

From: [Layton, David AG:EX](#)
To: Tomasson, Patti J AG:EX
Subject: RE: Fox - website is once again publicly available
Date: Sunday, May 15, 2022 3:26:23 PM

Hi [REDACTED]

In case I'm a witness regarding the website being publicly available, I can say that:

- At about 2:15 p.m. this afternoon I accessed the website www.desicapuano.com.
- The home page contained what I'll call an embedded "screen grab" from a CBC TV piece on Mr. Fox's case. The screen grab, when clicked, played the TV piece in question. I watched about 20 seconds at the beginning of the piece. I randomly clicked ahead on the player, and there was a bit in the piece where Mr. Fox was shown commenting on the website, which I assume from the context was one he had initially created.
- Still on the home page, below this link to the CBC piece was a posting that goaded or criticized the BC government for not obtaining a court order to take down the website.
- There appeared to be one or more other postings on the website that ostensibly post-dated Mr. Fox's release from jail this past April 17. One of those postings had a link to a transcript from his most recent trial, in February 2022. I clicked on the link, and the cover page of the transcript came up. Another posting had a title that was critical of Judge Denhoff's reasoning in convicting Mr. Fox.
- The website had sections addressing all of Mr. Fox's breach of probation trials, including the most recent one.
- The website appeared to contain documents from Mr. Fox's appeals, including Mr. Fox's notice of appeal, many letters written by me, my memorandum of argument filed in the late spring or early summer of 2021 on Mr. Fox's s. 684 applications, and an affidavit that Mr. Fox had filed on these s. 684 applications. I didn't click on the links to see whether they were active.
- The website had an entry for Chris Johnson, including a link that led to further information. I skimmed this further information, which was critical of Chris. It included a description of an event in court where Mr. Fox said that Chris suggested that Mr. Fox wasn't being accurate when he said that some disclosure that he had received was encrypted. There was a link to the disclosure and the reader was invited to click the link to confirm that the material was in fact encrypted. I didn't click the link.
- The website had an entry for me, which included a photo that I believe is publicly available from media coverage of the Ivan Henry case. But the link for more information about me wasn't accessible.
- The website had an entry for Zoe Zwanenburg, who had acted as s. 684 counsel for Mr. Fox on a limited appointment in the fall of 2021. As with the entry for me, the link for more information about her wasn't accessible.
- I saw a section criticizing the Crown for mistakenly disclosing material from another case to Mr. Fox, and describing Mr. Fox's questioning of DC Dent on this point. A link in this section, which I clicked, led to what appeared to me to be disclosure materials.
- I spent about 10-15 minutes in total looking at the website. I tried to access it again perhaps 15-20 minutes later, but I could no longer reach it. Rather, my computer said that the site

would not load.

From: Tomasson, Patti J AG:EX
Sent: Sunday, May 15, 2022 2:56 PM
To: Layton, David AG:EX <David.Layton@gov.bc.ca>;
Subject: Re: Fox - website is once again publicly available

We will get the Forensic video unit at VPD to look into it. Thanks.

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From: Layton, David AG:EX <David.Layton@gov.bc.ca>
Sent: Sunday, May 15, 2022 2:54:26 PM
To: Tomasson, Patti J AG:EX
Subject: RE: Fox - website is once again publicly available

It seems like it's not available at all.

From: Tomasson, Patti J AG:EX
Sent: Sunday, May 15, 2022 2:53 PM
To: Layton, David AG:EX <David.Layton@gov.bc.ca>
Subject: Re: Fox - website is once again publicly available

Is it password protected again or not online at all?

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From: Layton, David AG:EX <David.Layton@gov.bc.ca>
Sent: Sunday, May 15, 2022 2:51:02 PM
To: Tomasson, Patti J AG:EX
Subject: RE: Fox - website is once again publicly available

Weird – I just checked again and it's no longer available online.

From: Layton, David AG:EX <David.Layton@gov.bc.ca>
Sent: Sunday, May 15, 2022 2:37 PM
To: Tomasson, Patti J AG:EX
Subject: RE: Fox - website is once again publicly available

I'm not going to poke around any more at this point, but there are some other new postings, and

they include references to disclosure, and what appears to be a link to at least some disclosure. If disclosure has been loaded on to the website and then made publicly accessible, this may be a breach of the provincial court order obtained in December 2021 (attached). (Although the disclosure in question was likely received by him before that order was made, and it might have been put on to the website, but not made publicly accessible, at an earlier date as well.)

From: Tomasson, Patti J AG:EX
Sent: Sunday, May 15, 2022 2:29 PM
To: Layton, David AG:EX <David.Layton@gov.bc.ca>
Subject: Re: Fox - website is once again publicly available

David,

Thanks for the information. I will let the police know.

Patti

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From: Layton, David AG:EX <David.Layton@gov.bc.ca>
Sent: Sunday, May 15, 2022 2:27:57 PM
To: Tomasson, Patti J AG:EX
Subject: Fox - website is once again publicly available

Hi

I was checking this afternoon, and www.desicapuano.com is again available to the public. The home page now prominently features a CBC TV story about Ms. Capuano's inability to get the website taken down, and includes a new message goading the BC government about the continued accessibility of the website.

(I'm assuming that Mr. Fox took steps to make the website available only with a password prior to his release from jail on April 17, then put it back online at some point more than 72 hours after his release, because he takes the position that doing so complies with Condition 4 of Judge Denhoff's probation order. I'm not sure what his argument will be regarding Condition 6 of the probation order, but perhaps he takes the position that the Crown can't prove that he had any role in making the website once again accessible to all members of the public.)

David Layton, Q.C. | Crown Counsel
Ministry of Attorney General
BC Prosecution Service
Criminal Appeals & Special Prosecutions



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