

Court File No. CV-22-683322

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**ROCCO GALATI**

Plaintiff

- and -

**DONNA TOEWS (AKA "DAWNA TOEWS"), KIPLING WARNER, CANADIAN  
SOCIETY FOR THE ADVANCEMENT OF SCIENCE AND PUBLIC POLICY  
("CSAPP"), DEE GANDHI, JANES AND JOHNS DOE**

Defendants

**MOTION RECORD OF THE MOVING PARTY DEFENDANTS**

(motion to strike affidavit material within section 137.1 motion returnable September 12, 2023)

April 12, 2023

**DEWART GLEASON LLP**  
102-366 Adelaide Street West  
Toronto ON M5V 1R9

Tim Gleason, LSO No.: 43927A  
Email: tgleason@dglp.ca

Amani Rauff, LSO No.: 78111C  
Email: arauff@dglp.ca

Telephone: (416) 971 8000

Lawyers for the named defendants

**TO: ROCCO GALATI LAW FIRM  
PROFESSIONAL CORPORATION**  
1062 College Street, lower level  
Toronto ON M6H 1A9

Rocco Galati, LSO No.: 29488Q  
Email: rocco@idirect.com  
Telephone: (416) 773 0309

Plaintiff on his own behalf

Court File No. CV-22-683322

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Defendants

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# Tab 1

Court File No. CV-22-683322

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**ROCCO GALATI**

Plaintiff

- and -

**DONNA TOEWS (AKA “DAWNA TOEWS”), KIPLING WARNER, CANADIAN  
SOCIETY FOR THE ADVANCEMENT OF SCIENCE AND PUBLIC POLICY  
 (“CSAPP”), DEE GANDHI, JANES AND JOHNS DOE**

Defendants

**NOTICE OF MOTION**

**THE DEFENDANTS** will make a motion to a judge on September 12, 2023, at 10:00  
a.m., or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** the motion is to be heard:

- ☐ in writing under subrule 37.12.1
- ☐ in writing as an opposed motion under subrule 37.12.1 (4);
- ☐ in person;
- ☐ by telephone conference;
- ☒ by video conference

at the following location: the courthouse at 330 University Avenue, Toronto, Ontario.

**THE MOTION IS FOR:**

- (a) an order striking:
- i. the first sentence of paragraph 39 of the affidavit the plaintiff affirmed on March 14, 2023 in response to the defendants' motion pursuant to section 137.1 of the *Courts of Justice Act* (respectively, the "Galati affidavit" and the "s 137.1 motion");
  - ii. paragraph 43 of the Galati affidavit;
  - iii. the final sentence of paragraph 44 of the Galati affidavit;
  - iv. the final sentence of paragraph 61 of the Galati affidavit;
  - v. the final sentence of paragraph 64 of the Galati affidavit;
  - vi. paragraph 75 of the Galati affidavit;
  - vii. subparagraph 82(a) of the Galati affidavit;
  - viii. subparagraph 83(b) of the Galati affidavit;
  - ix. subparagraph 90(e) of the Galati affidavit;
  - x. subparagraph 124(a)(v) of the Galati affidavit;
  - xi. exhibit "S" to the Galati affidavit;
  - xii. paragraph 20 of the affidavit Tanya Gaw affirmed on March 11, 2023 in response to the s 137.1 motion (the "Gaw affidavit");
  - xiii. the final clause of paragraph 21 of the Gaw affidavit, beginning with "and in his failed attempt";
  - xiv. paragraph 27 of the affidavit Ted Kuntz affirmed on March 13, 2023 in response to the s 137.1 motion (the "Kuntz affidavit");
  - xv. the final sentence of paragraph 29 of the Kuntz affidavit; and

- xvi. the entirety of the affidavit Alicia Johnson affirmed on March 11, 2023  
in response to the s 137.1 motion;
- (b) the costs of this motion; and
- (c) such further and other relief as the circumstances of the case may require  
and this Court deem to be just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) the impugned evidence discloses purported communications between the  
defendant Kipling Warner and/or the defendant Canadian Society for the  
Advancement of Science in Public Policy ("CSASPP") and British Columbia  
lawyer Lee Turner that are protected by solicitor-and-client privilege;
- (b) all communications between, on the one hand, Mr. Warner and/or CSASPP  
and, on the other hand, Mr. Turner, were communications between a lawyer and a  
prospective client which entailed the seeking or giving of legal advice and which  
the parties considered to be confidential;
- (c) neither Mr. Warner nor CSASPP has waived privileged over their  
communications with Mr. Turner;
- (d) the impugned evidence contains purported communications that Alicia  
Johnson disclosed in breach of a confidentiality agreement dated August 30, 2021  
between her and CSASPP;
- (e) the impugned evidence is inadmissible;
- (f) the impugned evidence may prejudice or delay the fair hearing of the s.  
137.1 motion;

- (g) the impugned evidence is scandalous, frivolous, vexatious and an abuse of the process of the Court;
- (h) rule 25.11 of the *Rules of Civil Procedure*; and
- (i) such other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE  
HEARING OF THE MOTION:**

- (a) the affidavit of Kipling Warner affirmed April 12, 2023; and
- (b) such further and other material as counsel may advise and this Court may permit.

April 12, 2023

**DEWART GLEASON LLP**  
102-366 Adelaide Street West  
Toronto ON M5V 1R9

Tim Gleason, LSO No.: 43927A  
Email: tgleason@dglp.ca

Amani Rauff, LSO No.: 78111C  
Email: arauff@dglp.ca

Telephone: (416) 971 8000

Lawyers for the named defendants

**TO: ROCCO GALATI LAW FIRM  
PROFESSIONAL CORPORATION**  
1062 College Street, lower level  
Toronto ON M6H 1A9

Rocco Galati, LSO No.: 29488Q  
Email: rocco@idirect.com  
Telephone: (416) 773 0309

Lawyers for the plaintiff



**GALATI**

- and -

**TOEWS et al.**

Court File Nos.: CV-21-00658403-0000

Plaintiff

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF MOTION**

(motion to strike affidavit material)

**DEWART GLEASON LLP**  
102–366 Adelaide Street West  
Toronto ON M5V 1R9

Tim Gleason, LSO No. 43927A  
Email: tgleason@dglp.ca

Amani Rauff, LSO No. 78111C  
Email: arauff@dglp.ca

Telephone: (416) 971 8000

Lawyers for the named defendants

**Tab 2**

Court File No. CV-22-683322

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**ROCCO GALATI**

Plaintiff

- and -

**DONNA TOEWS (AKA "DAWNA TOEWS"), KIPLING WARNER, CANADIAN  
SOCIETY FOR THE ADVANCEMENT OF SCIENCE AND PUBLIC POLICY  
("CSAPP"), DEE GANDHI, JANES AND JOHNS DOE**

Defendants

**AFFIDAVIT OF KIPLING WARNER**

(affirmed April 12, 2023)

I, **KIPLING WARNER**, of the City of Vancouver, in the Province of British Columbia,  
**SOLEMNLY AFFIRM** as follows:

1. I am a defendant in this proceeding and Executive Director for the defendant Canadian Society for the Advancement of Science in Public Policy (the "Society"). I therefore have knowledge of the matters to which I depose in this affidavit.

2. I affirm this affidavit (a) in support of a motion to strike parts of the plaintiff's motion record responding to a motion the defendants have commenced pursuant to section 137.1 of the *Courts of Justice Act* (the "section 137.1 motion") and (b) to make a clarification with respect to the supplementary affidavit I affirmed in support of the section 137.1 motion on March 29, 2023.

## **BACKGROUND**

3. The Society is a non-profit society incorporated under British Columbia's *Societies Act*, SBC 2015, c 18.

4. Broadly speaking, the Society's mandate is to challenge COVID-19-related government restrictions that its membership does not consider to be adequately supported by science.

5. I am the Society's executive director.

6. In pursuing its mandate, the Society regularly consults with and retains lawyers.

7. I communicate with counsel on the Society's behalf.

8. By statement of claim issued June 28, 2022, a copy of which is included within the plaintiff's record responding to the section 137.1 motion, the plaintiff commenced this action against, among others, me and the Society.

9. The named defendants in the action commenced the section 137.1 motion, and delivered a record in support of it on January 31, 2023.

10. On March 15, 2023, the plaintiff delivered a responding record within which he has included evidence concerning purported communications between me and (a) Lee Turner and (b) Alicia Johnson (the "impugned evidence"). The impugned evidence is identified in the notice of motion.

## **LEE TURNER**

11. Lee Turner is a lawyer who is licenced by the Law Society of British Columbia. A

screenshot of the LSBC's 'lawyer's profile' for him, taken April 10, 2023, is marked as Exhibit "A" to this affidavit.

12. Mr. Turner approached me on more than one occasion to provide legal advice concerning the Society's work and litigation strategy.

13. I have at all times understood that my communications on behalf of the Society with Mr. Turner were entirely confidential and protected by solicitor-and-client privilege.

14. I have not waived solicitor-and-client privilege over Mr. Turner's communications with me, and neither has the Society.

15. As I noted above, on March 15, 2023, the plaintiff served motion materials in which he described communications between me and Mr. Turner and marked as an exhibit Mr. Turner's dictation of messages he told the plaintiff he had exchanged with me.

16. On March 30, 2023, my counsel sent an email to the plaintiff to advise of the commencement of this motion and seek his availability for a case conference. A copy of email correspondence from Amani Rauff to Rocco Galati dated March 30, 2023 is within the email chain that is marked as Exhibit "B" to this affidavit.

17. On April 5, 2023, the plaintiff sent a letter to my counsel in response. A copy of email correspondence from Mr. Galati to Ms. Rauff dated April 5, 2023 is within the email chain that is marked as Exhibit "B" to this affidavit. A copy of the attachment to the plaintiff's April 5, 2023 is email is marked as Exhibit "C" to this affidavit.

18. At 12:16 p.m. EDT on April 6, 2023, my counsel particularized to the plaintiff that, among

other things, the defendants would be moving to strike portions of his record on the basis that the communications he had included in his responding motion record contained privileged and confidential information. The email exchange between Ms. Rauff and Mr. Galati dated April 6, 2023 is within the email chain that is marked as Exhibit "B" to this affidavit.

19. At approximately 2:04 p.m. EDT on April 6, 2023 (11:04 a.m. in my current time zone, PDT), I received an automatic email notification from Mr. Turner's mail user agent, Office365, notifying me that Mr. Turner had just deleted email correspondence I had sent to him on December 3, 2022. A copy of the notification I received is marked as Exhibit "D" to this affidavit.

**ALICIA JOHNSON**

20. Ms. Johnson is an individual residing in Vancouver, British Columbia who was previously involved with the Society.

21. Ms. Johnson became a formal member of the Society in late August or early September 2021.

22. In order to participate in a confidential group chat on Signal in which the Society's members and directors discussed its advocacy efforts and strategy, Ms. Johnson executed a confidentiality agreement (an "NDA") dated August 30, 2021, a copy of which is marked as Exhibit "E" to this affidavit, by which she agreed not to disclose to anyone "the contents of any discussion, between or among persons who are members or directors of the Society [...]".

23. Ms. Johnson, to my knowledge, executed the NDA entirely voluntarily, because she sought to participate in the confidential group chat.

24. From her first view of the NDA, Ms. Johnson took two days to review it before initialling every page and executing it.

25. Ms. Johnson has never been an employee of the Society.

26. Ms. Johnson has never had employment duties to the Society.

27. Neither I nor anyone at the Society has ever directed Ms. Johnson to assist an employee in the conduct of Society business.

28. Neither I nor anyone at the Society has ever instructed or authorized Ms. Johnson to disclose confidential information (as defined in the NDA).

29. Neither I nor anyone at the Society has ever made Ms. Johnson a partner with, agent, director or representative of the Society or authorized her to hold herself out as such, whether in writing or otherwise. Our policy is that our members cannot hold themselves out as agents or representatives of the Society unless appointed to the office of director or otherwise engaged as such, in writing, by the Society. To ensure this policy was made clear to her it was made explicit in s 3.1 of her NDA.

30. I understood all communications I had with Ms. Johnson on or after August 30, 2021 to be protected by confidentiality under the NDA.

### **CLARIFICATION**

31. With respect to the supplementary affidavit that I affirmed in support of the section 137.1 motion on March 29, 2023 (the "supplementary affidavit"), the call that I described at subparagraphs 23(e) through (i):

a. occurred on September 23, 2021, not September 24, 2021, and was part of the call that I described at paragraph 20 of the supplementary affidavit.

b. was a Signal video call rather and not a telephone call.

32. As I deposed at paragraph 13(c) of the supplementary affidavit, Ms. Johnson and I never had any telephone calls. We only had Signal video and voice calls.

33. I could not remember precisely whether the calls over whatever medium that Ms. Johnson and I had were telephone or Signal voice or Signal video calls when I was first preparing the affidavit. I subsequently obtained my telephone records from my mobility provider, which confirmed that I have never spoken by telephone with Ms. Johnson. Copies of excerpts of voice call and text message logs my mobility provider sent me on March 29, 2023 for the period between March 1, 2021 and August 13, 2022 are collectively marked as Exhibit "F" to this affidavit. Ms. Johnson's telephone number is (778) 855 0545. I have excerpted the several hundred-page logs to include only the first page for context and the pages that include Ms. Johnson's phone number. They reflect that she did not answer the phone on the three occasions on which I have attempted to call her by telephone.



34. All records of calls in which I actually communicated, whether Signal voice or Signal video, with Ms. Johnson, are therefore captured in the screenshot marked as Exhibit "B" to the supplementary affidavit.

AFFIRMED BY THE DEPONENT at the City  
of Vancouver in the Province of British  
Columbia REMOTELY BY WAY OF VIDEO  
CONFERENCE before me at the City of  
Toronto in the Province of Ontario on April  
12, 2023, in accordance with O Reg 431/20



A commissioner for taking affidavits  
Kristen Lloyd, LSO No. 79631U



**KIPLING WARNER**

**Tab A**



MENU

SEARCH

MEMBER  
PORTAL

SHARE

TOP

HOME / WORKING WITH LAWYERS AND HOW THE JUSTICE SYSTEM / LAWYER DIRECTORY



## Lawyer Directory

### Lawyer's Profile

#### Lee Turner

##### Current status

Practising

##### Call date

May 20, 1994

##### Primary location

##### Contact address

Doak Shirreff Lawyers LLP  
#200 - 537 Leon Avenue  
Kelowna, BC  
V1Y 2A9

[\[ Show Map \]](#) [\[ Add to Outlook Contacts \]](#) [\[ Show QRCode \]](#)

##### Phone number

250 763-4323 [Firm]

##### Fax number

250 763-4780 [Firm]

##### Email

To obtain this lawyer's email address, [click here](#).

##### Current practice restrictions

None

##### Discipline history since 1983

None

##### Current regulatory proceedings

None

The Law Society provides a list of all unauthorized practitioners since September 2003, including related court documents. [Search the database](#).

Lawyers: [Does your contact information need updating?](#)

Back

New search

This is Exhibit "A" referred to in the affidavit of  
Kipling Warner affirmed before me  
electronically on April 12, 2023

A commissioner for taking affidavits  
Kristen Lloyd, LSO No. 79631U

CONTACT US

PRIVACY

TERMS OF USE

SITEMAP

The Law Society  
of British Columbia



©2016 LAW SOCIETY OF BRITISH COLUMBIA

**Tab B**

**From:** Amani Rauff [arauff@dgllp.ca](mailto:arauff@dgllp.ca)  
**Subject:** Re: Galati v Toews et al - CV-22-683322 - case conference re: motion to stike  
**Date:** April 6, 2023 at 12:16 PM  
**To:** Rocco Galati [rglfpc@gmail.com](mailto:rglfpc@gmail.com), Rocco Galati [rocco@idirect.com](mailto:rocco@idirect.com)  
**Cc:** Tim Gleason [tgleason@dgllp.ca](mailto:tgleason@dgllp.ca), Sabrina Carvalho [scarvalho@dgllp.ca](mailto:scarvalho@dgllp.ca)  
**Bcc:** Eric Kingsland [ekingsland@dgllp.ca](mailto:ekingsland@dgllp.ca)

electronically on April 12, 2023



A commissioner for taking affidavits  
Kristen Lloyd, LSO No. 79631U

Good afternoon Rocco,

I write in response to your letter of yesterday's date.

We will ask the Court to strike the paragraphs in your affidavit that describe communications between Lee Turner and Kipling Warner, and the related exhibit to your affidavit, on the basis that they were covered by solicitor-client privilege. Mr. Warner and Mr. Turner had no communications other than for the purpose of giving or receiving legal advice.

We will ask the Court to strike substantially all of Ms. Johnson's affidavit on the basis that she has breached the confidentiality agreement Mr. Warner marked as an exhibit to his supplementary affidavit on the section 137.1 motion.

Subsection 137.1(5) of the *Courts of Justice Act* does not preclude a party from commencing a motion within the section 137.1 motion; it only precludes fresh steps within the broader proceeding: *The Catalyst Capital Group Inc. v. West Face Capital Inc.*, [2021 ONSC 125](#) at ¶202; *United Soils Management Ltd. v Katie Mohammed*, [2017 ONSC 904](#) at ¶20.

We will agree to arguing the motion to strike on the return date of the section 137.1 motion, but still intend to seek a case conference to address timing.

Please provide Sabrina with your availability.

Thank you,

Amani



**Amani Rauff** (she/her)  
Dewart Gleason LLP  
Tel: 416.971.8000 | Fax: 416.971.8001  
Suite 102 - 366 Adelaide St W, Toronto ON M5V1R9  
Direct Line: 416.583.5793 | [arauff@dgllp.ca](mailto:arauff@dgllp.ca)

---

**From:** Rocco Galati <[rglfpc@gmail.com](mailto:rglfpc@gmail.com)>  
**Date:** Wednesday, April 5, 2023 at 12:47 PM  
**To:** Amani Rauff <[arauff@dgllp.ca](mailto:arauff@dgllp.ca)>, Tim Gleason <[tgleason@dgllp.ca](mailto:tgleason@dgllp.ca)>  
**Cc:** Rocco Galati <[rocco@idirect.com](mailto:rocco@idirect.com)>, Rocco Galati <[rglfpc@gmail.com](mailto:rglfpc@gmail.com)>  
**Subject:** Re: Galati v Toews et al - CV-22-683322 - case conference re: motion to stike

Dear Counsel,

Please see attached:

1. Ltr to Counsel in response

Thanks,  
Alex Borner  
Law Clerk

On Thu, Mar 30, 2023 at 3:30 PM Amani Rauff <[arauff@dglp.ca](mailto:arauff@dglp.ca)> wrote:

Good afternoon Rocco,

I write with respect to the above-noted action, and our clients' motion for its dismissal pursuant to section 137.1 of the *Courts of Justice Act*. We intend to move to strike privileged and confidential information included in the affidavits that you and Alicia Johnson affirmed responding to the section 137.1 motion. We propose to arrange a case conference before Justice Black, who scheduled the section 137.1 motion, to address the timing of the motion to strike. Our office will reach out with proposed dates.

Thank you,

Amani



**Amani Rauff** (she/her)

Dewart Gleason LLP

Tel: 416.971.8000 | Fax: 416.971.8001

Suite 102 - 366 Adelaide St W, Toronto ON M5V1R9

Direct Line: 416.583.5793 | [arauff@dglp.ca](mailto:arauff@dglp.ca)

--

ROCCO GALATI LAW FIRM  
PROFESSIONAL CORPORATION  
Rocco Galati, B.A., LL.B., LL.M.  
1062 College Street, Lower Level  
Toronto ON M6H 1A9

TEL: 416-530-9684  
FAX: 416-530-8129

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"Oh why, oh why, does the wind never blow backwards?"---Woody Guthrie

**Tab C**



**ROCCO GALATI LAW FIRM  
PROFESSIONAL CORPORATION**

1062 College Street, Lower Level  
Toronto, Canada M6H 1A9

Direct Line (416) 530-9684 Fax (416) 530-8129

April 5<sup>th</sup>, 2023

SENT VIA EMAIL: [tgleason@dglp.ca](mailto:tgleason@dglp.ca), [arauff@dglp.ca](mailto:arauff@dglp.ca)

Tim Gleason

Email: [tgleason@dglp.ca](mailto:tgleason@dglp.ca)

DEWART GLEASON LLP  
02-366 Adelaide Street West  
Toronto, ON M5V 1R9,

Amani Rauff,

Email: [arauff@dglp.ca](mailto:arauff@dglp.ca)

**RE: Galati v Toews et al - CV-22-683322**

This is Exhibit "C" referred to in the affidavit of  
Kipling Warner affirmed before me  
electronically on April 12, 2023



A commissioner for taking affidavits  
Kristen Lloyd, LSO No. 79631U

This is further to your e-mail/letter dated March 30th, 2023.

Firstly, I am unclear as to what you wish to strike from the affidavits filed in response to the Defendants' material.

In any event, whatever position you wish to take with the (in)admissibility of evidence, your client can make this argument on the return date of the anti-SLAPP motion date already set in September.

It is my position that this interim motion, on the purported admissibility of evidence, is barred by the terms of s.137.1(5) of the *Courts of Justice Act*. It will inevitably bifurcate, splinter, and delay the proceeding in the event of interlocutory appeals from the disposition of any such motion.

Your application on the anti-SLAPP should have, pursuant to s.137.2(1), been heard within sixty (60) days. This interim motion date may jeopardize the schedule already put in place.

We will oppose the scheduling of this motion and be submitting that any objections to evidence form part and parcel of the arguments made by the application Judge on the return date.

Yours very truly,

ROCCO GALATI LAW FIRM PROFESSIONAL CORPORATION

per:



Rocco Galati, B.A., LL.B., LL.M.

**Tab D**

electronically on April 12, 2023



A commissioner for taking affidavits  
Kristen Lloyd, LSO No. 79631U

**From:** Lee Turner <[ltturner@doakshirreff.com](mailto:ltturner@doakshirreff.com)>

**To:** kip@thevertigo.com <[kip@thevertigo.com](mailto:kip@thevertigo.com)>

**Subject:** Not read: Disconnected call

**Date:** Thu, 6 Apr 2023 18:04:28 +0000 (04/06/2023 11:04:28 AM)

**X-Gnd-Status:** LEGIT



Your message

To: Lee Turner

Subject: Disconnected call

Sent: Saturday, December 3, 2022 3:43:59 PM (UTC-08:00) Pacific Time (US & Canada)

was deleted without being read on Thursday, April 6, 2023 11:05:08 AM (UTC-08:00) Pacific Time (US & Canada).

  mail disposition report attachment

Final-recipient: RFC822; [ltturner@doakshirreff.com](mailto:ltturner@doakshirreff.com)

Disposition: automatic-action/MDN-sent-automatically; deleted

X-MSEch-Correlation-Key: 01Dd2hq0qECxf+oirNynlg==

X-Display-Name: Lee Turner

**Tab E**

Killoyd

A commissioner for taking affidavits  
Kristen Lloyd, LSO No. 79631U

### Confidentiality and Non-Competition Agreement

**THIS CONFIDENTIALITY AND NON-COMPETITION AGREEMENT** (the "**Agreement**") dated for reference 30 August 2021

**AMONG:** **CANADIAN SOCIETY FOR THE ADVANCEMENT OF SCIENCE IN PUBLIC POLICY**, a non-profit corporation incorporated pursuant to the *Societies Act*, S.B.C. 2015 c. 18, and having an office at **108-2115 Cypress Street, Vancouver, BC V6J 3M3**  
(the "**Society**")

#### OF THE FIRST PART

**AND:**

(the "**Volunteer**")

#### OF THE SECOND PART

#### WHEREAS:

- A. The Society is challenging the misuse or non-use of science and scientifically derived information for the implementation of authoritarian government or quasi-government public restrictions;
- B. The Volunteer desires to assist the Society and participate in furthering its objectives;
- C. The Society wishes to facilitate, and the Volunteer desires to participate in, candid "off-the-record" discussions where ideas, counter-ideas, rebuttals, and discussion may be exchanged frankly and freely and may be developed, rebutted, approved, or denied by participants without concern that they will be published or broadcast beyond those participating;
- D. The Society and the Volunteer each recognize that opinions, legal, political, personal, and other information that may become known to participants may be confidential in nature and the Volunteer has agreed to keep such information confidential;

The Volunteer and the Society anticipate the necessity of sharing the Society's Confidential Information (as hereinafter defined) and wish to do so without conveying any interest or rights to the Confidential Information or disclosing it to any other parties.

**NOW THEREFORE**, in consideration of the premises contained in this Agreement and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Volunteer hereby agrees as follows:

#### 1.0 Confidentiality

##### 1.1 Confidential Information

In this Agreement, "**Confidential Information**" refers to the identity of any participant, and the contents of any discussion, between or among persons who are members or directors of the Society or participating in a Society event (other than an event being broadcast by the Society to the public) and includes the identity of members, volunteers, and other participants and any discussion, conversation, information, knowledge, or opinion arising in the course thereof where such information or opinion, or the identification of a particular person in association with such information or opinion, is: not generally known to the public or the person sharing such information or opinion has not formally consented to the release of such information or opinion or their identification with its disclosure.

Without limiting the generality of the foregoing, Confidential Information includes:

AT

- (a) The identification of members of the Society or any other contributing participants in Society affairs or events;
- (b) The opinions shared between or among members or participants in private or in the course of Society affairs or events;
- (c) The information and the sources of information shared between or among members or participants in private or in the course of Society affairs or events;
- (d) Any analysis or critique shared between or among members or participants or in the course of Society affairs or events;
- (e) Any business; event; legal, political, or marketing strategy or analysis; or any other information concerning the activities of the Society or instructions to its professional advisors; and any lists or names of members, participants, legal or financial advisors, or other connections of the Society;

provided that any such information described above may be disclosed pursuant to a judicial order, or by written approval of the source or if first disclosed by a third party through no fault of the Volunteer. For the sake of this section 1.1, Volunteer includes such the Volunteer's affiliated and associated entities, if any.

#### 1.2 *Use of Confidential Information*

The disclosure of Confidential Information by the Society is solely for the purpose of facilitating the free flow, critique, and refining of ideas and will not be used for any other purpose. In particular, without limiting the generality of the foregoing, the Volunteer will not use Confidential Information for political, economic, or social gain or to politically or socially or otherwise malign any person or the reputation of any person.

#### 1.3 *Nondisclosure of Confidential Information*

The Volunteer agrees that it will keep secret and treat as confidential any of the Confidential Information and, except to the extent provided in section 1.1 or required by applicable law or with the Society's prior written authorization, shall not disclose any Confidential Information to any person or entity whatsoever.

#### 1.4 *Disclosure of Confidential Information*

- (a) The Volunteer shall limit dissemination of Confidential Information to the officers, directors, or solicitor of the Society who need to know such Confidential Information in connection with the business or activities of the Society. The Volunteer shall be responsible for each breach of this Agreement by its contractor's, officers, directors, agents, employees, representatives and other such affiliated individuals or entities.
- (b) Notwithstanding the foregoing, where the Volunteer is an employee or is assisting an employee in the conduct of Society business, disclosure of Confidential Information shall not be a violation of this Agreement by that person where they were instructed to do so or where it was necessary to do so in order to fulfill the employment duties of such employee.

#### 1.5 *Return of Documents and Property*

Upon termination of membership or participation in the Society, the Volunteer shall promptly deliver to the Society any documents or other materials containing any Confidential Information ("**Confidential Documents**") and any other property of the other that the Volunteer may have (or may have had) in its possession or under its control, including without limitation any Confidential Documents delivered to any third party. If materials are electronic or copies of materials are in

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electronic form, the Volunteer will use their best efforts to ensure that such copies or copies of copies are destroyed.

**1.6 Facilitating Third Parties**

The Volunteer will not, directly or indirectly, passively or actively, assist or facilitate any person to engage in activities prohibited by this Agreement.

**2.0 Breach**

**2.1 Notice and Mitigation**

Promptly on becoming aware of a breach of this Agreement, the Volunteer shall:

- (a) Notify the Society of the details of the Breach;
- (b) Take steps on an immediate, urgent basis to mitigate the breach.

**2.2 Injunctive Relief**

The Volunteer hereby acknowledges and agrees that, in the event of any breach of this Agreement, the Society will suffer irreparable injury, such that no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, the Volunteer agrees that the Society shall be entitled to specific performance under this Agreement, as well as such further injunctive or other relief as may be granted by a court of competent jurisdiction. In the event the Society seeks injunctive relieve and is successful, in whole or in part, the Volunteer hereby agrees to fully indemnify and hold harmless the Society in respect of the cost to the Society of seeking such relief.

**2.3 Applicable Law**

This Agreement shall be governed for all purposes by the laws of the Province of British Columbia, Canada, and the Volunteer hereby attorns to the exclusive jurisdiction of the courts of the Province of British Columbia and of Canada therein.

**2.4 Arbitration**

Any disputes pursuant to this Agreement shall be subject to Arbitration, in English, by the International Centre for Dispute Resolution (see: [icdr.org](https://icdr.org)) pursuant to their Canadian Dispute Resolution Procedures. An application for arbitration shall not prevent or preclude the Society from also seeking injunctive relief.

**2.5 Insurance**

In the event that a claim is made by the Volunteer against the Society, the Volunteer agrees that the maximum of any claim payable by the Society, including costs, shall be capped and the amount of the cap shall be the lesser of **ONE THOUSAND DOLLARS (\$1,000<sup>00</sup>)** and the amount of insurance applicable and then in force under such policy of insurance as may then be held by the Society.

**3.0 General**

**3.1 Not representatives of Agents**

Nothing in this Agreement shall make the Volunteer a partner with or agent or representative of the Society and the Volunteer agrees that it will not hold itself out as an agent or representative of the Society unless appointed to the office of director or otherwise engaged as such, in writing, by the Society.

**3.2 Communications**

The Volunteer will not, unless authorized in writing to do so, exercise any administrative function, or publish or change any content, biometrics, tags, hashtags, or any other information through any

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social media or other platform, whether delivered electronically or in any other form, in respect of which the Society has an account or member or administrator privileges or status analogous to that of a member or administrator of a social media account. Social media accounts include, but are not limited to platforms by which a person may publish information, photographs, video or audio recordings, coding, or any other information to an audience whether limited to members or specifically permitted persons or to the public.

### 3.3 Notices

Notices may be sent to the Society at the address above, or electronically to [service@covidconstitutionalchallengebc.ca](mailto:service@covidconstitutionalchallengebc.ca). Notices may be sent to the Volunteer at the address above. The Society may amend its address from time to time by filing a notice of address change with the Registrar of Companies, or by written notice to the Volunteer at the last address noted for the Volunteer in the records of the Society. The Volunteer may amend its address by delivering written notice of an amended address to the Society.

### 3.4 Severability

If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

### 3.5 Entire Agreement/Amendments

This Agreement constitutes the complete, final and exclusive agreement between the Volunteer and the Society with respect to the subject matters addressed herein. This Agreement may not be amended or modified except by writing signed by both the Society and the Volunteer.

IN WITNESS WHEREOF the Volunteer has executed this Agreement as A DEED UNDER SEAL as of the date first above written.

SIGNED, SEALED AND DELIVERED by  
Alicia Johnson in the  
presence of:



Witness signature

Dee Gandhi

Witness Name

1381 18th Street East,

Witness Address

North Vancouver, BC, V7J 1M2

Treasurer

Witness Occupation



Signature

Name: Alicia Johnson

09 / 02 / 2021



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TITLE	CSASPP Confidentiality Agreement
FILE NAME	CSASPP Confidentiality Agreement.pdf
DOCUMENT ID	603fd8ab59887deaff96650aac5b9445fe62983a
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

## Document History



SENT

**08 / 31 / 2021**

02:29:03 UTC

Sent for signature to Alicia Johnson  
(aliciajohnsonvancouver@gmail.com) from  
treasurer@covidconstitutionalchallengebc.ca  
IP: 187.143.159.60



VIEWED

**09 / 01 / 2021**

01:31:35 UTC

Viewed by Alicia Johnson (aliciajohnsonvancouver@gmail.com)  
IP: 72.143.234.103



SIGNED

**09 / 03 / 2021**

05:48:53 UTC

Signed by Alicia Johnson (aliciajohnsonvancouver@gmail.com)  
IP: 85.203.44.55



COMPLETED

**09 / 03 / 2021**

05:48:53 UTC

The document has been completed.

**Tab F**



This is Exhibit "F" referred to in the affidavit of  
Kipling Warner affirmed before me  
electronically on April 12, 2023

A commissioner for taking affidavits  
Kristen Lloyd, LSO No. 79631U

Date: March 29, 2023  
Customer Name: Kipling Warner  
Request: Voice Calls & Text Messages  
Account Number: [REDACTED]  
Freedom Number: 6045517988  
Email Address: [kip@thevertigo.com](mailto:kip@thevertigo.com)

Date and Time (EST)	Originating #	Receiving #	Duration	Event Type
3/1/21 12:56 PM	[REDACTED]	[REDACTED]	[REDACTED]	Voice
3/1/21 2:20 PM				Voice
3/1/21 4:19 PM				Voice
3/1/21 4:47 PM				Voice
3/1/21 5:23 PM				SMS
3/1/21 5:23 PM				SMS
3/1/21 5:26 PM				Voice
3/1/21 5:48 PM				SMS
3/1/21 6:02 PM				SMS
3/1/21 6:13 PM				SMS
3/1/21 6:13 PM				SMS
3/1/21 6:25 PM				SMS
3/1/21 6:44 PM				SMS
3/1/21 6:44 PM				SMS
3/1/21 8:41 PM				Voice International
3/1/21 8:42 PM				SMS International
3/2/21 1:07 PM				Voice
3/2/21 2:52 PM				SMS
3/2/21 2:52 PM				SMS
3/2/21 2:52 PM				SMS International
3/2/21 2:54 PM				SMS International
3/2/21 3:02 PM				SMS International
3/2/21 3:06 PM				SMS International
3/2/21 3:06 PM				SMS International
3/2/21 3:09 PM				Voice
3/2/21 3:31 PM				Voice
3/2/21 3:54 PM				Voice Special
3/2/21 3:58 PM				Voice Special
3/2/21 4:00 PM				Voice
3/2/21 4:07 PM				SMS International



9/22/21 4:46 PM				Voice
9/22/21 5:02 PM				SMS
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9/23/21 1:58 PM				Voice Special

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8/12/22 1:17 PM				Voice International
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8/13/22 12:53 PM				Voice

**GALATI**

- and -

**TOEWS et al.**

Court File No. CV-22-683322

Plaintiff

Defendants

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**AFFIDAVIT OF KIPLING WARNER**

(affirmed April 12, 2023)

**DEWART GLEASON LLP**  
102–366 Adelaide Street West  
Toronto ON M5V 1R9

Tim Gleason, LSO No. 43927A  
Email: tgleason@dgllp.ca

Amani Rauff, LSO No. 78111C  
Email: arauff@dgllp.ca

Telephone: (416) 971 8000

Lawyers for the named defendants

**GALATI**

- and -

**TOEWS et al.**

Court File Nos.: CV-21-00658403-0000

Plaintiff

Defendants

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**MOTION RECORD OF THE  
MOVING PARTY DEFENDANTS**

(motion to strike affidavit material)

**DEWART GLEASON LLP**  
102–366 Adelaide Street West  
Toronto ON M5V 1R9

Tim Gleason, LSO No. 43927A  
Email: tgleason@dglp.ca

Amani Rauff, LSO No. 78111C  
Email: arauff@dglp.ca

Telephone: (416) 971 8000

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