

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

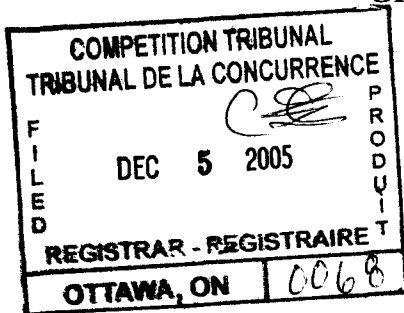
IN THE MATTER OF an application by B-Filer Inc., B-Filer Inc. doing business as GPAY GuaranteedPayment and Npay Inc. for an order pursuant to section 103.1 granting leave to make application under sections 75 and 77 of the *Competition Act*;

AND IN THE MATTER OF an application by B-Filer Inc., B-Filer Inc. doing business as GPAY GuaranteedPayment and Npay Inc. for an interim order pursuant to section 104 of the *Competition Act*.

BETWEEN:

**B-FILER INC., B-FILER INC. doing business as
GPAY GUARANTEEDPAYMENT and NPAY INC.**

Applicants



THE BANK OF NOVA SCOTIA

Respondent

THIRD AFFIDAVIT OF PATRICK HEALY

Affirmed December 2, 2005

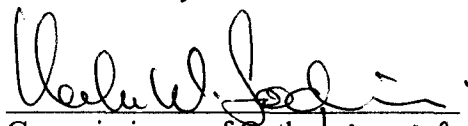
I, **PATRICK HEALY**, of the City of Montreal in the Province of Quebec
AFFIRM AND SAY AS FOLLOWS:


1. I hold the position of Full Professor in the Faculty of Law at McGill University.
2. A copy of my resume is attached hereto as **Exhibit A**.
3. For the purposes of preparing this Affidavit, I have reviewed the following documentation:

- a. Reasons for previous Order dated November 4, 2005, granting leave to apply only under section 75 of the *Competition Act*, of Justice Simpson, = in the matter of *B-Filer Inc., B-Filer Inc. doing business as Gpay Guaranteedpayment and Npay Inc. v. The Bank of Nova Scotia, CT-2005-006, dated November 14, 2005*; and
- b. an Affidavit of Stanley Sadinsky, sworn November 22, 2005 and the Exhibits attached thereto.

4. On instructions from counsel to the Applicants I have delivered a legal opinion incorporated herein by reference and attached hereto as **Exhibit B**.

AFFIRMED BEFORE ME
at the City of Montreal
in the Province of Quebec
on this 2nd day of December 2005


Commissioner of Oaths
Name: ROBERT P. LEDUC



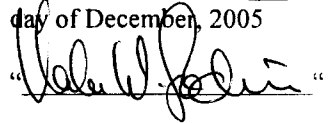
PATRICK HEALY

Exhibit A

Resume Professor Patrick Healy

This is the Exhibit A
referred to in the affidavit of
Patrick Healy

Sworn before me this 2nd
day of December, 2005


“*[Signature]*”

PATRICK HEALY

Curriculum Vitae

November 2005

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McGill University,
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E-mail: reception@shadleybattista.com

Canadian citizen, born 9 November 1955. *Languages:* English and French.

Professor of Law (1990 – present), **Faculty of Law & Institute of Comparative Law, McGill University** (*Subjects:* Criminal Law, Evidence, Criminal Procedure, International Criminal Law, Sentencing in Canadian Criminal Law, Corporate and Commercial Crime, Comparative Criminal Procedure, Advanced Problems in Evidence, Civil Procedure, Legal Clinics, Legal Research and Writing, supervision of graduate students).

Counsel, **Shadley Battista**, Barristers & Solicitors, Montreal, Quebec.

Associations

Barrister & Solicitor, Barreau du Québec (1983)
Canadian Bar Association
International Association of Penal Law
Society for Reform of the Criminal Law
International Association of Prosecutors
Canadian Institute for the Administration of Justice
Montreal Amateur Athletic Association

Education

LL.M., University of Toronto
B.C.L., McGill University
B.A. (Hons.), University of Victoria

Awards

Boulton Fellowship, McGill University (1989)
Overseas Research Studentship, University of Oxford (1985, 1986)
Research Fellowship, Social Sciences and Humanities Research
Council of Canada (1984, 1985, 1986)
Duff-Rinfret Scholarship in Law (1983)
Fraser & Beatty Scholarship, University of Toronto (declined,
1981)
Wainwright Essay Prize in Law (1981)
Isidore Ballon Memorial Medal (1981)
Scarlet Key, McGill University (1981)
President's Supplement (1977)
Kiwans Club of Victoria Scholarship (1974)

Academic appointments

Faculty of Law & Institute of Comparative Law, McGill University,
1990 – present.
Visiting Professor, Faculty of Law, Villanova University, Summer
Term, 2005.
Visiting Professor, Faculty of Law, Villanova University, Summer
Term 2004.
Visiting Fellow in International Criminal Law, International Studies
Centre, Queen's University, Herstmonceux Castle, England,
Summer Term, 2003.
Lecturer, Criminal Law, Faculty of Law, McGill University, 1990.

Boulton Fellow, Faculty of Law, McGill University, 1989-1990.

Lecturer, Criminal Procedure and Evidence, Faculty of Law, McGill University, 1984.

Editor-in-Chief, *McGill Law Journal*, 1980-1981.

Editorial and research assistant, Faculty of Law, McGill University, 1980.

Editorial Board, *McGill Law Journal*, 1979-1980.

Commission of inquiry

Commissioner of Inquiry (with the Honourable Chief Justice Joseph Daigle and the Honourable Mr Justice John Richard), *Committee of Inquiry established under the Judges Act to Inquire into the Conduct of Robert Flahiff*, February – April 1999.

Judicial education

Arbitrary Detention, National Judicial Institute, *Hearing and Deciding Charter Cases V*, 18 July 2005.

Instructor, National Judicial Institute, *Hearing and Deciding Charter Cases V*, Calgary, Alberta, 15 – 22 July 2005.

Mutation of the Charter, Annual Conference of Ontario Court of Justice, London Ontario, 14 June 2005.

A Court of Competent Jurisdiction – Some Preliminary Thoughts, Annual Conference of the Ontario Court of Justice, London Ontario, 13 June 2005.

New Developments in Corporate Criminal Liability, Governance of Public Institutions, Professions, Corporations, Tribunals and Courts: Ethics, Responsibility and Independence, Annual Conference of the Canadian Institute for the Administration of Justice, La Malbaie, Quebec, 15 October 2004.

Improperly-Obtained Evidence, National Judicial Institute, *Hearing and Deciding Charter Cases IV*, La Malbaie, Quebec, 22 July 2004.

Instructor, National Judicial Institute, *Hearing and Deciding Charter Cases IV*, La Malbaie, Quebec, 18 – 24 July 2004.

Similar Problems with Similar Facts, Judges' University Programme, Ontario Court of Justice, London Ontario, 8 June 2004.

Current Problems with Conditional Sentences, Judges' University Programme, Ontario Court of Justice, London Ontario, 7 June 2004.

A New Test for Judicial Notice, Annual Conference of the Ontario Court of Justice, Ottawa, Ontario, 21 May 2004.

Principles of Hearsay, Annual Conference of the Ontario Court of Justice, Ottawa, Ontario, 20 May 2004.

The Pitfalls of W.(D.), Annual Conference of the Ontario Court of Justice, Ottawa, Ontario, 19 May 2004.

Improperly-Obtained Evidence, National Judicial Institute, *Hearing and Deciding Charter Cases III*, Whistler, British Columbia, 24 July 2003.

Instructor, National Judicial Institute, *Hearing and Deciding Charter Cases III*, Whistler, British Columbia, 21 – 27 July 2003.

The Limits of Judicial Notice, Judges' University Programme, Ontario Provincial Court Judges' Association, London, Ontario (with Kent Roach), 12 June 2003.

The Duty to Intervene at Trial, Judges' University Programme, Ontario Provincial Court Judges' Association, London, Ontario, 12 June 2003.

Investigative Detention, Judges' University Programme, Ontario Provincial Court Judges' Association, London, Ontario, 11 June 2003.

L'Intervention du juge en cours du procès, L'Association des juges de la Cour du Québec (Chambre Criminelle), Lac Masson, Quebec, 19 February 2003.

The Role of the Trial Judge, Annual Meeting of the Court of Queen's Bench for Alberta, Calgary, Alberta, 22 November 2002.

Excluding Evidence, Seminar for Judges of the Superior Court of Quebec, Mont Tremblant, Quebec, 20 August 2002.

How Section 24(2) has Changed, National Judicial Institute, *Hearing and Deciding Charter Cases II*, Mont Tremblant, Quebec, 28 July 2002.

Instructor, National Judicial Institute, *Hearing and Deciding Charter Cases II*, Mont Tremblant, Quebec, 28 July – 2 August 2002.

Twenty Years of the Charter, Ontario Association of Provincial Court Judges, Niagara Falls, Ontario, 23 May 2002.

Applications for the Exclusion of Evidence on Constitutional Grounds, National Judicial Institute, Lake Carling, Quebec, 5 April 2002.

L'Exclusion de la preuve selon l'article 24(2) de la Charte, L'Association des juges de la Cour du Québec, Quebec City, Quebec, 21 January 2002.

New Directions for Judicial Education, National Judicial Institute, Ottawa, Ontario, 25 November 2001.

More Direction on Jury Directions, National Judicial Institute, *Seminar on Criminal Law*, Winnipeg, Manitoba, 4 October 2001.

Approaches to Search and Seizure under Section 8, National Judicial Institute, *Hearing and Deciding Charter Cases*, Montebello, Quebec, 31 July 2001.

The Right to Counsel, National Judicial Institute, *Hearing and Deciding Charter Cases*, (Intensive Course for Judges), Montebello, Quebec, 31 July 2001.

Instructor, National Judicial Institute, *Hearing and Deciding Charter Cases*, 29 July – 3 August 2001, Montebello, Quebec.

Instructor, Canadian Association of Provincial Court Judges, May – June 2001. *Re* conditional sentencing (on internet).

National Judicial Institute, Organising Committee, *Hearing and Deciding Charter Cases II*, Intensive Course for Judges, 2001 – 2002.

Evidence of Bad Character, Annual Seminar of the Judges of the Superior Court of Quebec, Montreal, Quebec, 10 May 2001.

Twelve Months in the Development of the Criminal Law, National Judicial Institute, *Appellate Judges Seminar*, 26 April 2001.

A Reasonable Charter, Annual Seminar of the Supreme Court of Nova Scotia, Halifax, Nova Scotia, 12 March 2001.

Instructor, Canada – China Senior Judges Training Project, 2 – 14 February 2001. *Re* Jurisdiction and the Rule of Law.

Direction and Guidance on Reasonable Doubt in the Charge to the Jury, National Judicial Institute, Ottawa, 16 November 2000.

National Judicial Institute, Organising Committee, *Hearing and Deciding Charter Cases*, Intensive Course for Judges, 2000 – 2001.

L'emprisonnement avec sursis, L'Association canadienne des juges de cours provinciales, sur l'Internet, du 1er au 26 mai 2000.

A-B-C du paragraphe 24(2), Congrès annuel des Juges de la Cour du Québec, Lac Delage, Québec, 31 January 2000; Journée d'étude de l'Association des avocats et avocates de la défense de Montréal, le 27 avril 2000, Montréal.

Instructor, Canadian Association of Provincial Court Judges, May 2000. *Re* conditional sentencing (on internet).

Instructor, Canada – China Senior Judges Training Project, Montreal, October - November 1999. *Re* comparative criminal procedure.

Instructor, Canada – China Senior Judges Training Project, Montreal, July 1999. *Re* economic and commercial crime.

New Developments concerning Conditional Sentences, National Judicial Institute, Conference on Criminal Law, Vancouver, 19 March 1999.

Reasonable Doubt and the Defence Case, National Judicial Institute, Montreal, March 1998.

Principal consultancies and previous employment (*excluding litigation mandates*)

Canadian Judicial Council, 2005. *Re* complaints procedure under the *Judges Act*.

Department of Justice (Canada), 2004. *Re* double criminality and immigration proceedings

Department of Justice (Canada), 2004. *Re* The Openness Principle and the Limits of Secrecy, (2004).

Adviser, Canadian Judicial Council, 2004 – present. *Re* complaints procedure in matters of judicial discipline (with Bruce Archibald, Q.C.).

Adviser, Canadian Judicial Council, 1999 – present. *Re* model jury directions for use in criminal cases in Canada.

Adviser, Canadian Bar Association, Canada – China Cooperation Project, 2003. *Re* development of a criminal defence bar in China.

Counsel, The State of Eritrea, 2001 – 2003. *Re* revision of *Code of Civil Procedure*.

Counsel, The State of Eritrea, 2001 – 2002. *Re* revision of *Civil Code* and *Commercial Code* (with Richard A. Rosen and Martin Ganzglass).

Adviser, Department of Justice (Canada), 2000. *Re* jurisdiction of criminal courts.

Adviser, Department of Justice (Canada), 2000. *Re* recent developments in conditional sentencing.

Adviser, Department of Justice (Canada), 1999. *Re* differential application of the criminal law in Canada.

Adviser, Department of Justice (Canada), 1998-1999. *Re* the principle of restraint in drafting criminal legislation.

Counsel, The State of Eritrea, 1997 - 2000. *Re* drafting a new *Code of Penal Procedure of the State of Eritrea* (with Richard A. Rosen and Martin R. Ganzglass).

Counsel, The State of Eritrea, 1997-1999. *Re* drafting a new *Penal Code of the State of Eritrea* (with Richard A. Rosen and Martin R. Ganzglass).

Adviser, Department of Justice, 1997. *Re* constitutional validity of Bill C-3 (acquisition of DNA samples).

Counsel, Coalition for Gun Control, 1996-1997. *Re* promotion and defence of gun-control legislation.

Adviser, Department of Justice (Canada), 1996. *Re* the constitutional validity of section 33.1 of the *Criminal Code*.

Adviser, Royal Commission of Inquiry concerning the Deployment of Canadian Forces in Somalia, Ottawa, 1995-1997. *Re* interrogation of prisoners, independence of military police and structure of prosecutorial decision-making in the military context (with James W. O'Reilly).

Adviser, Department of Justice (Canada), 1995. *Re* the role and powers of the Attorney-General of Canada.

Adviser, Department of Justice (Canada), 1994-1995. *Re* statements by accused young persons under section 56 of the *Young Offenders Act*.

Adviser, New Reproductive Technologies, Department of Justice (Canada), February 1994 - June 1994. *Re* policy for the Government of Canada concerning legislation on new reproductive technologies.

Counsel, Extradition Working Group, Department of Justice (Canada), 1990-1994. *Re* policy and planning concerning a new *Extradition Act*.

Adviser, Department of Justice (Canada), 1989-1990. *Re* regulatory liability.

Adviser, Department of Justice (Canada), 1989. *Re* revision of *London Scheme on Rendition of Fugitive Offenders*.

Counsel (Litigation), Martineau Walker, Montreal, 1988-1989.

Adviser, Department of Justice (Canada), 1988. *Re* infanticide and other child homicides.

Adviser, Department of Justice (Canada), 1988. *Re* section 11(d) of the *Canadian Charter of Rights and Freedoms*.

Adviser, Department of Justice (Canada), 1987. *Re* homicide of children.

Law Reform Commission of Canada, Ottawa, 1985-1987. *Re* the burden of proof and the presumption of innocence.

Law Reform Commission of Canada, Ottawa, 1983-1984. *Re* pre-trial disclosure by the prosecution (Report 22).

Adviser, Department of Justice (Canada), 1983. *Re* amendments of offences in the *Criminal Code* relating to driving offences.

Law Reform Commission of Canada, Ottawa, 1981-1983. *Re* police interrogation (Working Paper 32 and Report 23).

Membership in professional committees

Member, Standing Committee on Criminal Law, Bar of Quebec (1992 – 2003).

Director, Executive Committee, Criminal Law Division, Canadian Bar Association (Quebec) (1994 - present).

Member, General Council of the Canadian Bar Association in Quebec (1999 – 2000).

Publications

Editorial

Editor, *Canadian Criminal Law Review* (with Anne-Marie Boisvert, Guy Cournoyer and James O'Reilly), published by Carswell Legal Publications (from 1996).

Editorial Board, *Canadian Journal of Criminology* (from 1997).

Editorial Board, *Sentencing Matters* (from 1997).

Editorial Board, *Journal of the International Association of Prosecutors* (from 1999).

Monographs

Criminal Law and Procedure, 9th edition (2004), with Kent Roach and Gary Trotter.

Sentencing and Penal Policy in Canada: Cases and Materials (Emond-Montgomery, 2000), pp. 1 – 950, with Allan Manson and Gary Trotter.

Dawn or Dusk in Sentencing? (Thémis, 1998), pp. 1 - 417, edited with Hélène Dumont.

Independence in the Prosecution of Offences in the Canadian Forces, with James W. O'Reilly, prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (1997), pp. 1 - 124.

Questioning Suspects, Report (N° 23) prepared for the Law Reform Commission of Canada (1984), pp. 1 - 25.

Disclosure by the Prosecution, Report (N° 22) prepared for the Law Reform Commission of Canada (1984) (with Alan D. Reid, Q.C.), pp. 1 - 36.

Questioning Suspects, Working Paper (N° 32) prepared for the Law Reform Commission of Canada (1984), pp. 1 – 104.

Articles

Investigative Detention in Canada, [2005] Crim. L.R.98-107.

The Effect of Pre-Sentence Custody on Eligibility for a Conditional Sentence (2005) 9 Can. Crim. L.R. 261-271.

Counterfeit Canadian Bank Notes, Ontario Crown Internet (on line) (2004), pp. 1 – 24 (originally prepared for the Bank of Canada).

Canadian Cooperation with the International Criminal Court, in Dumont & Boisvert, *The Highway to the International Criminal Court: All Roads Lead to Rome* (2004), 483-487.

Constitutional Limitations upon the Allocation of Trial Jurisdiction to the Superior or Provincial Court in Criminal Matters (2003) 47 Crim. L.Q. 31-76.

Judicial Notice in Sentencing (with William J. Vancise) (2002) 65 Sask. L. Rev. 97-105.

The Future of Conditional Sentencing (with Julian V. Roberts) (2001) 44 Crim. L.Q. 309-341.

Direction and Guidance on Reasonable Doubt in the Charge to the Jury (2001) 6 Can. Crim. L.R. 161-178.

The Punitive Nature of the Conditional Sentence (2000-2001) 80 Can. Bar. Rev. 1011-1018; also published in Department of Justice (Canada), *The Changing Face of Conditional Sentencing* (2001), 1-9.

Six of the Best (2000) 43 Can. J. Criminology 389-404.

“A Canadian Perspective on the Role of the Prosecutor in Criminal Prosecutions” in Arbour, Eser, Ambos & Sanders, *The Prosecutor of a Permanent International Criminal Court* (Max Planck Institute, Freiburg, 2000), 245-250.

Automatism Confined (2000) 45 McGill L.J. 87-105.

“Legislating without Reverse Burdens”, in Stuart, Delisle & Manson, *Towards a Clear and Just Criminal Law* (1999), 85-94.

“The Principle of Restraint in Drafting Criminal Legislation”, in Bergeron *et al.*, *Essays on Legislative Drafting* (1999), 209-211 (Ukrainian), 205-216 (French), 195-205(English).

Questions and Answers on Conditional Sentencing in the Supreme Court of Canada (1999) 42 Crim. L.Q. 12-37.

Risk, Obligation and the Consequences of Silence at Trial (1997) 2 Can. Crim. L.R. 385-401.

“The Criminalisation of New Reproductive and Genetic Technologies”, in Weir (ed.), *Governing Medically Assisted Human Reproduction* (1997), 65-73.

“Sentencing Reform: The Elephant in the Snake”, in *Développements récents en droit criminel* (1997), 3-27.

Beard Still Not Cut Off (1996) 46 C.R. (4th) 65-73.

Reform of Criminal Law and the New Law Commission, Policy Options, Volume 17, N° 1, January - February 1996, pp. 3-6.

Admissibility, Discretion and the Truth of the Matter (1995) 6 S.C.L.R. (2d) 379-451.

Statutory Prohibitions and New Reproductive Technologies under Federal Law in Canada (1995) 40 McGill L.J. 905-946.

Repeal Criminal Negligence (1995) 37 C.L.Q. 205-219.

Another Round on Intoxication (1995) 32 C.R. (4th) 269-275.

“Orientations of Corporate Criminal Liability in Canada” in Glenn, *Contemporary Law 1994 / Droit contemporain 1994* (1995), 845-873; also published in Doelder & Tiedemann, *Criminal Liability of Corporations* (1996), 169-202.

Intoxication in the Codification of Canadian Criminal Law (1994) 72 Can. Bar Rev. 515-552.

The Creighton Quartet: Enigma Variations in a Lower Key (1993) 23 C.R. (4th) 265-279.

Innocence and Defences (1993) 19 C.R. (4th) 121-131.

Regulatory Offences: The Case for a Purposive Test of Proportionality in Public Liability [1990] Meredith Lectures 195-231.

Bernard: *Difficulties with Voluntary Intoxication* (1990) 35 McGill L.J. 610-632.

The Value of Silence (1990) 74 C.R. (3d) 176-190.

Fundamental Questions in Wholesale Travel (1990) 69 Can. Bar Rev. 761-775.

Proof and Policy: No Golden Threads [1987] Crim. L.R. 355-365.

The Quantum Required for Proof of Voluntariness of Confessions (1985) 17 Ottawa L. Rev. 132-170.

The Process of Reform in Canadian Criminal Law (1984) 42 U. Toronto Fac. L. Rev. 1-24.

Motor Vehicles: Redefining the Scope of Criminal Liability for Dangerous and Impaired Driving (1984) 16 Ottawa L. Rev. 361-387.

Bill C-19: Reforming the Criminal Law (1984) 16 Ottawa L. Rev. 231-240.

Chabotage: Expanding the Crown's Power to Prefer Additional Counts (1984) 38 C.R. (3d) 344-351.

A Technical Note on Subsection 454(1.1) of the Criminal Code and the Release Powers of Police Officers (1982) 24 Crim. L.Q. 489-496 (with Stanley A. Cohen).

Notes and comments

Liberty under Stress (2004) 9 Can. Crim. L.R. 149-155 (editorial).

The International Criminal Court (2003) 8 Can. Crim. L.R. 1-4 (editorial).

Renewing Reform of the Criminal Law (2002) 7 Can. Crim. L. R. 253-256 (editorial).

A Reasonable Charter (2002) 7 Can. Crim. L.R. 1-4 (editorial).

Conditional Sentencing at the Limit (2001) 6 Can. Crim. L.R. 1-5 (editorial).

The Evolving Rule of Law (2000) 5 Can. Crim. L.R. 241-246 (editorial).

Rewriting Automatism (1999) 4 Can. Crim. L.R. 119-126 (editorial).

Awaiting Answers from the Supreme Court on Conditional Sentencing (1999) 3 Sentencing Matters 1-2.

Local Programmes under Part XXIII of the Criminal Code (1998) 2 Sentencing Matters 1-2.

Breach of a Conditional Sentence by Allegedly Committing Another Offence (1998) 3 Can. Crim. L.R. 1-16 (editorial).

More Protection for the Silent Accused in Canada (1998) 2 Int'l J. Evidence & Proof 247-252.

New Directions in Sentencing (1996) 1 Can. Crim. L.R. 262.1-262.9 (editorial).

Annotation to *Daviault* (1995) 39 C.R. (4th) 270-273.

Gagnon: *Suicide and Solitude* (1994) 24 C.R. (4th) 389-394.

Barbeau: *Nihil ex nihilo fit* (1992) 15 C.R. (4th) 190-197.

Further Points on the Defence of Voluntary Intoxication: Problems with Penno (1992) 71 Can. Bar Rev. 143-155.

Some Answers and Some Questions on Insanity (1991) 2 C.R. (4th) 95-106.

The Right to Remain Silent: Value Added, but How Much? (1990) 77 C.R. (3d) 199-208.

Anderson: *Marking Time or a Step Back on Criminal Negligence?* (1990) 75 C.R. (3d) 58-68.

Hunt and *Implied Exceptions to Woolmington* (1986) 136 N.L.J. 423-424.

R. v. Talbourdet: *Annotation* (on arrest and detention) (1984) 39 C.R. (3d) 210-213.

"Preface", *Issues in Medical Law in Canada* (1981) 26 McGill L.J. 671-672.

Newspaper articles

"Doing Time in Community can Work", *The Toronto Star*, 16 February 2000 (with Julian Roberts).

"Conditional Sentences: Jury is still out on Effectiveness", *The Lawyers' Weekly*, 11 February 2000, p. 5 (with Julian Roberts).

"Ruling will mean longer conditional sentences", *The Gazette* (Montreal), 4 February 2000, p. B-3 (with Julian Roberts).

"Prevention anchors Youth Crime Law", *The Gazette* (Montreal), 1 June 1998, p. B-3.

"Canada has too many Public Inquiries covering Too Much Ground", *The Gazette* (Montreal), 15 January 1997, p. B-3.

"Top Court is not Letting Drunks get away with Murder", *The Gazette* (Montreal), 29 March 1996, p. B-3.

"Rock Solid", *The Gazette* (Montreal), 31 January 1996, p. B-3.

"Justice was Done", *The Gazette* (Montreal), 7 September 1995, p. B-3.

"A Sobering Thought", *The Gazette* (Montreal), 7 March 1995, p. B-3.

“Prosecutor's Comments Jeopardize the Presumption of Innocence”, *The Citizen* (Ottawa), 11 May 1994, p. A-11 (with James W. O'Reilly).

“Why Valery Fabrikant Had Such a Long, Torturous Trial”, *The Gazette* (Montreal), 17 August 1993, p. B-6.

“Steps to Police Reform”, *The Globe and Mail*, 8 December 1983; p. 7; also published in French in *Le Devoir*, 29 December 1983, p. 7 and in *Le Soleil*, 8 January 1984, p. A-7.

“Police Interrogation and the Charter of Rights”, *The Globe and Mail*, 27 November 1981, p. 7.

Reviews

Andrews & Hirst, *Criminal Evidence* (1987) in [1988] Crim. L.R. 71-72.

Heydon, *Evidence: Cases and Materials*, 2nd ed. (1985) in [1985] Crim. L.R. 467-468.

Ewaschuk, *Criminal Pleadings and Practice in Canada* (1982) in (1983) 28 McGill L.J. 1047-1051.

Berger, *Fragile Freedoms* (1982) in (1982) 45 M.L.R. 726-728.

Manchester, *Modern Legal History* (1980) in (1981) 26 McGill L.J. 125-128.

Translations

Imperial Tobacco Ltd. v. Attorney-General of Canada (1988) 55 D.L.R. (4th) 555-577.

R. v. Clot (No. 1) (1982) 69 C.C.C. (2d) 349-365.

R. v. Clot (No. 2) (1982) 69 C.C.C. (2d) 365-367.

R. v. Clot (No. 3) (1982) 69 C.C.C. (2d) 367-380.

Parliamentary testimony

Testimony on Corporate Criminal Liability, 28 May 2002, *Minutes of the Standing Committee on Justice and Human Rights* (House of Commons).

Testimony on proposed Blood Samples Act (private member's bill), 21 February 2002, *Minutes of the Standing Committee on Justice and Human Rights* (House of Commons).

Testimony on Proposed Legislation concerning New Reproductive Technologies, 24 October 2001, *Minutes of the Standing Committee on Health* (House of Commons).

Testimony on Bill C-95, 24 April 1997, *Minutes of the Standing Committee on Justice and Constitutional Affairs* (Senate of Canada).

Testimony on Bill C-45, 27 November 1996, *Minutes of the Standing Committee on Justice and Constitutional Affairs* (Senate of Canada).

Testimony on Bill C-45, 17 June 1996, *Minutes of the Standing Committee on Justice and Legal Affairs* (House of Commons).

Testimony on Bill C-68, 18 September 1995, *Minutes of the Standing Committee on Justice* (Senate of Canada).

Testimony on Bill C-68 (for the Barreau du Québec), 7 June 1995, *Minutes of the Standing Committee on Justice* (Senate of Canada).

Testimony on Bill C-68 (for the Barreau du Québec), 17 May 1995, *Minutes of the Standing Committee on Justice and Legal Affairs* (House of Commons), Issue N° 110, First Session, Thirty-fifth Parliament.

Testimony on Bill C-72 (Intoxication Defence), 6 April 1995, *Minutes of the Standing Committee on Justice and Legal Affairs* (House of Commons), Issue N° 97, First Session, Thirty-fifth Parliament.

Submissions on Bill C-126 (Criminal Lawyers' Association of Ontario), presented to the Standing Committee on Justice and the Solicitor General (House of Commons), 2 June 1993.

Testimony on Reform of the General Part of the Criminal Code, in *Minutes of the Subcommittee on the Recodification of the General Part of the Criminal Code of the Standing Committee on Justice and the Solicitor General*, 26 November 1992, Issue N° 9, Third Session, Thirty-fourth Parliament.

Submissions on Bill C-49 (Criminal Lawyers' Association of Ontario), presented to the Legislative Committee on Bill C-49 (House of Commons), 14 May 1992, and published in *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-49*, Issue No. 1, 14 May 1992, Appendix C-49/2, pp. 1A:14-1A:26; also published in (1992) 13 *Criminal Lawyers' Association Newsletter* (2) 7-15.

Changing the Rules on Confessions, prepared for the Canadian Bar Association and presented to the Senate of Canada as part of the Association's brief on Bill S-33, the proposed new *Canada Evidence Act*. Senate of Canada, *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs* (Hansard), First Session, 32nd Parliament, Vol. 128, Issue No. 68 (28 June 1983), Appendix 68-A, pp. 58-111.

Expert evidence

United States of America v. Del Vicchio, Osorio & Osorio, Superior Court of Quebec, October 2001. *Re* comparative analysis of legal systems for extradition.

United States of America v. Palmucci, Superior Court of Quebec, June 2001. *Re* comparative analysis of legal systems for extradition.

United States of America v. Rangasoonbhan & Yang, Superior Court of Justice (Ontario), 6 September 2000. *Re* comparative analysis of legal systems for extradition.

Working committees and reports

Canadian Judicial Council, *Recommendations concerning the Complaints Procedure* (2005).

Canadian Judicial Council, *Judicial Accountability since 1995* (2005).

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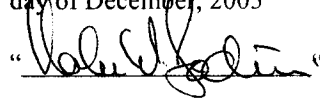
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Exhibit B

Legal Opinion of Patrick Healy

This is the Exhibit B
referred to in the affidavit of
Patrick Healy

Sworn before me this 2nd
day of December, 2005


"_____"

PATRICK HEALY

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2 December 2005

Adam Atlas, Esq.,
Barrister & Solicitor,
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H3A 3A2.

Dear Mr. Atlas,

You have asked for my opinion concerning criminal aspects of the following factual hypothesis:

BF receives funds electronically from X, who is in Canada, and transmits them electronically to Y, who is not in Canada, in the knowledge that Y is an off-shore gambling casino and that Y might place the funds at X's instructions for gambling in its casino that are not in Canada but that operate legally in the jurisdiction of Y.

Your question is whether BF is a party to criminal activity in Canada. It is assumed that the funds might be used for gambling that would be contrary to the *Criminal Code* if it occurred in Canada but is entirely lawful in Y.

The first question to consider is whether X is committing an offence in Canada and my answer is no.

Subject to several exceptions, Canadian criminal law respects the territoriality principle.¹ This means that, in the absence of an express exception, Canadian courts do not have jurisdiction over offences committed outside of Canada.

¹ *Criminal Code*, section 6(2).

Gambling offences are not among the crimes over which Canada has asserted extra-territorial jurisdiction. If a Canadian enters a foreign casino and gambles legally, Canadian courts could not assert jurisdiction over that conduct. Indeed it makes no difference whether the conduct is or is not a crime in the foreign state and it makes no difference whether the specific conduct is a crime in Canada.

Gambling offences are not comparable, for example, to money-laundering, which is given an extra-territorial reach in the *Criminal Code*.² Another example would be providing financial assistance to facilitate terrorism, which is also given extra-territorial ambit.³

Thus if X commits an act entirely outside of Canada, even if that conduct would be a crime in Canada, there can be no jurisdiction over that offence in the absence of an express assertion of extra-territorial jurisdiction. In the situation at hand, however, it is assumed that anything occurring in Y is entirely lawful according to the law of Y.

This is not the end of the matter, however, if it could be argued that an offence was committed in Canada or that a substantial part of an offence by X took place in Canada. In *Libman* the Supreme Court ruled that Canadian courts could assert jurisdiction over an offence if a significant portion of the activity constituting the crime occurred in Canada.⁴

On the hypothesis under consideration this would be a difficult argument to sustain. The activities of X and BF, up to and including the moment of receipt by Y, constitute a transfer of funds. X has instructed BF to receive and transfer funds to Y that will be placed in a foreign casino. No gambling has occurred and no gambling could occur unless and until X instructs Y to place a bet or do some other gaming activity. In short, X's transfer of funds to BF is too remote from any conduct in a foreign casino for it to be a significant portion of an offence.

Moreover, on this hypothesis there could be no liability in X (and *a fortiori* in BF) if the precise conduct in the foreign casino is not also an offence in Canada. If the precise activity in question is not an offence in Canada X cannot be a party to something over which Canadian courts have no jurisdiction.

² E.g., *Criminal Code*, section 462.31

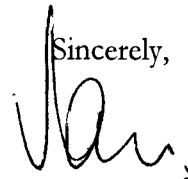
³ E.g., *Criminal Code*, sections 83.01 *et seq.*

⁴ [1985] 2 S.C.R. 178.

Much gambling activity is permitted under licensing schemes provided in Canadian law and thus there is no basis to assert jurisdiction. Simply put, if a Canadian court were to assert jurisdiction over conduct that is entirely lawful in Y, it would amount to an assertion by Canada of an extra-territorial jurisdiction for which no provision is made.

There are therefore profound obstacles to any theory of criminal liability in X or BF in Canada on the facts considered. Even if BF knows that X might ultimately instruct Y to gamble with his money in a foreign casino, a substantial portion of the offence must have taken place in Canada and the offence in question must also be an offence here. On the supposed facts, however, the only thing that has occurred in Canada is a transfer of funds by X to BF and by BF to Y. In that activity there is no gambling. There is not even an attempt to gamble in Canada although there might, at its highest, be conduct that constitutes preparation to gamble *lawfully* in a foreign casino. BF cannot be an aider or abettor because, for reasons given above, no offence is committed over which a Canadian court has jurisdiction

Sincerely,



Patrick Healy.