

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ERWIN SINGH BRAICH in his personal capacity and in his capacity  
as the TRUSTEE OF THE PEREGRINE TRUST

PLAINTIFF

AND:

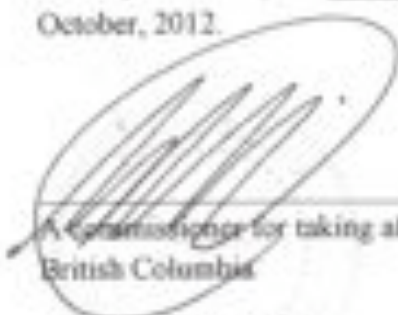
PUBLIC PROSECUTION SERVICE OF CANADA, GERRY SAIR,  
ROYAL CANADIAN MOUNTED POLICE (RCMP), WENDY SAINT-ONGE

DEFENDANTS

AFFIDAVIT

- 1.) I am the Plaintiff in the above noted action and have knowledge of the matters set-out herein and except where the same are stated to be based upon information and belief and where so stated I verily believe the same to be true.
- 2.) Attached hereto and marked as Exhibit "A" is a Statement of Claim dated October 12<sup>th</sup>, 2012.

SWORN BEFORE ME, at the City of  
Vancouver, in the Province of  
British Columbia, this 13<sup>th</sup> day of  
October, 2012.

  
A Commissioner for taking affidavits in  
British Columbia

SAHIB SIDHU  
NOTARY PUBLIC  
32090 South Fraser Way  
Abbotsford, BC V2T 3V7

  
Erwin Singh Braich  
Plaintiff

This is Exhibit "A" referred to in the Affidavit of  
Erwin Singh Braich

No.

Vancouver Registry

Sworn before me at Abbotsford, British Columbia,  
this 13<sup>th</sup> day of Oct. 2012

A Notary Public in and for the Province of British Columbia

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**SAHIB SIDHU**  
NOTARY PUBLIC  
12000 South Fraser Way  
Abbotsford, BC V2T 2V7

**BETWEEN:**

**ERWIN SINGH BRAICH in his personal capacity and in  
his capacity as the TRUSTEE OF THE PEREGRINE TRUST**

**PLAINTIFF**

**AND:**

**PUBLIC PROSECUTION SERVICE OF CANADA,  
GERRY SAIR, ROYAL CANADIAN MOUNTED POLICE (RCMP),  
WENDY SAINT-ONGE**

**DEFENDANTS**

**STATEMENT OF CLAIM**

**The Parties**

1. The Plaintiff is a businessman and resides at 33474 Kingsley Terrace, Abbotsford, British Columbia V2S 6J6, Canada.
2. The Defendant Gerry Sair ("Sair") was at all material times subsequent to 2008: the Crown counsel from the Public Prosecution Service of Canada in this matter.
3. The Defendant Wendy Saint-Onge ("Saint-Onge") was at all material times a member of the Royal Canadian Mounted Police ("RCMP"), holding the rank of Constable within the "E" Division of the RCMP in the city of Surrey in the province of British Columbia, Canada.

### Pattern of Events

4. On or about mid- 2001, a total of seven counts, all infractions pursuant to a Section of the *Bankruptcy and Insolvency Act*, were laid against Braich. Then this led to duplicitous Warrants for the arrest of Braich. The first of which was obtained by Brian McLean, as counsel for KPMG (the Trustee in Bankruptcy) on October 12, 2001.
5. The entire investigation was single-handedly performed by former Constable Tim Alder of the RCMP. His gross negligence laid the foundation for all seven counts.
6. It should be noted that the aforementioned arrest Warrant, as drafted by McLean, contains the footer 'g:\...files\walsh'. Furthermore, at a subsequent Supreme Court of British Columbia hearing; this Warrant was quashed by the Honourable Madam Justice Morrison in March 2004.
7. At this hearing the Honourable Madam Justice Morrison ruled that Mr. Brian McLean was indeed conflicted as per Braich's contentions from the outset. The Court further admonished the conduct of personnel from KPMG.
8. Insofar as the seven quasi-criminal charges are concerned; Braich was offered repeatedly, by various Crown Counsel, a plea bargain of admitting guilt to any one count only, which would result in a paltry \$500 fine. Braich refused to acquiesce.
9. At great personal pain and suffering for several years, in addition to in excess of \$200,000 spent on the services of defense lawyers (without quantitative success); Braich ended up representing himself before Associate Chief Provincial Court Judge Spence.
10. In anticipation of the scheduled three week trial; Braich issued over 70 subpoenas (including 5 to the Crown witnesses to ensure their attendance), and requested that the Court extend the length of the trial by two weeks. Mysteriously; the Crown decided to stay all charges on the eve of the scheduled trial.

11. In or about December of 2009, while on his way to meet with one of his American attorneys, Braich was turned back from the Sumas border crossing, and was not allowed to enter United States. This was the first time that Braich had ever been denied entry into the United States.
12. On July 2<sup>nd</sup>, 2010, Chief Executive Officer and President of Kingsgate Resources Inc. and a beneficiary of The Peregrine Trust, Satinder Paul Singh Dhillon ("Dhillon") was arrested for allegedly posting blogs, (by approximately 9 police officers), from his residence located in Abbotsford, British Columbia. Later the same day he was interrogated by Constable Ray Moos and Constable Geoffrey Holmes. The transcript of this interrogation is truly shocking and very revelatory as to the sphere of influence which KPMG and their respective counsel apparently have with government agencies and certain members of the judiciary.
13. On or about August 18<sup>th</sup>, 2010, a report was submitted to Crown counsel, Mr. Roger F. Cutler, of the Ministry of Attorney General for consideration of laying one or more criminal charges against Dhillon. One charge was laid in or about March, 2011, under the most obscure and archaic of laws. The 1600 plus pages of disclosure provided by the RCMP illuminates the waste of taxpayer dollars and further reveals the influence KPMG's counsel has with the Ministry of Justice.
14. On or about September 14<sup>th</sup>, 2010, Constable Wendy Saint-Onge and Corporal Michelle Baly attended at 33474 Kingsley Terrace and requested to speak to Erwin Singh Braich ("Braich"). Dhillon explained to them the circumstances surrounding Dhillon's arrest and the fact that Constable Ray Moos is already working on this case.
15. They both claim that they know nothing of the subject investigation, despite sharing the same office in Surrey, British Columbia. They insist that they have "one" question for Braich; on a totally separate matter.
16. On or about September 24<sup>th</sup>, 2010, Pradeep Chand from Toronto, counsel for Braich, contacted Saint-Onge, and requested via email and telephone, that any questions be directed to him. Saint-Onge refused to direct any questions to Braich's counsel.

17. On or about September 29<sup>th</sup>, 2010, Roger Cutler informed the RCMP that he needed more time to process the file with respect to Dhillon.
18. On or about September 29<sup>th</sup>, 2010, Constable Park called Dhillon despite knowing that Mr. Dhillon had a lawyer on record, and attempted to have Mr. Dhillon voluntarily come and grant an extension for the detention of the materials that were seized during his arrest.
19. On or about October 8, 2010, Constable Park and Constable Holmes attended at the residence of Dhillon. While there, they ask to speak to a relative of his. Constable Park claimed he was attending the Dhillon residence on yet another 'separate' matter and wanted to speak just to Mr. Dhillon's relative. This was absolutely absurd.
20. Despite Dhillon clearly stating on the telephone that he had retained a lawyer (which is attested to by Constable Holmes in an Affidavit), the RCMP continues to attend Mr. Dhillon's residence in person to deliver notice of a court application. Again totally inappropriate conduct.
21. When questioned, Constables Park and Holmes have no plausible explanation for arriving at the residence of Dhillon together, in the same car, at the same time.
22. On or about October 22, 2010, Counsel for KPMG, Mr. Howard Mickelson, attends a hearing, whereby he has no standing before the court, to convince a Provincial Court Judge in Abbotsford, British Columbia, to detain Dhillon's seized materials for longer than the 3 month period, as allowed by law.
23. To this day, the RCMP has not returned Dhillon's property. It is now approaching 28 months.
24. On or about March 30<sup>th</sup>, 2012, Constable Kerrie Thiessen and Constable Mike Stafford visit 33474 Kingsley Terrace, Abbotsford, British Columbia, looking for Braich.
25. Shortly thereafter, one of Braich's American attorneys, Hugh Berry, attempts to contact Constable Thiessen in her Surrey, British Columbia office. On or about May 17<sup>th</sup>, 2012 Constable Thiessen leaves a voicemail message for Hugh Berry.

26. On or about May 29<sup>th</sup>, 2012, Mr. Berry responds with a letter to Constable Thiessen, that all exchanges between them must be in writing. Not surprisingly, absolutely no correspondence follows.
27. On or about July 26, 2012, Braich learned from his mother and siblings about the existence of a new Warrant for his arrest.
28. On July 30, 2012, at 10:56 AM, Braich spoke to Constable Chung from the Mission, British Columbia, RCMP detachment. The police officer kindly told Braich details about the new Warrant. Constable Chung further advised Braich to contact somebody at the Provincial Commercial Crimes Section at 604-543-4990, in order to straighten matters out. He remarks to Braich "That is what lawyers do".
29. On or about August 16, 2012, Braich sends an email to Constable David Peck of the Mission RCMP detachment, directing him to send all relevant documents, including the "new" Warrant, to his lawyer, Mr. Rob Dhanu. Copies were also sent to other members in Mission and Surrey.
30. On or about August 23, 2012, Lindsay Eden from Mr. Dhanu's office, contacts the Crown Prosecutor's Office in Vancouver, British Columbia and inquires about the "new" Warrant. The person at the Prosecutor's office (Nancy) responds that the Warrant has been vacated on January 18<sup>th</sup>, 2012.
31. Astonishingly; the copy of a vacated Warrant is forwarded to Mr. Dhanu's office. However, the document has nothing to do with Mr. Dhanu's client (Braich).
32. On or about September 7<sup>th</sup>, 2012, Mr. Dhillon attends the offices of Mr. Dhanu, and is told that in fact the Public Prosecutor's office made a mistake and the Warrant is still, in fact, alive, and is Canada wide.
33. It is learned that Crown counsel Sair will be opposing bail as the "Count 2" is deemed "serious". Sair admits to Mr. Dhanu that "Count 1" is "no big deal." The two counts are alleged offenses of a Section of the *Bankruptcy and Insolvency Act*

and were committed between August 20, 2008 and April 15, 2010 at or near the City of Vancouver, and elsewhere, in the Province of British Columbia.

34. Dhillon is given an unsigned copy of the Information document by Dhanu and Sair promises that the signed copy would be delivered to Mr. Dhanu, before he leaves the office that same day. Some 24 days pass and no signed documents were forthcoming.
35. In the intervening 24 days, several emails were exchanged between Braich and Mr. Dhanu. Most of which were also sent to Sair, his assistant (Ms. F. Tolentino), and at least one email was copied to Mr. Roger Cutler.
36. The aforementioned email which was copied to Mr. Cutler was dated Wednesday, September 19, 2012 and contained approximately 10 paragraphs which dealt squarely with the alleged "Count 2" of the Information as described in the unsigned version. Every item as described in this email could be corroborated by many Officers of the Court.
37. As Braich had no counsel representing him at this time, during the week of September 24, 2012, Braich left several voicemail messages for Mr. Gerry Sair (at 666-5250) and his assistant Ms. F. Tolentino. None of his voicemail messages were answered.
38. On or about October 1<sup>st</sup>, 2012 – Mr. Braich's Toronto lawyer - Pradeep Chand - writes a letter to Sair requesting information relating to any outstanding Warrant. Furthermore, if there was an active Warrant for arrest, that it be rescinded due to all available information available to Crown counsel. No response was immediately forthcoming.
39. On or about October 4<sup>th</sup>, 2012, Pradeep Chand follows up with an email requesting a response.
40. On or about October 11<sup>th</sup>, 2012, Sair sends a fax to Pradeep Chand, stating that there has been a Warrant outstanding since July 18<sup>th</sup>, 2011. Sair finally forwards to Chand a copy of this Warrant. Sair also transmits to Chand, in Toronto, copies

reflecting Sair's improperly addressed emails to Chand as returned and marked "undeliverable."

41. Along with the items sent to Chand as outlined in paragraph 29, Sair forwards the signed version of the Information document which was promised to Mr. Dhanu. All explained above.
42. This aforementioned document was endorsed by Saint-Onge, allegedly on July 18, 2011.

### **Responsibilities of Crown Counsel**

43. One of the responsibilities of Crown counsel as set out in the Crown Counsel Act is charge assessment. This means that it is Crown's responsibility to review every report received from the police and decide whether or not charges should be approved.

There are two components to the charge approval standard: an evidentiary test, which requires there be a substantial likelihood of conviction, and a public interest test. The evidentiary test is met when Crown counsel is satisfied there is a strong, solid case of substance to present to the court. Once Crown counsel is satisfied that the evidentiary test is met, Crown counsel determines whether the public interest requires a prosecution. Criminal Justice Branch policy outlines the public interest factors in favour of a prosecution, those factors against prosecution and additional factors to be considered in the public interest.

Crown counsel does not investigate cases, that is the function of the police or, in some kinds of offences, other investigative agencies such as officers responsible for the enforcement of environmental protection legislation.

If the report from the police does not meet the evidentiary standard, Crown counsel may request further investigation from the police to determine whether that standard can be met.

If the evidentiary standard is met but Crown counsel is satisfied that a prosecution is not necessary in the public interest, Crown counsel can:



- not approve charges when it appears that no further action is required to protect the public or make the perpetrator accountable for their actions
- refer the accused to an alternative measures program (also called “diversion”) if the accused is an appropriate candidate for such a program and the public interest factors support referral of the particular individual to that program.

44. In this case, Crown Counsel has not and is currently still not acting in good faith.

45. Furthermore, pursuant to Chapter 49 of the Federal Prosecution DESKBOOK, the four-part test for determining whether a Crown servant qualifies for indemnification/legal assistance has not been met. This is outlined in section 49.3.

#### **Responsibilities of the RCMP**

46. The decision of a majority of the Supreme Court of Canada in *Hill v. Hamilton-Wentworth regional Police Services Board*, 2007 SCC 41, produced what is arguably a mixed result for law enforcement officers on the question whether – and in what circumstances – they may be found liable for conducting a negligent investigation. The majority decision, written by Chief Justice McLachlin, made headlines by confirming that the sort of negligent investigation forms a part of Canadian law.

47. Clearly, Braich has been plagued with investigative officers who have been grossly negligent since the beginning of this century.

48. The duty of care which has been owed to Braich is sorely lacking and could not meet the standard of a reasonable officer in a similar circumstance.

### Detrimental Timing Again

49. KPMG via their counsel Brian McLean, in an action by the *Peregrine Trust v Gowlings et al* (Action No. 0401-06677, Court of Queens Bench of Alberta, Judicial District of Calgary), sent copies of the bankruptcy documents to counsel opposing the Peregrine Trust action. Braich is the trustee of the Peregrine Trust, a trust created in British Columbia for the benefit of his children before he was petitioned into bankruptcy.
50. One would think counsel for the trustee would seek to preserve the claimed bankrupt's assets and related interests, instead of attempting to subvert his legal claim by assisting the defendants in the Alberta civil proceedings.
51. As noted above, the Peregrine Trust's lawsuit in Alberta has been augmented by a lawsuit which was filed by Kingsgate Resources Inc. A hearing is scheduled to take place in Calgary, Alberta on October 17, 2012, relating to both the Peregrine and Kingsgate lawsuits.
52. Certain defendants in the Alberta lawsuits are represented by Mr. Gerald Scott, QC, a partner at the firm Fraser Milner Casgrain LLP. This firm's Vancouver office has been heavily relied upon by KPMG and its counsel Mr. H. Mickelson.
53. Due to the harassment as outlined herein; Braich is unable to attend the hearing in Alberta and speak to the approximately 5,500 pages of material that has been filed, thus far, in Calgary.
54. At stake, in the Alberta lawsuits, is in excess of \$5 billion dollars (this calculation in no way reflects the Racketeer Influenced and Corrupt Organizations Act (RICO Act) claims related litigation, which will stem from American soil. If successful the RICO Act lawsuits will be awarded treble damages).

Braich's Ability to Travel Stymied and Obstructed

55. Due, in part, to the actions of the defendants named herein, Braich has been unable to travel to the United States of America.
56. At stake, in the United States of America, are various enterprises, in various stages, with an aggregate net value exceeding \$12 billion dollars.

Relief Sought

- 1.) General damages
- 2.) Special damages
- 3.) Past loss of opportunity
- 4.) Future income loss
- 5.) In the alternative, diminished earning capacity
- 6.) Aggravated damages
- 7.) Punitive damages
- 8.) Special injunctive relief to prevent further abuse of process against Braich
- 9.) Interest pursuant to the court order *Interest Act* RSBC 1996, Chapter 79, from the date of judgement or date of payment, whichever is sooner
- 10.) Costs
- 11.) Such further and other relief as this Honourable Court may deem

Dated this 12<sup>th</sup> day of October 2012.



Erwin Singh Braich  
Plaintiff