searching the  
18 land registry. I take it that you would agree with  
19 me that it is likely that, to the extent that they  
20 had documents from the land registry relating to the  
21 lending relationship with the RBC, that those  
22 documents may have come from your investigation?

23 A. Correct.

24 1105. Q. Now, coming back to your affidavit.  
25 All of the information that is contained in

1 paragraphs 103 to 137, as you have now described, is  
2 information that was obtained from either the  
3 financial reports, or the land registry  
4 documentation, correct?

5 A. Yes.

6 1106. Q. And you have summarized...

7 MS. WARD: Do you mean 37? You said 103  
8 to 137?

9 1107. MR. SIRIVAR: Correct.

10 MS. WARD: Is that right?

11 1108. MR. SIRIVAR: Correct.

12 MR. CAYLOR: Just let him check.

13 THE DEPONENT: Yes, correct.

14

15 BY MR. SIRIVAR:

16 1109. Q. And as it relates to RBC, if you  
17 skip to paragraph 133 of your affidavit...

18 A. Yes.

19 1110. Q. ...you were able to discern  
20 specifics on RBC's relationship with Sakto, as  
21 described in paragraphs 133 and 134...

22 A. Correct.

23 1111. Q. ...from publicly available  
24 information, correct?

25 A. Yes.

1 1112. Q. You and I spoke at the same time.  
2 The answer to the question that I asked is correct?  
3 It is yes?

4 A. Yes.

5 1113. Q. And so you were able to discern that  
6 at least by September of 2013?

7 A. I would say so. Or, maybe in  
8 November, 2013. Sometime in there. Ferguson &  
9 Mak's investigation did not...I mean, the period of  
10 time was very limited when they conducted this  
11 investigation.

12 1114. Q. So your point is sometime in 2013?

13 A. Yes. Fall 2013.

14 1115. Q. Now, when we go to table 4 in  
15 relation to your summary of...

16 MR. CAYLOR: What page?

17 1116. MR. SIRIVAR: Sorry, table 4 is at  
18 paragraph 51 of your affidavit.

19 MR. CAYLOR: Paragraph or page?

20 MS. WARD: What page?

21 1117. MR. SIRIVAR: Page 63...I am sorry.  
22 Page 63 of the record, paragraph 114 of the  
23 June 27th, 2017 affidavit. My apologies.

24 MR. CAYLOR: Okay.  
25

1 BY MR. SIRIVAR:

2 1118. Q. You have summarized in table form  
3 your conclusions as to the loans that Sakto had from  
4 1984 to 1993, correct?

5 A. Correct.

6 1119. Q. And am I correct in understanding  
7 where you indicate the type of mortgage...sorry, the  
8 type of loan, you have indicated in two instances in  
9 items 15 and 16, that they were related-party loans,  
10 so from your assessment you viewed that as being two  
11 corporate or other entities that were in one way  
12 related?

13 A. Correct.

14 1120. Q. And so to the extent that you  
15 haven't made that reference that those were third  
16 party mortgages?

17 A. The others?

18 1121. Q. Yes.

19 A. No. Actually, we concluded that  
20 these were related-party loans from two facts.  
21 First...

22 MR. CAYLOR: No, but the rest of them.

23 He is just asking about the rest of them.

24 THE DEPONENT: The rest of them are just  
25 other mortgages.

1 BY MR. SIRIVAR:

2 1122. Q. Maybe I will make it simple. Do any  
3 of the mortgages described on table 4 between items  
4 1 and 13...sorry, 1 and 14, and then item 17, do any  
5 of those relate to mortgages that were granted  
6 either by the TD Bank or the Royal Bank or any of  
7 the institutions that are respondents to this  
8 application?

9 MR. CAYLOR: Do you know...

10 MS. WARD: These are loans...

11 THE DEPONENT: Well...

12 1123. MR. SIRIVAR: I would like the witness'  
13 answer.

14 THE DEPONENT: Yes. Let's check at  
15 table 5 on the next page, because in table  
16 5 we tried to identify the loans  
17 corresponding to the loans in table 4. And  
18 we have a loan dated the 13th of January,  
19 1989, which was from the Royal Bank of  
20 Canada, so number 13 in table 4.

21 1124. MR. SIRIVAR: So...

22 THE DEPONENT: We cross-referenced that  
23 as an RBC loan.  
24

25 BY MR. SIRIVAR:

1 1125. Q. So, table 5 is your attempt to  
2 reconcile table 4 with who the third party lenders  
3 are?

4 A. Correct.

5 1126. Q. Okay, so we will go to table 5.

6 A. So, table 5 is based on land  
7 registry sources; whereas table 4 is based on  
8 financial statement sources.

9 1127. Q. I see.

10 A. And the financial statement sources  
11 mostly don't say who the loan was being owed to.

12 1128. Q. I see.

13 A. But that is why we reconciled those.

14 1129. Q. I see. So, if we go to table 5  
15 then, your investigations revealed that there were  
16 two loans, of specific relevance to me. One was  
17 from the Toronto-Dominion Bank, dated the 27th of  
18 May, 1986.

19 A. Correct.

20 1130. Q. And the other one was from the Royal  
21 Bank of Canada, dated the 13th of January, 1989?

22 A. Correct.

23 1131. Q. And it is in relating to those  
24 specific accounts that you are looking for  
25 documentation on this application, among others?

1 A. Yes.

2 1132. Q. Now, in relation to the loans from  
3 1994 and up to 2016, you have identified in table 6,  
4 which is at paragraph 120 of your affidavit...

5 A. Yes.

6 1133. Q. ...a mortgage granted by the Royal  
7 Bank on the...that is described as having been  
8 granted to Sakto on September the 14th, 1994?

9 A. Correct.

10 1134. Q. And as it relates to the TD Bank,  
11 and the Royal Bank, insofar as your affidavit goes,  
12 those are the only mortgages that you were able to  
13 identify in respect of those two entities, correct?

14 A. Correct. However, I understand that  
15 some other financial institutions that may be listed  
16 in table 5 have been taken over by the  
17 Toronto-Dominion Bank since. Is that correct?

18 1135. Q. I am not going to answer your  
19 question.

20 A. Sorry. According to my recollection  
21 one...the TD Bank also took over...I don't know if  
22 it is Guaranty Trust Company of Canada,  
23 Mortgage and Housing Corporation. If that is the  
24 case, these two mortgages will also relate to the TD  
25 Bank.

1 1136. Q. So, leaving aside for the moment...

2 A. Yes.

3 1137. Q. ...mortgages that were taken over by  
4 an institution, these are the only mortgages that  
5 you were able to discern were mortgages that were  
6 granted originally by the financial institutions  
7 that I represent?

8 A. Correct.

9 1138. Q. And so to the extent that you have  
10 identified other mortgages in the proposed draft  
11 order, those are mortgages that you say the  
12 Toronto-Dominion Bank took over?

13 A. Took over if it...yes.

14 1139. Q. And so in relation to those  
15 categories of mortgages, the ones at  
16 Toronto-Dominion Bank, you would agree with me that  
17 the only information that the Toronto-Dominion Bank  
18 would have would be information that arises from the  
19 time...the period of time that it took over the  
20 mortgages?

21 MS. WARD: What...you are asking...

22 THE DEPONENT: Are you referring to the  
23 disclosure order? I mean, exactly what is  
24 being listed there?

25 1140. MR. SIRIVAR: Yes.

1 BY MR. SIRIVAR:

2 1141. Q. So you are asking for documents  
3 relating to certain mortgage and other accounts,  
4 correct?

5 A. Yes.

6 1142. Q. And you and I have just been through  
7 the totality of the list of the mortgage accounts  
8 that you identified from the Toronto-Dominion Bank  
9 and the Royal Bank that were granted by those  
10 institutions in the first instance. Correct?

11 A. Yes.

12 1143. Q. You also said that in addition to  
13 those there may be other mortgages that the  
14 Toronto-Dominion Bank took over from other financial  
15 institutions, correct?

16 MR. CAYLOR: Correct.

17

18 BY MR. SIRIVAR:

19 1144. Q. In respect of that latter category  
20 of mortgages, you would agree with me that the only  
21 information that the Toronto-Dominion Bank would  
22 have, as it relates to your intended targets, would  
23 be the information that it had from the date on  
24 which it took that mortgage account over, going  
25 forward?

1 A. I presume so, yes.

2 1145. Q. It would give you no information in  
3 relation to what happened in terms of the inflow of  
4 funds in the period of time before that?

5 MR. CAYLOR: Well, I don't think the  
6 witness can answer one way or the other.

7 1146. MR. SIRIVAR: Well, he can tell me if he  
8 can.

9 MR. CAYLOR: He has to presume, so I  
10 don't want him to do that again. So, only  
11 your client can tell us the information  
12 they got when they took over. I understand  
13 the distinction...

14 1147. MR. SIRIVAR: Mr. Caylor, if you want to  
15 object that is okay, I will move on, but I  
16 want the witness to...if he can't answer  
17 the question he will tell me that.

18 MR. CAYLOR: Well, he is presuming, so I  
19 don't want him to presume.

20 THE DEPONENT: We...I...

21 MR. CAYLOR: So, don't presume.

22 THE DEPONENT: Okay.

23 MR. CAYLOR: You can give whatever  
24 information you do have...

25 THE DEPONENT: Okay.

1 MR. CAYLOR: ...and you can answer the  
2 questions.

3 THE DEPONENT: We don't know if there  
4 was a customer relationship between the  
5 Royal Bank of Canada and the Taib family  
6 prior to these loans being granted. So, if  
7 there is a...for instance, it is possible  
8 that two years prior to these mortgages  
9 being granted, \$5,000,000 came in from  
10 Malaysia onto an RBC bank account, and  
11 later on were used as a collateral or  
12 whatever. I mean, this is possible.

13

14 BY MR. SIRIVAR:

15 1148. Q. But you are speculating?

16 MR. CAYLOR: You are asking him to.

17 1149. MR. SIRIVAR: No, you told him not to.

18 THE DEPONENT: But, I mean...

19 MR. CAYLOR: It is late in the day. I  
20 understand...is there anything further on  
21 that point that you want to get from the  
22 witness, Counsel?

23 1150. MR. SIRIVAR: I have your position.

24

25 BY MR. SIRIVAR:

1 1151. Q. Mr. Straumann, Ms. Vermette took you  
2 to the e-mail correspondence that Mr. Bailey, who  
3 you would agree with me is in this room...

4 A. Yes.

5 1152. Q. ...had with the RCMP?

6 A. Correct.

7 1153. Q. And you would agree with me that the  
8 conclusion that Ms. Vermette took you to, in  
9 relation to the RCMP, determined that there was no  
10 proof of violation of law, which could allow the  
11 RCMP to prosecute a case, was based after...was at a  
12 point in time after you had given the RCMP all the  
13 information that you and I talked about you giving  
14 them in September of 2013?

15 A. Yes.

16 1154. Q. So they looked at everything you  
17 gave them and they told Mr. Bailey that in their  
18 view there was no proof of violation of law which  
19 would allow the RCMP to prosecute a case, correct?

20 A. We don't know if they looked at  
21 everything we gave them.

22 1155. Q. But they had it?

23 A. I mean, this kind of phone call  
24 information, it is not firsthand information from  
25 the RCMP. It is just what Mr. Bailey wrote to me

1 about the phone call, and...

2 1156. Q. Mr. Straumann...

3 A. I don't know...we don't know what  
4 the RCMP did. We simply don't know.

5 1157. Q. Do you doubt Mr. Bailey's  
6 conclusion...Mr. Bailey's recitation of what the  
7 RCMP told him?

8 A. No.

9 1158. Q. And what the RCMP told him with the  
10 documents you provided them was that they did not  
11 have proof of violation of law which would allow the  
12 RCMP to prosecute a case, correct?

13 A. I am just making the point that this  
14 e-mail is not direct information from the RCMP, but  
15 it is after the recollection has been written down  
16 and sent to me. So, it is not the exact wording  
17 that the RCMP may have given.

18 1159. Q. Is the answer to my question yes?

19 A. We have no record of the phone  
20 calls.

21 1160. Q. But is the answer to my question  
22 yes?

23 A. What was the question?

24 1161. Q. Mr. Bailey told you in an e-mail  
25 that the RCMP told him in February of 2017 that

1           there was no proof of violation of law which would  
2           allow the RCMP to prosecute a case?

3                   A.           Yes.

4   1162.           Q.           And the RCMP...Mr. Bailey told you  
5           that in February of 2017, correct?

6                   A.           Can we look at...

7                   MR. CAYLOR:       I am assuming that is the  
8                   date of the e-mail. Is that what is stated  
9                   in the e-mail?

10                  THE DEPONENT:       Yes.

11

12   BY MR. SIRIVAR:

13   1163.           Q.           So the answer to my question is yes?

14                   A.           The date of the e-mail?

15   1164.           Q.           Mr. Bailey told you that in February  
16           of 2017, correct?

17                   A.           Yes.

18   1165.           Q.           And he told you that he had had the  
19           conversation with the RCMP that day, correct?

20                   A.           Yes.

21   1166.           Q.           And some years earlier you had  
22           provided the RCMP with all of the information you  
23           and I had discussed earlier, correct?

24                   A.           Yes.

25   1167.           MR. SIRIVAR:       This question might be for

1 your counsel. Mr. Caylor, at the outset of  
2 Mr. Straumann's cross-examination you had  
3 an exchange with Ms. Vermette relating to  
4 whether or not Mr. Taib and Onn, who as we  
5 have been referring to them, were served  
6 with the applicants' materials. Several  
7 questions.

8 The first is were both of those  
9 individuals served with the Notice of  
10 Application?

11 MR. CAYLOR: I don't know, but I think  
12 so. I will have to confirm that. U/T

13 1168. MR. SIRIVAR: Were both those  
14 individuals served with what I am going to  
15 call the application record, or the  
16 seven-volume record?

17 MR. CAYLOR: We will have to confirm but  
18 I think they were, yes. U/T

19 1169. MR. SIRIVAR: And I would like to know  
20 the manner of service. How were they  
21 served?

22 MR. CAYLOR: And I think I gave the  
23 undertaking to our friend that, to the  
24 extent there is a record of how the service  
25 took place, we will provide that. U/T

1 1170. MR. SIRIVAR: Okay. Was leave of the  
2 court granted to serve those individual ex  
3 juris?

4 MR. CAYLOR: No.

5 1171. MR. SIRIVAR: I would also like to know  
6 where they were served.

7 MR. CAYLOR: As I said, we will give you  
8 the particulars. U/T

9 1172. MR. SIRIVAR: Perhaps the witness could  
10 be given a copy of Exhibit 7, the Statement  
11 of Claim?  
12

13 BY MR. SIRIVAR:

14 1173. Q. Do you have that in front of you?  
15 Do you have the Statement of Claim in front of you?

16 A. Yes.

17 1174. Q. I gather this is a document you have  
18 seen before?

19 A. Yes.

20 1175. Q. And prior to it being filed with the  
21 court, if you understand...or, issued with the  
22 court, I gather you had an opportunity to review it  
23 in draft form?

24 A. Yes.

25 1176. Q. To make sure that you understood

1           what the document said, and agreed with its  
2           contents, correct?

3                   A.       Correct.

4   1177.           Q.       And so this document, as far as you  
5           are concerned, is correct?

6                   A.       Yes.

7   1178.           Q.       And if you refer to paragraph 10...

8                   A.       Yes.

9   1179.           Q.       ...it states:

10                   "...The defendants..."

11           Which are now the respondents in this application.

12                   A.       Correct.

13   1180.           Q.       It continues:

14                   "...through no fault of their own appear to  
15           have become mixed up in the crime of money  
16           laundering at the direction of the Taib  
17           entities..."

18           Do you see that?

19                   A.       Correct. Yes.

20   1181.           Q.       And when this matter was converted  
21           into an application, the document that is now at  
22           Exhibit 2 was issued. Can you have that in front of  
23           you?

24                   MR. CAYLOR:       Yes, we have it.

25

1 BY MR. SIRIVAR:

2 1182. Q. So, I have looked at these documents  
3 closely together, and when I look at the Notice of  
4 Application I see no reference in the Notice of  
5 Application to a sentence similar to the first  
6 sentence at paragraph 10 that you and I just took  
7 over. Can you...is it the position...so, does it  
8 continue to be the applicants' view that the  
9 respondents, including the Royal Bank and  
10 Toronto-Dominion Bank, have done nothing wrong, to  
11 put it bluntly?

12 MR. CAYLOR: Yes.

13 1183. MR. SIRIVAR: Okay. Now, are you  
14 prepared to undertake not to sue the  
15 respondents, including the Royal Bank and  
16 The Toronto-Dominion Bank, if you are  
17 granted the order you are seeking?

18 MR. CAYLOR: I will have to give that  
19 some thought and let you know. Yes, I will  
20 have to speak to my client, but you have  
21 our position with respect to the pleading  
22 and the position. I will let you know  
23 about the undertaking.

U/A

24 1184. MR. SIRIVAR: And so what was the  
25 position in terms of the pleading again?



1 MR. CAYLOR: Do you know? Do you have  
2 an understanding of what they meant?

3 1188. MR. SIRIVAR: Well, he has mentioned...

4 THE DEPONENT: I have an understanding  
5 what they meant.

6 MR. CAYLOR: Okay.

7 THE DEPONENT: They were concerned about  
8 the report being published. The only  
9 context that this report should be used was  
10 within a litigation context.

11

12 BY MR. SIRIVAR:

13 1189. Q. And at that time, in 2014, were you  
14 contemplating litigation as against TD Bank, the  
15 Royal Bank or any of these respondents?

16 A. We were contemplating litigation  
17 against the Taib Group, not against TD Bank and  
18 Royal Bank of Canada.

19 1190. Q. And that remains the case today?

20 A. From my point of view, yes.

21 1191. Q. Well...

22 MR. CAYLOR: No, we have already  
23 answered that, I thought.

24 THE DEPONENT: Yes, this remains  
25 the...yes.

1 BY MR. SIRIVAR:

2 1192. Q. From the point of view of Lukas  
3 Straumann, the BMF and the applicants in this  
4 proceeding, correct?

5 A. Correct. I mean...

6 MR. CAYLOR: That is all right, just  
7 wait for a question.

8 1193. MR. SIRIVAR: Thank you, those are my  
9 questions.

10

11 CROSS-EXAMINATION BY MS. DANIS:

12 1194. Q. Hi. By the way, I am Stacey. I am  
13 here for Manulife Financial. We just wanted to  
14 confirm as you just did, that it was your position  
15 as for RBC and TD that they have done nothing wrong.  
16 That it is also that you agree that it is your  
17 position that Manulife Financial has done nothing  
18 wrong? Do you agree with that?

19 A. Yes.

20 1195. Q. Okay. And I understand now you are  
21 considering to undertake not to sue RBC and TD based  
22 on the documents that we have produced?

23 MR. CAYLOR: And I will consider the  
24 same with respect to your client.

U/A

25 1196. MR. SIRIVAR: Okay, that is all of our

1 questions. Thank you.

2 MR. CAYLOR: Thank you.

3 MR. BLACKBURN: And finally, very brief.

4 Jed Blackburn, counsel for Deloitte. I  
5 would just like to confirm that those  
6 questions and answers apply similarly to  
7 the Respondent, Deloitte?

8 MR. CAYLOR: We will so confirm that.

9 MR. BLACKBURN: Thank you.

10

11 --- upon adjourning at 4:56 p.m.

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**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**

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**FACTUM OF SAKTO DEVELOPMENT CORPORATION ET AL.**  
**(Application Returnable February 5-6, 2018)**

---

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## **PART I -- THE APPLICATION**

1. The Applicants seek a *Norwich* Order that requires the Respondents to provide financial, customer and other information that relates to the Sakto Non-Parties<sup>1</sup> to the Applicants.
2. The Applicants rely in this case on oft-repeated allegations against the Sakto Non-Parties that attempt to link them to alleged corruption in Malaysia. This Application is simply the latest variant in a long string of unsuccessful efforts. The Sakto Non-Parties have consistently denied the very serious allegations made by the Applicants. Despite the strong language once again used by the Applicants, they lack the legal and factual foundation for the Order they seek.

### **THE POSITION OF THE SAKTO NON-PARTIES IN A NUTSHELL**

3. Granting a *Norwich* Order to permit the gathering of evidence in aid of a private prosecution would be contrary to section 8 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”). *Norwich* Orders are not available in relation to criminal matters. They are an equitable remedy that can only be granted in the civil context.
4. In any event, the Applicants do not meet the test for a *Norwich* Order in this case. Their allegations that proceeds of crime have been used by the Sakto Non-Parties in Canada are pure speculation unsupported by evidence. Further, the Applicants do not have clean hands and it is not in the interests of justice to allow them to use invasive investigation tools.

## **PART II -- THE FACTS**

### **(1)**

#### **THE APPLICANTS**

5. The Applicant Bruno-Manser-Fonds (“**BMF**”) is a Swiss charitable association.<sup>2</sup> BMF’s

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<sup>1</sup> The Sakto Non-Parties are: Jamilah Taib Murray, Sean Murray, Sakto Development Corporation, Sakto Corporation, City Gate International Corporation, Urban Sky Investments Ltd., Urban Sky Europe Ltd., 1041229 Ontario Inc., 1575 Carling Limited, Hawkhurst Island Holding Ltd., Adelaide Ottawa Corporation, Preston Building Holding Corporation, Tower One Holding Corporation, Tower Two Holding Corporation, Waterford Property Group Ltd., Prime Median Holdings Inc., Ridgford Properties Limited, Ridgford Developments Limited, Wallysons Inc. and Sitehost Pty Limited.

Executive Director and main affiant in this case, Lukas Straumann (“**Straumann**”), is a Swiss citizen. He is a historian by training.<sup>3</sup> Straumann is not offered as an expert in this case, and has never been qualified to give evidence as an expert on corruption or money laundering.<sup>4</sup>

6. The other Applicant, Mutang Urud, is a Canadian citizen who was born in Malaysia.<sup>5</sup> Mr. Urud has given no evidence in this proceeding.

7. In his affidavit, Straumann describes the purpose of this Application as follows:

The purpose of my application is to obtain financial records detailing the flow of funds from a public official in Malaysia to his daughter, her husband and their numerous Canadian companies in Canada. I verily believe that such funds are proceeds from corrupt activity carried out by Abdul Mahmud Taib (“**Taib**”) and that the flow of funds in the manner detailed below in this affidavit constitutes money laundering. I seek this information to determine whether there is a basis for a private prosecution against possibly Taib’s daughter, Jamilah Taib-Murray (“**Jamilah**”), Canadian-based Taib-related corporations and others unknown to me for the Canadian criminal offence of money laundering.<sup>6</sup>

8. Straumann intends to use the documents provided for the purposes of a private prosecution.<sup>7</sup>

## (2)

### **BMF’S LEGACY OF UNSUCCESSFUL COMPLAINTS**

9. BMF has been investigating Abdul Mahmud Taib (“**Taib**”) and the Sakto Non-Parties for many years.<sup>8</sup> Since 2010, BMF has been making allegations of criminal acts against Taib and the Sakto Non-Parties. It has filed complaints, often with detailed information and supporting documents, with authorities in numerous countries. Many of these complaints contain substantially the same allegations as made in this proceeding. None of these complaints has

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<sup>2</sup> Affidavit of Lukas Straumann sworn June 27, 2017, Application Record, Vol. 1, Tab B (“**Straumann Affidavit**”), p. 14, para. 1.

<sup>3</sup> (1) **Straumann Affidavit**, p. 14, para. 2; (2) Transcript of the cross-examination of Lukas Straumann held January 9, 2018, Supplementary Application Record, Tab A, (“**Straumann Cross**”), pp. 4-5, qq. 5-13.

<sup>4</sup> **Straumann Cross**, pp. 7-8, qq. 26-29.

<sup>5</sup> **Straumann Affidavit**, p. 17, para. 12.

<sup>6</sup> **Straumann Affidavit**, p. 16, para. 8.

<sup>7</sup> **Straumann Affidavit**, p. 17, para. 9.

<sup>8</sup> **Straumann Affidavit**, pp. 18-19, para. 14.

resulted in a prosecution.<sup>9</sup> Among other things:

- (a) In the U.K., BMF made a formal criminal report to the City of London Police, and sent information to the National Crime Agency and the British Foreign and Commonwealth Office. No action was taken based on the information provided.<sup>10</sup>
- (b) In Australia, BMF wrote to the Senate Inquiry into Foreign Bribery, and to the Department of Foreign Affairs and the Federal Police. The latter two advised BMF “that there was insufficient evidence in the Taib case for them to act. They requested [BMF] provide hard evidence that Taib real estate in Australia had indeed been financed out of the proceeds of corruption.” Such evidence was not provided. No action was taken.<sup>11</sup>
- (c) In Germany, BMF wrote to the Chancellor, and the federal ministry of finance launched an inquiry into the business relationship between the Deutsche Bank and the Taib family. The German Federal Financial Supervisory Authority concluded that there were no grounds for action.<sup>12</sup>
- (d) In Switzerland, BMF sent information to the Foreign Minister, which was forwarded to the Swiss Financial Market Supervisory Authority (FINMA). Following certain allegations, the office of the Swiss Attorney General carried out an examination, but decided not to open a criminal investigation and not to proceed with the matter. No other actions were taken in Switzerland.<sup>13</sup>
- (e) In the United States, BMF provided information to Secretary of State Hillary Clinton and FBI Director Robert Mueller, and met with officers from the FBI and the IRS. No money laundering investigation or proceeding against Taib or related entities was initiated. In fact, the FBI rents a building in Seattle from a company which is owned by the Taib family, the FBI is aware of the fact, and has no concerns about it.<sup>14</sup>
- (f) In Canada, BMF wrote and provided information to FINTRAC (Financial Transactions and Reports Analysis Centre of Canada), the Prime Minister and the RCMP.<sup>15</sup> After a

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<sup>9</sup> Straumann Cross, pp. 220-221, qq. 1032-1034.

<sup>10</sup> Straumann Cross, pp. 195-197, qq. 899-911.

<sup>11</sup> (1) Straumann Cross, pp. 197-199, qq. 912-929.; (2) *Money Logging: On the Trail of the Asian Timber Mafia*, Exhibit “1” to the Straumann Affidavit, Application Record, Vol. 1, Tab B-1 (“*Money Logging Book*”), p. 261.

<sup>12</sup> (1) Straumann Cross, pp. 200-203, qq. 930-941; (2) *Money Logging Book*, pp. 197, 262.

<sup>13</sup> (1) Straumann Cross, pp. 203-207, qq. 942-961; (2) *Money Logging Book*, p. 201.

<sup>14</sup> (1) Straumann Cross, pp. 208-213, qq. 964-994; (2) Straumann Affidavit, pp. 80-81, paras. 162-163.

<sup>15</sup> Straumann Cross, pp. 183-185, 213-221, qq. 843-848, 995-1034.

number of contacts with the RCMP over the years,<sup>16</sup> BMF's Ontario representative had a telephone conversation with an officer from the RCMP in February 2017, which he summarized as follows in an e-mail to Straumann:

[...] However, when all is said and done, **his problem (the RCMP's) is that there is no proof of violation of the law which would allow the RMCP to prosecute a case.** My response was that we appreciate that problem. We do not have the tools to dig deep enough to get proof – which is precisely why we have forwarded the case to them, because they, hopefully have the tools to deepen the investigation. While he was careful how he said it, the basic message was that from the RMCP has to prioritize, one criteria being on cases they think will lead to prosecution, and they are not going to do more work on the BMF case as things stand. He did not say it but the implication was that they have other cases that are more likely to be “prosecutable”. [...] <sup>17</sup> [Emphasis added.]

10. BMF also sent a detailed criminal complaint to the Malaysian Anti-Corruption Commission (“**MACC**”), the Attorney General of Malaysia and the Inspector General of Police in December 2011.<sup>18</sup> The MACC started an investigation in 2009 regarding Taib's alleged misuse of power for illegitimate private gain. The MACC made significant efforts in the investigation, and it did not uncover anything that could lead to a prosecution.<sup>19</sup> In 2014, the MACC concluded that there had been no abuse of power on the part of Taib in relation to logging areas given to his relatives as Taib had delegated his approval authority when his family members were involved.<sup>20</sup> BMF has seen no activity on the part of the MACC since 2014.<sup>21</sup>

### (3)

#### **BMF'S BREACH OF CONFIDENTIALITY UNDERTAKING IN CANADA**

11. In January 2016, BMF filed a complaint against the “Sakto Group” with the Canadian Government's “National Contact Point” (“**NCP**”) based on the OECD Guidelines for

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<sup>16</sup> See exchange of e-mails at Exhibit “128” to Straumann Affidavit, Application Record, Vol. 7, Tab 128, p. 2468.

<sup>17</sup> E-mail dated February 6, 2017 from Bruce Bailey to Straumann, Exhibit “129” to Straumann Affidavit, Vol. 7, Tab 129, p. 2473.

<sup>18</sup> Letter from BMF to the MACC and others dated December 13, 2011, Exhibit “34” to Straumann Affidavit, Application Record, Vol. 3, Tab 34, p. 860.

<sup>19</sup> (1) Straumann Cross, pp. 190-192, qq. 874-879; (2) Article entitled “No proof of Taib power abuse as Sarawak ministers had approved land for his kin, say sources”, Exhibit “137” to Straumann Affidavit, Application Record, Vol. 7, Tab 137 (“**MACC Article**”), p. 2571.

<sup>20</sup> MACC Article, pp. 2569-2570.

<sup>21</sup> Straumann Cross, pp. 193-194, qq. 887-894.

Multinational Enterprises. There is significant overlap between this complaint and the *Norwich* proceeding in terms of the requests for information that are made and the corporations that are the subject of these requests.<sup>22</sup>

12. Draft NCP documents are confidential, and BMF undertook to maintain the confidentiality of those documents.<sup>23</sup> Despite this, BMF blatantly breached its confidentiality undertaking, and published the draft confidential documents on its website, i.e. the NCP's Draft Initial Assessment and Draft Final Statement, which had been sent to the parties for comments.<sup>24</sup> BMF did so in the face of a letter from the NCP stating: "The draft Initial Assessment and draft Final Statement are products of the NCP and not the parties and should not be made public without our consent. At this time, our consent will not be forthcoming."<sup>25</sup> Straumann stated that because he thought that BMF had been "let down", he felt justified taking matters in his own hands and posting the documents on the Internet, intentionally breaching his own undertaking.<sup>26</sup>

13. On July 11, 2017, the NCP issued its Final Statement declining to make an offer of facilitated dialogue to the parties and closing the case. While the NCP was critical of both parties, it stated the following with respect to BMF's conduct:

**The Canadian NCP is of the view, and regrets, that this specific instance process was ultimately derailed by the Notifier's [BMF's] decision to breach confidentiality with the issuance of public statements and confidential documentation, concerning the NCP process, prior to the completion of the process and the release of the NCP's Final Statement.** The April 3, 2017 news release by the Notifier indicates that "*the Bruno Manser Fund requested the Canadian government to compel Saktó to disclose its shareholders, beneficial owners, internal group structure and all relevant financial information*". The same news release further states that "*the Bruno Manser Fund urges the Canadian*

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<sup>22</sup> (1) Complaint to National Contact Point dated January 2, 2016, Exhibit "130" to Straumann Affidavit, Application Record, Vol. 7, Tab 130, p. 2476; (2) Straumann Cross, pp. 159-160, qq. 698-710; (3) Straumann Affidavit, pp. 89-90, paras. 185-187.

<sup>23</sup> Straumann Cross, pp. 163-166, qq. 723-740.

<sup>24</sup> Straumann Cross, pp. 167-172, qq. 746-776.

<sup>25</sup> Letter dated March 30, 2017 from Duane McMullen to Straumann, Exhibit "132" to Straumann Affidavit, Application Record, Vol. 7, Tab 132, p. 2520.

<sup>26</sup> Straumann Cross, pp. 168-170, qq. 751-758.

*authorities to open a criminal investigation against Sakto and the Taib family.” It is the NCP’s opinion that these public statements reveal a misuse of the NCP process to seek actions clearly outside the mandate granted to the NCP by the OECD Guidelines. [Bold added. Italics in the original.]*<sup>27</sup>

14. In their Factum, the Applicants rely on, and quote from, the NCP’s Draft Initial Assessment.<sup>28</sup> This confidential document is attached to Straumann’s affidavit and relied upon as the position of the NCP. This is a breach of confidentiality and improper. The Draft Initial Assessment was never finalized and was replaced by the NCP’s Final Statement.

### **PART III -- THE LAW**

#### **(1)**

#### **THE TEST FOR A *NORWICH* ORDER IS CONSTITUTIONALLY INAPPLICABLE IN THIS CASE**

15. Extending the reach of a *Norwich* Order to criminal proceedings and allowing such Orders to be granted in aid of a private criminal prosecution would violate section 8 of the *Charter* because: (i) the proposed seizure of documents is not authorized by law; and (ii) the test for a *Norwich* Order does not require an applicant to prove reasonable and probable grounds. As a result, the test for *Norwich* Orders is constitutionally inapplicable to criminal proceedings.<sup>29</sup>

#### **(a) The *Charter* Applies in this Case**

16. The *Charter* applies to State actors, but it also applies to private bodies and individuals when such bodies or individuals: (a) can be characterized as part of the government; (b) are performing a specific government function; or (c) can be considered state agents.<sup>30</sup>

17. In *Eldridge v British Columbia (Attorney General)* (“*Eldridge*”),<sup>31</sup> the Supreme Court of Canada (“SCC”) discussed the application of the *Charter* to private entities performing a specific government function. The SCC held that the *Charter* applies to private entities when

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<sup>27</sup> Canada’s NCP – Final Statement dated July 11, 2017, Exhibit “1” to the Supplementary Affidavit of Lukas Straumann sworn August 21, 2017, Tab A, p. 8, para. 28.

<sup>28</sup> See, e.g., Factum of the Applicants, pp. 7, 25, paras. 22, 75.

<sup>29</sup> The Sakto Non-Parties served a Notice of Constitutional Question raising these issues on January 12, 2018.

<sup>30</sup> *R. v Buhay*, [2003] 1 SCR 631 at para. 25.

<sup>31</sup> [1997] 3 SCR 624.

they are engaged in “inherently governmental actions” and “in so far as they act in furtherance of a specific governmental program or policy.”<sup>32</sup>

18. In *Blencoe v British Columbia (Human Rights Commission)* (“*Blencoe*”),<sup>33</sup> the SCC also stated that entities exercising statutory authority are bound by the *Charter*. The Court noted that “[o]ne distinctive feature of actions taken under statutory authority is that they involve a power of compulsion not possessed by private individuals.”<sup>34</sup>

19. In the present case, the Applicants seek a *Norwich* Order in aid of a private prosecution. The *Charter* applies to a person advancing a private prosecution as such person is performing a specific government function and exercises statutory authority.

20. The prosecution of crimes in Canada is a government function. The principal object of criminal law is “the recognition of society’s abhorrence of a criminal act and the punishment of criminal behaviour.”<sup>35</sup> As stated by the SCC,

although many criminal offences make victims of individuals, criminal law treats all crimes as offences against society. It is the state that prosecutes the offender in a public forum. The interests of the state are paramount while the interests of victims are peripheral.<sup>36</sup>

21. The prevention and investigation of crime in accordance with the law constitute another government function that is performed by, and are duties of, police officers.<sup>37</sup>

22. A private prosecutor’s actions in the conduct of a private prosecution are taken under statutory authority.<sup>38</sup> Pursuant to such statutory authority, the private prosecutor can exercise powers that are not otherwise possessed by private individuals.

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<sup>32</sup> *Ibid.* at para. 42.

<sup>33</sup> [2000] 2 SCR 307 at para. 35.

<sup>34</sup> *Ibid.* at paras. 36-37.

<sup>35</sup> *R. v Lucas*, [1998] 1 SCR 439 at para. 70.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Hill v Hamilton-Wentworth Regional Police Services Board*, [2007] 3 SCR 129 at paras. 40-41. See also *Hunter v Southam*, [1984] 2 SCR 145 at 159-160, 167 where the Court refers to “the state’s interest in detecting and preventing crime” and the government’s interest in advancing its law enforcement goals.

23. The fact that private prosecutions are described as “a valuable constitutional safeguard against inertia or partiality on the part of authority”<sup>39</sup> confirms that the prosecution of crimes is a government function, and that the purpose of private prosecutions is to allow persons to “do the government’s work” if the government fails to do so.

24. In the recent case *R. v HMTQ*, Mrozinski J. found that a prosecution by a private prosecutor was subject to the *Charter*. After reviewing the relevant authorities, he stated:

[37] These authorities demonstrate, in my view that the *Charter* can apply to the actions of otherwise non-State actors, or private individuals, when those actors or persons are carrying out a government function or policy, generally under the authority of statute.

[...]

[39] I find that a prosecution by a private prosecutor, enabled only by s. 504 of the *Criminal Code*, must similarly be subject to the *Charter*. The private prosecutor has a role parallel to that of the Attorney General.

[40] Private prosecutions are authorized pursuant to s. 504 of the *Criminal Code* to provide oversight of the Crown’s own Attorney General. As the Crown put it in oral submissions, as one example, the purpose of a private prosecution is to ensure prosecution of police where the Crown declines to do so. It is inconceivable that in such a situation a police officer could rely on his or her *Charter* protection only if the Crown prosecuted but not if the same alleged offence were prosecuted by a private prosecutor.

[41] Private prosecutors and prosecutions are entirely enabled by statute. [...] The office of the private prosecutor itself is an expression of government policy. There is, in my view, an ample connection to government action in the context of this private prosecution to engage the *Charter*.<sup>40</sup>

25. Mrozinski J. also specifically addressed the 2012 case *Podolsky v Cadillac Fairview Corp.* (“*Podolsky*”)<sup>41</sup>, on which the Applicants rely.<sup>42</sup> Mrozinski J. stated that he did not agree with the *obiter* comment in *Podolsky*.<sup>43</sup> He was convinced by the authorities that the *Charter* must apply, and stated that the State cannot avoid its *Charter* obligations “by statutorily enabling private

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<sup>38</sup> See, e.g., sections 504 and 507.1 of the *Criminal Code*.

<sup>39</sup> *Gouriet v Union of Post Office Workers*, [1977] 3 All ER 70 at 79 (HL).

<sup>40</sup> *R. v HMTQ*, 2017 BCPC 371 at paras. 37, 39-41.

<sup>41</sup> *Podolsky v Cadillac Fairview Corp.* (2012), 112 OR (3d) 22 (SCJ).

<sup>42</sup> Factum of the Applicants, p. 40, para. 101, footnote 150. The Applicants do not refer to *R. v HMTQ*, 2017 BCPC 371.

<sup>43</sup> *R. v HMTQ*, 2017 BCPC 371 at paras. 45-46.

actors to commence criminal or regulatory prosecutions.”<sup>44</sup>

26. For the reasons set out in *R. v HMTQ, Podolsky* should not be relied upon and can easily be distinguished. In addition:

- (a) The comments in *Podolsky* about the non-application of the *Charter* to private prosecutors were not only *obiter*, they were made in the absence of submissions by the parties on the issue. Green J. noted that the defendants, who were the parties seeking relief, were “careful not to expressly invoke the *Charter* (nor, indeed, any law)”.<sup>45</sup>
- (b) The application before the Court in *Podolsky* was an application by the defendants (i.e. the accused) seeking production of documents from a third party. The private prosecutor was not seeking to seize any documents. Green J. was of the view that the defendants’ application was late and that the defendants should have objected to the evidence in issue when tendered at trial.<sup>46</sup>

27. The result is that the *Charter* applies to private prosecutions and to private prosecutors. Further, and in any event, the rights recognized in the *Charter* in relation to criminal matters are relevant because:

- (a) the common law should be developed in a manner that is consistent with *Charter* values;<sup>47</sup> and
- (b) any discretion conferred by a common law rule must be exercised within the boundaries set by the principles of the *Charter*.<sup>48</sup>

28. In the present case, the Applicants are seeking to extend the law on *Norwich* Orders to criminal matters, and are asking the Court to exercise its discretion to grant a *Norwich* Order. For the reasons below, the relief sought is contrary to rights and principles set out in the *Charter*. The protection of a person’s rights in the penal context is the subject matter of numerous sections of the *Charter* (including sections 7 to 13) and is a core *Charter* principle. It is inconceivable that

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<sup>44</sup> *R. v HMTQ*, 2017 BCPC 371 at para. 47.

<sup>45</sup> *Podolsky v Cadillac Fairview Corp.* (2012), 112 OR (3d) 22 at para. 21 (SCJ). See also para. 26.

<sup>46</sup> *Ibid.* at paras. 26-28.

<sup>47</sup> *R.W.D.S.U., Local 558 v Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 SCR 156 at paras. 18-22.

<sup>48</sup> *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835 at 875.

an accused would be denied these rights in the context of a private prosecution, especially if imprisonment is an available punishment.<sup>49</sup>

**(b) Granting a *Norwich* Order to Permit the Gathering of Evidence  
in Aid of a Private Prosecution Would Be Contrary to Section 8 of the *Charter***

29. Section 8 provides that everyone has the right to be secure against unreasonable search or seizure. In the present case, the *Norwich* Order would authorize a seizure, i.e. the taking of documents and information belonging to the Non-Parties and/or the Respondents.<sup>50</sup>

30. In paragraphs 74 and 75 of their Factum, the Applicants appear to suggest that section 8 is not engaged in this case as it does not protect commercial records. This is incorrect. The SCC has recognized that the protection of section 8 extends to commercial documents.<sup>51</sup> While there may be a lower expectation of privacy with respect to commercial documents in the regulatory context, when commercial documents are sought for the purpose of determining penal liability as opposed to monitoring compliance with a regulatory regime, *Charter* protections are engaged and search warrants are required to obtain such documents.<sup>52</sup>

31. A search or seizure must meet three requirements to be found reasonable under section 8: (a) it must be authorized by law; (b) the law itself must be reasonable; and (c) the manner in which the search was carried out must be reasonable.<sup>53</sup> The first two requirements are not met here.

32. For a search or seizure to be authorized by law, there must be either a statutory or common law power that authorizes the search or seizure.<sup>54</sup> There is no statutory authority for a private prosecutor to seize documents belonging to the person charged or to be charged. While the

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<sup>49</sup> Punishment for money laundering includes imprisonment: see section 462.31(2) of the *Criminal Code*, RSC 1985, c C-46 (“*Criminal Code*”).

<sup>50</sup> A seizure within the meaning of section 8 is “the taking hold by a public authority of a thing belonging to a person against that person’s will”: *Quebec (Attorney General) v Laroche*, [2002] 3 SCR 708 at paras. 52-53.

<sup>51</sup> See, e.g., *R. v Law*, [2002] 1 SCR 227 at para. 16; and *143471 Canada Inc. v Quebec (Attorney General)*, [1994] 2 SCR 339 at 379.

<sup>52</sup> *R. v Jarvis*, [2002] 3 SCR 757 at paras. 97-99.

<sup>53</sup> *R. v Stillman*, [1997] 1 SCR 607 at para. 25.

<sup>54</sup> *Ibid.*

*Criminal Code* authorizes the issuance of search warrants to peace and public officers, it does not authorize the issuance of search warrants to private persons or private prosecutors.<sup>55</sup>

33. In addition to not being authorized by a statutory power, the proposed seizure is also not authorized by a common law power. The Applicants have no common law powers similar to the police (e.g. the common law power of search incident to a lawful arrest).<sup>56</sup> Further, the court's equitable jurisdiction to grant a *Norwich* Order does not constitute a "common law power". In any event, it has not been used to authorize searches or seizures in the criminal context.

34. As such, the proposed *Norwich* Order seizure sought in this case is unreasonable under section 8 as it is not authorized by law.

35. Should the Court consider that the equitable jurisdiction to grant a *Norwich* Order is a "common law power" or "law" authorizing the proposed seizure in this case, this "law" would not meet the reasonableness standard under section 8.

36. The minimum standard under section 8 for authorizing search and seizure are reasonable and probable grounds, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of the search.<sup>57</sup> As stated by the SCC, "[t]he state's interest in detecting and preventing crime begins to prevail over the individual's interest in being left alone at the point where credibly-based probability replaces suspicion."<sup>58</sup>

37. Reasonable and probable grounds must be based on objectively discernible facts that can be subjected to independent judicial scrutiny and that demonstrate a probability of crime, not a mere possibility.<sup>59</sup> There must be sufficient credible and reliable evidence to permit a justice of the peace to find reasonable and probable grounds to believe that an offence has been committed and

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<sup>55</sup> Section 487 of the *Criminal Code*.

<sup>56</sup> *R. v Stillman*, [1997] 1 SCR 607 at para. 26.

<sup>57</sup> (1) *Hunter v Southam*, [1984] 2 SCR 145 at 167-168; (2) *R. v Morelli*, [2010] 1 SCR 253 at para. 39.

<sup>58</sup> *Hunter v Southam*, [1984] 2 SCR 145 at 167-168.

<sup>59</sup> *R. v Chehil*, [2013] 3 SCR 220 at paras. 26-27.

that evidence of that offence will be found at the specified time and place.<sup>60</sup>

38. The test for a *Norwich* Order does not require an applicant to prove reasonable and probable grounds that an offence has been committed. Rather, it requires an applicant to provide “evidence sufficient to raise a valid, *bona fide* or reasonable claim”.<sup>61</sup> To meet this part of the test, the applicant only has to show that its claim is not frivolous or vexatious.<sup>62</sup> This is not reasonable and probable grounds.

39. The Applicants admit that they do not have reasonable and probable grounds.<sup>63</sup> Accordingly, a *Norwich* Order would infringe section 8 of the *Charter*.

40. The infringements of section 8 identified above cannot be justified under section 1 of the *Charter*. There are no extraordinary circumstances in this case that would justify finding that an unreasonable seizure under section 8 is nevertheless a “reasonable limit” under section 1.<sup>64</sup>

(2)

**NORWICH ORDERS CANNOT BE GRANTED IN RELATION TO CRIMINAL MATTERS**

**(a) Equity Should Not Intervene in the Statutory Scheme for Private Prosecutions**

41. Private prosecutors and prosecutions are entirely enabled by statute.<sup>65</sup> While private prosecutions are permitted by the *Criminal Code* and “any one” may lay an information,<sup>66</sup> Parliament made a decision not to authorize the issuance of a search warrant to a private individual to assist in commencing a private prosecution. A search warrant can only be issued to, and executed by, “a peace officer or a public officer who has been appointed or designated to

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<sup>60</sup> *R. v Morelli*, [2010] 1 SCR 253 at para. 40.

<sup>61</sup> *GEA Group AG v Venra Group Co.* (2009), 96 OR (3d) 481 at paras. 49-50, 62 (CA).

<sup>62</sup> (1) *Ibid.* at para. 49, 62 (CA); (2) *Isofoton S.A. v Toronto Dominion Bank* (2007), 85 OR (3d) 780 at paras. 42, 47 (SCJ).

<sup>63</sup> Factum of the Applicants, p. 2, para. 4.

<sup>64</sup> *Baron v Canada*, [1993] 1 SCR 416 at 453.

<sup>65</sup> *R. v HMTQ*, 2017 BCPC 371 at para. 41.

<sup>66</sup> Sections 504 and 507.1 of the *Criminal Code*.

administer or enforce a federal or provincial law”.<sup>67</sup>

42. The Applicants are trying to circumvent Parliament’s legislative decision by invoking this Court’s equitable jurisdiction to grant a *Norwich* Order, which is based on section 96(1) of the *Courts of Justice Act*.<sup>68</sup>

43. However, equity has no jurisdiction in criminal matters.<sup>69</sup> Among other things, courts have declined to grant an injunction in aid of, or as a substitute for, a remedy available under criminal law. In *Mid West Television Ltd. v S.E.D Systems Inc.*, Noble J. relied on the following remarks of Middleton J.A. of the Ontario Court of Appeal in *Robinson v Adams*<sup>70</sup>:

**The equitable jurisdiction of a civil Court cannot properly be invoked to suppress crime.** Unlawful acts which are an offence against the public, and so fall within the criminal law, may also be the foundation of an action based upon the civil wrong done to an individual, but when Parliament has, in the public interest, forbidden certain acts and made them an offence against the law of the land, then, unless a right to property is affected, the civil Courts should not attempt to interfere and forbid by their injunction that which has already been forbidden by Parliament itself. [...] [Emphasis added.]<sup>71</sup>

44. Granting a *Norwich* Order in this case would amount to circumventing the comprehensive statutory scheme with respect to private prosecutions, and undermine the legislative intent behind the provisions of the *Criminal Code*.<sup>72</sup>

**(b) The Case Law Relied Upon by the Applicants Does Not Support their Position**

45. The Applicants are asking this Court to extend the reach of an equitable remedy into the criminal law domain. The relief sought is without precedent and is not supported by principle.

46. The Applicants rely on three Ontario decisions and two 2002 U.K. decisions. None of those decisions granted the relief sought by the Applicants in this case. Further, the decisions are easily

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<sup>67</sup> Section 487 of the *Criminal Code*.

<sup>68</sup> (1) *GEA Group AG v Ventra Group Co.* (2009), 96 OR (3d) 481 at para. 71 (CA); (2) *Courts of Justice Act*, RSO 1990, c C.43. Section 96 states that “[c]ourts shall administer concurrently all rules of equity and the common law.”

<sup>69</sup> *Halsbury’s Laws of England*, Vol. 47, 5th ed. (London, UK: LexisNexis UK, 2014) at 13, para. 9.

<sup>70</sup> *Robinson v Adams* (1924), [1925] 1 DLR 359 (Ont CA) (quoted in *Mid West Television Ltd. v S.E.D Systems Inc.*, [1981] 3 WWR 560, 1981 CarswellSask 117 (QB)).

<sup>71</sup> *Mid West Television Ltd. v S.E.D Systems Inc.*, 1981 CarswellSask 117 at para. 15 (QB).

<sup>72</sup> *Obégi Chemicals LLC v Kilani*, 2011 ONSC 4636 at paras. 23-28 and 41-45.

distinguished and cannot support the relief sought.

47. The Applicants rely on comments made by the U.K. Court of Appeal in *Financial Times Ltd. v Interbrew SA*<sup>73</sup> and by the House of Lords in *Ashworth Hospital Authority v MGN Ltd.*<sup>74</sup>

However, these decisions do not support the relief sought by the Applicants in Canada:

- (a) In neither case was a *Norwich* Order sought for the purpose of bringing a private prosecution. The comments that the Applicants rely upon in their Factum were *obiter*.
- (b) Given that no private prosecution was contemplated in these cases, the decisions do not consider the peculiarities of the criminal law, such as higher burdens of proof and protections granted to the accused.
- (c) Even if those aspects of the criminal law had been considered, the differences between the U.K. legal system and the Canadian legal system would have rendered such analysis distinguishable. Among other things, accused in Canada have rights that are guaranteed by the *Charter*, to be contrasted with the U.K. that has no written constitution.
- (d) Both decisions only considered the application of the *Norwich* Order in the context of a private prosecution for the purpose of helping identify the wrongdoer.<sup>75</sup> This is not the purpose for which the Applicants seek a *Norwich* Order in this case. The Applicants have already clearly identified many parties as alleged wrongdoers based on various records that they have obtained to date, and have not provided any evidence that would meet the *bona fide* claim requirement that any other individuals or companies could be involved.<sup>76</sup> The U.K. decisions do not deal with the situation here, i.e. applicants that are seeking a *Norwich* Order in order to gather additional evidence.
- (e) Both decisions only considered the use of a *Norwich* Order by victims of the alleged crime.<sup>77</sup> In this case, Straumann admits in paragraph 22 of his affidavit that BMF is not a victim of the alleged offences of money laundering, and there is no evidence of harm suffered by Mutang Urud from the alleged money laundering that would make him a

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<sup>73</sup> *Financial Times Ltd. & Ors v Interbrew SA*, [2002] EWCA Civ 274.

<sup>74</sup> *Ashworth Hospital Authority v MGN Ltd.*, [2002] UKHL 29.

<sup>75</sup> (1) *Financial Times Ltd. & Ors v Interbrew SA*, [2002] EWCA Civ 274 at para. 22; (2) *Ashworth Hospital Authority v MGN Ltd.*, [2002] UKHL 29 at paras. 53-55.

<sup>76</sup> Factum of the Applicants, pp. 4, 11-12, paras. 11 and 35.

<sup>77</sup> (1) *Financial Times Ltd. & Ors v Interbrew SA*, [2002] EWCA Civ 274 at para. 22; (2) *Ashworth Hospital Authority v MGN Ltd.*, [2002] UKHL 29 at paras. 53-54

victim of this alleged crime. While Straumann attempts to characterize Mr. Urud as a “victim” in his affidavit because he is “a Malaysian born in Sarawak” (para. 13), Straumann does not link Mr. Urud to any specific crime committed in Malaysia that would have generated proceeds allegedly laundered in Canada. Mr. Urud provided no evidence in this matter.

48. The three decisions by the Ontario courts similarly do not provide a basis for granting a *Norwich* Order to a potential private prosecutor. In *R. v Thornton*, although the Court of Appeal allowed into evidence the banking records that were obtained pursuant to a *Norwich* Order in a related civil proceeding, it also found that “the police ultimately would have been able to get a warrant or order to obtain them”.<sup>78</sup>

49. The Applicants also rely on two decisions of Brown J. (as he then was). In *Ontario (Attorney General) v 615 Stanley Street*<sup>79</sup>, the only comment made by Brown J. was that it was open to the Attorney General “in the appropriate case” to seek a *Norwich* Order. The decision does not elaborate on what “the appropriate case” would be and cites Brown J.’s decision in *Ontario (Attorney General) v Two Financial Institutions*<sup>80</sup> in support of that comment.<sup>81</sup>

50. In the *Two Financial Institutions* decision, Brown J. refused to grant a *Norwich* Order. Importantly, Brown J. cautioned that *Norwich* Orders should not be used for purposes of criminal investigation. While Brown J. found that a *Norwich* Order could be issued to assist the Attorney General with respect to a potential forfeiture application (a civil proceeding),<sup>82</sup> he held that “[t]he equitable jurisdiction of the courts on which rests the power to issue *Norwich* orders should not be used to assist in criminal investigations”.<sup>83</sup>

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<sup>78</sup> *R. v Thornton*, 2016 ONCA 562 at para. 10.

<sup>79</sup> *Ontario (Attorney General) v 615 Stanley Street*, 2010 ONSC 1229.

<sup>80</sup> *Ontario (Attorney General) v Two Financial Institutions* (2010), 98 OR (3d) 775 (SCJ).

<sup>81</sup> *Ontario (Attorney General) v 615 Stanley Street*, 2010 ONSC 1229 at para. 17.

<sup>82</sup> *Ontario (Attorney General) v Two Financial Institutions* (2010), 98 OR (3d) 775 at paras. 13-14, 21, 24 (SCJ).

<sup>83</sup> *Ibid.* at para. 37. See also paras. 35-36.

51. Far from supporting the Applicants' position, the decision of Brown J. in *Two Financial Institutions* supports the position that *Norwich* Orders should only be granted in relation to civil proceedings, not criminal matters.

(3)

**IN ANY EVENT, THE *NORWICH* ORDER TEST IS NOT MET IN THIS CASE**

52. Even if this Court were to find that a *Norwich* Order could be granted in relation to a private prosecution, the Applicants do not meet the test for the granting of such an Order because: (a) the Applicants have not provided evidence sufficient to raise a valid, *bona fide* or reasonable claim; (b) the Applicants do not meet the necessity requirement for *Norwich* relief; and (c) the interests of justice do not favour granting the relief sought.

**(a) The Evidence Does Not Raise a Valid, *Bona Fide* or Reasonable Claim**

53. The Applicants' "claim" is for money laundering. A person commits the offence of money laundering if he or she deals with "any property or proceeds of any property with intent to conceal or convert that property or those proceeds, **knowing or believing that all or part of that property or of those proceeds was obtained or derived directly or indirectly as a result of** the commission of a designated offence in Canada, or an act or omission anywhere that would have constituted a designated offence had it occurred in Canada."<sup>84</sup> [Emphasis added.]

54. The offence of money laundering requires proof of the use of specific proceeds known or believed to have been obtained or derived from a specific offence. It is not sufficient to show that the proceeds were derived from some unspecified criminal activity.<sup>85</sup>

55. In the present case, Taib and the Sakto Non-Parties have always denied participating in any unlawful business.<sup>86</sup> The Applicants have failed to counter these clear statements with any

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<sup>84</sup> Section 462.31(1) of the *Criminal Code*.

<sup>85</sup> *R. v Tejani* (1999), 123 OAC 329 at para. 34 (CA).

<sup>86</sup> See, e.g.: (1) Straumann Affidavit, p. 96, para. 203(e); (2) Letter from Sean Murray, Exhibit "139" to Straumann Affidavit, Application Record, Vol. 7, Tab 139, p. 2580; and (3) Letter dated October 10, 2014 from Mishcon de Reya to Bergli Books, Exhibit "140" to Straumann Affidavit, Application Record, Vol. 7, Tab 140, pp. 2586-2590.

evidence of any specific crime committed in Malaysia or elsewhere, and have failed to demonstrate that specific proceeds derived from such a crime were used in Canada.

56. After almost a decade of investigation, Straumann has no direct knowledge of any crime committed by Taib or the Saktu Non-Parties. His purported evidence on the issue of corruption is hearsay (often, multi-layered hearsay) and, given the highly contentious nature of this issue, such evidence is inadmissible on an application.<sup>87</sup>

57. No direct evidence of a crime has been adduced, and no explanation for the failure to find an affiant with direct knowledge is offered. The absence of such evidence following an intensive investigation is telling.

58. The indirect evidence contained in Straumann's affidavit does not show the use of specific proceeds obtained or derived from a specific offence. The Applicants state in paragraph 57 of their Factum that "Taib's actions in Malaysia would constitute the Canadian crimes of frauds on the government, breach of trust by public officer and fraud." Yet, aside from making this conclusory statement, the Applicants fail to articulate how the elements of these crimes are met, and how and when these alleged crimes were committed. They also fail to point to any specific evidence of such crimes, and any specific proceeds derived from these alleged crimes.

59. For example, the offence of breach of trust by a public officer requires evidence, among other things, that the accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office, and that the conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust.<sup>88</sup> The Applicants have not adduced evidence of any applicable standard that would have been breached. In fact, the evidence in this case with respect to the MACC's investigation

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<sup>87</sup> Rule 39.01(5) of the *Rules of Civil Procedure*.

<sup>88</sup> *R. v Boulanger*, [2006] 2 SCR 49 at para. 58.

supports the position that Taib respected applicable standards.<sup>89</sup>

60. Straumann admitted during his cross-examination that he does not know what internal procedures were followed to grant specific licences and contracts, and the Applicants have not adduced any evidence of the internal processes that are followed by the Sarawak government in granting licences and contracts.<sup>90</sup> Accordingly, there is no factual or evidentiary basis for the Applicants' allegations of impropriety in Malaysia.

61. In paragraph 19 of his affidavit, Straumann summarizes "certain key factors" which support his belief that the Sakto Non-Parties are laundering proceeds of corruption from Malaysia through the receipt of funds, directly or indirectly, from Taib or his brother Onn.<sup>91</sup> All of these factors are based on speculation or unreliable evidence, or are not probative of the commission of a crime or the receipt of proceeds of crime. They should be given limited or no weight.

62. For example, in paragraph 19(a) of his affidavit, Straumann states that Taib "was completely in charge of the state of Sarawak and responsible for all of the timber contracts and concessions. He provided such concessions to companies related to himself and his family." Yet, Straumann admitted that he had no knowledge of the internal procedures followed by the Sarawak government in granting licences and contracts, and his opinion is directly contradicted by the findings of the MACC that Taib had delegated his approval authority on two ministers.<sup>92</sup>

63. In paragraph 19(b) of his affidavit, Straumann relies on a video prepared by another organization, Global Witness. Straumann admitted during his cross-examination that this paragraph was inaccurate. First, there was no discussion in the video about paying 10% to Taib in relation to the sale of Taib's cousins' company. Second, there was no discussion in the video

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<sup>89</sup> See paragraph 10 above.

<sup>90</sup> Straumann Cross, p. 190, qq. 871-873.

<sup>91</sup> Straumann Affidavit, pp. 20-22, para. 19.

<sup>92</sup> See paragraph 10 above.

about paying 10% to Taib “offshore”.<sup>93</sup> While the nephew of a Sarawak businessman, Huang Lung Ong, talked about a possible 10% payment to Taib in the video, it is noteworthy that:

- (a) he used the words “maybe” and “probably”, showing that he did not know;
- (b) the “undercover” Global Witness representative is the one who brought up Taib during the conversation and asked “will he ever surface”;
- (c) some of the sentences used by Mr. Ong, a non-native English speaker, make no sense, as acknowledged by Straumann;
- (d) after Global Witness put the allegations in the film to Mr. Ong, he denied the allegations and denied having knowledge of the existence of a kickback and of the manner in which his uncle obtained the asset in question; and
- (e) the “undercover” interviews by Global Witness are heavily edited; the video only contains short excerpts and very little is said about the genesis of the interviews and what the participants were told.<sup>94</sup>

64. Straumann discusses the same video in paragraph 56 of his affidavit, in which he expresses his view as to what the video shows. However, each of the points made by Straumann about the video either does not involve Taib or is inaccurate.<sup>95</sup>

65. In paragraph 19(c), (d) and (e), Straumann suggests that certain funds used by Sakti Development Corporation came from Taib and other family members. There is nothing inappropriate in this scenario. The facts set out are innocuous and do not show any crime having been committed. Again, Straumann fails to provide any evidence that any such funds are proceeds derived from a crime.

66. In paragraph 19(f) and (g), as well as in paragraph 75, Straumann relies on Ross Boyert (“**Boyert**”), a former employee of two U.S. corporations (Sakti International Corporation and

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<sup>93</sup> Straumann Cross, p. 103, q. 466. See also pp. 100-102, qq. 454-459.

<sup>94</sup> (1) Revised transcript of Global Witness video, Supplementary Responding Application Record, Tab B, p. 298, 301-303; (2) Straumann Cross, pp. 98-99, 103-109, qq. 442-447, 469-494.

<sup>95</sup> Straumann Cross, pp. 96-116, qq. 429-525.

Wallyson's, Inc.), to support his allegation that "corrupt Malaysian funds are being laundered in Canada". Interestingly, while Boyert is mentioned twice in Straumann's list of "key factors" in paragraph 19 of his affidavit, Boyert is not relied upon in the Applicants' Factum. This is likely because, as exposed during the cross-examination of Straumann:

- (a) Boyert was a disgruntled employee who was terminated and sued for having abused his position of trust and for significant and substantiated acts of self-dealing, which Straumann failed to disclose in his affidavit;<sup>96</sup>
- (b) by Straumann's own admission, Boyert's mental health was "questionable"; "real and imaginary situations were becoming mixed up in his mind"; he was suffering from paranoia; and he was locked in a mental ward with suspected paranoid schizophrenia a few weeks after meeting with Straumann, and shortly before committing suicide;<sup>97</sup>
- (c) Boyert had no documents or knowledge regarding the Canadian operations of the Sakti Non-Parties;<sup>98</sup> and
- (d) Boyert never went to Malaysia and his only source of knowledge to support his allegations of wrongdoing in Malaysia was from "reading newspapers" and working as a property manager in California for two companies in which members of Taib's family had an interest.<sup>99</sup>

67. Finally, in paragraph 19(g) and (h) of his affidavit, Straumann refers to the fact that Taib may have interests, or hold shares, in corporations. Again, there is nothing improper or criminal about this and, if true, this establishes multiple sources of potential income for Taib. In paragraph 19(g), Straumann appears to suggest that holding shares or an interest in a corporation would be contrary to Sarawak's constitution. Sarawak's constitution provides that the Chief Minister "shall not hold any office of profit and shall not actively engage in any commercial enterprise." Under

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<sup>96</sup> (1) Straumann Cross, pp. 37-43, 44-54, qq.168-195, 201-245; (2) Verified Answer of Defendants Sakti International Corporation and Wallyson's, Inc. to Verified Complaint for Damages; Cross-Complaint, Responding Application Record, Tab C, pp. 36-50; (3) Exhibits to Mediation Brief of Sakti International Corporation, Inc. and Wallyson's, Inc., Exhibit "4" to Straumann Cross, Supplementary Responding Application Record, Tab 4, pp. 362-535.

<sup>97</sup> (1) Straumann Cross, pp. 70-75, 82-83, qq. 312-332, 373-374; (2) *Money Logging Book*, pp. 37, 41.

<sup>98</sup> Straumann Cross, pp. 45, 54-57, qq. 157, 246-254.

<sup>99</sup> Straumann Cross, pp. 87-89, qq. 393-396.

no reasonable interpretation could the holding of shares in a corporation constitute holding an office for profit or actively engaging in a commercial enterprise. The Applicants have not adduced any evidence that Taib has failed to abide by his obligations under the constitution.<sup>100</sup>

68. Straumann also relies in his affidavit on a tax case in Japan regarding payments made by nine Japanese shipping companies to a Hong Kong company called Regent Star Company Ltd. (“**Regent Star**”).<sup>101</sup> While the Tokyo Regional Taxation Authority had originally found that the payments made to Regent Star were “entertainment expenses” that could not be deducted, this decision was overturned by the National Tax Tribunal. Contrary to what Straumann suggests in paragraphs 52 and 53 of his affidavit:

- (a) This case provides no evidence of “kickbacks” or “illicitly obtained funds”. The National Tax Tribunal found that (i) the payments in issue were paid according to a contract and could not be deemed to be “entertainment expenses”, and (ii) Regent Star exists and provides legitimate brokerage services.<sup>102</sup> The payments in issue were found to be deductible, and no finding has been made anywhere in the world that these payments were illegal.<sup>103</sup>
- (b) In any event, there is no evidence that any of the payments made to Regent Star were received by Ridgefold Investment Limited (as alleged in paragraph 52) or any of the Sakto Non-Parties, or that any of these funds were transferred to Canada.<sup>104</sup>

69. In numerous documents published and correspondence sent by BMF since 2010 (including correspondence to police authorities), BMF has consistently misrepresented the involvement of Taib family members in Regent Star and the findings made in the tax case. Further, BMF has frequently omitted to refer to the fact that the initial decision of the Tokyo Regional Taxation

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<sup>100</sup> The Constitution of the State of Sarawak, Exhibit “33” to Straumann Affidavit, Application Record, Vol. 3, Tab 33, p. 850, s. 6(5).

<sup>101</sup> Straumann Affidavit, pp. 35-36, paras. 48-53.

<sup>102</sup> (1) Article dated August 8, 2008 entitled “Total Victory of NGA Puts an End to Controversy Over Transport Brokerage Fees”, Exhibit “25” to Straumann Affidavit, Vol. 2, Tab 25, p. 740; (2) English translation of the decision of the National Tax Tribunal dated July 23, 2008, Exhibit “26” to Straumann Affidavit, Vol. 3, Tab 26, p. 772; (3) Article dated January 3, 2012 entitled “Taib withdraws suit against Malaysiakini”, Responding Application Record, Tab D, pp. 57-58.

<sup>103</sup> Straumann Cross, pp. 145, 155, 158, qq. 633, 683, 694.

<sup>104</sup> Straumann Cross, pp. 122, 123-124, qq. 553, 560-562.

Authority had been overturned by the National Tax Tribunal, even though BMF and Straumann knew this important fact.<sup>105</sup>

70. Considering the above, the Applicants' allegations that proceeds of crime have been used by the Sakto Non-Parties in Canada are pure speculation unsupported by evidence. The Applicants fail to meet the first part of the *Norwich* test as they have no evidence of a valid, *bona fide* or reasonable claim. This conclusion is reinforced by the fact that the numerous authorities contacted by BMF over many years, including the RMCP, have not taken action based on the information and evidence provided by BMF.<sup>106</sup> The Applicants simply do not have any support for their allegations that the Sakto Non-Parties received the proceeds of crime. As found by the RCMP, "there is no proof of violation of the law."<sup>107</sup>

71. Finally, a *Norwich* Order cannot and would not remedy the Applicants' stated deficiency: the lack of evidence. This is because the information requested by the Applicants in this proceeding would not in any way provide evidence that the Sakto Non-Parties are using funds in Canada that are proceeds of crime. The Applicants seek information on the source of funds and the movement of funds in Canada. Even if the Applicants were to obtain documents showing that some funds came from Taib, such documents would still not provide evidence that these funds are proceeds of crime. There is no allegation and no evidence that the Respondents could have in their possession documents related to the commission of any crimes abroad.

**(b) The Applicants Do Not Meet the Requirement of Necessity for *Norwich* Relief**

72. In *GEA Group AG v Ventra Group Co.*,<sup>108</sup> the Ontario Court of Appeal confirmed that an applicant for a *Norwich* Order must "demonstrate that the requested pre-action discovery is 'necessary'." It also held that a *Norwich* Order cannot serve as a substitute for the normal

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<sup>105</sup> Straumann Cross, pp. 116-121, 150-158, 188, qq. 528-549, 652-697, 862.

<sup>106</sup> See paras. 9-10 above.

<sup>107</sup> See para. 9(f) above.

<sup>108</sup> (2009), 96 OR (3d) 481 at para. 75 (CA).

discovery regime mandated by the *Rules of Civil Procedure*, or as a tool to obtain further evidence to aid in proving the facts already identified.<sup>109</sup> If a *Norwich* Order is available in the criminal context (which is denied), the *Norwich* Order process should similarly not be used as an evidence-gathering tool, or as a substitute for the search warrant procedure in the *Criminal Code*.

73. In this case, the Applicants rely on evidence that they say proves that Taib provided funds to his daughter Jamilah.<sup>110</sup> As a result of their searches of the land registry records, the Applicants also have evidence of various loans and movement of funds and properties involving and among the Sakto Non-Parties. What the Applicants are seeking in this case is further evidence of facts already identified. The Applicants admit that they may have sufficient information to commence a civil action and that, in such an action, they would obtain the information that they seek through discovery.<sup>111</sup> The fact that there is no discovery process available in criminal law (for very good reasons) does not lead to the conclusion that the Applicants can use the *Norwich* Order process for a purpose that is not allowed in the civil context, i.e. evidence-gathering with respect to facts that have already been identified.

74. Further, the suggestion that a *Norwich* Order is necessary to determine against which individuals or entities a private prosecution could be pursued is speculative and without evidentiary support. The Applicants have already identified a long list of individuals and corporations. They have also identified the principal alleged “wrongdoers” and have pursued them with multiple criminal complaints for almost a decade. It is disingenuous to assert that there is now an interest in finding others to prosecute. On these facts, to grant a *Norwich* Order for the purpose of identifying other potential wrongdoers, as yet unknown, would “countenance an overt

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<sup>109</sup> *GEA Group AG v Ventra Group Co.* (2009), 96 OR (3d) 481 at paras. 104-105 (CA).

<sup>110</sup> Straumann Affidavit, pp. 54-55, paras. 94-95.

<sup>111</sup> Factum of the Applicants, p. 11, para. 34.

‘fishing expedition’.”<sup>112</sup>

75. The Applicants have no evidence that any proceeds used by the Sakto Non-Parties were derived from a crime, and no evidence that any crime has been committed. Without such evidence, there is no viable private prosecution and it is unnecessary to provide the Applicants with further evidence on how Canadian individuals and companies manage their funds as such evidence is not going to remedy the fatal flaw in the Applicants’ case.

**(c)**

**The Interests of Justice Do Not Favour the Obtaining of Disclosure**

76. Equitable relief should not be granted to the Applicants as they do not have clean hands, as demonstrated by the following:<sup>113</sup>

- (a) BMF, a Swiss entity, sought to use the NCP process in Canada to obtain, by and large, the same documents and information that it is seeking in this proceeding. However, when BMF felt let down and realized that it would not get what it wanted out of this process, it knowingly breached the confidentiality undertaking that it gave in the NCP proceeding. The NCP also found that BMF sought to misuse the NCP process.<sup>114</sup>
- (b) BMF used confidential documents that it received from Boyert that BMF knew were internal company documents of Boyert’s employer, and not Boyert’s personal documents. BMF’s close collaborator published all these documents on the Internet.<sup>115</sup>
- (c) BMF has demonstrated a clear pattern of overstating its case, misstating the facts, and omitting facts that do not fit neatly within its theory.<sup>116</sup>

77. In addition:

- (a) BMF and the Sakto Non-Parties have a “long standing and adversarial history of

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<sup>112</sup> *GEA Group AG v Ventra Group Co.* (2009), 96 OR (3d) 481 at paras. 106-108 (CA).

<sup>113</sup> *Raso v Dionigi* (1993), 12 OR (3d) 580 at 590 (CA).

<sup>114</sup> See paragraphs 11-14 above.

<sup>115</sup> *Straumann Cross*, pp. 57-60, qq. 255-269.

<sup>116</sup> This pattern is shown throughout the cross-examination of Straumann. See also paras. 68-69 above, and Schedule “C” to this Factum which includes some of the errors in Straumann’s affidavit that Straumann admitted and corrected during his cross-examination. See also the press release issued by BMF after the decision of Justice Myers in this case, Responding Application Record, Tab F, p. 63, and *Straumann Cross*, pp. 180-185, qq. 822-848.

dispute.”<sup>117</sup> BMF has published on the Internet private information about Jamilah Taib Murray, Sean Murray and their children, including passport numbers, dates of birth, and their home address.<sup>118</sup> It did so for no apparent reason that could be legitimate.

- (b) BMF has engaged, to use Straumann’s words, in “name and shame” campaigns.<sup>119</sup> For example, BMF “published a blacklist in the format of a ‘Wanted’ poster with the names of thirty individuals from nine countries, who were accused of providing financial, technical, or other services to Taib, and thereby of having supported or legitimised the despot’s regime.” Former FBI director Robert Mueller was on this list.<sup>120</sup>

78. In light of this, it is not in the interests of justice to allow the Applicants to use invasive investigation tools to obtain confidential financial information regarding the Sakto Non-Parties.

79. Finally, it is not in the interests of justice for this Court to make findings (even preliminary ones) regarding alleged corruption or crimes committed by foreign state officials in foreign countries based on speculation and hearsay. A court must proceed with caution when it is asked to make findings pertaining to foreign criminal law, actions of foreign government officials, or the integrity of a legal system with which it is not familiar.<sup>121</sup>

#### **PART IV -- ORDER REQUESTED**

80. The Sakto Non-Parties ask that the Application be dismissed, with costs on a substantial indemnity basis.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

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**Marie-Andrée Vermette**

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**Anastasija Sumakova**

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<sup>117</sup> Canada’s NCP – Final Statement dated July 11, 2017, Exhibit “1” to the Supplementary Affidavit of Lukas Straumann sworn August 21, 2017, Tab A, p. 8, para. 26.

<sup>118</sup> Straumann Cross, pp. 177-179, qq. 796-815.

<sup>119</sup> Straumann Cross, pp. 209-211, qq. 971-979.

<sup>120</sup> (1) *Money Logging Book*, pp. 243-244; (2) Straumann Cross, pp. 209-211, qq. 971-979.

<sup>121</sup> See, for example, *Pro Swing Inc. v Elta Golfing*, [2006] 2 SCR 612 at paras. 49 and 51.

# TAB A

**SCHEDULE “A”**

1. *R. v Buhay*, [2003] 1 SCR 631
2. *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624
3. *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307
4. *R. v Lucas*, [1998] 1 SCR 439
5. *Hill v Hamilton-Wentworth Regional Police Services Board*, [2007] 3 SCR 129
6. *Hunter v Southam*, [1984] 2 SCR 145
7. *Gouriet v Union of Post Office Workers*, [1977] 3 All ER 70
8. *R. v HMTQ*, 2017 BCPC 371
9. *Podolsky v Cadillac Fairview Corp.* (2012), 112 OR (3d) 22 (SCJ)
10. *R.W.D.S.U., Local 558 v Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 SCR 156
11. *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835
12. *Quebec (Attorney General) v Laroche*, [2002] 3 SCR 708
13. *R. v Law*, [2002] 1 SCR 227
14. *143471 Canada Inc. v Quebec (Attorney General)*, [1994] 2 SCR 339
15. *R. v Jarvis*, [2002] 3 SCR 757
16. *R. v Stillman*, [1997] 1 SCR 607
17. *R. v Morelli*, [2010] 1 SCR 253
18. *R. v Chehil*, [2013] 3 SCR 220
19. *GEA Group AG v Ventra Group Co.* (2009), 96 OR (3d) 481 (CA)
20. *Isofoton S.A. v Toronto Dominion Bank* (2007), 85 OR (3d) 780 (SCJ)
21. *Baron v Canada*, [1993] 1 SCR 416
22. *Halsbury’s Laws of England*, Vol. 47, 5th ed. (London, UK: LexisNexis UK, 2014)
23. *Mid West Television Ltd. v S.E.D Systems Inc.*, 1981 CarswellSask 117 (QB)
24. *Obégi Chemicals LLC v Kilani*, 2011 ONSC 4636

25. *Financial Times Ltd. & Ors v Interbrew SA*, [2002] EWCA Civ 274
26. *Ashworth Hospital Authority v MGN Ltd.*, [2002] UKHL 29
27. *R. v Thornton*, 2016 ONCA 562
28. *Ontario (Attorney General) v 615 Stanley Street*, 2010 ONSC 1229
29. *Ontario (Attorney General) v Two Financial Institutions* (2010), 98 OR (3d) 775 (SCJ)
30. *R. v Tejani* (1999), 123 OAC 329 (CA)
31. *R. v Boulanger*, [2006] 2 SCR 49
32. *Raso v Dionigi* (1993), 12 OR (3d) 580 (CA)
33. *Pro Swing Inc. v Elta Golfing*, [2006] 2 SCR 612

# TAB B

**SCHEDULE “B”**

***Criminal Code***  
**RSC 1985, c C-46**

**Laundering proceeds of crime**

**462.31 (1)** Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

- (a) the commission in Canada of a designated offence; or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

**Punishment**

- (2) Every one who commits an offence under subsection (1)
  - (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
  - (b) is guilty of an offence punishable on summary conviction.

**Exception**

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under subsection (1) if the peace officer or person does any of the things mentioned in that subsection for the purposes of an investigation or otherwise in the execution of the peace officer’s duties.

[...]

**In what cases justice may receive information**

**504** Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged

- (a) that the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person
  - (i) is or is believed to be, or
  - (ii) resides or is believed to reside,

within the territorial jurisdiction of the justice;

- (b) that the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;
- (c) that the person has, anywhere, unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or
- (d) that the person has in his possession stolen property within the territorial jurisdiction of the justice.

[...]

### **Referral when private prosecution**

**507.1 (1)** A justice who receives an information laid under section 504, other than an information referred to in subsection 507(1), shall refer it to a provincial court judge or, in Quebec, a judge of the Court of Quebec, or to a designated justice, to consider whether to compel the appearance of the accused on the information.

### **Summons or warrant**

(2) A judge or designated justice to whom an information is referred under subsection (1) and who considers that a case for doing so is made out shall issue either a summons or warrant for the arrest of the accused to compel him or her to attend before a justice to answer to a charge of the offence charged in the information.

### **Conditions for issuance**

- (3) The judge or designated justice may issue a summons or warrant only if he or she
  - (a) has heard and considered the allegations of the informant and the evidence of witnesses;
  - (b) is satisfied that the Attorney General has received a copy of the information;
  - (c) is satisfied that the Attorney General has received reasonable notice of the hearing under paragraph (a); and
  - (d) has given the Attorney General an opportunity to attend the hearing under paragraph (a) and to cross-examine and call witnesses and to present any relevant evidence at the hearing.

### **Appearance of Attorney General**

(4) The Attorney General may appear at the hearing held under paragraph (3)(a) without being deemed to intervene in the proceeding.

**Information deemed not to have been laid**

(5) If the judge or designated justice does not issue a summons or warrant under subsection (2), he or she shall endorse the information with a statement to that effect. Unless the informant, not later than six months after the endorsement, commences proceedings to compel the judge or designated justice to issue a summons or warrant, the information is deemed never to have been laid.

**Information deemed not to have been laid — proceedings commenced**

(6) If proceedings are commenced under subsection (5) and a summons or warrant is not issued as a result of those proceedings, the information is deemed never to have been laid.

**New evidence required for new hearing**

(7) If a hearing in respect of an offence has been held under paragraph (3)(a) and the judge or designated justice has not issued a summons or a warrant, no other hearings may be held under that paragraph with respect to the offence or an included offence unless there is new evidence in support of the allegation in respect of which the hearing is sought to be held.

**Subsections 507(2) to (8) to apply**

(8) Subsections 507(2) to (8) apply to proceedings under this section.

**Non-application — informations laid under sections 810 and 810.1**

(9) Subsections (1) to (8) do not apply in respect of an information laid under section 810 or 810.1.

**Definition of *designated justice***

(10) In this section, “designated justice” means a justice designated for the purpose by the chief judge of the provincial court having jurisdiction in the matter or, in Quebec, a justice designated by the chief judge of the Court of Quebec.

**Meaning of *Attorney General***

(11) In this section, “Attorney General” includes the Attorney General of Canada and his or her lawful deputy in respect of proceedings that could have been commenced at the instance of the Government of Canada and conducted by or on behalf of that Government

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***Canadian Charter of Rights and Freedoms***  
**Being Part I of the *Constitutional Act, 1982***

**Rights and freedoms in Canada**

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[...]

**Life, liberty and security of person**

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

**Search or seizure**

8. Everyone has the right to be secure against unreasonable search or seizure.

**Detention or imprisonment**

9. Everyone has the right not to be arbitrarily detained or imprisoned.

**Arrest or detention**

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay and to be informed of that right; and
- (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

**Proceedings in criminal and penal matters**

11. Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

- (e) not to be denied reasonable bail without just cause;
- (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

### **Treatment or punishment**

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

### **Self-crimination**

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

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*Courts of Justice Act*  
RSO 1990, c C.43

**Rules of law and equity**

96 (1) Courts shall administer concurrently all rules of equity and the common law.

**Rules of equity to prevail**

**PART 1 - (2)** Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails.

**Jurisdiction for equitable relief**

(3) Only the Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided.

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***Rules of Civil Procedure***  
**RRO 1990, Reg 194**

**EVIDENCE BY AFFIDAVIT**

**Generally**

**PART 2 - 39.01 (1)** Evidence on a motion or application may be given by affidavit unless a statute or these rules provide otherwise.

**Service and Filing**

(2) Where a motion or application is made on notice, the affidavits on which the motion or application is founded shall be served with the notice of motion or notice of application and shall be filed with proof of service in the court office where the motion or application is to be heard at least seven days before the hearing.

(3) All affidavits to be used at the hearing in opposition to a motion or application or in reply shall be served and filed with proof of service in the court office where the motion or application is to be heard at least four days before the hearing.

**Contents — Motions**

(4) An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

**Contents — Applications**

(5) An affidavit for use on an application may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit.

**Full and Fair Disclosure on Motion or Application Without Notice**

(6) Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application.

**Expert Witness Evidence**

(7) Opinion evidence provided by an expert witness for the purposes of a motion or application shall include the information listed under subrule 53.03 (2.1).

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# TAB C

SCHEDULE "C"

ERRORS IN THE AFFIDAVIT OF LUKAS STRAUMANN SWORN JUNE 27, 2017 AS IDENTIFIED BY MR. STRAUMANN DURING HIS CROSS-EXAMINATION HELD ON JANUARY 9, 2018

NO.	PARAGRAPH IN L. STRAUMANN'S AFFIDAVIT	ERROR	TRANSCRIPT PAGE(S) AND QUESTION(S)
1.	Para. 75	<p>Paragraph 75 states: ". . . As noted previously, Boyert was a whistleblower who worked closely for Taib in setting up his ventures in the United States, primarily in California, and who worked on transferring wealth to the United States on behalf of, and in trust for Taib..."</p> <p><b>Correction:</b> Paragraph 75 is not correct. Mr. Straumann confirmed that the paragraph should read: "worked on generating wealth in the United States."</p>	P. 37, Q. 167
2.	Para. 18	<p>Paragraph 18 states: ". . . In addition to the clear evidence linking the Sarawak timber licences to the massive increase of wealth of many of Taib's family members, as well as linking Taib, his family members and numerous companies around the world, I have obtained documents that confirm at least some of the offshore assets held by those companies are, in fact, held by Taib's family members in trust for Taib . . ."</p> <p><b>Correction:</b> Paragraph 18 is not correct. Mr. Straumann confirmed that this paragraph should read "I [Mr. Straumann] have obtained one document" instead of "documents".</p>	P. 62, Q. 276
3.	Para. 18	<p>Paragraph 18 states: ". . . In addition to the clear evidence linking the Sarawak timber licences to the massive increase of wealth of many of Taib's family members, as well as linking Taib, his family members and numerous companies around the world, I have obtained documents that confirm at least some of the offshore assets held by those companies</p>	P. 64-66, QQ. 286-294

No.	PARAGRAPH IN L. STRAUMANN'S AFFIDAVIT	ERROR	TRANSCRIPT PAGE(S) AND QUESTION(S)
		<p>are, in fact, held by Taib's family members in trust for Taib . . ."</p> <p><b>Correction:</b> Paragraph 18 is not correct. Mr. Straumann confirmed that "unless you lift the corporate veil", which is not referenced in paragraph 18 of his Affidavit, Exhibit 8 does not "confirm at least some of the offshore assets held by those companies are, in fact, held by Taib's family members in trust for Taib." Mr. Straumann's affidavit should read that the shares are held in trust.</p>	
4.	Para. 63	<p>Paragraph 63 states: ". . . In particular, Boyert gave us a document showing that Taib was the secret majority shareholder of Sakti . . .".</p> <p><b>Correction:</b> Paragraph 63 is not correct. Mr. Straumann confirmed that Taib was not a majority shareholder.</p>	P. 66, Q. 295
5.	Paras. 77 and 81	<p>Paragraph 81 states: "Boyert also gave me a copy of a letter he sent directly to Taib in November 2006, after he was let go from Sakti . . ."</p> <p>Paragraph 77 states: ". . . The dismissal was made official in October 2006 when Boyert received a document from Taib's lawyers containing the signatures of all the Sakti shareholders in which they declared their approval of the nomination of Sean Murray as sole director . . ."</p> <p><b>Correction:</b> Paragraphs 77 and 81 are not correct. Mr. Straumann confirmed that Mr. Boyert was terminated in January, 2007.</p>	P. 78, QQ. 345-350
6.	Para. 19(f)	<p>Paragraph 19(f) states: "19. The following is a summary of certain key factors which support my strong belief that Jamilah and the Canadian Taib-related companies discussed herein, have and are laundering proceeds of corruption from</p>	PP. 84-85, QQ. 379-381

No.	PARAGRAPH IN L. STRAUMANN'S AFFIDAVIT	ERROR	TRANSCRIPT PAGE(S) AND QUESTION(S)
		<p>Malaysia . . .</p> <p>(f) A whistleblower, Ross Boyert (“Boyert”), who was Taib’s employee charged with managing Taib’s wealth in the U.S. and who is now deceased . . .”</p> <p><b>Correction:</b> Paragraph 19(f) is not correct. Mr. Straumann confirmed that Ross Boyert was not an employee of Abdul Taib Mahmud, he was an employee of Sakti International Corporation and Wallyson’s Inc.</p>	
7.	Para. 56	<p>Paragraph 56 states: “. . . owning Sarawak land which had been granted to the company by Taib”.</p> <p><b>Correction:</b> Paragraph 56 is not correct. Mr. Straumann corrects that the company did not own the land, it was a lease.</p>	P. 111, QQ. 503-505
8.	Para. 56	<p>Paragraph 56 states: “In my view, the Global Witness video shows the following: . . . the requirement that a bribe be paid to Taib through an ‘offshore’ Singapore bank in exchange for the sale of a company, owned by Taib’s cousin . . .”</p> <p><b>Correction:</b> Paragraph 56 is not correct. Mr. Straumann confirmed that the reference in paragraph 56 to “through an ‘offshore’ Singapore bank” should be removed.</p>	P. 100-101, QQ. 454-457
9	Para. 56	<p>Paragraph 56 states: “In my view, the Global Witness video shows the following: . . . the requirement that a bribe be paid to Taib through an ‘offshore’ Singapore bank in exchange for the sale of a company, owned by Taib’s cousin . . .”</p> <p><b>Correction:</b> Paragraph 56 is not correct. Mr. Straumann confirmed that there was no suggestion in the Global Witness video that, in</p>	P. 101-102, Q. 458

No.	PARAGRAPH IN L. STRAUMANN'S AFFIDAVIT	ERROR	TRANSCRIPT PAGE(S) AND QUESTION(S)
		the proposed transaction with the cousins, a bribe be paid.	
10.	Para. 19(b)	<p>Paragraph 19(b) states: "19. The following is a summary of certain key factors which support my strong belief that Jamilah and the Canadian Taib-related companies discussed herein, have and are laundering proceeds of corruption from Malaysia . . .</p> <p>(b) An NGO representative went undercover posing as an investor wishing to purchase a Sarawak-based company from Taib's first cousin, which company owned vast amounts of land granted to it by Taib, and were told, among other things, that they would be required to pay 10% to Taib 'offshore'."</p> <p><b>Correction:</b> Paragraph 19(b) is not correct. Mr. Straumann confirmed that there was no discussion of "offshore" and the requirement to pay 10% was not with respect to the proposed transaction with the cousins.</p>	P. 103, Q. 466
11.	Para. 49	<p>Paragraph 49 states: "Regent Star became internationally known in 2007 when the Tokyo tax authorities uncovered the fact that nine Japanese shipping companies had paid over JPY¥1.1 billion (CAD\$13 million) to Regent Star and had deducted these payments from their taxes over a seven-year span. The Tokyo Regional Taxation Authority found that these payments were 'illegitimate expenses' or kickbacks, rather than 'entertainment expenses' . . ."</p> <p><b>Correction:</b> Paragraph 49 is not correct. Mr. Straumann confirmed that the Tokyo Regional Taxation Authority found that the payments were entertainment expenses under Japanese law.</p>	PP. 125-126, QQ. 568-572

**BRUNO-MANSER-FONDS et al.**  
Applicants

- and -

**ROYAL BANK OF CANADA et al.**  
Respondents

Court File No. CV-17-578681.00CL

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

Proceeding commenced at Toronto

**FACTUM OF SAKTO DEVELOPMENT**  
**CORPORATION ET AL.**  
(Application Returnable February 5-6, 2018)

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**CITATION:** Bruno-Manser-Fonds v. Royal Bank of Canada, 2018 ONSC 918  
**COURT FILE NO.:** CV-17-578681-00CL  
**DATE:** 20180207

**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**

[1] It is not because the court can do something that it ought to do it. In my view, it would be inappropriate to extend the application of the court's inherent jurisdiction beyond existing precedent where doing so is not demonstrably necessary. As well, inherent jurisdiction ought not to be exercised in such a fashion as to undermine the careful balancing of interests already undertaken by Parliament in the *Criminal Code*. The order sought would confer greater powers upon individuals investigating a possible crime than those Parliament has conferred upon police and other public officials.

[2] I dismissed from the bench this application for a "Norwich Pharmacal" order. The order sought would have required the respondents to produce a broad range of confidential information to the applicants in order for the applicants to pursue their

investigation into a possible private prosecution of certain individuals or corporations in Canada. They concede they do not yet have sufficient evidence to pursue that prosecution without the further information they hope to glean from the documents sought. Upon dismissing the application, I undertook to deliver my reasons, these are those reasons.

### **Factual background**

[3] The applicant Bruno-Manser-Fonds is a Swiss-based non-profit organization that advocates for rainforest conservation in Malaysia and combatting corruption in government there. The applicant, Mr. Urud, is a Canadian resident and citizen, but was originally from a village in Malaysia and is a descendent of the Kelabit people who are native to that Malaysian state on the island of Borneo.

[4] The applicants are of the view that Mr. Abdul Mahmud Taib has been guilty of systematic corruption for a number of years and has enriched himself very greatly as a result. Mr. Taib is a government official in the Malaysian state of Sarawak, itself located on the island of Borneo.

[5] The applicants have filed a large volume of information relating the allegations of corruption that they believe Mr. Taib is guilty of. Much of that information is of the hearsay variety, arising from media and similar accounts. None of it has yet been proven in court. However, the charges are serious ones.

[6] Of course allegations of corruption in Malaysia do not in and of themselves engage Canadian courts or Canadian law. There are at least two avenues in particular where Canadian law becomes engaged in such matters.

[7] Canadians doing business abroad are banned from engaging in corrupt practices themselves. We have ratified the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and in consequence enacted the *Corruption of Foreign Public Officials Act* (S.C. 1998, c. 34).

[8] We have also enacted a variety of amendments to the *Criminal Code* in relation to possession of the proceeds of crime and money laundering that are of potential application. These apply when proceeds of activity that would be illegal if undertaken inside Canada are brought into this country. These provisions are set forth in s. 354 and in Part XII.2 of the *Criminal Code*. Where some of the proceeds of corrupt activity are brought into this country, Canada may, in some circumstances, find itself having to deal with the consequences of corruption abroad.

[9] The Canadian connection to this application arises from the fact that Mr. Taib's daughter went to school in Canada, married a Canadian and has settled here. Ms. Taib and her husband have founded and operated what has become a fairly large group of real estate companies that are referred to for convenience as the "Satko Group".

[10] The applicants allege that the Satko Group was founded with and has been significantly funded over the years by proceeds of the allegedly corrupt activities of

Mr. Taib in Malaysia. As such, they wish to investigate the prospect of charging some or all of the individuals and companies connected to the Satko Group with crimes including, potentially, knowing receipt of proceeds of crime and money laundering. The common elements of both offences are (i) that the proceeds in question are proceeds of an act or omission anywhere that, if it had occurred in Canada, would constitute a designated offence (this would include corruption-related offences in the *Criminal Code*); and (ii) that the proceeds in question were received and/or converted knowing or believing the property in question to be proceeds of such a crime.

[11] The applicants originally brought this application as an *ex parte* motion for a *Norwich Pharmacal* order. The matter came on before Myers J. on August 21, 2018. He declined to deal with the matter *ex parte* and directed notice be given. His reasons are now reported (*Bruno-Manser-Fonds v Royal Bank of Canada*, 2017 ONSC 5517 (CanLII)).

[12] The applicants re-constituted their application under a formal Notice of Application and, as directed, served the four financial institutions against whom relief was sought. The Satko Group and certain members of Mr. Taib's family alleged to be associated with it were also served. The Satko Group and each of the named financial institutions responded.

[13] These "Norwich Pharmacal" proceedings are not the only proceedings instituted by the applicants in Canada. They also filed a complaint/request for review in relation to the Satko Group with the "National Contact Point" for the OECD in Canada under the OECD Guidelines for Multinational Enterprises. This application was very hotly contested by the Satko Group and from this it would appear that the efforts of the applicants against Mr. Taib and persons and corporations associated with him has a very long and involved history.

[14] The Canadian National Contact Point issued a "Final Statement" dated July 11, 2017 declining to become further involved. The Final Statement made a number of comments regarding the conduct of the application by both sides, including breaches of confidentiality by the applicant BMF and observations about the "long standing and adversarial history of dispute between BMF and Satko".

[15] Each of the four named financial institutions have provided or are providing financial services to the Satko Group and are alleged to possess records that might enable the applicants to determine the sources of shareholder loans, down payments on properties and confirmation of legal and beneficial ownership of entities and properties. Evidence of these facts would be essential to make out the essential elements of the crimes being investigated.

[16] The material provided on this application was voluminous. Evidence and legal authorities presented at this hearing have filled two banker's boxes quite full. It can fairly be observed that no party left any stone un-turned in their zeal to present the issues fully and completely.

### **Issues to be decided**

[17] The issue in this case is whether the inherent jurisdiction of this court ought to be exercised to permit the issuance and execution of what amounts to a civil search warrant in aid of a possible private criminal prosecution.

### **Analysis and discussion of issues**

[18] The parties presented extensive written argument addressing the issues and evidence. The thoroughness of these presentations enabled me to focus on the one or two key questions that emerged and to conduct what had been originally scheduled as a two-day appearance in a half day. That is not intended as a reproach. I was able to focus my questions on key areas of dispute and to evaluate the position of the applicants on these. As it turned out, those issues were sufficient to enable me to dispose of the application more quickly than might otherwise have been the case. My reasoning process in arriving at that conclusion is summarized under each of the headings that follow.

(i) *This case is novel*

[19] Our Court of Appeal reviewed the history and application of *Norwich Pharmacal* orders in this province in the case of *GEA Group AG v. Flex-N-Gate Corporation*, 2009 ONCA 619 (CanLII). The origins and application of this remedy are quite decisively civil in nature. I have not been pointed to any Canadian cases where *Norwich Pharmacal* orders have been sought or granted in the connection with intended criminal proceedings.

[20] The applicants have referred me to a House of Lords decision that, they suggest, indicate an opening to use of this remedy in the context of criminal proceedings. An examination of *Ashworth Hospital Authority v. MGN Ltd.*, [2002] UKHL 29, [2002 All E.R. (D) 234 (Jun) reveals a much more nuanced conclusion. The *Norwich Pharmacal* order under consideration in that case was sought by the putative plaintiff in connection with a potential tort claim that might also become a criminal matter. I have been referred to no cases, whether in England or in Canada, where the *Norwich Pharmacal* jurisdiction has been applied in a purely criminal context.

[21] That is not at all surprising. Criminal law is overwhelmingly a matter of public investigation and enforcement.

[22] In the present case there is no civil proceeding contemplated or described. The applicants have no connection with the persons who might potentially be the object of the criminal proceedings they wish to investigate. That criminal proceeding, it is to be recalled, relates to the knowing receipt and conversion in Canada of proceeds of criminal activity abroad. This is of course derivative of the main focus of the applicants' attention being the corruption allegedly taking place in Sarawak and the alleged devastation of the traditional lands of the indigenous peoples there. If the criminal activity abroad was also a tort – which fact is by no means established – there is nothing before me to indicate that either applicant would have standing to advance the tort claim or that Ontario would be a potential forum for it. I raise the point only to dismiss it. The applicants have not

alleged a civil foundation to this application. They base it solely upon the prospect of an investigation of possible criminal charges.

[23] The relevance of novelty is this. Where I am being urged to take my inherent jurisdiction down paths where it has not yet gone, different considerations apply than when I am being urged down a well-worn path. I must be more alert to the public policy context and ramifications of the proposed relief.

(ii) *Inherent jurisdiction*

[24] There are perhaps two areas of the law where it can be observed that the categories are not yet closed. Negligence is one; inherent jurisdiction of superior courts is another.

[25] In *R. v. Caron*, [2011] 1 SCR 78, 2011 SCC 5 (CanLII), Binnie J. observed that a “categories” approach to inherent jurisdiction is not appropriate, but that the “very plenitude” of inherent jurisdiction “requires that it be exercised sparingly and with caution” where it is “essential to avoid an injustice”.

[26] Following *Caron*, I would not hold that I should decline to entertain this application merely because no other court has exercised the jurisdiction to make the order sought. Whether this application neatly fits within the *Norwich Pharmacal* category or not, the underlying consideration is whether the relief sought is “essential to avoid an injustice”. However, the *Caron* also commends caution in considering that question given the novelty of the relief sought.

(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.

(iv) *Necessity*

[31] The necessity, if any, of the relief sought must therefore logically be examined from the perspective of the necessity to pursue an investigation that (i) has not proceeded to the point of producing sufficient information to justify a warrant if sought by police under s. 487 of the *Criminal Code* and (ii) has not produced sufficient evidence to sustain a private prosecution by way of information under s. 504 of the *Criminal Code*.

(v) *Interests of justice*

[32] In my view, the forgoing analysis leads logically to only one possible outcome and that is a dismissal of this application.

[33] Parliament has marked out a wide road for the applicants to follow if their investigation reaches the point where they have enough information to lay an information under s. 504 of the *Criminal Code*. Many things may happen in the context of such a private prosecution. The attorney-general may determine to issue a stay. The attorney-general may decide to intervene. Peace officers may determine to exercise their authority to seek a warrant to further the investigation of charges emerging from review by a justice. I express no view as to whether such a private search warrant would be available under the court's inherent jurisdiction to a private prosecutor whose evidence reaches that s. 504 *Criminal Code* threshold of reasonable grounds to believe.

[34] In this case, the applicants say that they have not yet got enough evidence to take the private prosecution path laid out by Parliament. They ask this court to carve out for them another road that Parliament has not seen fit to add to the *Criminal Code*. They ask this court to lend its inherent jurisdiction to advance a private *investigation* of alleged crimes before there is enough evidence to justify private *prosecution* of those crimes by the standards laid out in the *Criminal Code*. They further ask this court to sanction a mandatory search for evidence in circumstances where that investigation has not progressed to the point where police, were they running the investigation, could ask for such a warrant.

[35] The public policy case for *favouring* private criminal investigations over public investigations is not one that can be made.

[36] It seems to me to be self-evident that a civil search warrant in aid of a private criminal investigation ought to be a vanishingly rare occurrence where no criminal search warrant could be issued were the investigation publicly led.

[37] Tough cases can often make bad law. The applicants' story is a moving one that very naturally evokes sympathy. It is impossible to maintain indifference in the face of the possible destruction of the way of life of so many people and the loss of fragile, unique and invaluable ecosystems in the forests of Sarawak. These considerations quite naturally lead to a temptation to bend the rules "just this once".

[38] The power of precedent in our legal system, however, is such that rules seldom get bent just once. Today's novel order is tomorrow's routine.

[39] There are other perhaps less obvious, but no less important public policy issues that must also be considered before venturing out into the uncharted waters the applicants invite me to explore. These include considerations of the role of judicial discretion in relation to the rule of law and the balancing of interests in our criminal justice system to say nothing of the fundamental principles embodied in our *Charter of Rights and Freedoms*.

[40] Expanding the application of this court's inherent jurisdiction in the manner requested would put the court on what could easily turn out to be a very slippery slope. Favouring private prosecutions with lower standards than Parliament request be applied to public prosecutions would inexorably work to undermine the checks and balances built into the *Criminal Code*. The emergence of a cottage industry in private prosecutions to work around troublesome "obstacles" in the *Criminal Code* would be a very foreseeable and negative outcome of such a policy.

[41] Parliament has chosen to retain the institution of private prosecutions in the *Criminal Code* and Canadian courts have recognized this as a valuable safety valve in the case of official inertia, indifference or even ineptitude. However, the scope retained for private prosecutions is a constrained one and is a creature of statute. It would not be appropriate to disrupt the balance struck by the *Criminal Code* with ad hoc intrusions of inherent jurisdiction that may have significant unintended consequences.

### **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.

[43] I have not yet made a decision regarding costs. Any decision I do make will have to consider and take into account, among other things, the novelty of the issues raised and the public interest in their airing and resolution. My reference to "public interest" is not limited to the interests advanced by *any* party as there were and are important public policy issues touching upon the positions of *all* of the parties.

[44] The parties are invited to discuss the matter among themselves. If they are not able to reach a resolution, I will receive their written submissions. These are to be limited to five pages per party, exclusive of authorities cited (citations alone are sufficient unless the cases are not available in the normal on-line data bases) and any outlines of costs or

offers to settle. The timetable below may be modified by the parties without consulting me providing *all* are in agreement. I would ask one of the respondents to volunteer to collect *all* submissions and to submit them to me electronically all together via my assistant or the Commercial List office once all are collected and in place. In the absence of a volunteer, Royal Bank of Canada is nominated as first named respondent.

Respondent submissions: February 28, 2018

Applicant submissions: March 14, 2018

(Reply with leave only and not to be encouraged)

[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

**CITATION:** Bruno-Manser-Fonds v. Royal Bank of Canada, 2018 ONSC 1952  
**COURT FILE NO.:** CV-17-578681-00CL  
**DATE:** 20180323

**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 Saktó 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:** In writing

**REASONS FOR DECISION: COSTS**

[1] I released reasons on February 7, 2018 dismissing this application for a *Norwich Pharmacal* order in this case. The parties were invited to make written submissions regarding costs if they were unable to resolve this matter between themselves. They have not been able to resolve it and they have accordingly filed written submissions for me to review. My decision and reasons follow.

**Background facts**

[2] I shall not repeat the factual background set forth in my earlier ruling except in a very summary way.

[3] The applicants are a Swiss-based non-profit organization advocating for rain forest conservation in Malaysia and a Canadian citizen who was born in the Malaysian state of Sarawak and is a member of a tribe indigenous to that state.

[4] The applicants brought an application seeking a *Norwich Pharmacal* order as against the respondents Royal Bank of Canada, Toronto-Dominion Bank, Manulife Financial Corporation and Deloitte & Touche. That application was originally brought *ex parte* before F.L. Myers J. on August 21, 2017. The applicants were ordered to give notice both to the respondents and to the target of their intended proceeding, the Sakto Group. They did so and the matter returned before me on February 5, 2018 scheduled for a two day hearing. I dismissed the matter from the bench with reasons to follow that were issued on February 7, 2018.

[5] The application was novel in a number of respects. While the “typical” *Norwich Pharmacal* order is sought to discover critical information needed for a civil suit (such as the name of the party who stole funds or published a libel) or to identify stolen assets to better preserve them before the thief can further hide them, this order was sought in aid of a possible future private criminal prosecution. The applicants were advancing the theory that a certain Malaysian official had been guilty of massive and systematic corruption over a period of a great many years and that he had arranged to secrete a portion of his allegedly ill-gotten gains in one or more Canadian entities affiliated with his daughter (collectively, the Sakto Group). It was alleged that an investigation would determine whether there was sufficient evidence to warrant bringing a private criminal prosecution for money laundering offenses. The applicants admitted that their investigation had not yet revealed sufficient information to sustain an application for a search warrant under the Criminal Code if police were conducting the investigation.

### **Position of the parties**

[6] The applicants took the position that they should be considered as public interest litigants and exempted from paying any costs at all. They sought to investigate a possible crime in Canada that was not being investigated by public authorities and did so for no personal gain on their part. In the alternative, they claim that the originally-named institutional respondents could easily have chosen to take no position on the hearing given the appearance of the Sakto Group respondents after they were served on the order of Myers J. As such, the applicants suggest that those respondents should be deprived of any costs while the Sakto Group respondents ought to be restricted to a claim of \$22,500 out of the \$161,742.81 in costs claimed by them.

[7] The successful respondents take an entirely different view. The Sakto Group respondents seek substantial indemnity costs, pointing to what they view as reckless and baseless allegations of improper or illegal conduct on their part. The three named institutional respondents faced no such allegations but submit that they were required to stay in this proceeding even after the Sakto Group appeared by reason of choices made by the applicants and incurred considerable and unnecessary expenses as a result. Two of them (Deloitte & Touche and Manulife) claim partial indemnity costs while TD Bank and Royal Bank (represented by the same counsel) claim substantial indemnity costs.

## **Analysis and discussion**

[8] At the conclusion of my reasons for dismissing the application, I wrote the following regarding costs:

43. I have not yet made a decision regarding costs. Any decision I do make will have to consider and take into account, among other things, the novelty of the issues raised and the public interest in their airing and resolution. My reference to “public interest” is not limited to the interests advanced by any party as there were and are important public policy issues touching upon the positions of all of the parties.

[9] All parties appear to have read into that non-decision an indication of support for one or the other of the propositions advanced by them. My words were intended to convey exactly what they say – I had made no decision as to costs and any decision would have to consider a number of factors including the ones listed. All of those issues were and are open for consideration and decision.

(i) *Institutional respondents*

[10] The applicants expended very considerable efforts in pursuing this application with the aid of sophisticated counsel. Whatever payment arrangements the applicants made vis-à-vis their own counsel, they cannot have been taken by surprise by the degree of effort and expense the responding institutions undertook in responding.

[11] The applicants chose to pursue multiple institutional targets for disclosure of information, they cannot be heard to complain that some of them chose to be separately represented instead of pooling their resources for a common response. In fact, two of them (TD Bank and Royal Bank) did pool resources and retained a single counsel.

[12] The actual costs of the three groups of institutional respondents were:

- a. TD/RBC: \$60,936.74
- b. Manulife: \$41,486.12
- c. Deloitte & Touche: \$76,153.04

[13] The applicants suggest that the comparative financial consequences of a costs award must be borne in mind and urge upon me the significant capacity of financial institutions such as these respondents to absorb legal expenses.

[14] Financial institutions are not exempt from paying or receiving costs. If relative financial strength were the measure, I should have required detailed financial disclosure of the financial capacity of the applicants. I have no reliable information on that subject. I cannot assume the applicants are impecunious or unable to sustain a costs award of the magnitude at stake in these proceedings. To the contrary, the intensity of the long-running, multi-front battles undertaken by Bruno-Manser-Fonds (of which this application

is but one chapter) strongly suggest very considerable financial resources have been devoted to this project. I cannot infer impecuniosity from the record before me.

[15] The applicants object that they sought to negotiate a means for these respondents to withdraw by undertaking not to seek proprietary information or “irrelevant internal communications”. They miss the point.

[16] The information sought by the applicants was broad and sweeping. It affected important privacy interests, interests not confined to those of the third parties notified of this proceeding pursuant to the direction of Myers J. Recognizing the test nature of the application, the applicants might, for example, have started with a more restrained “ask” that might have permitted the institutional respondents room to bow out while still pursuing the desired precedent.

[17] I do not mean thereby to comment on either the good faith or the strategic sense of the applicants. The choice was theirs to make, but choices have consequences. They chose to ask for everything they wanted and to ask for it in a manner that did not permit the institutional respondents, in the exercise of their reasonable judgment, to decline to defend their institutional interests. Obviously, the applicants do not have the statutory and common law duties of confidentiality to clients that banks, insurance companies or accounting firms must contend with. Banks, insurance companies and accounting firms do have such responsibilities. In my view, they reasonably chose to ensure those obligations as well as the potential impact of the orders sought upon those obligations were both firmly fixed on this court’s radar.

[18] In this regard, they point to the novelty of the issues and allege that they should be considered as public interest litigants. They rely on the decision of Sharpe J. (as he then was) in *Mahar v. Rogers Cablesystems Ltd.*, 1995 CanLII 7129 (ON SC). I do not agree.

[19] The application before me implicitly sought to establish the legitimacy of a means of conducting a criminal investigation and prosecution unhindered by the strictures of s. 8 of the *Charter*. If there was a public interest in that question, it ran in quite the opposite direction from that espoused by the applicants. While there was no law on the precise points raised by the applicants, the entire weight of the law was against them. Theirs was a sufficiently uphill climb that the respondents were not required to take the floor at the hearing.

[20] While the ultimate aims of the applicants – the protection of endangered rainforest eco-systems in Borneo – are clearly worthy ones, this particular application was a chapter in a very long-running battle against the Sakti Group and the Malaysian official they accuse of corruption. The merits of that dispute and its relationship to the overall goal of rainforest protection is not something that can be presumed by me in assessing costs here.

[21] I cannot find that the applicants are entitled to be considered as public interest litigants in all of the circumstances of this case. I see no reason to depart from the rule that costs follow the event in this case and shall not do so.

[22] While I have not agreed with the applicants' primary argument that they ought to pay *no* costs, my conclusion does not extend to departing from the "usual" partial indemnity scale of costs.

[23] There certainly were opportunities offered to the applicants to minimize costs. That being said, I cannot find that their failure to pursue these ought to lead to the imposition of a higher scale of costs in all of the circumstances of this case. There was nothing in the conduct of this case that ought to have led the unsuccessful applicants to expect that they were opening themselves up to potential exposure for substantial indemnity costs vis-à-vis any of the institutional respondents at least.

[24] I have reviewed the outline of costs on a partial indemnity basis of each of the institutional respondents. There has been no granular challenge of individual line items. Rather, the objection of the applicants was to the overall reasonableness of the amounts sought. Having reviewed the outlines of costs of each, I concur with that approach.

[25] By way of summary they break down as follows:

- a. TD/RBC: \$36,951.27;
- b. Manulife: \$25,181.72
- c. Deloitte & Touche: \$52,443.68

[26] These three institutions had very similar interests to defend and yet incurred quite different amounts of legal costs. There was no material difference in the burden carried by each – this was not a case where one took the lead and the others maintained a "me too" watching brief. Each filed a detailed factum.

[27] The fixing of costs is necessarily arbitrary to some degree. Was one lawyer or two necessary? Should more or less partner time have been used? There are hundreds of judgment calls that are made by lawyers and clients in the course of a case and a court is generally ill-suited to second guess these decisions on a micro level, particularly in hindsight. However, a judge exercising discretion to fix costs applies the criteria in Rule 57.01 of the *Rules of Civil Procedure*. The review is broader than simply considering the indemnity principle or what costs were reasonable as between the solicitor and his or her own client. A number of competing factors must be balanced in a process that is always highly specific to the facts of the case.

[28] In undertaking that balancing, I think it is reasonable for me to have regard to the costs claimed by all three of these similarly situated respondents. Without engaging in a critique of staffing levels or other strategic decisions made by the parties along the way, it seems fair for me to observe that this large a discrepancy (more than 100%) as among the claims advanced by similarly situated parties raises issues. In comparing these, I think the criterion of the reasonable expectations of the unsuccessful party in particular comes to the fore.

[29] In my view, it would not be fair to ask the unsuccessful party to pay more than 125% of the \$25,181.72 claimed by Manulife, being the lowest of the three. That amount is \$31,477.15. It would not be reasonable for the unsuccessful party to expect the same claim to come from each of the defendants, but this large a swing must be addressed by me. Having regard to all of the principles listed in Rule 57.01 of the *Rules of Civil Procedure*, the resulting figures appear quite reasonable and appropriate to me.

[30] Accordingly, I order the applicants to pay the following costs of these three respondents:

- a. RBC/TD: \$31,477.15;
- b. Manulife \$25,181.72;
- c. Deloitte & Touche: \$31,477.15.

(ii) *Sakto Group respondents*

[31] I have separated out the Sakto Group respondents for separate consideration for a number of reasons. They were not named respondents (initially) although they were ordered to be served by Myers J. The applicants had them in their cross-hairs for a possible private criminal prosecution. They had vital interests at stake. That their response should be different in kind and by an order of magnitude when compared to the other respondents was to be expected.

[32] I have already found in relation to the named institutional respondents that the applicants cannot claim the mantle of public interest litigants to avoid the costs consequences of their unsuccessful application. There is nothing on the facts of this case that would justify me depriving the Sakto Group respondents of their costs either. The only real issue in relation to the Sakto Group respondents is whether there is a basis for me to depart from the "usual" scale of costs (partial indemnity) in favour of the claimed substantial indemnity scale.

[33] The Sakto Group respondents point to the allegations of corruption, knowing participation in money laundering and other similar allegations advanced by the applicants as constituting very serious allegations with significant potential to impact professional and business reputations. Furthermore, they claim the allegations were advanced recklessly particularly given their history of unsuccessful complaints in other fora.

[34] The Sakto Group respondents do not allege a financial interest of the applicants in seeking the relief sought but point to the long and adversarial history between them as a factor that indicates a rationale other than altruism for making such serious and they say reckless claims. Criminal prosecutions and investigations are serious matters and belong to the state and police for a reason.

[35] There is some force to these arguments. The evidence of the applicants included direct allegations of criminal activity by the Sakto Group respondents that went beyond

the corruption allegations leveled against the Malaysian official. The applicants' evidence alleged that the "flow of funds" described (involving the Sakto Group respondents) represented proceeds of corrupt activity and "constitutes money laundering". That amounts to a direct allegation of criminal intent on the part of the Sakto Group respondents implicated.

[36] The applicants respond that the application did not seek any finding of wrong-doing as against the Sakto Group respondents. They were, to the contrary seeking information from which they could *decide* whether a criminal prosecution was warranted. That objection is a distinction without a difference in my view. This application was only brought because the applicants had at least a subjective belief that the criminal charges were well-founded and sought to persuade the court to share that view to some degree failing which the application had no basis *at all*. The entire foundation of the application was the criminal allegations and the strength (or lack thereof) of the evidence of those allegations.

[37] The award of substantial indemnity costs is a discretionary decision. The Sakto Group respondents have made a very strong case in favour of substantial indemnity costs. There are two factors that move me to turn them down.

[38] Firstly, the amount of costs claimed is very high relative to the other respondents. The partial indemnity costs claimed by the Sakto Group respondents is \$110,206.34 while the claim for substantial indemnity is \$161,742.81. Even on a partial indemnity scale, the claimed amount is more than the amount of partial indemnity costs I have allowed for all of the other respondents together. I fully appreciate that the Sakto Group respondents had more at stake. All allowances being made, the numbers are still very high and considerably higher than I can reasonably impose on the unsuccessful litigant. The indemnity principle is important, but it is not the only factor I must balance.

[39] Secondly, the parties have a long and acrimonious history with each other. In prior proceedings, neither side has shown a significant degree of restraint. Perspective and clarity of focus on the true issues becomes blurred when litigants have their blood up. It is clear to me that both sides to this long-running dispute have had their blood up for a while. The relatively high costs of the Sakto Group relative to the other respondents reflects this reality at least to some degree.

[40] In my view, fixing partial indemnity costs of the Sakto Group respondents at a level equal to the sum of the other four respondents' combined costs achieves a fair and reasonable balance in all the circumstances of this difficult case. I am accordingly ordering the applicants to pay the Sakto Group respondents their partial indemnity costs that I am fixing at \$88,136.02.

### **Disposition**

[41] The applicants are therefore ordered to pay the partial indemnity costs of the respondents in the following amounts plus post-judgment interest:

- a. RBC/TD:                   \$31,477.15;

- b. Manulife \$25,181.72;
- c. Deloitte & Touche: \$31,477.15.
- d. Sakto Group: \$88,136.02

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S.F. Dunphy J.

**Date:** March 23, 2018

# Sakto Corporation Wins Court Case Brought by Bruno Manser Fund

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**Sakto Corporation**

Mar 26, 2018, 16:15 ET

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## BMF Ordered to Pay for Unfounded Allegations of Corruption

OTTAWA, Ontario , March 26, 2018 /CNW/ -- The Ontario Superior Court of Justice has dismissed a court case brought by Swiss-based Bruno Manser Fund (BMF) against an Ottawa-based real estate company, Sakto Corporation, stating that the allegations against Sakto Corporation were based on "conjecture and suspicion."

BMF submitted thousands of pages of documents to a Canadian court and asked to have a hearing to obtain private company records, without notifying Sakto Corporation. The judge refused to make the requested order without notice to Sakto Corporation, and the Executive Director of BMF, Lukas Straumann, was subsequently cross examined on his serious allegations.

Based on the thousands of pages of documents submitted by BMF, and the transcript of the cross-examination of Straumann, the Honourable Justice Sean F. Dunphy dismissed the case. In his reasons, he stated that the allegations against Sakto Corporation were based on "conjecture and suspicion more than evidence."

"We are pleased to see that the Ontario Superior Court quickly dismissed the case," said attorney Marie-Andrée Vermette of WeirFoulds LLP. "Sakto Corporation is a renowned, local Canadian company, led by a local family known for being

community supporters and philanthropists. This attempt by the Swiss organization is another in a long string of similar failed attacks against my client.

"The court order sought by this organization was unsupported in law and based on repackaged allegations that have not been substantiated by any government or authoritative body," continued Ms. Vermette.

Justice Dunphy held that BMF cannot claim the mantle of public interest litigants to avoid the costs consequences of their unsuccessful application and ordered BMF to pay a total of \$175,000 to the respondents and Sakto Corporation for their legal costs.

To learn more and read the court documents, visit [www.thefactsmatter.ca](http://www.thefactsmatter.ca).

**Sakto Corporation** is a privately owned and operated real estate holding and investment firm founded and located in Ottawa, Canada. Throughout its three decades of operation, Sakto Corporation has remained true to its core standard of excellence and integrity. Today, the company owns and manages multiple property holdings and is renowned as one of the capital's foremost property facilitators. **Jamilah Taib Murray** is the Chairman and **Sean Murray** is President. Visit Sakto Corporation's [Facebook](#), [Twitter](#), and [LinkedIn](#).

SOURCE Sakto Corporation

SOURCE Sakto Corporation

For further information: Duncan Fraser, 613-612-8436, <http://www.sakto.com>

## Organization Profile

**Sakto Corporation**



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Canada's National Contact Point - Final Statement: Bruno Manser Fund (BMF) and Sakto Corporation et. al. (Sakto)

# Canada's National Contact Point - Final Statement Bruno Manser Fund (BMF) and Sakto Corporation et. al. (Sakto)

**May 11, 2018**

On January 11, 2016, the Canadian National Contact Point (the "NCP") for the OECD Guidelines for Multinational Enterprises (the "Guidelines"), received a Request for Review (RfR) from the notifier, Bruno Manser Fund ("BMF"), entitled "Complaint against the Sakto Group, Ottawa".

The RfR alleged that the "Sakto Group", comprised of a number of corporations operating in Canada and in foreign jurisdictions, did not voluntarily apply the disclosure provisions contained in the Guidelines (Chapter III: Disclosure, paragraphs 2 and 4, pages 27 and 28 of the 2011 Edition).

The NCP assesses requests for review according to the [Canadian NCP Procedures Guide](#) and the [Procedural Guidance provisions of the Guidelines](#). The NCP process is a voluntary, alternative grievance mechanism through which the NCP can offer good offices to the parties if it is deemed appropriate.

Both the Procedural Guidance provisions of the Guidelines (section C, paragraph 3, page 73) and the Canadian NCP Procedures Guide (sections 3.4 and 11.8) require the NCP to make the results of its procedures publicly available. Specifically, these same provisions in both the Procedural Guidance provisions of the Guidelines and the Canadian NCP Procedures Guide require the NCP to issue a public final statement.

The NCP met with the parties and carefully examined their respective submissions. In determining whether the allegations contained in the RfR merited further examination, the NCP considered the following factors in accordance with the Canadian NCP Procedures Guide (section 11.4) and the Procedural Guidance provisions of the Guidelines (paragraph 25, page 83 of the 2011 edition):

- the identity of the party concerned and its interest in the matter;
- whether the issues are material and substantiated;
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;
- the relevance of applicable law and procedures, including court rulings;
- how similar issues have been, or are being, treated in other domestic or international proceedings; and
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

The NCP sought the views of both parties on the first draft of the initial assessment dated October 25, 2016 which was shared with the parties on a confidential basis. That draft document does not reflect the opinion or contain conclusions of the NCP and it is now superseded by this revised final statement.

While the draft initial assessment was not intended for publication, the notifier released the draft initial assessment through a public press release on April 3, 2017, in breach of the Canadian NCP's confidentiality procedures, prior to completion of the NCP review process.

The NCP has concluded that an offer of good offices to the parties (i.e. dialogue facilitation) would not contribute to the purposes and effectiveness of the Guidelines. With the publication of this revised final statement, the Canadian

NCP considers this specific instance to be closed.

Date Modified: 2018-05-09

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# Sakto Corporation: Canadian Government Issues Final Statement Closing Case

NEWS PROVIDED BY

**Sakto Corporation**

May 18, 2018, 12:48 ET

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## *Directs Bruno Manser Fund to Cease and Desist*

OTTAWA, Ontario , May 18, 2018 /CNW/ -- After a long and unfounded campaign by Lukas Straumann and Bruno Manser Fund (BMF), Sakto Corporation welcomes the release by the Government of Canada's OECD National Contact Point (NCP) of its Final Statement, closing the case.

"Following a thorough examination of the facts by Canadian Government officials we are pleased to see Canada come to this determination and take a stand against a foreign group misusing the OECD process. This group has been making unfounded allegations for years," said Duncan Fraser, counsel to Sakto. "We support Canada's diligence and we are pleased with the outcome of this comprehensive process."

In response to the Final Statement, BMF has condemned the Canadian government for "protecting" Sakto. This follows their pattern of attacking respected authorities and law enforcement bodies who have reached the same conclusion on the same allegations. Past victims of BMF attacks include Robert Mueller (then Director of the FBI), the RCMP, FINTRAC, Switzerland, Australia, Germany and the Malaysian Anti-Corruption Commission. According to Mr. Fraser, "It is time for BMF to accept the facts and the outcomes, and move on."



OECD Watch has also reported that the Canadian Department of Justice has served them, and BMF, with a Cease and Desist demand for breaching confidentiality by publishing draft confidential OECD documents that the Government of Canada says do not reflect its position. This confrontation follows BMF's loss in other proceedings against Sakto in the [Ontario Superior Court in February 2018](#).

"Mr. Straumann and BMF's complete failure with both Canada's NCP and the Ontario Superior Court make it clear that the questions raised by BMF about Sakto are without foundation," added Mr. Fraser. "Both of these decisions, and Mr. Straumann's admissions in cross-examination in the law suit, show that an unbiased look at the facts reveals these allegations to be unfounded."

BMF was ordered to pay more than \$175,000 in costs to Sakto and the other parties following the Ontario Superior Court proceeding. The record of the legal proceedings may be found at [www.thefactsmatter.ca](http://www.thefactsmatter.ca).

Read the [Final Statement by the Government of Canada's NCP](#).

Along with the Government of Canada's NCP office, Sakto too considers the matter "closed".

SOURCE Sakto Corporation

For further information: Duncan Fraser, counsel to Sakto Corporation, (613) 612-8436

## Organization Profile

**Sakto Corporation**



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HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

député  
L'HON Andrew Leslie, M.P.  
Orléans

March 20, 2018

The Honourable François-Philippe Champagne, Minister  
Department of International Trade  
125 Sussex Drive  
Ottawa, Ontario K1A 0G2

Dear Minister Champagne,

Enclosed is a letter that I wrote to your predecessor dated November 14, 2015. It was on behalf of two residents of Ottawa-Vanier regarding their case before the Canadian National Contact Point (NCP) for the OECD. I sent this letter as I was representing them at the time in my capacity as Chief Government Whip and acting-MP for Ottawa-Vanier while our dear friend Mauril Bélanger who was on extended leave due to his health issues.

The constituents, Mr. and Mrs. Murray and their company, Sacto Corporation, were subject to an ongoing campaign of harassment from the Swiss activist group, the Bruno Manser Fund (BMF) related to its vendetta with Mrs. Murray's father, a long-time Malaysian politician and frequent target of the group, for over nine years. Mr. and Mrs. Murray made a strong case to me that the BMF was using the NCP complaint process as a vehicle to pursue this ongoing harassment of their family and achieve its political ends.

The Murrays' main concerns revolved around what appeared to them to be a lack of due process and accountability surrounding the NCP complaint mechanism and its susceptibility to abuse by parties not acting in good faith. Of note, the Malaysian Anti-Corruption Commission has investigated BMF's allegations, all of which have been categorically rejected and the file was closed many years ago.

This assessment I made in 2015 turned out to be similar to the findings of a Canadian judge in a February 2018 court ruling against BMF's stated claims. The Murrays had to resort to the court room main because the NCP walked away from its responsibility as stated in its Final Statement on the complaint.

What troubles me most about is paragraph 26 of the NCP Final Statement. In it your officials state that I, acting in my capacity as Member of Parliament and acting as ombudsperson for the constituents of Ottawa-Vanier at the time, was inappropriately involved!

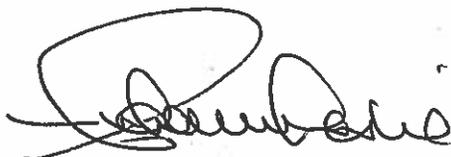
Minister, two citizens asking for help from their federal representative because they (rightly, as it turns out) believed that a federal institution - the NCP - was being manipulated by a foreign organization should not be castigated in this ruling for their actions. I believe that as an MP yourself, you would agree that constituents should not be penalized for consulting with their elected representative when they are experiencing difficulties with federal government organizations.

In their testimony to the Court, the BMF admitted to fabricating evidence, making slanderous comments, and using the NCP process as a political maneuver to embarrass this family and smear their reputations in public view.

As the nature and purpose of the case was clear to me after a relatively cursory assessment, I am troubled by the fact that the Department's experts were not able to make a similar assessment and use proper judgment to dismiss this case at the outset and resolve it in a much quicker fashion.

In light of this case, I would request that your office conduct an investigation into the conduct of the relevant officials in this matter as well as creating a policy not to penalize constituents for approaching their MP in cases where help and guidance is warranted.

Sincerely,



LGen (ret'd) Hon. Andrew Leslie, P.C., M.P.  
Orléans

Enclosures: 2

28 May 2018

Mr and Mrs Murray  
688 Manor Ave.  
Ottawa, Ont.,  
K1M 0E2

Dear Mr and Mrs Murray

I hope the summer is treating you and yours well. In November 2016 you wrote to me in my capacity as Chief Government Whip and Member of Parliament overseeing the Ottawa-Vanier riding office. You drew my attention to the troubling campaign against you and your family by the Swiss activist group Bruno Manser Fonds (BMF).

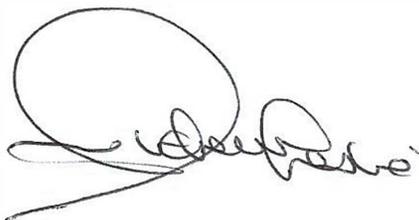
I am glad that I was able to assist you in raising this issue with the Minister of International Trade and his department. It is unfortunate that the process took far longer than any of us anticipated, but I am delighted to hear that you have been vindicated. It is also great to hear that the Government of Canada is engaging to set the record straight.

It is quite satisfying that the initial and very informal assessment I made concerning the actions of BMF turned out to be very similar to the findings of an independent and impartial Canadian judge, who in a February 2018 ruling rejected BMF's allegations as unfounded and "based on conjecture and suspicion". As well, I see that BMF has been found to be in breach of the NCP process.

As proud Canadians and successful business people, this entire process must have been extremely difficult. However, it must be reassuring that objective observers have ultimately rejected the BMF allegations and supported you.

Please accept my congratulations and my thanks for your community engagement.

Sincerely

A handwritten signature in black ink, appearing to read "Andrew Leslie". The signature is fluid and cursive, with a large loop at the beginning.

LGen (ret'd) the Honourable Andrew Leslie, PC, CMM, MSC, MSM, CD, MP  
MP Orleans  
255 Centrum Blvd, Orleans, Ont  
K1E 3W3



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May 11, 2018

Our File Number: 9564102

**BY E-MAIL**

Joseph Wilde-Ramsing  
Coordinator  
OECD Watch  
[j.wilde@oecdwatch.org](mailto:j.wilde@oecdwatch.org)

Dear Sir:

**Re: Bruno Manser Fund (BMF) and Sakto Corporation et. al. (Sakto)**

I am writing on behalf of the National Contact Point (NCP) with respect to publication of the confidential, Draft Initial Assessment dated October 25, 2016 on the OECD Watch website.

The NCP shared the Draft Initial Assessment with the parties to the above-captioned specific instance on a confidential basis, and did not authorize its publication. As a result, the NCP requests that OECD Watch remove the Draft Initial Assessment from its website and any other publicly accessible forum and cease and desist from any further republication of the Draft Initial Assessment. To be clear, OECD Watch should refrain from any further electronic or paper transmission, dissemination, posting or other form of publication of the Draft Initial Assessment.

The Draft Initial Assessment does not reflect the opinion or contain conclusions of the NCP and it is now superseded by the Revised Final Statement published on May 11, 2018.

Yours truly,

*Per:* Helen Gray  
Counsel

c.c. Lukas Straumann, BMF ([lukas.straumann@bmf.ch](mailto:lukas.straumann@bmf.ch))  
Sean Murray, Sakto (by courier)  
NCP ([ncp.pcn@international.gc.ca](mailto:ncp.pcn@international.gc.ca))

Canada



Department of Justice  
Canada

Ministère de la Justice  
Canada

Civil Litigation Section  
National Litigation Sector  
Department of Justice Canada  
50 O'Connor Street, Room 503  
Ottawa, Ontario  
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May 11, 2018

Our File Number: 9564102

**BY E-MAIL**

Lukas Straumann  
Executive Director  
Bruno Manser Fund  
[lukas.straumann@bmf.ch](mailto:lukas.straumann@bmf.ch)

Dear Sir:

**Re: Bruno Manser Fund (BMF) and Sakto Corporation et. al. (Sakto)**

I am writing on behalf of the National Contact Point (NCP) with respect to the publication, by the Bruno Manser Fund (BMF), of the confidential, Draft Initial Assessment dated October 25, 2016 which was sent to the parties in the context of the above-captioned matter.

<h1>Shafee &amp; Co</h1>	
Peguambela & Peguamcara Advocates & Solicitors	
CHAMBERS TWENTY- FIVE NO. 25 JALAN TUNKU, BUKIT TUNKU, 50480 KUALA LUMPUR Telephone: <a href="tel:03-26948377">03-2694 8377</a> Facsimile: <a href="tel:0326947307">03 2694 7307</a> E-mail: <a href="mailto:shafeeco@shafeeco.com">shafeeco@shafeeco.com</a>	
<u>PRINCIPAL</u>  TAN SRI DATO' SRI DR. MUHAMMAD SHAFEE ABDULLAH PSM, SSAP, DIMP, SSA LL.B (HONS) (MALAYA), LL.M (LSE UNIVERSITY OF LONDON), LL.D (UEL)	<u>LEGAL ASSISTANTS</u> SARAH MAALINI  ARISHEGAM, LL.B (HONS) (LON) CLP SARA ANN CHAY SUE MAY, LL.B (HONS) (LON) CLP NOOR FARHAH BINTI MUSTAFFA, LL.B (HONS) UTM LEW CHO KANG, LL.B (HONS) (CARDIFF) Barrister-At-Law WAN AZUDDIN WAN MOHAMMED, LL.B (HONS) UKM RAHMAT BIN MOHAMMED HAZLAN, LL.B (HONS), DI.SA, UTM
Our Ref:	Your Ref:

9<sup>th</sup> September 2016

**TUAN YANG TERUTAMA TUN PEHIN SRI ABDUL TAIB MAHMUD**  
Governor of State of Sarawak

Tun Pehin Sri,

Re: Investigation Towards Tuan Yang Terutama Tun Pehin Sri Abdul Taib  
Mahmud ("TYT Tun") by Malaysian Anti-Corruption Commission (MACC)

First of all, allow us to congratulate Tun Pehin Sri on the occasion of the official birthday of the Yang DiPertua Negeri Sarawak.

We take the opportunity on this auspicious occasion to bring forward a piece of good news subject matters of the 2 letters attached herein.

In summary, there is a letter dated 3.8.2016 from the MACC addressed to our firm whereby all the Investigation Papers (altogether 15 of them) against Tun Pehin Sri have been brought to a close. The matters are now classified as NFA (No Further Action). This is the official decision of the MACC which are copied to the Attorney General as well.

Thank you

Yours faithfully,

.....  
**TAN SRI DATO' SRI DR MUHAMMAD SHAFEE ABDULLAH**



BAHAGIAN PERUNDANGAN DAN PENDAKWAAN  
IBU PEJABAT  
SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA  
ARAS 6, BLOK D6, KOMPLEKS D  
PUSAT PENTADBIRAN KERAJAAN PERSEKUTUAN  
PETI SURAT 6000  
62007 PUTRAJAYA

TEL : 03-88867000  
03-88867200  
03-88867400  
FAX.: 03-88889552



Ruj. Tuan :

Ruj. Kami : TPR/SPRM/S: 55

Tarikh : 3 Ogos 2016



Tetuan Shafee & Co.  
Peguambela & Peguamcara  
Chambers Twenty-Five  
No. 25 Jalan Tunku, Bukit Tunku  
50480 Kuala Lumpur

**TANPA PREJUDIS**

Tuan,

**Per: Siasatan Terhadap Tun Yang Terutama Tun Pehin Sri Abdul Taib Mahmud ("TYT Tun") Oleh Suruhanjaya Pencegahan Rasuah Malaysia (SPRM)**

Saya merujuk kepada surat tuan bertarikh 26 Julai 2016.

2. KS telah ditaklimatkan kepada YBhg. Tan Sri Dato' Sri Peguam Negara pada 2 Ogos 2016. Kesemua KS yang melibatkan TYT Tun telah diarahkan untuk KUS dan dirujuk kepada Bahagian Pemeriksaan dan Perundangan SPRM.

Sekian, terima kasih.

**'BERKHIDMAT UNTUK NEGARA'**

Saya yang menurut perintah

( MOHD JAZAMUDDIN BIN HJ. AHMAD NAWAWI )  
Pengarah  
Bahagian Perundangan dan Pendakwaan  
Suruhanjaya Pencegahan Rasuah Malaysia

- s.k**
1. YBhg. Tan Sri Dato' Sri Haji Mohamed Apandi bin Ali  
Peguam Negara, Jabatan Peguam Negara
  2. YBhg. Datin Paduka Ketua Bahagian Pendakwaan  
Jabatan Peguam Negara
  3. YBhg. Dato' Haji Azam bin Baki  
Pengarah Bahagian Siasatan SPRM

# TRANSLATION

**LEGAL AND PROSECUTION DIVISION  
HEADQUARTERS  
MALAYSIAN ANTI-CORRUPTION COMMISSION  
LEVEL 6, BLOCK D6, COMPLEX D,  
PUSAT PENTADBIRAN KERAJAAN PERSEKUTUAN,  
PETI SURAT 6000  
62007 PUTRAJAYA**

---

Messrs Shafee & Co.  
55

Our Reference: TPR/SPRM/S:

Advocates & Solicitors  
Chambers Twenty-five  
No. 25, Jalan Tunku, Bukit Tunku  
50480 Kuala Lumpur

Date: 3rd August 2016

**WITHOUT PREJUDICE**

Sir,

**Re: Investigation Towards Tun Yang Terutama Tun Pehin Sri Abdul Taib Mahmud  
("TYT Tun") By Malaysian Anti-Corruption Commission (MACC)**

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We refer to your letter dated 26th July 2016.

2. On 2nd August 2016, the Attorney General has been briefed on the Investigation Papers (IP/KS). All Investigation Papers involving TYT Tun were ordered for "NO FURTHER ACTION (NFA)" and to be referred to the Inspection and Consultancy Division of MACC.

Thank you.

**'ACTING FOR THE NATION'**

Your obedient servant,

**(MOHD JAZAMUDDIN BIN HJ. AHMAD NAWAWI)**  
Director  
Legal And Prosecution Division  
Malaysian Anti-Corruption Commission

c.c 1. YBhg. Tan Sri Dato' Sri Haji Mohamed Apandi bin Ali

**Attorney General, Attorney General Chambers**

- 2. YBhg. Datin Paduka Head of Prosecution  
Attorney General Chambers**
- 3. YBhg. Dato' Haji Azam bin Baki  
Director of Investigation, MACC**