Masood Masjoody
[redacted]

Court of Appeal for British Columbia
400-800 Smithe St
Vancouver, BC, V6Z2C5

RE: CA47689 Masood Masjoody v Amélie TROTIGNON; Simon Fraser University
Application under S. 43(1) and Re-opening Application

The Honourable Division of the Court of Appeal for British Columbia,

I am writing to make two applications to the Division, one based on Section 43(1) of the Act and for the Division to amend its decision by providing for the outstanding matters that should have been but were not adjudicated (the "Amendment Application") and the other for re-opening the appeal pursuant to the inherent jurisdiction of the Court (the "Re-opening Application").

To comply with the Registrar's direction that this letter be limited to 5 pages, in what follows I will only give a concise overview of the two applications I am making followed by a more extensive, though not comprehensive, line of reasoning for Item 2.1 below regarding actual or a reasonable apprehension of bias of Fitzpatrick J. of the court below.

I am also writing to request to appear before the Division to make supporting oral submissions regarding both applications. In any case, I would like to make supplementary written submissions to the Division regarding all points concisely made herein, particularly the bias of Fitzpatrick J. of the court below.

1. Overview of the Amendment Application

The outstanding matters that should have been but were not adjudicated are as follows:

1.1. The division did not address at all, thereby did not adjudicate, the sought order that the seizure of the applications in the court below by Fitzpatrick J. be set aside;

1.2. The Division did not address at all the matter of the residual jurisdiction of the regular courts, which exists regardless of any determination of the subject-matter jurisdiction and could be exercised given the circumstances of a particular case; and

1.3. The Division did not address, thereby did not adjudicate, whether the jurisdiction of the courts could be declined prematurely when, as in this case, the particulars of the defamation (the Corporate Defamations as opposed to Trotignin Defamation) were, and still are, yet to be disclosed by the respondent university.

Remark 1. The peculiar circumstances of the proceedings in the court below involve the bias of the judge—as reflected in her victim-shaming the plaintiff, suppressing the plaintiff's pleadings, and engaging extensively in fabrications, manipulations, and outright

lies all one-sidely and to the benefit of the respondent university— alongside the overall conduct of the court below, the respondent university and counsels (particularly and among other things, their expressed call for judicial activism and partisan judgment), and the very nature of the dispute as a matter of high public interest.

Remark 2. While **Item 1.1** naturally calls for the consideration of a possible bias of the judge (indications of which were brought up in this appeal), each of the circumstances enumerated in *Remark 1* is material to **Item 1.2.** These circumstances have <u>not</u> been addressed by the Division.

2. <u>Overview of the Re-opening Application</u>

I am seeking an order for a re-hearing of the appeal so that:

(a) a new point can be argued to prevent serious injustice (Item 2.1 below); and

(b) overlooking or misapprehending the evidence or arguments can be addressed when there is a risk of a miscarriage of justice (Items 2.2-2.5 below).

This application is then based on that:

2.1. There was a reasonable apprehension of bias of Fitzpatrick J. against the plaintiff, clearly recognizable from the words of her published reasons for judgment (see *Remark 1*), which apprehension should—to use the wording of the Supreme Court of Canada—"regardless of the merits of [her] decision", "inexorably" lead to a decision by this Court that a new hearing in the court below must be held for the Dismissal Application of the respondents, whereby allowing the appeal on this ground;

2.2. The Division overlooked the evidence of the peculiar circumstances of the proceedings in the court below (also concisely enumerated in *Remark 1* herein) and overlooked the ensuing argument for exercising the residual jurisdiction of the courts (regardless of any determination as to the subject-matter jurisdiction of the court below) in such peculiar circumstances (paras 124-125 of the appellant's factum);

2.3. The division overlooked or misapprehended the evidence that, due to the blockage of discovery in the court below, particulars of the Corporate Defamations were **<u>not</u>** available, as a result of which overlook or misapprehension the Division finally concluded the opposite of this fact. In other words, the Division mistakenly concluded that Corporate Defamations were available and were the repetitions of Trotignon Defamation. The Division then overlooked the appellant's ensuing argument (paras 23-34 and 112-113 of the appellant's factum; see also Item 1.3 above).

2.4. The Division misapprehended the evidence regarding the nature of a conspiracy that was furthered by sexual harassment and Corporate Defamation, both in the context of the appellant's personal life. This issue in part led the Division to a new determination regarding conspiracy; i.e., that the way a conspiracy is carried out would not be determinative of the subject-matter jurisdiction of the courts; and

2.5. The Division misapprehended the evidence about the nature of the conspiracy when it determined that the alleged conspiracy was due to the appellant's place of birth and political beliefs, which determination had no basis in the evidence and the appellant's pleadings.

Remark 3. The misapprehension or overlook brought up in Item 2.3 seems to have occurred only after the hearing of the appeal. During the hearing of the appeal, the Division expressly was aware —through the pleadings and the appeal material— that the particulars of the Corporate Defamations were not disclosed by the respondents. Indeed, concerning the Corporate Defamations and about two hours into the hearing of the appeal, Mr. Justice Marchand confirmed part of the appellant's argument when he, in effect, said: "We do not know what they were saying and until we know we cannot say there is no subject-matter jurisdiction. If the words are not disclosed, who can say there is no subject matter jurisdiction." However, later, in the Reasons for Judgment, Mr. Justice Marchand referred to the Corporate Defamations simply as repetitions of Trotignon Defamation by SFU.

Remark 4. The new determination of the Division regarding the jurisdiction over conspiracy causes of action (Item 2.4) unreasonably gives any conspirator a new path for evading the courts. This can be clarified by providing a concrete example: One can consider a hypothetical situation where a unionized indigenous worker is the subject of a conspiracy by his coworkers/employer that was furthered by the conspirators setting his dwelling on fire and then murdering him. Then, based on the precedent newly created by the Division, the conspirators can evade a trial in the courts subject to a court determination that the murdered worker was being conspired against because of his indigenous status. It is only reasonable to say that injustice would certainly go beyond a certain case and may potentially extend to all victims of conspiracies in British Columbia.

3. The bias of Fitzpatrick J. and the necessity for a fresh hearing in the court below

3.1. Legal basis

The Court, citing the decision of the Supreme Court of Canada in *R. v. Curragh Inc.*, [1997] 1 S.C.R. 537 at paras. 6-7, has recognized that a plaintiff's "allegations of bias or apprehension of bias" following a dismissal application "can form a ground of appeal", adding that:

> …If she is not satisfied with the decision in the Dismissal Application, she can appeal and her allegations of bias or apprehension of bias can form a ground of appeal. … A decision reached and orders made in the course of a hearing that is found by a court of appeal to be unfair as a result of a reasonable apprehension of bias are void and unenforceable. If the court determines that there is a reasonable apprehension of bias, preservation of the integrity of the justice system will generally require the granting of a new trial or hearing…
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> *Skyllar v. The University of British Columbia*, 2022 BCCA 138 at para 38

This accords with the opinion of the Supreme Court of Canada in *R. v. Curragh Inc.*:

> The properly drawn conclusion that there is a reasonable apprehension of bias will ordinarily lead inexorably to the decision that a new trial must be held. In circumstances where reasonable apprehension of bias is demonstrated the trial judge has no further jurisdiction in the proceedings and there is no alternative to a new trial.
>
> …[I]t is impossible to have a fair hearing or to have procedural fairness if a

> reasonable apprehension of bias has been established. … The damage created by apprehension of bias cannot be remedied. The hearing, and any subsequent order resulting from it, is void.
>
> …
>
> The right to a trial before an impartial judge is of fundamental importance to our system of justice. Should it be concluded by an appellate court that the words or actions of a trial judge have exhibited bias or demonstrated a reasonable apprehension of bias then a basic right has been breached and the exhibited bias renders the trial unfair. Generally the decision reached and the orders made in the course of a trial that is found by a court of appeal to be unfair as a result of bias are void and unenforceable.
>
> …
>
> [W]hen a court of appeal determines that the trial judge was biased or demonstrated a reasonable apprehension of bias, that finding retroactively renders all the decisions and orders made during the trial void and without effect.
>
> *R. v. Curragh Inc.*, [1997] 1 S.C.R. 537 at paras. 5-8.

Similarly, the Suprme Court of Canada holds that:

> As the Court stated in *Cardinal*, "I find it necessary to affirm that the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision" (p. 661). Similarly, the Court has also recognized that the judgment of a partial adjudicator must be set aside, regardless of the merits of their decision…[emphasis added]
>
> *R. v. Nahanee*, 2022 SCC 37 at para 102

3.2. Some of the indications of the bias of Fitzpatrick J. in her reasons for judgment

It should be noted that the judge heard the jurisdictional challenge of the defendants after the defendants had contested all of several plaintiff's applications for the discovery of documents and examination for discovery and the court below had adjourned the discovery applications of the plaintiff.

While the discovery was blocked, in her reasons for judgment, the judge made every effort to embarrass the plaintiff by baselessly expressing her disbelief in the allegations made against SFU, which allegations were the subject of the jurisdictional challenge in a pre-trial application, not the subject of fact-finding on the merits.

The conduct of the judge amounted to the following undeniable indications of bias:

3.2.1. Victim-shaming the plaintiff through mockery and loaded language: baseless, unnecessary, and unfair

In the absence of discovery and despite acknowledging that fact-finding about the plaintiff's allegations was not issue before her, the judge extensively and pathetically engaged in using loaded language and baselessly calling out the allegations against the wealthy and politically powerful SFU administration as "escalated", "bizarre", "irrational", and "escalated irrationally". This inhumane conduct was not only unnecessary but was also baseless and appears to have been crafted to benefit the

enablers of the terrorist regime of the Islamic Republic (of Iran) within the SFU administration or the SFU administration in general.

3.2.2. Suppression of the plaintiff's pleadings that were the subject of the jurisdictional challenge and replacing them with the judge's fabrications, lies, and decidedly false speculations

While shaming a victim of conspiratorial defamation and sexual harassment by SFU, the judge disregarded the actual notice of claim (the "ANoCC") that was before her and arrogantly stated that she did not need to read the ANoCC in reaching her jurisdictional decision about AnoCC. Indeed, the judge engaged heavily in blanket mockery of the allegations that she does not appear to have bothered to read and properly report on. Notably, 38 paragraphs in the judge's 100-paragraph Reasons, including but not limited to the entire background, are copied directly and one-sidedly from the defendants' notice of application.

3.2.3. Further victim-shaming and unfair conduct through the judge's fabrications, lies, and manifestly false speculations

Following the hearing, in her reasons, the judge decidedly engaged in fact-manipulations, fabrications, and manifestly false speculations about the plaintiff's pleadings and affidavits that she appears not to have bothered to read. While the judge appears to have been too lazy to read the plaintiff's material, including pleadings and affidavits, at the same time, she was too eager to blatantly mock them and engage in fabrications and false speculations about them.

Just to give an example, one can compare on the one hand the actual contents of the plaintiff's affidavit 5 concerning a presumably compromised faculty member of SFU (due to his known history of sexual misconduct in 2013 and 2016) with the judge's false and fully manipulated and speculated report on it, on the other hand. Ironically, on that very occasion which is evidence of her bizarre level of bias and negligence for a judge, Fitzpatrick J. once more resorts to loaded language and pathetically and uninformedly writes that: "Dr. Masjoody's allegation took another bizarre turn."

(Appellant's (1) factum at para 70, (2) Appeal Record, pg 152 at para 72, and Appeal Book, pgs 270-284).

Likewise, Fitzpatrick's lies and fabrications extended to the facts regarding a consent order that was reached between the lawyers (without a hearing) to adjourn a hearing scheduled for April 2021 whereby allowing the plaintiff's then-newly hired lawyer to have time to review the court material. The judge, however, once more used her fabrications and fact-distortions about a simple matter to show her bias against the plaintiff, as is evident from paragraphs 77-78, among other places, in her Reasons.

All of which is respectfully submitted. Date: December 22, 2022

Yours sincerely,

Masood Masjoody