Notice of Appeal Form 61A

File#: _____

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

JOEL ALLAN SUMNER

(Appellant)

-AND-

THE LAW SOCIETY OF UPPER CANADA

THE TORONTO POLICE SERVICES BOARD

MALCOM MERCER

BARBARA MURCHI

JOHN KOCHIS

(Respondents)

NOTICE OF APPEAL

THE APPELLANT APPEALS to the Court of Appeal for Ontario from the judgment of the Honourable Justice of the Superior Court Of Justice dated October 16, 2017 from the Superior court in New Market, Ontario.

THE APPELLANT ASKS that the final order be overturned and that Mr. Sumner's chose-in-action is reinstated and he is given the right to a jury, that holds the right to decide facts with oversight from a Judge, who holds the right to provide instructions to the jury regarding the rule of law in accordance with statutes and stare decisis.

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THE GROUNDS OF APPEAL are as follows:

(1) Mr. Sumner held a claim that he was badly injured when while in his house and without breaking any laws men with guns suddenly burst in and threatened to blow his head off if he did not stop.Mr. Sumner was again badly injured when these men assaulted him, battered him, kidnapped him, and maliciously prosecuted him for crime in order to provide the colour of right to their unlawful violence against his person.

(2) Mr. Sumner then suffered the greatest indignity and damage to his life that he could have possibly imagined. Mr. Kochis obstructed his ability to obtain justice by shaking him down and extorting him for his right to sue.

Mr. Kochis corruptly threatened Mr. Sumner that he would take or withhold official acts that would harm his reputation if he did not put his signature on a piece of paper that purported to transfer his rights (property) for private third-party benefit without Mr. Sumner receiving nor waiving his right to a trial during a criminal cause. Mr. Sumner then involuntarily and unjustifiably paid out of fear of Mr. Kochis' threat. Mr. Kochis in essence made it a crime not to pay, for Mr. Sumner had to fear a criminal cause if he did not pay.

(3) Mr. Kochis actions have devastated Mr. Sumner's life. How could anybody feel safe in their home when they know men with guns can suddenly burst into your home and threaten to blow your head off, but if you want to peacefully and orderly petition the Courts for a redress of grievances you will be threatened with a criminal prosecution? And if you resist stealing by way of extortion by prosecutors, your resistance will be met with overwhelming force by the Law Society of Upper Canada and the Toronto Police Services Board.

(4) Could it be that a conviction is not a punishment, but rather a conviction is what gives Government property that can now be both exercised and enforced through public officials?

(5) Mr. Sumner was further injured when the Law Society of Upper Canada, Malcom Mercer, Barbara Murchi, and the Toronto Police Services extorted and robbed him in violation of Canadian Criminal Code sections 343 and 346 by threatening violence and using violence in the form of official acts against Mr. Sumner's person and property to overcome his resistance to what they knew was stealing by way of extortion.

Even if Mr. Sumner cannot use the courts like a human being, is he not entitled to seek assistance to make a citizen's arrest? Mr. Kochis who Mr. sumner has been endeavouring to arrest for the crimes of extortion, interferring with commerce through threats or violence, mail fraud, wire fraud, and racketeering lives in California. California Penal code section 839 says "Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein. Mr. Kochis remains at large.

(6) Could it be that the law against resisting an arrest comes from the fact that it is a trespass to interfere with a person's right to make an arrest against another who has in fact committed a felony, such as Mr. Kochis? Yet this is what the Law Society of Upper Canada, the Toronto Police Services, Malcom Mercer, and Barbara Murchi do, is interfere by way of threats or violence with what they know is a lawful endeavour to arrest a felon.

(7) The Supreme Court of Canada in explaining what a citizen could do when endeavouring to make a lawful arrest at common-law (and at least partially today under Canadian Criminal Code 8(3)) said in *R. v. Asante-Mensah*, 2003 SCC 38 para 37:

> "[a]ny private person (and a fortiori a peace officer) that is present when any felony is committed, is bound by the law to arrest the felon; on pain of fine and imprisonment, if he escapes through the negligence of the standers by. And they may justify breaking open doors upon following such felon: and if they *kill him*, provided he cannot be otherwise taken, it is justifiable; though if they are killed in endeavoring to make such an arrest, it is murder.

(8) When dismissing a claim "[t]he facts alleged should be taken as true. See *Sentinel Hill Production (1999) Corporation v. Her Majesty the Queen* 2007 TCC 742. The Court may only strike the pleading in cases where it is plain

and obvious that the Appeal will lose and "the case is beyond doubt." *Operation Dismantle v. The Queen* [1985] 1 SCR 441.

(9) The Judge who dismissed Mr. Sumner's action, acted corruptly in violation of Canadian Criminal Code section 346, by using official acts--which are coercive--to obtain property (Mr. Sumner's thing-in-action) without legal justification because the benefit was not solely for the Government. Mr. Kochis, Malcom Mercer, and Barbara Murchi (and probably the Law Society) are all private third-parties who benefited from the obtaining of Mr. Sumner's chose-in-action with official acts. Is it not true that Mr. Sumner's action is an exercise of his property and any interference with his thing-in-action is a trespass?

(10) Could it be that the right to recover money damages by judicial proceeding against another is a chose-in-action and therefore a form of personal property and it has been this way since common-law? Could it be that a chose-in-action is just a claim? Like money is a chose-in-action because money is a claim on goods and services. Or is the case just beyond doubt and it is clearly not a form of personal property, which would mean that it is not a right, but I guess a privilege to be able to use the Courts? In *Foote v. Foote*, [Civ. No. 9609. Third Dist. May 18, 1959.], the California Appellate Court said:

> The cause of action sought to be asserted by plaintiff, being a right to recover payment for damages, is a chose in action, as defined by Civil Code, section 953, which provides that: 'A thing in action is a right to recover money or other personal property by a judicial proceeding.'

Section 248 of the Canadian Income Tax Act defines property as "property of any kind whatever whether real or personal, immovable or movable, tangible or intangible, or corporeal or incorporeal and, without restricting the generality of the foregoing, includes

- **(a)** a right of any kind whatever, a share or a chose in action,

(11) The Supreme Court of Canada said in *R v. Davies*, [1999] 3 SCR 759 at para 48:

> Extortion was originally a separate common law offence punishing the conduct of public officials who sought personal financial gain under colour of their office. It has since been statutorily expanded in some jurisdictions, such as Canada, to include more familiar forms of blackmail.

(12) The Supreme Court of the United States said in *Evans v United States*, 504 U.S. 255

> [a]t common law, extortion was an offense committed by a public official who took "by colour of his office" money that was not due to him for the performance of his official duties. A demand, or request, by the public official was not an element of the offense. Extortion by the public official was the rough equivalent of what we would now describe as "taking a bribe.

(13) Again in *Evans* at 266 the Supreme Court said “[courts] conclude that the coercive element is provided by the public office itself.” Lastly in *Evans* the Supreme Court said:

> As we explained above, our construction of the statute is informed by the common-law tradition from which the term of art was drawn and understood. We hold today that the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts.

(14) The Supreme Court of the United States said in *Wilkie v. Robbins*, 551 U.S. 537

> [t]he importance of the line between public and private beneficiaries for common law and Hobbs Act extortion is confirmed by our own case law, which is completely barren of an example of extortion under color of official right undertaken for the sole benefit of the Government.

(15) The Supreme Court also said in *Wilkie v. Robbins*, 551 U.S. 537 "Robbins is certainly correct that public officials were not immune from charges of extortion at common law."

(16) Lastly, the Supreme Court of the United States said in *Wilkie*

> *Whaley* was about a charge of extortion against a justice of the peace who wrongfully ordered a litigant to pay compensation to the other party as well as a small administrative fee to the court. Because the case involved illegally obtaining property for the benefit of a private third party, it does not stand for the proposition that an act for the benefit of the Government alone can be extortion.

(17) Even sitting Governors were not held above the rule of law, but instead were subjected to a jury when corruption was alleged. See *U.S. v. Blagojevich*, 794 F.3d 729 (2015) where the seventh Circuit Court of Appeals said "A jury was entitled to conclude that the money was for his personal benefit rather than a campaign."

(18) The Judge's order is an extortionate one because he threatened to use or used official acts to obtain property (Mr. Sumner's thing-in-action) unjustifiably because the benefit was not solely for the Government. The Judge's act was also unconstitutional because he obtained rights without fundamental Justice. No statute could authorize the Judge's order because any statute that authorized obtaining the enjoyment of property without due process of the law would be inoperative under the Bill of Rights.

(19) Could it be that when public officials obtain property with official acts solely for the benefit of Government in violation of a person's constitutional rights that would be an involuntary transfer? But when a public official obtains property with official acts not solely for the benefit of Government, that is a trespass, is unjustifiable, and is the ancient crime of extortion?

(20) Mr. Sumner did not make the extortion laws up, neither did the Supreme Courts. Our forefathers drew the term and understood its meaning at least a thousand years ago, and I highly suspect the laws date all the way back to

the antediluvian period. The Judge's order simply tosses out at least 1,000, if not 10,000 or more years of legal precedent in favour of corruption.

(21) Is there any chance the Supreme Courts and the common-law are correct about the extortion laws, or is the case beyond doubt and the Supreme Courts and common-law are plainly wrong? If the Supreme Courts and the common-law are plainly wrong, should it not be litigated to decide if the precise definition of the words "public corruption" means a public official threatening to use, or using, official acts to obtain property not solely for the benefit of Government?

(22) Could it be that at common-law Courts of equity enforced property rights while courts of law obtained property through a jury because of the extortion laws? Could it be that specific performance was in equity because there is no obtaining of property, but rather the enforcement of property rights and therefore official acts could be used? And could it be the reason an act for replevin was in law instead of in equity, is because property was obtained, rather than rights being enforced, so official acts could not be used?

(23) Could the Law Society of Upper Canada and Toronto Police Services have been infiltrated by organized crime that has a main purpose of shaking people down for property? What is the difference between the Law Society of Upper Canada and the prosecutor's office? In *United States v. Goot*, 894 F.2d 231, the seventh circuit Court of Appeal said

> Next, Goot argues that the district court erred by instructing the jury that the prosecutor's office can be an "enterprise" for RICO purposes. However, this argument has already been foreclosed, see. E.g., Yonan 800 F.2d at 167, and we decline Goot's invitation to reconsider this precedent.

Could it be that Mr. Sumner is entitled to punitive damages if he can prove that the Law Society of Upper Canada and Toronto Police Services Board are corrupt organizations?

(24) The Judge also obstructed justice in violation of Canadian Criminal code section 139(3)(a) which states "Without restricting the generality of subsection (2), every one shall be deemed wilfully to attempt to obstruct,

pervert or defeat the course of justice who in a judicial proceeding, existing or proposed,

- **(a)** dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence”

(25) The Judge, who is presumably a person and not a tyrant, acted corruptly and issued an order obtaining rights not solely for the benefit of Government that dissuaded Mr. Sumner from giving evidence in a proposed or existing judicial proceeding.

(26) The Supreme Court of the United States said in *Dennis v. United States*, 341 U.S. 494 (1951) “[w]hatever theoretical merit there may be to the argument that there is a ‘right’ to rebellion against dictatorial governments is without force where the existing structure of the government provides for peaceful and orderly change.”

(27) The Judge not only committed the crimes of extortion and obstruction of justice by issuing his order obtaining Mr. Sumner’s thing-in-action for the benefit of private third parties, but he also issued an unconstitutional and tyrannical order that denied a Governmental structure for peaceful and orderly change thereby giving Mr. Sumner the theoretical right to rebellion.

(28) How can we call ourselves a decent society, let alone a free one, if criminal defendants are worthy victims of police, prosecutors, justices of the peace, adjudicators, and Judges stealing from under the colour of official right and then overcoming resistance to stealing through threats, intimidation, or violence?

THE BASIS OF THE APPELATE COURT’S JURISDICTION IS:

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(a) Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

(b) The order appealed from is a final order.

(c) Leave to appeal is not required for this appeal.