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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

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

Applicants

- and -

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

Respondents

FACTUM OF THE RESPONDENTS ROYAL BANK OF CANADA AND THE TORONTO-DOMINION BANK
(Application for a *Norwich Pharmacal* Order, returnable February 5-6, 2018)

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FACTUM OF THE RESPONDENTS ROYAL BANK OF CANADA AND THE TORONTO-DOMINION BANK

PART I - INTRODUCTION

1. The Applicants impermissibly seek a *Norwich Pharmacal* order in aid of a contemplated private criminal prosecution. Their request for such relief runs contrary to settled law and attempts to sidestep the constitutional constraints Parliament has seen fit to place on the investigation of criminal proceedings. If the novel relief sought on this Application were granted, it would provide an unprecedented path for virtually anyone, from anywhere, to knock at the doors of Canadian financial institutions like the Respondents, seeking broad, ill-defined production of confidential financial information on the mere and speculative suspicion of criminal wrongdoing. This Court should not exercise its discretion to allow an equitable remedy to be employed for this purpose.

PART II - THE FACTS

2. Royal Bank of Canada ("**Royal Bank**") and The Toronto-Dominion Bank ("**TD Bank**") are both chartered banks pursuant to the *Bank Act*, R.S.C. 1991, c. 46, and listed in Schedule I thereto.

3. Royal Bank and TD Bank adopt and rely on the recitation of facts as set out in the factum of 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., Ridgeford Properties Limited, Ridgeford Developments Limited, Wallysons Inc. and Sitehost Pty Limited (the "**Affected Third Parties**"), and recite the following facts as supplementary to those set out in the Affected Third Parties' factum.

4. The Applicants seek production of, *inter alia*, "account information", broad categories of information relating to mortgages and loans, including entire mortgage and loan files, and "information, documents, and account statements" relating to the source of funds held in accounts by the Affected Third Parties and others affiliated with them, used by them toward down payments on property, and used by them to repay loans.[1]

5. The Applicants take the position that the above production is information they require to determine "whether there are reasonable grounds for a private prosecution and [identify] the individuals and entities against whom such prosecution should be brought" in connection with

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[1] Draft Order, Schedule E to the Factum of the Applicants, dated January 23, 2018 [the "**Applicants' Factum**"].

suspected money laundering of proceeds of crimes they allege have been committed in Malaysia.[2] However, they have not established the commission of a crime in Malaysia, nor do they have sufficient evidence of wrongdoing to establish that conduct occurred in Malaysia that, if it had occurred in Canada, would be considered a crime here.[3]

6. In February 2017, after receiving the fruits of the Applicants' investigation into the Affected Third Parties suspected criminal activity, the RCMP concluded that "there is no proof of violation of the law which would allow [it] to prosecute a case."[4]

PART III - ISSUES AND THE LAW

7. The issues on this application are:

(a) Whether a *Norwich Pharmacal* order can properly be used in aid of a private criminal prosecution. Royal Bank and TD Bank submit that it cannot.

(b) Whether a *Norwich Pharmacal* order should nonetheless be granted in the specific circumstances of this case. Royal Bank and TD Bank submit that it should not.

8. Royal Bank and TD Bank adopt and rely on the law as set out in the factum of the Affected Third Parties, and submit the argument below as supplementary to that set out in the Affected Third Parties' factum.

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[2] Applicants' Factum, at para. 8.

[3] Royal Bank and TD Bank repeat and rely upon the facts as set out by the Affected Third Parties in this regard.

[4] Transcript of Cross-examination of Lukas Straumann (January 9, 2018) [the "**Straumann Cross**"], p. 184; pp. 224-249, Supplementary Responding Application Record of the Affected Third Parties ["**Supplementary Responding Record**"], Tab A.

A Norwich Pharmacal Order is Not an Appropriate Remedy for the Stated Purpose

9. A *Norwich Pharmacal* order is an equitable civil remedy that is not applicable to the criminal proceeding in aid of which the Applicants seek to employ it. It is an evidentiary order permitting a party that has, or believes it may have, a civil cause of action against another to gather various types of information it may require to formulate its pleading.[5] On the rare occasions on which *Norwich Pharmacal* orders have been granted in Canada for that purpose, the Courts have held that they are available as a form of pre-***action*** discovery, and the Court of Appeal has said that they "co-exist with the *Rules of Civil Procedure*".[6]

10. The Applicants recognize that a *Norwich Pharmacal* order is a civil remedy that has never been used in aid of a criminal proceeding in Ontario.[7] They have also given evidence establishing that any civil claims they might have had in connection with the subject matter of their proposed criminal prosecution would be statute-barred.[8] They now nonetheless seek to use this civil remedy in order to target their long-time political adversary criminally,[9] all the while implicating four major Canadian financial institutions in these proceedings.

11. The Applicants cite some U.K. authorities[10] for the proposition that a *Norwich Pharmacal* order may also be used in aid of a criminal proceeding. This Court does not need to look to a foreign jurisdiction for guidance on whether such an extension of the law is appropriate in Canada: the issue has been decided by this Court in jurisprudence post-dating the U.K.

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[5] See the leading Ontario Court of Appeal authority on *Norwich Pharmacal* orders, *GEA Group AG v. Ventra Group Co. et al.*, 2009 ONCA 619, at para. 100, Brief of Authorities of the Respondents, Royal Bank of Canada and Toronto-Dominion Bank ["**BOA**"], Tab 3.

[6] *Ibid*, at para. 52.

[7] Applicants' Factum, at para. 40.

[8] Straumann Cross, at e.g. pp. 237-238, Supplementary Responding Record, Tab A.

[9] Straumann Cross, at p. 174, Supplementary Responding Record, Tab A.

[10] Applicants' Factum, at paragraphs 40-43.

authorities upon which the Applicants rely. In the 2010 decision of *Ontario (Attorney General) v. Two Financial Institutions*,[11] Brown J. (as he then was), held that "***Norwich orders should not be used for purposes of criminal investigation***".[12]

12. The Applicants' attempt to distinguish Justice Brown's decision in order to avail themselves of a *Norwich Pharmacal* order for this purpose cuts to the very heart of the reason why it should *not* be available to them. At paragraphs 48-49 of their factum, they argue that, unlike the applicant Attorney General in that case, "the [private party] applicants cannot utilize the *Criminal Code*'s search warrant provisions", and that therefore Justice Brown's rationale does not apply here, nor does the *Canadian Charter of Rights and Freedoms*.[13]

13. On the contrary, Justice Brown's rationale applies here, and perhaps with even greater force. His decision cannot fairly be read as saying that the Attorney General "was able"[14] to use the *Criminal Code*'s search warrant provision in order to investigate crimes, and therefore simply did not *need* recourse to a *Norwich Pharmacal* order for this purpose; rather, the decision emphasizes that the Attorney General *must* use the appropriate tools when investigating crimes. The "reasonable grounds" requirement in the *Criminal Code* search warrant provision[15] is a constitutional requirement in Canada addressing the *Charter* rights of those targeted by search warrants in aid of criminal proceedings.[16] Parliament has seen fit to limit the use of this remedy to state actors, such that the *Charter* clearly applies to the act of forced search and seizure in aid of a criminal proceeding. This rationale cannot properly be circumvented by bending a *civil*

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[11] 2010 ONSC 47, at para. 37, BOA, Tab 5.
[12] *Ibid*, at para. 37 [emphasis added].
[13] Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the "***Charter***").
[14] As the Applicants put it at para. 48 of their factum.
[15] R.S.C., 1985, c. C-46, s. 487(1).
[16] TD Bank and Royal Bank refer to the argument of the Affected Third Parties in this regard.

remedy to achieve the same substantive result, simply because a private party suspects a crime may have been committed.

14. To permit the proposed use of the remedy would be particularly perverse in the circumstances of the present case, where the RCMP, a state actor that would be in a position to obtain a search warrant if reasonable grounds were established, reviewed the fruits of the Applicants' investigation and concluded that there was no evidence of a violation of the law sufficient to permit it to prosecute a case.[17]

15. Finally, the degree to which the order sought would only serve to circumvent the applicable constitutional protections is thrown into sharp relief when one considers that, if the Applicants' private prosecution were to pass muster at the pre-enquete stage and proceed to a preliminary inquiry and prosecution on an indictable offence, the Crown would be *required* to take over the prosecution. The *Crown Attorneys Act*[18] provides that "[t]he Crown Attorney…***shall***…conduct, on the part of the Crown…preliminary hearings of indictable offences and prosecutions for indictable offences."[19] As a result, to permit the Applicants' proposed use of this remedy in aid of a private criminal prosecution is to functionally create a new, sub-constitutional standard for the investigation of indictable crimes prosecuted by the Crown in Ontario.

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[17] Straumann Cross, at pp. 224-229 and pp. 247-249, Supplementary Responding Record, Tab A.

[18] R.S.O. 1990, c. C.49.

[19] *Ibid*, at s. 11(b). Contrast this mandatory provision with the discretion the Crown Attorney in Ontario is afforded to only take over the prosecution of privately-laid summary conviction matters "where in his or her opinion the public interest so requires" (s. 11(e)).

The Test for the Appropriate Remedy is Not Met

16. The Applicants' suspicions do not rise to the level of having reasonable grounds to believe a crime has been committed, as required for the purposes of the substance of the relief they seek (i.e. a search warrant in aid of criminal proceedings).

17. The fact that the Applicants have not met this requirement is betrayed by the manner in which they frame the relief they seek. They argue that the documents sought are "***required to determine whether there are reasonable grounds*** for a private prosecution". [20] That is to say they do not, at present, have reasonable grounds to believe a crime has been committed.

18. Indeed, on cross-examination, the Applicants gave admissions that the bases for their theory of wrongdoing were: i) derived from discussions with a disgruntled former employee whose psychiatric condition rendered him paranoid and delusional;[21] ii) "circumstantial";[22] iii) derived from unproven pleadings in other proceedings;[23] iv) materially misstated;[24] and v) unsubstantiated hearsay.[25]

19. A consideration of the Applicants' proposed use of the records sought is illustrative of how far short this Application falls of the reasonable grounds standard. In order to obtain account statements and similar banking records to trace funds suspected of being the laundered proceeds of crime, the commission of that suspected crime needs to be articulated with sufficient particularity so as to make clear what one would be looking for in the bank statements. There

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[20] Applicants' Factum, at para. 4.
[21] Straumann Cross, at e.g. p. 48, ll. 1-20; p. 69, ll. 1-22; pp. 70-73; p. 83; pp. 87-89, Supplementary Responding Record, Tab A.
[22] *Ibid*, at p. 26, l. 18.
[23] *Ibid*, at p. 27, ll. 1-4.
[24] *Ibid*, at e.g. p. 37, ll. 5-23; pp. 65-66; pp. 81-82; pp. 84-85, pp. 117-119.
[25] *Ibid*, at p. 61, ll. 3-22.

also needs to be sufficient reason to believe that the relevant information would be found in those bank statements.[26] An apt analogy can be drawn to the law of equitable tracing, which does not provide the plaintiff with a *carte blanche* to obtain broad and general disclosure of the state of the defendants' assets, but rather, requires the plaintiff to identify the *specific* assets into which *specific* funds can be traced.[27]

20. In contrast to this standard, the Applicants' suspicions of criminal wrongdoing are impressionistic and general, drawn from a correlation between the Affected Third Parties' association with both a foreign government and a real estate business in Canada over the course of many years. Rather than identifying the particulars of the suspected crimes being investigated and the reasons for which the Respondents can be expected to hold evidence of the commission of those particular crimes, the Applicants speculate that the records sought will "likely have important information relevant to evaluating whether there are reasonable grounds for a private prosecution."[28]

21. Even if the Applicants had sufficient evidence of commission of a crime in Malaysia, which they do not,[29] cross-examination on this Application revealed that the Applicants' reasons for believing that any funds held in Canada can ultimately be traced back to Malaysia,

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[26] See e.g. *R. v. Turcotte* (1987), 39 C.C.C. (3d) 193 (Sask. C.A.), BOA, Tab 7, in which the accused was seen negotiating a cheque of the type that was stolen in a particular theft a month prior. In that theft, a chequebook containing that type of cheque was stolen, along with a number of other items. A search warrant for all of those items was issued for the accused's residence. It was found to be a warrantless search on appeal, since there was no evidence that the particular cheque the accused was seen attempting to negotiate was from that stolen chequebook. The Applicants' ability to identify *a particular instance* of a commission of a crime, and a specific reason to believe that monies flowing through accounts held by Royal Bank and TD Bank represent the laundered proceeds *of that crime*, falls far short of even the level of particularity and established nexus found to be insufficient in *Turcotte*.

[27] See e.g. Master Dash's commentary in *Lafarge Canada Inc. v. McAdoo Auto Parts Ltd.*, 2009 CarswellOnt 338 (Sup. Ct. J.), at para. 15, BOA, Tab 4.

[28] Applicants' Factum, at para. 64.

[29] Royal Bank and TD Bank specifically repeat and rely on the argument of the Affected Third Parties in this regard.

supposedly via Hong Kong, are not supported by any evidence.[30] In the absence of more particularized reasons to believe that funds can be traced from particular instance(s) of the commission of a crime to a specific account held by either of the banks, or to specific property with respect to which they extended a mortgage or loan, the proposed evidentiary order takes on the appearance of a fishing expedition falling far short of the requirements of a criminal search warrant.

It Would be Inappropriate to Extend or Modify the Law to Grant this Application

22. It is clear that the law does not support the Applicants' position. There is good reason why this is so, and the law should not be bent to their purposes in the circumstances of this case. Institutions like Royal Bank and TD Bank, who hold vast quantities of confidential and sensitive information on behalf of millions of customers, should not properly be required to respond to evidentiary orders, particularly ones as broad as the order proposed on this Application, on any private party's speculation of criminal activity. In ordering that these proceedings be brought on notice to the Respondents and the Affected Third Parties, Justice Myers of this Court alluded to this concern, characterizing the relief as "extraordinary by any measure" and adding:

> Private parties do not have the right to obtain search warrants under the *Criminal Code*…Can ***anyone in the world*** just come to Canada, make an allegation, and obtain government sanctioned access to very private details about a resident or someone who does business here…?[31]

23. This general and principled concern is magnified on the particular facts of this Application, in which the Applicants come to this Court seeking equitable relief with unclean hands. On cross-examination, the Applicants conceded that they: i) have wilfully published on

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[30] Straumann Cross, at pp. 120-122, Supplementary Responding Record, Tab A.

[31] *Bruno-Manser-Fonds v. Royal Bank of Canada*, 2017 ONSC 5517, at paras. 11 and 14, BOA, Tab 1 [emphasis added].

the Internet a document authored by an OECD standards oversight body despite being explicitly informed that this document was non-public and provided on condition of confidentiality;[32] and ii) have participated in the Internet publication and dissemination of documents which they knew to be confidential to affiliates of the Affected Third Parties, and which were provided to the Applicants in breach of that confidence.[33] Even if the extraordinary relief they seek were available to a private party, this evidence demonstrates that the Applicants, in particular, cannot properly be entrusted with sensitive, confidential financial records.

24. The Applicants' history of misuse of confidential information highlights another, more general, defect in the legal underpinning of this Application, in that it fails to address how and whether the usual and expected restrictions on any collateral use of the produced documents – i.e. the deemed undertaking rule in the civil context and/or the test for disclosure set out in *P. (D.) v. Wagg*[34] in the criminal context – would apply for the protection of the parties producing them.

25. The Applicants rely on the Court of Appeal's decision in *R. v. Thornton*[35] for the proposition that documents obtained by a private actor for the purposes of a civil proceeding can properly be used by the Crown for the purposes of a criminal prosecution. However, this authority does not satisfactorily address the concern raised above. The Applicants ignore that the Court of Appeal assumed that such a use of the documents was a violation of both the deemed undertaking rule and the accused's *Charter* rights.[36] Notwithstanding this latter violation, the

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[32] Straumann Cross, at pp. 161-173, Supplementary Responding Record, Tab A.
[33] *Ibid*, at pp. 57-60.
[34] (2004) 239 D.L.R. (4th) 501 (Ont. C.A.) aff'g (2002), 61 O.R. (3d) 746 (Div. Ct.), BOA, Tab 6.
[35] 2016 ONCA 562, BOA, Tab 8.
[36] *Ibid*, at para. 8.

Court determined that it would not have excluded the evidence under section 24(2) of the *Charter* in the particular facts of that case, thereby upholding the criminal conviction and disposing of the issue on that appeal. Against the backdrop of their own admitted misuse of confidential information, the Applicants have failed to provide a satisfactory answer to the question of the restriction of any collateral use of any documents they would obtain from these proceedings, a question which is in turn raised by the uncertainty engendered by their novel application.

26. Finally, and in any event, the documents sought from Royal Bank and TD Bank would not assist in furthering the stated purpose. As discussed above, the record does not establish grounds to believe that the records sought would be of assistance in a tracing exercise. Nor is there reason to believe that they would provide any evidence that a crime has been committed at all, so as to provide the basis for an investigation of suspected laundering of the proceeds of crime. The Applicants have certainly not demonstrated reason enough to justify the unprecedented relief they seek.

The Production Sought is Vague and Overbroad and Impugns the Respondents' Confidentiality Interests

27. That the production order sought is a fishing expedition is reinforced by its proposed terms. The draft order is largely temporally unlimited. Aside from the list of approximately thirty corporate entities about whose accounts the banks would be required to produce information, the order also seeks account information and any "information, documents and account statements" relating to an unspecified set of entities meeting certain criteria, and potentially also including

private individuals.[37] This vague ask cannot properly be said to be in aid of the investigation of a specific instance, or even instances, of the commission of a crime.

28. This overbroad set of records sought also includes the Respondents' "entire file" with respect to mortgages and loans granted to certain parties. This provision would ostensibly extend so far as to comprise the Respondents' internal communications regarding their customers and their processes for granting, pricing, and setting terms for the provision of those services. To compel production of such records would trample on the Respondents' interest in keeping their security, anti-money laundering, and know-your-client protocols confidential, along with their commercially sensitive internal discussions about customers and product pricing.

29. In order to comply with an Order in the form sought, Royal Bank and TD Bank would be required to undertake significant internal inquiries in order to identify documents that correspond to the Order's broad and ill-defined scope, and then undertake further efforts to vet those records, including for various categories of privilege and statutory evidentiary protections applying to certain records in the possession of Canadian banks.[38] If this Court's discretion were bent to the purposes of foreign private parties who seek to compel Canadian banks to undertake such an exercise on mere speculation of illicit activity, there is the potential that a significant operational burden would be created for these institutions.

The Extreme Sensitivity of Banking Records Weighs Against the Relief Sought

30. These consequences become even more stark when considered in the context of the nature of the information being sought from Royal Bank and TD Bank, namely, non-publicly

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[37] Draft Order, Schedule E to Applicants' Factum, at para. 3(b).

[38] Such as those contemplated by the *Bank Act*, S.C. 1991, c. 46, s. 956.1.

available financial information. This type of information has been described by the Supreme Court of Canada as "extremely sensitive," being one of the types of private information that "falls at the heart of a person's biographical core." [39] Corporations also have confidentiality interests in their non-public financial records, including because they may be commercially sensitive. The non-disclosure of banking records has long been recognized as a central implied term of the bank's relationship with its customer.[40] In Canada, in addition to the banker's common law duties of confidentiality, personal financial information held by banks is further protected from disclosure and dissemination by statute.[41]

31. The extreme sensitivity of the banking records sought militates strongly against their production to the Applicants, particularly on the tenuous grounds on which they purport to be entitled to them. To permit this relief would have an adverse effect on the trust and confidence placed in the Canadian banking system and Canadian banks, who are expected to keep their customers' information confidential except in circumstances where required by law and where there is compelling reason for disclosure. There is no such compelling reason here.

PART IV - ORDER REQUESTED

32. For the foregoing reasons, Royal Bank and TD Bank request that this Application be dismissed with costs.

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[39] *Royal Bank of Canada v. Trang*, 2016 SCC 50, at para. 3, BOA, Tab 9.

[40] *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, 1987 CarswellOnt 760 (S.C.C.), at para. 55, citing *Tournier v. National Prov. & Union Bank of England*, [1924] 1 K.B. 461, 93 L.J.K.B. 449 (C.A.), BOA, Tab 2.

[41] *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of January, 2018.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Bruno-Manser-Fonds v. Royal Bank of Canada*, 2017 ONSC 5517
2. *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, 1987 CarswellOnt 760 (S.C.C.)
3. *GEA Group AG v. Ventra Group Co. et al.*, 2009 ONCA 619
4. *Lafarge Canada Inc. v. McAdoo Auto Parts Ltd.*, 2009 CarswellOnt 338 (Sup. Ct. J.)
5. *Ontario (Attorney General) v. Two Financial Institutions*, 2010 ONSC 47
6. *P. (D.) v. Wagg*, (2002) 61 O.R. (3d) 746 (Div. Ct.)
7. *R. v. Thornton*, 2016 ONCA 562
8. *R. v. Turcotte*, (1987) 39 C.C.C. (3d) 185 (Sask. C.A.)
9. *Royal Bank of Canada v. Trang*, 2016 SCC 50

SCHEDULE "B"

RELEVANT STATUTES

1. ***Bank Act,*** **R.S.C. 1991, c. 46**

Evidentiary privilege

956.1 (1) Prescribed supervisory information shall not be used as evidence in any civil proceedings and is privileged for that purpose.

2. ***Canadian Charter of Rights and Freedoms,*** **Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11**

LEGAL RIGHTS

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

3. ***Criminal Code,*** **R.S.C., 1985, c. C-46**

Information for search warrant

487 (1) A justice who is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in a building, receptacle or place

> (a) anything on or in respect of which any offence against this Act or any other Act of Parliament has been or is suspected to have been committed,
> (b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, against this Act or any other Act of Parliament,
> (c) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant, or
> (c.1) any offence-related property,

may at any time issue a warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant

> (d) to search the building, receptacle or place for any such thing and to seize it, and
> (e) subject to any other Act of Parliament, to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice for the same territorial division in accordance with section 489.1.

4. *Crown Attorneys Act,* R.S.O. 1990, c. C.49

Duties

11. The Crown Attorney shall aid in the local administration of justice and perform the duties that are assigned to Crown Attorneys under the laws in force in Ontario, and, without restricting the generality of the foregoing, every Crown Attorney shall,

…

to conduct prosecutions

(b) conduct, on the part of the Crown, preliminary hearings of indictable offences and prosecutions for indictable offences,

(i) at the sittings of the Superior Court of Justice where no law officer of the Crown or other counsel has been appointed by the Attorney General,

(ii) before provincial judges in summary trials of indictable offences under the Criminal Code (Canada),

in the same manner as the law officers of the Crown conduct similar prosecutions at the sittings of the Superior Court of Justice, and with the like rights and privileges, and attend to all criminal business at such courts;

…

cases brought by private prosecutors

(d) watch over cases conducted by private prosecutors and, without unnecessarily interfering with private individuals who wish in such cases to prosecute, assume wholly the conduct of the case where justice towards the accused seems to demand his or her interposition;

summary conviction matters

(e) where in his or her opinion the public interest so requires, conduct proceedings in respect of any provincial offence or offence punishable on summary conviction;

…

summary conviction appeals

(g) where in his or her opinion the public interest so requires, conduct appeals to the Superior Court of Justice for provincial offences and offences punishable on summary conviction;

…

5. *Personal Information Protection and Electronic Documents Act,* S.C. 2000, c. 5

Disclosure without knowledge or consent

7. (3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is

(a) made to, in the Province of Quebec, an advocate or notary or, in any other province, a barrister or solicitor who is representing the organization;

(b) for the purpose of collecting a debt owed by the individual to the organization;

(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

(c.1) made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that

(i) it suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,

(ii) the disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law,

(iii) the disclosure is requested for the purpose of administering any law of Canada or a province, or

(iv) the disclosure is requested for the purpose of communicating with the next of kin or authorized representative of an injured, ill or deceased individual;

(c.2) made to the government institution mentioned in section 7 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act as required by that section;

(d) made on the initiative of the organization to a government institution or a part of a government institution and the organization

(i) has reasonable grounds to believe that the information relates to a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, or

(ii) suspects that the information relates to national security, the defence of Canada or the conduct of international affairs;

(d.1) made to another organization and is reasonable for the purposes of investigating a breach of an agreement or a contravention of the laws of Canada or a province that has been, is being or is about to be committed and it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the investigation;

(d.2) made to another organization and is reasonable for the purposes of detecting or suppressing fraud or of preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect or suppress the fraud;

(d.3) made on the initiative of the organization to a government institution, a part of a government institution or the individual's next of kin or authorized representative and

> (i) the organization has reasonable grounds to believe that the individual has been, is or may be the victim of financial abuse,
>
> (ii) the disclosure is made solely for purposes related to preventing or investigating the abuse, and
>
> (iii) it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the ability to prevent or investigate the abuse;

(d.4) necessary to identify the individual who is injured, ill or deceased, made to a government institution, a part of a government institution or the individual's next of kin or authorized representative and, if the individual is alive, the organization informs that individual in writing without delay of the disclosure;

(e) made to a person who needs the information because of an emergency that threatens the life, health or security of an individual and, if the individual whom the information is about is alive, the organization informs that individual in writing without delay of the disclosure;

(e.1) of information that is contained in a witness statement and the disclosure is necessary to assess, process or settle an insurance claim;

(e.2) of information that was produced by the individual in the course of their employment, business or profession and the disclosure is consistent with the purposes for which the information was produced;

(f) for statistical, or scholarly study or research, purposes that cannot be achieved without disclosing the information, it is impracticable to obtain consent and the organization informs the Commissioner of the disclosure before the information is disclosed;

(g) made to an institution whose functions include the conservation of records of historic or archival importance, and the disclosure is made for the purpose of such conservation;

(h) made after the earlier of

> (i) one hundred years after the record containing the information was created, and
>
> (ii) twenty years after the death of the individual whom the information is about;

(h.1) of information that is publicly available and is specified by the regulations; or

(h.2) [Repealed, 2015, c. 32, s. 6]

(i) required by law.

BRUNO-MANSER-FONDS et al Applicants	and	ROYAL BANK OF CANADA, et al Respondents	Court File No. CV-17-578681-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM OF THE RESPONDENTS ROYAL BANK OF CANADA AND THE TORONTO-DOMINION BANK (Application for a *Norwich Pharmacal* Order, returnable February 5-6, 2018)

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