COURT OF APPEAL OF ALBERTA

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REGISTRY OFFICE:	CALGARY
PLAINTIFF/APPLICANT:	(a) SUSAN MULHOLLAND (b) BIOMEA INC. (c) JAN UTTL
STATUS ON APPEAL:	(a) (b) (c)
STATUS ON APPLICATION:	(a) (b) APPLICANT (c) APPLICANT
DEFENDANT/RESPONDENT:	(a) ANNE RENSONNET (b) ANNE RENSONNET; RENSONNET VENTURES INC; DUCHARME, MCMILLEN & ASSOCIATES CANADA LTD. (c) CORY CLIFTON; KARA CLIFTON; ANNE RENSONNET
STATUS ON APPEAL:	(a) (b) (c)
STATUS ON APPLICATION:	(a) RESPONDENT (b) RESPONDENT (c) RESPONDENT
THIRD PARTY DEFENDANT:	JAN UTTL
DOCUMENT:	**MEMORANDUM OF ARGUMENT OF JAN UTTL**
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TABLE OF CONTENTS

PART I: FACTS

1. This is an Application for access to the transcripts of the proceedings held in open court before Honourable Justice Horner. The Transcript Management Services ("TMS") of the Court of the Queen's Bench, Calgary, denied access to the proceedings even though the proceedings were held in open court, with public access, and no order restricting access to the court records was ever made. The TMS stated that an order from Honourable Justice Horner was required to release the transcripts. This denial of access is astonishing. As stated by the Supreme Court of Canada, the open court principle is "the cornerstone of the common law", is designed to ensure "public access to and scrutiny of the judicial process", and "the administration of justice thrives on exposure to light – and withers under a cloud of secrecy." The access to the court records can be restricted only in exceptional circumstances and only after the Court determines that the Dagenais/Mentuck test is satisfied. Equally importantly, a party to a litigation is entitled to know what facts a judge found, reasons for a decision, and the decision itself.

2. The TMS declined to provide transcripts of the hearings in the following three actions: Susan Mulholland v. Anne Rensonnet (Third Party Uttl); Uttl v. Cory Clifton, Kara Clifton, and Anne Rensonnet (1401-05866); and Biomea Inc. v. Anne Rensonnet, Rensonnet Ventures Inc, and DuCharme, McMillen & Associates (1401-05840).

3. Uttl repeatedly wrote to both Honourable Justice Horner and to the case management counsel, Ms. Catherine Christopher, requesting their cooperation in obtaining the transcripts. Uttl's requests were acknowledged but ignored. Only on December 19, 2016, after six weeks of requests and reminders, Ms. Christopher replied that the transcript from one hearing (Mulholland v. Rensonnet, heard on October 26, 2016) would be released because the decision pronounced at that hearing was appealed by Mulholland (however, no order to release the transcripts was provided for the TMS). With

respect to the transcripts of the other three hearings, Ms. Christopher made it clear that such transcripts would not be released in foreseable future unless the decisions were appealed. Moreover, with respect to November 24, 2016, hearing in Biomea Inc. v. Rensonnet et al. action, Ms. Christopher stated that there was no reason for Uttl to have the transcript.

PART II: ISSUES

4. Can access to the transcripts of the hearing held in open court be arbitrarily denied to a party and to a public without an application to restrict access, without a hearing to restrict access, without a consideration of Dagenais/Metuck tests, and without an order of the court to restrict access?

5. Can a case management counsel, Ms. Christopher, made judicial decisions, act as a justice of the Court of Queen's Bench, and deny access to the court records by merely directing the TMS not to release the records?

PART III: ARGUMENT

SUMMARY OF LAW: ACCESS TO COURT RECORDS BY PUBLIC

6. **The unimpeded access to court records is a cornerstone of Canadian justice.** In Toronto Star Newspapers Ltd. v. Ontario, 2005 SCC 41 (**TAB 1**), paras 1-4, the Supreme Court of Canada made it clear that "the administration of justice thrives on exposure to light – and withers under a cloud of secrecy" and that "What goes on in the courts ought therefore to be, **and manifestly is** [emphasis added], of central concerns to Canadians." (see also R v. White, 2005 ABCA 435, para 3-4, **TAB 2**)

7. **The access to the court proceedings and records can be restricted only in exceptional cases and only if the Dagenais/Mentuck test is satisfied.** In Toronto Star Newspapers Ltd. v. Ontario, 2005 SCC 41, paras 26-27, the Court made it clear that the restrictions should be ordered only when (a) "such an order is necessary in order to prevent a serious risk to the proper administration of justice",

and (b) "the salutary effects of the restrictions outweigh the deleterious effects on the rights and interests of the parties and the public". Moreover, the "risk" in the first prong "must be real, substantial and well grounded in the evidence" The Dagenais/Mentuck test must be applied to all discretionary actions or decisions that may limit access and the publicity of the judicial proceedings (Canadian Broadcasting Corp. v. The Queen, 2011 SCC 3, para 13, **TAB 3**).

8. **A person seeking access to the records does not have to justify why he or she seeks access to the records and does not need to give any reasons for seeking access to the records** (Innovative Health Group Inc. v. Calgary Health Region, 2006 ABCA 7, para 6-10, **TAB 4**)

SUMMARY OF LAW: ACCESS TO COURT RECORDS BY A PARTY

9. **A party's access to the court records is essential to administration of justices** It is plainly obvious that justice cannot be done and cannot be seen done when a party to a proceedings as well as public are denied access to a court records. For these reasons, in many Canadian jurisdictions, a party to a proceeding and media can record any proceedings they are a party of.

10. **Courts must give reasons for their decisions and such reasons must be transparent and accessible** (Paragon Capital Corporation Ltd. v. Morgan, 2014 ABCA 363, 48-49, **TAB 5**). To determine whether the Court gave such reasons, the transcript is clearly essential.

11. **Case law makes it clear that a party to a proceeding must have access to the Court records and that such access cannot be denied because it would amount to denial of justice.** In Dahlseide v. Dahlseide, 2013 ABCA 434, para 7 (**TAB 6**), this Court made it clear that an appellant "must know what the basis for his or her appeal is..." Yet, for a party to know the grounds of appeal and to show that they have merit, the party must first understand arguments made, findings of facts, application of law to those facts, and the decision made by a justice of a court appealed from. (see R v. R.E.M., 2008 SCC 51, para 11-13, **TAB 7**) A transcript or a recording of a hearing is clearly

essential for this purpose. Similarly, the transcript is necessary to determine if the Court gave sufficient reasons for the decision. If the reasons are deficient or even absent, an error in law has been committed and the appellate court will interfere with the decision (Paragon Capital Corporation Ltd. v. Morgan, 2014, ABCA 363, para 48, **TAB 5**). Finally, the transcripts are essential for an appeal by Rule 14.15.

12. Moreover, pursuant to the Court of Queen's Bench Act, section 16.2(2) (**TAB 8**), a case management counsel, Ms. Christopher, "shall not" be assigned "functions that require judicial independence", such as making making judgments and making court orders to restrict access to the court records.

APPLICATION OF THE LAW TO THE FACTS

13. Uttl seeks access to the court records – the transcripts of the open court proceedings –in which he is a party. No application was ever made to restrict access to these court records and no order was ever pronounced to restrict access to them. The denial of access to the court records was made in the complete absence of any consideration of the open court principle, the fundamental principles of justice, and the Dagenais/Mentuck test. Thus, this denial of access is a flagrant violation of the open court principle as well as the parties rights to know the pronounced decisions, the reason for the decisions, and their rights to appeal those decisions.

14. The Court's failure to respond to Uttl's requests for access to the transcripts for one month and a half is nothing short of astonishing. With all respect, given non-responsiveness of the case management counsel, Ms. Christopher, Honourable Justice Horner's remark made on November 24, 2016, that she would **shred** all communication addressed directly to her by Uttl calls in question Honourable Justice Horner's ability to do justice impartially and transparently.

15. Ms. Christopher's letter denying Uttl's access to the transcripts because (a) there is no reason for Uttl to have the transcripts and (b) because no one has yet appealed the decision is similarly

astonishing in a constitutional Canadian democracy. It strongly suggests that Ms. Christopher and/or the Court want to keep what was said and done in those hearing in secrecy, not exposed to the light, and kept away from both the appellate and the public scrutiny, and thus, frustrate administration of justice in Alberta and parties right to appeal the decisions. As outlined above, a person seeking access to the Court records does not need to give any reason whatsoever for seeking access and an appellant is presumed to know the decision to be appealed and the reasons for that decisions. However, unless one's memory is equivalent to that of the proverbial elephant, a party is unlikely to remember word by word what was said, argued and pronounced in an hour long hearing.

16. The denial of access to the transcripts of the open court proceedings is fundamentally wrong. It cloaks the administration of justice in Alberta in a cloak of secrecy, allows arbitrary decisions and cover ups of the court's actions, denies justice to the parties to the proceedings, and, as the Supreme Court of Canada made abundantly clear, it causes the administration of justice in Alberta to wither under such cloud of secrecy.

PART IV: RELIEF SOUGHT

17. Uttl requests that this Court orders the TMS to provide transcripts of any and all hearings in these actions upon request to Uttl, to any other party, and to any member of the public.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of January, 2017

Jan Uttl, Pro Se

LIST OF AUTHORITIES