Motion to set aside plea

In the matter of the complaint of criminal harassment brought by an employee of the Government owned Canadian broadcasting Corporation, namely Ms. Wendy Mesley, the victim of the complaint being Myself Mr. Michael Chessman, the individual submitting this document in my own defense.

Submitted this 6th day of January 2010

Preamble:

It should be noted that while the Judge in this case (The Honourable Mr. Peter Harris) has previously suggested that assisting counsel should be available for "technical matters" that could arise needing any such assistance (possibly perhaps), it is clear that he is more recently insisting that on his obviously strong preference and desire for "other present" representation altogether, while the crown has most recently stated that they see no objections to my representing myself, from the governments point of view. My views are controversial to say the least, yet entirely Christianly in spirit and composition in fact. . As such I am continuing with my constitutional prerogative at this point of representing my own best interests as it would appear that I lack a friend in this profession at this point who could do any better I submit as the matters are complex and requiring an individual of conscience beyond any and all political considerations. I therefore am rejecting any attempt to substitute my own best representation in this court with any inferior efforts in this regard, lest they be lacking in good intent, and instead be capable of prejudicial engagement of great possible harm to my case, based on such maliciousness as could turn out yet again with different legal representation as has recently been my experience in this case I regret to say. The old adage "a man who represents himself has a fool for a lawyer" is my adequate reason for settling for my own counsel in this regard as I wish to be fooled no more.

Substantive comment

Not intended as seeking not to negate the comments of Judge Mr. Peter Harris in respect of the value of procedure, I must still state that it has long been my belief that such a focus can never be an adequate substitute for the desire for the right outcome, for real justice, and that any member of the legal profession armed with that basic sense of goodness will do his or her best with the facts in order to see through such a result, applying what rules of procedure are needed to aid the court in this regard, mainly with a view to ensuring a sense of decorum and engagement with sensibilities of common courtesy as required. As such I do not otherwise understand any emphasis on

this element of court proceedings other than that they allow for vagaries and insensibilities as rules are substituted for reasons, and good reasons are all we should ever be concerned with or the exercise becomes (sic) inane by comparison, as is my submission in all due respect. We should certainly avoid going down such a path of emphasis and this comment I make is for general purposes in expressing my views on such matters rather than a comment specifically as a rebuttal to Judge Harris's note of importance of procedures as he was too making the comment on generally as was my impression at the time. It is sufficient to remind the court that it is for this very reason that the "Courts of equity" were first established for this purpose in England, our guide in all such matters among those that seek to recognize common law traditions and be rightly held to them in the correct spirit.

Specifics of the motion

My motion seeks to have the "plea bargain" purported by former defense counselor John Scarfe to be in effect, to be set aside, on the following grounds:

> The sole basis for acquiring a signed document assigning ay blame or guilt to myself was that no bail could be granted without the coerced document. This was Scarfe's clear position in his dealings with the state towards me, not negated by anyone else in the court although I spoke out in open court against the tactic. As such it is fundamentally flawed as it is a tactic which must be disallowed for all the reasons that follow, including that all sense of fundamental fairness and due process is at once violated in the eyes of the seekers of justice and in terms of internationally understood such concepts for that matter; a note I make for this court here especially as this country seeks a better reputation than would be justified by the goings on as indicated here for this entire court proceeding, I submit.
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> Note: I was held under life threatening circumstances in a case that Crown Counsel Ms. Kozak stated clearly in open court, that I had already served the maximum possible sentence, (and in circumstances where I could not be proven guilty of the offence to begin with, but where even prima facie evidence was sorely lacking to have proceeded with any charges to begin with here, and for which reason the investigating officers who gave me no indication of what the basis for the charges were, or an opportunity to respond to them, are in fact guilty too of misconduct under the Police services act as is my contention already submitted to the Ontario Civilian commission on Police matters).

The case against me falls on the very basic aspects required for any case to succeed. As such no plea of guilt should have been acceptable to the court in the first place, nor should the embellishment of the document drafted by Scarfe et al have been sought for the purposes of "making it stick" as it were".

This is what the transcript of the case proceedings will clearly show as will any formal questioning of counsel that were present, and the witnesses observing such as court officers who came and went throughout the day.

The document drafted by Scarfe, has a logical fallacy contained therein, which in and of itself would be the sufficient basis for rejection of it by the court.

It is the error represented by the well known legal maxim (I have to recall this from my days in Pre-law study in Latin summer school at the University of Alberta some decades ago now) post hoc ergo proctor hoc

The fallacy that since one event may be followed by another should presuppose that one is in fact caused by the other and reasonably so.

I must emphasize the aspect of reasonable as that is what is missing here. I could grant that Ms. Mesley might have perceived a threat to herself in that I might have made public my concerns that she did not act with due regard for her own modesty or adequate regard to public standards in her video performance in a clip involving a man of African descent who clearly had a leering attitude throughout the affair.

This is a statement I signed in as “fair enough” to be guilty of communicating my objections to the performance I viewed on the Internet back then. However it fails to be a threat in the criminal sense in the following aspects:

In the first place, I have never made ANY such threat, to make public my concerns, as such no evidence exists that Ms. Mesley was ever so threatened or that to have even done so would be criminally culpable as criticism of such public figures in public performance is considered “par for the course” in any fair and decent society, provided that no malice is involved of a disreputable nature in sprit and in countenance too on the part of those involved (my own interpretation of added fairness in such matters). As such the case falls flat on its face, and any signed confession indicating that she could have come to such a perception, lacks actual culpability in that the presumption of guilt or responsibility for what are her own thoughts cannot be made since she is not able to directly attribute the perception to my own intent, actions, direct expressions, or lack of right to have expressed in legitimate fashion. There was never an element involving the criminal realm in this regard and the matter would have been resolved in civil fashion had statements ever have been made publicly that would have amounted to slander or defamation as that was always the only possible outcome a reasonable person would have been allowed to foresee.

There was therefore a **lack of** mens rea, and **no** actus reus and **due process** throughout this entire affair. Clearly bail was therefore unreasonably withheld in life threatening circumstances (only yesterday a report of escalating violence at the notorious Don prison where I was held for seven months, yet again made the local television news). No prima facie evidence was ever presented to justify these unreasonable charges and therefore the entire system stands accused of failing the cause of a good man, the best of men, I

submit, in what was an obvious witch-hunt against better views than pervade this nation at present.

I certainly intend on an action against the state to restore my good name and seek the award of monetary damages sufficient to deter the system from ever going down this path again. Any award I receive will be put into my donations campaign to better stock libraries with better material as has long been my undertaking with best efforts I have made in this regard in this city and elsewhere as the founder of the “Euro British coalition”, which maintains a website at britishcanada.org I require a sincere apology from all concerned.

Ms. Mesley was never even impolitely spoken to by me, my only rebuke was to indicate sadly that I lacked any further interest in her of a romantic nature, and I only kept up communications which were mainly directed to her lawyer Ms. Lara Spiers (who only months after herself declined further correspondence) to clarify any concerns that would have left Ms. Mesley's feelings in any hurt fashion. I indicated over some course of time the events that were taking place as we made efforts to comply with their demands to have her fan site removed from the Internet (which I had maintained to her benefit for years without so much as a thank you note directly related) and to have her video content etc withdrawn too. (Later I kept pointing to out to Lara in notes from my prison cell that charges against me bearing Wendy’s name couldn’t possibly be Wendy’s own doing -in my own view back then – I had yet to sober up as it were, and I thought they should be aware of what was being so preposterously asserted). The Honourable Judge made a wise decision in this case to not take a “strict liability” attitude to the previous direct communications to Wendy Mesley as representing harassment, however the judge has failed so far to recognize that it is sufficient that I indicated it unconscionable to proceed with the plea as purported to be valid by John Scarfe, to have had the plea struck before now, and the case against me thrown out as lacking in any real foundation, and in any aspect of fairness or validity in essence. This is disturbing to me as a man of idealism that is profoundly ingrained within my character on such matters as I wish to be heard on more clearly if need be, in this or any other court intent on relief.

I am therefore seeking the following alternative relief from the court:

1) A negating of the plea
2) A verdict instead, of acquittal on all counts

Failing either, I am making a formal demand for a verdict of mistrial or that the trial be allowed to proceed in a manner as to allow to present a defence and fairly so, on all matters raised, and to be allowed to be questioned thoroughly by the court and the Counsel for the crown to get to the heart of these matters (if need be at this point yet, and if in fact what have been my statements since the day of the so called “trial” have not already sufficiently spoken to the matters as required).

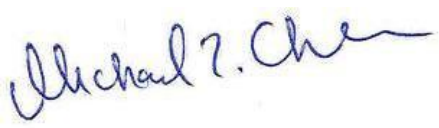
I also seek injunctive relief against Ms. Mesley making ay further statements or accusations against me, until this entire matter has been investigated by the SIU, and the Bar Association of Ontario. The Judicial Council too is aware

of my concerns. When my name is cleared, the publication ban granted by a judge indicating he was a friend of Ms. Mesley, be lifted too as all should be aware of this travesty at this point since I intent to sue the state to restore my good name and reputation in all such dealings as Ms. Mesley was privileged to partake of in her own benefit for the longest time.

It is my submission that MS. Mesley has never had a better friend publicly or in my supportive communications to her these past years. It is with deep regret that I must withdraw my unfound comments suggesting that she is in fact any better as a person in my view, in the end, than anyone else I could think of, thinking particularly of any that I've been a friend to in my lifetime even casually so. I was completely taken aback when I saw her for the first time in my life during the court proceedings as she seemed to lack all veracity and in fact and sense of duty t be fair to a better man than any she could possible have ever known.

I also submit that her entire testimony should be ignored by the court and negated as lacking in respect for rules of courtesy and fair play to the extent to daring to purport to read into the record statements from emails that never contained any such statements as she seemed simply to be indulging in her fantasies of winning without merit as it were. This was pointed out immediately at the time, however Scarfe was in the mood not for fair play but for horsing around and chose not to act on my better advice to inform the court to have her testimony halted in order to clarify the record. He was therefore incompetent for this reason clearly lacking in better judgment or competence to see a better man acquitted on charges that were in fact incompetently brought in the first place. Incompetent representation is therefore an added element of this case, seeking relief as I have indicated is within my rights to do. No rebuttal to Ms. Mesley was allowed for in the bid to shortcut an end with no defence presented as it was politically "alright" it would seem for the players involved, back then. That would never do. Time to set things straight. My thanks to the court and most especially Ms. Kozak, a great Christianly spirit in these proceedings too.

Respectfully,



Michael Thessman