

SUPREME COURT OF YUKON

Citation: *Sabo v. Attorney General of Canada et al.*,
2011 YKSC 34

Date: 20110413
S.C. No. 01-A0226
Registry: Whitehorse

Between:

DANIEL SABO

SUPREME COURT OF YUKON
COUR SUPRÊME DU YUKON
APR 13 2011
FILED / DÉPOSÉ
Plaintiff

And

**THE ATTORNEY GENERAL OF CANADA, MARCEL CLEMENT, RICHARD
HERD, GINA LECHEMINANT, CPL. DAN PARLEE, CHARLES F. ROOTS,
BILL SCHNECK, JOHN WOOD**

Defendants

Before: Mr. Justice A.W. Germain

Appearances:

Daniel Sabo
Alexander Benitah, and
Suzanne M. Duncan

Appearing on his own behalf
Counsel for the defendants The Attorney
General of Canada, Marcel Clement,
Richard Herd, Gina Lecheminant, Cpl. Dan
Parlee, Charles F. Roots and John Wood
Counsel for the defendant, Bill Schneck

Daniel Shier

REASONS FOR JUDGMENT

1. INTRODUCTION

[1] Daniel Sabo claims that in May 1999 he turned a meteorite over to the Geological Survey of Canada ["GSC"], an agency of the federal government. Mr. Sabo says an extraterrestrial life form was growing on that meteorite. He claims that a group of government employees, the Defendants Marcel Clement, Richard Herd, Gina Lecheminant, Charles F. Roots, and John Wood [collectively the "government

employees", and individually identified by name], conspired to prevent him from realizing the potential value of his discovery by a variety of wrongful conduct: fraud [written argument, at para. 9], theft [written argument, at para. 9], breach of trust [written argument, at paras. 4 and 11], misfeasance, breach of contract [written argument, at para 6], and abuse of office.

[2] The Defendant Cpl. Dan Parlee (now retired) was a member of the Royal Canadian Mounted Police ["RCMP"]. Cpl. Parlee was sued for not properly investigating Mr. Sabo's allegations against the government employees, and / or assisting in a conspiracy and cover-up. Mr. Sabo's written argument also indicate Cpl. Parlee's misconduct included "violation of statutory authority" [written argument, at para. 10], and negligence [written argument, at para. 59(d)].

[3] The Defendant Bill Schneck is a Seattle-based metallurgical expert that the Plaintiff engaged through an agent, Whitehorse lawyer Lorne Astring, to do an independent analysis of the meteorite. Mr. Schneck became a Defendant when his preliminary opinion did not support Mr. Sabo's thesis. Mr. Sabo accuses him of destroying evidence [modified to breach of trust in the written argument, at para. 11], and participating in the conspiracy and cover-up.

[4] Mr. Sabo alleges a wide range of factual conduct, he asserts is wrongful. This includes:

1. the government employees removed more material from Mr. Sabo's meteorite than was authorized;
2. the government employees replaced Mr. Sabo's meteorite with some kind of man-made duplicate;

3. the government employees were aware that an extraterrestrial life form was present on Mr. Sabo's meteorite and have removed that life form or taken other steps to conceal its existence;
4. the government employees have, without lawful reason, retained a part of Mr. Sabo's meteorite;
5. Cpl. Parlee did not properly investigate Mr. Sabo's allegations concerning the government employees and their conduct; and
6. Bill Schneck made alterations to Mr. Sabo's meteorite or its duplicate, while the meteorite or its duplicate, was in Mr. Schneck's possession.

[5] If I conclude that Mr. Sabo has not proven these assertions on a balance of probabilities, then Mr. Sabo's claim against the Defendants collapses.

2. PRE-TRIAL CASE MANAGEMENT

[6] The Plaintiff is self-represented. This litigation commenced January 30, 2002 and has been managed for a number of years by Yukon Senior Judge R.S. Veale. During case management, Justice Veale allowed the statement of claim to be amended, dismissed the action against some Defendants, allowed the Plaintiff to prove some of his case based on affidavit evidence [Affidavit 33 to 35 inclusive], appointed a court-appointed expert, and directed that a non-resident judge would attend in Yukon to hear the case.

[7] To further assist the Plaintiff and extend Senior Judge Veale's approach, I allowed closing argument to be presented in written form.

3. THE POSITION OF THE PARTIES

[8] Mr. Sabo's claim is anchored around two key findings of fact, which I am required to make:

1. that what the GSC sent him back in August of 1999 was not his meteorite but a complete replica right down to its molecular structure; and
2. that his meteorite had growing or living upon it an extraterrestrial life form.

[9] It is these two key factors that drive his damage claim of over \$12 million.

[10] Mr. Sabo's claim for relief is multifaceted, and it has undergone some evolution between the amended statement of claim and the written argument presented at trial. His at-trial theory is that the government employees, in their desire to deprive him of his property, substituted his meteorite with another meteorite of lower value or perhaps a construct that is not even a meteorite at all. On that basis the Plaintiff demands the return of his meteorite, all its parts, and all photographs, slides, and documents in the possession of the government employees which relate to his meteorite.

[11] Further, Mr. Sabo wants to have the meteorite's value properly assessed and advance a subsequent claim for its true value. In the alternative, the Plaintiff pleads an economic loss of U.S. \$12,150,000. This sum is based on the alleged starting weight of the meteorite of 243 grams, valued at \$50,000.00 US per gram.

[12] In the amended statement of claim, the Plaintiff also claims general, compensatory, special, aggravated, and punitive damages plus costs, but these categories are not carried forward in part V of the Plaintiff's final written argument.

[13] All Defendants deny all allegations of wrongdoing and ask that the lawsuit be dismissed with costs against the Plaintiff.

4. GENERAL BACKGROUND

[14] A "Who's Who" summary is helpful to track the various persons involved in this action. The job descriptions are for the positions held by these persons at the relevant time. A number of participants are now retired.

Daniel Sabo - the Plaintiff	A placer miner, who mined several claims in an area known locally as Empire Creek approximately 20 miles from Mayo, Yukon. He generally looked for gold and other valuable minerals.
The Attorney General of Canada	A Defendant on a vicarious liability basis.
Marcel Clement	Employed by Natural Resources Canada as a security officer, he refused to return a piece of the meteorite to Mr. Sabo on or about February 29, 2000.
Dr. Richard Herd	Curator - National Collections, Geological Survey of Canada
Gina LeCheminant	The head of the Applied Geochemistry & Mineralogy Subdivision of Mineral Resources Division – GSC; Dr. Herd's immediate supervisor.
Corporal Dan Parlee	RCMP officer, the head of commercial crime investigations, Whitehorse, Yukon.
Dr. Charles F. Roots	Employee of GSC, seconded to the Yukon

	Geology Program of the Yukon government, he conducted field work in the Yukon.
Bill Schneck	A Seattle, Washington, U.S.A. forensic expert hired by the Plaintiff to conduct a forensic analysis of the meteorite.
John Wood	Employee of the federal government Department of Mines and Minerals, and immediate supervisor to Gina LeCheminant of the GSC

[15] In 1986, Daniel Sabo was placer mining in an area known locally as Empire Creek, approximately 20 miles southeast of Mayo, Yukon. There, to his great delight, he found a piece of geological material, which he came to conclude was a small meteorite. He says when recovered the meteorite weighed 243 g [7.75 troy ounces]. He also found two other smaller pieces which he felt had similar characteristics.

[16] In March 1987, Mr. Sabo asked a friend to have the larger piece assayed. In doing the assay, a slice was removed from the flattest side, creating a "mountain like" profile to the meteorite when it sits on that flat base. When viewed towards the flat base and utilizing ones imagination, the base somewhat resembles a butterfly. The shape of the object, as illustrated in numerous photos filed in this matter, is quite distinctive. The assayer called it a meteorite [Bondar Clegg & Co. Ltd., North Vancouver BC; Report 127 – 1127, March 19, 1987, Exhibit 3, Tab 1]. Thereafter, so did Mr. Sabo. In this

judgment I will also refer to this specimen recovered by Mr. Sabo as a meteorite, but that nomenclature is subject to my comments in paras. 127 and 139-141.

[17] After 1987 numerous years passed with little attention paid to the meteorite. All this was about to change!

[18] In the winter of 1997-1998 (if not earlier and more frequently – see Affidavit 34 – time line), Mr. Sabo took the meteorite to Silver City, New Mexico, U.S.A., where his parents lived. He returned from New Mexico, in the early spring of 1998, bringing the meteorite with him. No special precautions were taken for the meteorite's handling. Mr. Sabo would hold it in his hand, place it in the crook of his elbow, and occasionally allow his dog to drool on it. When he returned to his claim site at Empire Creek, he placed the meteorite on his east facing cabin window sill. There, part of the meteorite began to acquire green formations in a seam running diagonally across the side. Mr. Sabo also felt the meteorite began to develop an inner glow.

[19] Mr. Sabo would later suggest that the meteorite contained an extraterrestrial life form that was replicating itself on the meteorite. Extended to its logical conclusion, Mr. Sabo concludes that his extraterrestrial traveler, which was a small hand sized piece of iron/nickel rock, came to earth with some kind of extraterrestrial life form hitching a ride. In his own words at trial: "... it wasn't mineral nor organic and was growing ...".

[20] Mr. Sabo reported the changes to his long time friend, Mr. Joe Hawes. Mr. Hawes first felt that Mr. Sabo had sustained some type of mental or isolation illness, occasionally called "cabin fever" in the North. This prompted Mr. Hawes and another friend, Kim Klippert, to travel to Mr. Sabo's mining site, supposedly to bring some supplies but also to observe Mr. Sabo.

[21] Mr. Hawes observed, with the naked eye, some green material in a small crevasse on the surface of the meteorite. When he examined the green coloured area with a geologist's loupe (a handheld 10 times magnification microscope) he observed the green coloured area to be multidimensional. Mr. Hawes never indicated that the growth on the meteorite was extraterrestrial. His evidence was only to describe, that under magnification something green, three-dimensional, and "coral like" was visible in the meteorite crevasse. He also observed some white objects in the same area. Mr. Klippert indicated he too observed the green material and for the most part his description is similar to that given by Mr. Hawes. There is really no dispute about the green coloration - it is visible in photos taken at the time. The Defendants Dr. C. Roots and Dr. R. Herd acknowledge its existence.

[22] The dispute is therefore on the origin and identity of the green coloured formation. On one hand, Mr. Sabo feels it is extraterrestrial in origin, and in some fashion was replicating itself and thus increasing in size. He drew sketches of the green material that resemble a type of coral. Dr. Charlie Roots and Dr. Richard Herd examined and describe the green material as a type of oxidation on a piece of mineral that is primarily iron with a significant amount of nickel, but also numerous trace mineral elements all of which in the presence of light, heat, and moisture will create oxidation coloration that will change over time. Oxidized materials can be removed from the surface by mechanical means, either intentionally or accidentally. Mr. Woods, who also possesses at least one degree in geology, specifically rejects the idea that the green material was anything more than a salt type crystal.

[23] The alternative that has been suggested is that the green material had a more mundane terrestrial explanation, it was some kind of lichen, a slow-growing fungal/algae symbiont often found on trees and rocks.

5. EVENTS THAT PRECEDED THE ENCOUNTERS BETWEEN THE LITIGANTS

[24] During the mining season (spring to fall) in 1998 (the season before Mr. Sabo's dealings with the GSC, and 12 years after he found the meteorite), Mr. Sabo was joined at Empire Creek by an American, who is identified only as "Rex". Rex was accompanied by his girlfriend, [name unknown]. Mr. Sabo had met Rex while visiting his parents in New Mexico earlier that winter.

[25] Rex claimed he could find gold by "dowsing" for it! Mr. Sabo agreed that Rex and the girlfriend, could visit his mine site in the spring of 1998. However, as Mr. Sabo narrates, when attempting to enter Canada Rex indicated to the *Canadian Border Service* that he was going to Yukon to mine. The *Border Service* denied Rex entry.

[26] To circumvent this obstacle Rex called Mr. Sabo – a relative stranger - and persuaded Mr. Sabo to transfer 50% of his mining interest to Rex. Part ownership would then allow Rex to enter Canada. Mr. Sabo says the deal was that the claims would be transferred entirely back at the end of the 1998 mining season.

[27] On September 1, 1998 Rex and the girlfriend, left Mr. Sabo's mine claim taking with them, by consent, the meteorite. Mr. Sabo asserts that the green life form on the meteorite had continued to grow, and thus he took special precautions to pack the meteorite in a wooden box, with the meteorite attached to the back of the box with an

insulated piece of electrical wiring so that the meteorite would not move around and damage the green growth form.

[28] Mr. Sabo did not again see his meteorite from September 1, 1998 until late August of 1999. That later date was when the GSC returned the meteorite (or as alleged, the duplicate) to him.

[29] Mr. Sabo's purpose, both when he first took the meteorite to New Mexico in the winter of 1997-1998, and the next year when he allowed the meteorite to travel to the United States with Rex, was to sell the meteorite without an export permit. That sale would be contrary to Canadian legislation and an offense, the *Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51 ["CPEIA"] prohibits the unauthorized removal of certain items from Canada: *CPEIA*, s. 40. Meteorites are specifically included among the items whose export is controlled under the *CPEIA: Canadian Cultural Property Export Control List*, C.R.C., c. 448, ss. 1, 2(e).

[30] The permit acquisition process includes an examination and valuation process, and provides an opportunity for the government or a government institution to purchase items such as a meteorite at fair market value (*CPEIA*, s. 29(5)(a)), under a controlled objective process.

[31] A rock which can fit in a hand is not an object that would attract border patrol attention, so Mr. Sabo and others had no difficulty bringing this meteorite back and forth across the border on at least two if not more occasions.

[32] To justify this apparent breach of Canadian legislation, Mr. Sabo indicates that he was annoyed with Dr. Herd because he listened to Dr. Herd on CBC radio speak about the government artifact purchase system under the *CPEIA*. Mr. Sabo says he felt that

Dr. Herd was under-pricing Canadian meteorites at the expense of Canadians, such as himself, who had found them.

[33] This explanation presents two difficulties to Mr. Sabo. First, the radio broadcast in question occurred in June 1998, after Mr. Sabo had already been to the United States with the meteorite and without an export permit. Second, the transcript of the broadcast [Exhibit 3, tab 59] contains *nothing* about the price of Canadian meteorites, except to imply that they have some value and are expensive! I conclude therefore that Mr. Sabo's explanation that he smuggled the meteorite out of the country without the appropriate permit because of his distrust of Dr. Herd is a non-substantiated after-the-fact reconstruction. Mr. Sabo is attempting a rewrite of history.

[34] The most logical explanation is that initially Mr. Sabo did not realize he needed a permit to transport the meteorite outside of Canada, and after learning this in the June broadcast, Mr. Sabo did not want to get one. Naturally, it gives the Court cause for concern when the Plaintiff expresses a factual point of view that is inconsistent with information for which there exists a clear documented record.

[35] Returning to the meteorite's 1998-1999 American excursion, Mr. Sabo explains that once Rex was back in the United States he "double crossed" Mr. Sabo both by refusing to deliver the meteorite to Mr. Sabo's parents, and by refusing to transfer back the mining claims. Mr. Sabo indicates he paid \$10,000 to Rex to get the meteorite delivered to his parents and for Rex to sign back the mining claims. No evidence was presented on what happened to the meteorite, where it traveled, who inspected or handled it, or what else was done to it while in Rex's custody.

[36] After the meteorite was returned to Mr. Sabo's parents, it traveled in the southern United States where it was shown to an unknown number of people for possible purchase. No evidence was called on the extent of the meteorite's travel, nor what, if any, sampling techniques may have been used by third parties to investigate the rock while determining its likelihood as a meteorite. Similarly, there is no evidence as to what, if any, other tests were performed. The meteorite traveled extensively while out of Mr. Sabo's control and no evidence was called to trace the meteorite in that gap in time of nearly a year.

[37] In the spring of 1999, Mr. Sabo asked Mr. Hawes to go to Spokane, Washington and pick up a package which contained the meteorite. This package was sent to Mr. Hawes in some way by Mr. Sabo's parents. Mr. Hawes was instructed to bring the meteorite back into Canada and deliver it to the Defendant, Dr. Charlie Roots, in Whitehorse. Mr. Hawes indicates that upon receipt of the package he opened the wooden box and found the meteorite resting on the flat surface of the box, wired against the box with a piece of electrical wiring. The wiring was twisted through the box and twist-tied to one side of the box. Neither the box nor the wiring was introduced in evidence at this trial. Mr. Hawes felt the green coloration was still on the meteorite.

[38] Mr. Hawes does not mention anything else in the box when he inspected it after receipt from Mr. Sabo's parents. As instructed, he forwarded the box and meteorite to Dr. Charles Roots.

6. THE GEOLOGICAL SURVEY OF CANADA [GSC]

[39] The federal Department of Natural Resources includes an earth sciences sector which has a subdivision identified as the Geological Survey of Canada ["GSC"]. The

GSC is responsible for maintaining the 'national meteorite collection' and the education of the public about meteorites.

[40] The coming together of Mr. Sabo and the GSC was initially a match made in heaven. The GSC is always looking for new and exciting meteorites to become part of the Canadian collection, but even if the GSC does not obtain the specimen, with the finder's cooperation the GSC can document and validate the find to obtain valuable research data and generally expand our understanding of the universe. Mr. Sabo was not wealthy and scientific research costs money - unless it can be obtained free as part of a public policy. The GSC's scientific investigative services provided exactly that.

[41] The face of the GSC in the Yukon was Dr. Charles F. Roots, who has education, training, and extensive experience in geology. Dr. Roots had been seconded to Yukon to act as a geological advisor to the Territory. Dr. Roots knew and had a rapport with many prospectors, including Mr. Sabo.

[42] At that time Gina LeCheminant (now retired) was the head of the GSC; Dr. Richard Herd reported to her, she in turn reported to Mr. Woods (also now retired) who was part of the executive structure of the Department of Mines and Minerals. The Mines and Minerals department has access to a security division that operates more or less independently. Marcel Clement was then the head of the security division.

[43] Around the time that Mr. Sabo began thinking of having the GSC perform a further analysis on his meteorite, he spotted on his claim site some rock formations which he felt contained Jadeite [a green, blue, or white sodium aluminum silicate form of jade: **The Canadian Oxford Dictionary 2001**]. This material could be turned into forms of art. Mr. Sabo was interested in accessing Dr. Roots' knowledge about where he

might find other similar specimens in the region. He met with Dr. Roots, who supplied him with some information and later a package of maps. Mr. Sabo advised Dr. Roots that he would ask Mr. Hawes to deliver the meteorite to Dr. Roots for transmittal to Ottawa, as long as some other rock formations (the possible Jadeite) could also be analyzed.

[44] In 1999 Mr. Sabo was experiencing economic pressure and was tiring of mining. He had reasons to change his path. First, he wanted to convert some of his energy into his own art. Second, Rex [see para. 35] had cost him a large sum of money. Third, the alluvial plane that Mr. Sabo was mining for gold was soon going to require larger equipment to dig deeper. That last development was an issue, as the Yukon government was bringing in new mining regulations that could have imposed additional or more stringent rules and costs on placer miners such as Mr. Sabo.

A. May, 1999

[45] In May 1999, Dr. Charlie Roots received the meteorite in some fashion from Mr. Hawes. When Dr. Roots inspected the inside of the box the meteorite was loose in the box, along with another piece of metallic looking rock and some bits of wiring. There is no conflict in this evidence between Mr. Hawes and Dr. Roots. It may well be that when Mr. Hawes sent the package, the meteorite was properly secured and he may not have noticed the other piece. He was not asked specifically about this. The fact that according to Dr. Roots the meteorite arrived loose is also not a conflict in the evidence - during its travels the meteorite may simply have become detached from the wire which had previously held the meteorite firm. I accept the evidence of Dr. Roots about the condition of the meteorite when he received it.

[46] Mr. Sabo authorized Dr. Roots to forward the meteorite plus the possible Jadeite for analysis to Ottawa. Dr. Roots, on behalf of Mr. Sabo, sent Dr. Richard Herd a cardboard box which contained a few samples of the "jadeite-like" material that Mr. Sabo had found, and the smaller wooden box containing the meteorite and the other rock formation that Dr. Roots had received from Mr. Hawes. Prior to sending the material to Ottawa, Dr. Roots took the time to craft a Styrofoam mould to serve as a more secure environment for the meteorite, and retrofitted the mold into the same wooden box. Dr. Roots also composed a detailed letter dated May 12, 1999 [Exhibit 3, tab E] that accompanied the courier delivery.

[47] Mr. Sabo asks that I find that a copy of his original *Bondar-Clegg* assay [Exhibit 3, tab 1] accompanied the meteorite to Ottawa. I do not find that to be the case. Mr. Hawes did not mention sending the assay on to Charlie Roots, however it is clear that Charlie Roots did see or at least received particulars of that report, because he passed the assay information on to Dr. Herd in the letter of May 12, 1999. It would not have been necessary for Mr. Roots to take the time to place the assay particulars in the letter, if he had a copy of the original assay to include with the May 12 package and letter. Nothing, however, turns on this fact.

B. The Meteorite Arrives in Ottawa

[48] The meteorite arrived in Ottawa on May 17, 1999. Dr. Herd accepted the condition that the GSC were to inspect and photograph the meteorite, but not to do any invasive or destructive testing of it. He thus conducted a preliminary investigation but to do a microscopic observation of the base (the side that had been cut historically by others) that surface had to be polished (etched) to remove accumulated tarnish and

oxidation. This step occurred with Mr. Sabo's consent, as Mr. Sabo wanted, if possible, a definitive analysis on the nature of the meteorite; see also Exhibit 1, tab C, RCMP statement 99-733, page 7, last answer. I am satisfied that by May 1999 (if not before) Mr. Sabo had become aware that formal certification was necessary to confirm that the object was a meteorite before the rock would attract any value.

[49] During that initial inspection Dr. Herd concluded that the geological formation "had possibility" as a meteorite. He requested permission to take a small additional piece, an "off cut", from the previously cut base, and that the GSC could conduct further testing on the "off cut" piece. Initially, Mr. Sabo would not consent. During this period of time, Mr. Sabo appeared to develop a distrust of Dr. Herd and began to ask for his meteorite back. When Dr. Herd, who was understandably engaged with other pressing work, did not drop everything to return the meteorite, Mr. Sabo complained to Gina LeCheminant, Dr. Herd's superior.

[50] Gina LeCheminant gave evidence at the trial. Ms. LeCheminant is a pleasant and extremely credible witness; she has an amazing memory of the events. For my task an equally important fact is that Ms. LeCheminant kept a daily written log of her activities, and any such record is highly persuasive in any litigation. Mr. Sabo, who operates primarily from self-serving memory, simply cannot compete in credibility against a witness who in the course of her duty kept a daily log. As a consequence, I prefer Ms. LeCheminant's evidence where her evidence is different from that of Mr. Sabo's.

[51] Both Mr. Sabo and Ms. LeCheminant confirmed that Mr. Sabo did not initially give the GSC permission to cut a piece off the meteorite. However, that changed with a call which Ms. LeCheminant received from Mr. Sabo on or about July 27, 1999 [Exhibit

3, tab 20]. That telephone call began as a demand by Mr. Sabo for the expedited return of the meteorite. However, during the call Mr. Sabo altered his position and gave the GSC permission to remove a small piece, the "off cut", from the meteorite to be used in additional testing. In Mr. Sabo's evidence [affidavit 34], he deposes that the "off cut" was only going to be 2 grams. That is a ridiculously small amount for a mechanical cut off a piece of rock; given the density of this material, and I reject that evidence. I accept the evidence of the GSC, that the "off cut" would be a small slice, of no set weight - but sufficient to allow detailed scientific testing.

[52] My conclusion is that the permission to remove the "off cut" implied that the GSC also had permission to continue to retain the meteorite while this "off cut" was removed, then retain the "off cut" thereafter for sophisticated testing.

[53] The only stipulation on this procedure would be that effort would be made by the GSC to protect the green formations and that the meteorite would be cut without the use of either an oil or water lubricant. That last requirement was very unusual. It is difficult to cut any mineral material without a solvent, but nevertheless the GSC accepted this condition.

[54] Mr. Sabo admits that he gave his permission for this testing activity, however he indicates in his evidence that his agreement was only made under duress. He feared that he would not get *any* part of his meteorite back if he did not allow the government to take that small slice. The privately held motive, that Mr. Sabo had, was not expressed to Ms. LeCheminant. Canadian legal authority supports the proposition that consent is validly given, irrespective of any undisclosed strategic motive which the grantor may have believed forced his hand. In ***Greater Fredericton Airport Authority Inc. v. NAV***

Canada, 2008 NBCA 28, 290 D.L.R. (4th) 405, the New Brunswick Court of Appeal conducted a comprehensive review of when a contract agreement can be negated due to duress. A requirement to prove duress is that "...the coerced party made the promise "under protest" or "without prejudice" ..." (at para. 53). If Mr. Sabo felt he had no choice, then he did not communicate that fact.

[55] With Mr. Sabo's permission, the GSC's analysis of the meteorite moved forward. As expected, the dry cut led to a very rough, crude cut base. Dr. Herd was dismayed with the appearance of the base of the meteorite after the "off cut" had been taken and elected to have it polished so that Mr. Sabo would receive a meteorite back with a smoother base, just like had been received. This procedure was absolutely necessary for more than just restoration of the aesthetic appearance of the meteorite. If other persons wished to observe the base structure of the meteorite under a microscope they needed a clean, smooth surface. As a result Dr. Herd authorized polishing of the cut surface after the "off cut" had been removed.

[56] Mr. Sabo had earlier consented to the initial polishing of the base surface. Both the initial polishing and the post-cut polishing were, in any sense, completely to Mr. Sabo's benefit. I therefore conclude that his consent extended to the re-polishing after the "off cut" had been taken. Had this re-polishing not occurred the GSC would have returned to Mr. Sabo a meteorite with an unfinished base surface and even less value. In short, the GSC did Mr. Sabo another favour.

C. The Meteorite Returns to the Yukon

[57] After the "off cut" was removed and the meteorite polished, it, together with the other rock material, was returned to Mr. Sabo in the original packaging. Dr. Herd also

wrote a comprehensive two page report letter, dated August 4, 1999 [Exhibit 3, tab 31], in that letter Dr. Herd indicated that while the meteorite had promise as having an extraterrestrial origin, more sophisticated testing was required. Dr. Herd also indicated that the other rock formations that had accompanied the meteorite were not jadeite and did not have the value of a jade derivative.

[58] All the GSC witnesses who gave evidence denied any impropriety in their handling of the meteorite. They admit that the meteorite returned weighing less than when they received it, but explain the reduced weight is due to removal of the "off cut" that the GSC was permitted to take, and the wastage that occurred during polishing of the base surface, both before and again after the "off cut". They deny Mr. Sabo's claim that the meteorite he sent to them weighed 243 grams. When it arrived Dr. Herd weighed it at 198 grams.

[59] All the GSC officials emphatically denied that a meteorite look-alike had been fabricated and then substituted for the rock that Mr Sabo had collected. They deny removing the extraterrestrial life force.

[60] Mr. Sabo was unhappy with the approach taken by the GSC and his interactions with that organization. In particular, he was unhappy with the GSC conclusion that even if his find was a meteorite, the meteorite was still of an iron nickel type. Iron nickel meteorites are the most commonly recovered type, and rarely generate any more than five dollars per gram.

[61] Mr. Sabo viewed the meteorite as a way out of his economic difficulties and as an opportunity to fund a change of lifestyle. He was less than delighted by any information he received that refuted his personal high value assessment of the

meteorite. His response to this bad news was to turn against anyone, or any organization that deflated his assessment of the value of his find. His first step in that process was to scrutinize the object which had returned from Ottawa.

D. The Weight of the Meteorite

[62] The first disputed point is the weight of the meteorite. Mr. Sabo claims that the object had a substantial decrease in weight while in the GSC's possession. Mr. Sabo believes this may indicate a number of nefarious possibilities.

[63] Mr. Sabo says after the meteorite came back from the *Bondar-Clegg* Assay in May 1987 that the weight of the meteorite was 7.75 troy ounces or 243 grams. His friend, Mr. Gerald Graham, who held a government role in Yukon as an official claims recorder also asserts that he weighed the meteorite to verify Mr. Sabo's on-site weight, and he remembers 243 grams, as well.

[64] However, weighing meteorites is not within the official duty of a Yukon Claims Recorder and therefore no official government record of this weight was made. I find it incredible that Mr. Graham would, years after the fact, remember the weight of this formation at a time when it had not yet been confirmed as a possible meteorite. At best, the object would only have been an unusual rock formation. Later, when the difficulties of a lack of official record (or any record) of the initial or early weight were brought to Mr. Sabo's attention, he prepared a self-serving statutory declaration asserting under oath the weight (243 grams) and had Mr. Graham, also a Notary, swear the affidavit.

[65] Ironically, this statutory declaration was misdated, which reflects how easily people can become confused about dates, particularly when those dates radiate back in time. It is also instructive to note that, at that time, Mr. Graham did not personally swear

a statutory declaration about the weight, as one might have expected if he indeed officially weighed the material. In short I find the explanation of Mr. Sabo about how he knows and remembers that this meteorite was 243 g when weighed in 1987 to be weak. That means the alleged starting weight of the meteorite is, at best, suspect. Although Mr. Graham supports his friend on the witness stand, his memory of the weight historically may simply be an error.

[66] The starting weight is also questionable for another reason. After Mr. Sabo found the meteorite he voluntarily surrendered it to a friend to have it assayed. If Mr. Sabo is wrong about the time he conducted his undocumented weighing of the meteorite, and the 243 gram weight is for the object before the *Bondar-Clegg* assay, the full explanation for the missing weight could be due to the amount removed by *Bondar-Clegg* during the 1987 investigations.

[67] There are also other explanations; perhaps a small piece was chipped off, broken off or inappropriately taken as a sample during the many months that the meteorite traveled in the United States looking for buyers. Indeed, Dr. Roots observed a loose piece of additional material in the box he received from Mr. Hawes.

[68] There is also a possible scientific explanation. When he examined the meteorite Dr. Herd noticed a small center portion of the base of a different color which appears to run, like a valley, through the center of the base. He suspects that region may include a clay-based (or clay property like) material. Clay is notorious for absorbing and shedding water and it may well be that there were little fissures and holes in the middle of the meteorite with some clay-like substance, and if that material were to retain or shed water then that would affect its weight from time to time.

[69] The next weight evaluation we have of the meteorite was that performed by Dr. Herd when it arrived in Ottawa. He found the object to weight 198 grams. After it was initially polished its weight remained 198 grams, which indicates that its initial polishing removed so little that the scale could not detect any shrinkage. I accept this weight, and Dr. Herd's evidence of it.

[70] The "off cut" removed by the GSC was measured; it weighed 12.98 grams. After the final polishing the meteorite returned to Mr. Sabo weighed 176 grams. In short, the activities by the GSC reduced the weight of the meteorite by 22 grams, including the "off cut".

[71] Dr. Charlie Roots, who was himself preoccupied by his own fieldwork in the summer of 1999, misstated in his letter to Dr. R. Herd, the weight of the meteorite sent to Ottawa. He has subsequently and repeatedly explained that this was simply a typographical error. Mr. Sabo has pounced on this as representing evidence that in fact Dr. Charlie Roots cut a slice of the meteorite even before he sent it to Ottawa. I reject that proposition and I accept the more common sense proposition that Dr. Roots simply made a typographical error when he repeated the weight he received from others. In fact his email of May 11, 1999 to Dr. R. Herd states the weight at 198 grams, but Dr. Herd's return response of the same date inserts the weigh of 158 grams into the discussion, which could well be the thread that led to the error. [Exhibit 3 tab 6]

[72] I find as a fact that Mr. Sabo consented to the "off cut", the etching, and the polishing. Implicitly, he also must have consented to the shrinkage that would result from those steps. This is what the GSC contracted to do for Mr. Sabo, in the name of science, and that is precisely what they did.

[73] I see this agreement as an oral contract between the parties but confirmed in the parties' correspondence and e-mail. The GSC group of Defendants did not breach any term of this contract, as carried through by the GSC and its employees. They fulfilled their obligations to Mr. Sabo.

7. THE RCMP BECOMES INVOLVED

[74] On September 1, 1999, [Exhibit 3, tab A] Mr. Sabo contacted Officer Galenzoski of the RCMP with two allegations:

1. the alleged missing meteorite weight [see paras. 62-73], and
2. the missing extraterrestrial life form.

Mr. Sabo was interviewed on September 2, 1999 and his statement was transcribed.

Mr. Sabo asserts the statement as transcribed is inaccurate, but agreed to it becoming an exhibit.

[75] Mr. Sabo makes only two allegations in his report to the RCMP, with no mention of a meteorite substitution. I am satisfied that his initial complaint only related to the missing weight and life forms. Usefully, in the statement given to the RCMP Mr. Sabo again confirms that he allowed the GSC to initially etch the base of the meteorite to improve its resolution for viewing under a microscope, and also that he consented to the GSC taking an "off cut" from the meteorite.

[76] As I have previously indicated, Mr. Sabo's allegations have evolved over time. It would be only later that Mr. Sabo concluded that an entire substitution of his original meteorite for some kind of replacement had taken place. And even much later, after inspection by the court-appointed expert, Mr. Sabo opined that the substitution occurred prior to the "off cut". Implicit in this allegation is that the GSC was prescient (or

extremely thorough) and knew or anticipated that years later, in litigation, a judge would order a forensic comparison of the meteorite returned to Mr. Sabo and the GSC "off cut". Extending Mr. Sabo's theory, in anticipation of this development, the GSC made a duplicate and then removed an "off cut" from the duplicate to ensure that the "off cut" perfectly matched the remainder.

[77] Shortly after receiving Mr. Sabo's initial complaint, Constable Galenzoski left Whitehorse and his replacement, Defendant Corporal Parlee, took over the file.

A. The Claim against Corporal Parlee

[78] When Cpl. Dan Parlee replaced Constable Galenzoski, he reviewed the file and met with Mr. Sabo. Cpl. Parlee had been left with many other serious files to investigate. He indicated to Mr. Sabo that he was not going to investigate the missing life forms because he doesn't: "believe in extraterrestrial aliens". Nevertheless, Cpl. Parlee felt obliged to investigate the weight loss allegation.

[79] Corporal Parlee contacted Dr. Roots, and Gina LeCheminant. Both cooperated fully. Dr. Roots attended for an interview, and created a written summary of relevant information and communications. Ms. LeCheminant discussed the case on the phone and sent a comprehensive letter, dated February 28, 2000, that set out the position of the GSC [Exhibit 3, tab 49].

[80] After receiving the LeCheminant letter it is fair to say that Cpl. Parlee lost interest in further investigation of this matter. His explanation is logical. He concluded that the chain of continuity to the meteorite was disrupted, there was potential ambiguity in its initial weight, and the extent of the meteorite's travels while it was in the possession of other persons and outside of Mr. Sabo's custody meant that Cpl. Parlee could not prove

a reliable starting weight. The explanation given by Ms. Lecheminant of the agreement between Mr. Sabo and the GSC justified a conclusion that the GSC had indeed removed some of the meteorite's material, but it had only done so with Mr. Sabo's consent.

[81] In cross examination Cpl. Parlee admits that he did not follow up with any of Mr. Sabo's witnesses but rather took at face value the information from the GSC. While that is true, the chain of continuity issue meant it was not possible to determine the initial weight of the meteorite immediately before it was sent to the GSC. That was a key factor in Cpl. Parlee's decision not to investigate further, as was his conclusion that the meteorite had gone to the GSC consensually and therefore the case was in the realm of civil, not criminal law.

[82] His decision not to pursue the investigation further is reasonable and within his discretion as a peace officer. The decision to end the investigation provides no evidence of a conspiracy or an effort to protect other government employees. Nor was Cpl. Parlee involved when the dispute between the GSC and Mr. Sabo intensified and Marcel Clement decided to retain the "off cut" in February 2000. I will later detail what happened surrounding that decision. Cpl. Parlee was advised that the GSC was retaining the "off cut" piece of the meteorite, but did not influence that decision.

[83] Cpl. Parlee's assessment that he was not going to investigate the issue of the "extraterrestrial aliens" being unlawfully retained by GSC in Ottawa is also reasonable, particularly once he had received a plausible explanation from the professionals involved that the green formations were a more mundane growth readily explained by the laws of chemistry and mineralogy, and thus of terrestrial origin.

B. Was There a Conspiracy Participated in by the RCMP?

[84] There is no evidence that the RCMP, as represented by Cpl. Parlee, assisted in some government conspiracy and cover-up other than that information supplied in Mr. Sabo's evidentiary affidavit (permitted by direction of the case management Justice), as complemented by Mr. Sabo's own *viva voce* evidence. Mr. Sabo reports that a "brush off" comment that Cpl. Parlee had given him, "to not worry we'll look after you Dan", was also given to Mr. Sabo verbatim by Defendant Bill Schneck. Mr. Sabo says the similarity of those brush offs is evidence of a conspiracy.

[85] In addition, when Mr. Sabo would later go to Ottawa to conduct his own investigation of the situation, he stayed at a motel. That motel was the location from which Mr. Sabo's statutory declaration on the weight of the meteorite [Exhibit 3, tab 26] was faxed to the GSC. Mr. Sabo denies he sent that fax, though he agrees the message was faxed at a time, date, and from a place at which Mr. Sabo was staying. Rather, Mr. Sabo says that at that time he was under surveillance by two men wearing black suits. These persons stayed in the room next to him and Mr. Sabo speculates it could be those men who faxed the statutory declaration of the initial weight of the meteorite to the GSC.

[86] At trial, Mr. Sabo provided an elaboration on this event. He suggested that the men who had him under surveillance may have broken into his room, stolen the statutory declaration, and then faxed it to the GSC. However, in his written argument he asserts that the fax came from a different source – he says it was Cpl. Parlee who sent that communication (para. 59(c)). No credible explanation is offered on how the motel's

name, as the source of the fax, could be found at the very top of the statutory declaration, when Cpl. Parlee remained back in Yukon.

[87] Mr. Sabo has other evidence of peculiar events that occurred while he was in Ottawa that he says support his conspiracy theory. Mr. Sabo explains that although he brought his dog to Ottawa, the motel he stayed at refused to rent him a room on the main floor – it claimed that those rooms were under renovation. However, one night while walking his dog, Mr. Sabo saw the window blind move on one of those rooms under renovation and when he looked quickly at the window, the curtain was dropped, surreptitiously. It is from this that Mr. Sabo concludes that for some of the time he was in Ottawa, and despite staying in a motel of his own choice, his room was entered and his statutory declaration on the weight (see para. 86) was taken from his room and faxed to the GSC by those spying on him.

[88] Mr. Sabo asserts that he was shocked when he discovered the GSC possessed that statutory declaration via an *Access to Information Act* (R.S.C. 1985, c. A-1) request. He indicates that it was only Cpl. Parlee, his Member of Parliament, or the alleged surveillance team at his motel that could have delivered that document to GSC. Mr. Sabo is oblivious to the possibility that when the dispute concerning the initial weight arose on his first visit to GSC offices, on February 25, 2000, he may well have gone back to his motel room and faxed his statutory declaration to the GSC and has simply now forgotten that act. It makes no sense for a document composed and created entirely by Mr. Sabo, which indicates (but does not establish) a larger weight, to constitute such a sinister document that a surveillance team was necessary to access Mr. Sabo's room, remove the document, and fax it to the GSC.

[89] I prefer the inference that, to further support Mr. Sabo's meteorite weight allegation, it was he who asked the motel to fax the document. When the speculative underpinnings of Mr. Sabo's allegation against the RCMP are simply removed as instead consistent with another more logical explanation, or the entire event is interpreted as a misperception by Mr. Sabo, the case against Cpl. Parlee must fail.

[90] I conclude that the RCMP properly opened a file to investigate Mr. Sabo's claims. The RCMP investigated the issue of the weight loss. While the police concluded they would not pursue his claim of the extraterrestrial life form, they nevertheless treated Mr. Sabo with respect. They closed their file for an entirely reasonable basis; the RCMP could not show a continuous starting weight for the meteorite. That, from time to time, the RCMP would take Mr. Sabo's calls is neither sinister nor inappropriate. The fact that they would allow Mr. Sabo to tape their calls with him is also not sinister but rather an attempt to be open and transparent. That is no basis for a complaint.

[91] Police can be liable for negligent conduct. In a recent Supreme Court of Canada case, **Hill v. Hamilton-Wentworth Regional Police Services Board**, 2007 SCC 41, [2007] 3 S.C.R. 129, that court re-confirmed the existence of a tort of negligent police investigation (paras. 19-61). The standard of care of a police officer is "the standard of the reasonable police officer in like circumstances as the standard that is generally appropriate in cases of alleged negligent investigation." (para. 67). In short, Cpt. Parlee's obligation was to investigate Mr. Sabo's allegations as he would any other claim that property had been misappropriated.

[92] I conclude he did and so I find no negligence in the conduct of Cpl. Parlee. In my view, he also properly recognized the separation in Canadian law between civil matters

and criminal matters; and following a proper and appropriate investigation, closed his file.

[93] In conclusion, the claim against Cpl. Parlee is dismissed. There is no basis in fact for the claim of conspiracy. Legally, Cpl. Parlee properly discharged his duty. That addresses the entire waterfront of any legal action brought by Mr. Sabo against Cpl. Parlee. I conclude that these allegations were unmerited, unworthy, and served only to sully the reputation of a career RCMP officer. The allegations are just supposition and innuendo that was completely unsupportable by any evidence other than the firmly held, but erroneous beliefs of Mr. Sabo.

8. THE FEBRUARY 2000 TRIP TO OTTAWA

[94] When Mr. Sabo's police complaint did not lead to the investigative assistance from Cpl. Parlee for which Mr. Sabo hoped, Mr. Sabo decided to go to Ottawa, and confront the GSC and its the handling of his meteorite.

[95] Mr. Sabo's unannounced and unexpected attendance in Ottawa did create controversy! When he first arrived, without appointment, on Thursday February 24, 2000, security officers contacted Gina LeCheminant. She agreed to meet with Mr. Sabo. Mr. Sabo continued to express concern about the government's handling of his meteorite and particularly of the weight difference and his suspicions that flowed from that apparent discrepancy. Mr. Sabo also expressed concern over the diminution of the green texturing. At the meeting, Gina LeCheminant for the first time actually saw Mr. Sabo's meteorite (or its alleged, GSC manufactured double) which Mr. Sabo had brought back to Ottawa with him. She describes it as a "pretty rock formation".

[96] She concluded that Mr. Sabo was still troubled by the "off cut" and the missing mass, even based on the government's recorded before and after weight, and irrespective of the initial weight that Mr. Sabo attributed to the meteorite. She was also aware that the government was still in possession, with Mr. Sabo's permission; of the "off cut" and that numerous coloured photographs of the meteorite had been taken by Dr. Herd and perhaps others at the GSC. Mr. Sabo was demanding all of this material back including the "off cut". Ms. LeCheminant arranged to have him meet with Dr. Herd.

[97] Ms LeCheminant testified that she had no difficulty with Mr. Sabo. She viewed him as a Canadian prospector who had strong views about his meteorite, so she took him to Dr. Herd. When she walked into Dr. Herd's office, Dr. Herd politely greeted Mr. Sabo and extended his hand in greeting. Gina LeCheminant indicates that at this point Mr. Sabo became agitated, alleged that Dr. Herd had ruined his life, and refused to shake his hand. Mr. Sabo demanded to look at the pictures of his meteorite. Ms. LeCheminant agreed to give Mr. Sabo accurate reproductions of all of the photos and slides in possession of the GSC which related to his meteorite, including those illustrating the "off cut" which was still in the GSC's possession. However, mechanically this duplication could not be performed instantly, so she told Mr. Sabo that he would have to return on Friday.

[98] During this initial encounter Dr. Herd feels that Mr. Sabo may have taken at least three original slides with him. Dr. Herd noticed these slides were missing after Mr. Sabo left. The slides reappeared among Mr. Sabo's exhibits at the trial. Nothing turns on this, as the GSC was prepared to give Mr. Sabo copies of everything that related to his meteorite.

[99] As instructed, Mr. Sabo returned Friday, February 25, 2000. Because Ms. LeCheminant noted the tension between Mr. Sabo and Dr. Herd the previous day she had the head of security, Defendant Marcel Clement, attend at that meeting [Exhibit 21: the security report]. Dr. Herd did not attend; he felt threatened to such extent by the encounter on Thursday that he took the next day, Friday, off work and refused to participate in any further interaction with Mr. Sabo.

[100] During the Friday meeting, numerous photographs and slides were delivered to Mr. Sabo. However, due to Dr. Herd's absence, some of the material that was reviewed on Thursday could not be made available. It was locked up in Dr. Herd's private storage areas which Ms. LeCheminant either felt that she should not enter, or perhaps physically could not enter, until Dr. Herd returned on Monday.

[101] Mr. Sabo agreed to stay over the weekend and return on Monday at which time he demanded production of all of the remaining photographs and the return of the "off cut". This time Mr. Sabo refused to go into the GSC building. He says he feared for his safety. He also used a video camera as a tape recorder to record the meeting. I accept the evidence of those there that Mr. Sabo's behaviour was becoming erratic. A transcript of the February 29, 2000 outdoor meeting has been filed before the court. it offers a frank explanation of why Mr. Clement was refusing to deliver the GSC "off cut" to Mr. Sabo. By this time, Mr. Sabo's conduct in Ottawa, which was initially perhaps best described as eccentric, was now giving the government employees some cause for concern. The GSC employees were pretty sure, having already been contacted by Cpl. Parlee of the RCMP, that there would be a civil lawsuit flowing from their handling of the meteorite. As this decision shows, their concerns were proven correct.

[102] In addition, I accept Mr. Sabo's evidence that the February 29 meeting was the point he expanded his allegations, and claimed that a total substitution of his meteorite had taken place. The government employees concluded that since they had been voluntarily allowed to take and retain the "off cut", pending litigation they would continue to retain that piece. The GSC members did agree that if the "off cut" was needed for a criminal investigation then they would turn the "off cut" over to the RCMP, but now confronted by an evolving and escalating succession of allegations of wrongdoing, they were simply not prepared to return this remaining piece to Mr. Sabo. They felt, at that point, that the "off cut" in their possession was the one piece of evidence that would prove that the "off cut" came from the same parent object as the remainder that had been returned to Mr. Sabo. Mr. Clement, as the head of security for the GSC, advised that the GSC should take reasonable steps to retain and preserve the "off cut", pending the conclusion of litigation or a request from the RCMP for that object.

[103] It is a credit to Gina LeCheminant that the GSC does not take the position that Mr. Sabo had, directly or indirectly, irrevocably given the "off cut" to the GSC. There is, in fact, a lack of clarity in evidence on this point, but at trial Gina LeCheminant was clear and unequivocal; she accepts that the "off cut" remained Mr. Sabo's property. Up to February 29, the GSC retained that object with Mr. Sabo's consent. After Mr. Sabo revoked his consent that the GSC could retain the "off cut", the fragment was unilaterally retained by GSC solely for the purpose of trial evidence and out of fear of litigation. This decision was also communicated to Cpl. Parlee.

[104] I also accept as a fact that on February 29, 2000 Mr. Sabo demanded the return of his "off cut" and cancelled any implied agreement by which he had allowed the "off cut" to stay in Ottawa for ongoing analysis.

[105] Wrongful possession of the "off cut" is the sole allegation made against Marcel Clement. He admits that he made a decision to recommend retention of the "off cut" and takes full responsibility for that decision. As his employer, the federal government is vicariously liable for that decision he made. The GSC looked to Mr. Clement for advice on security matters and that was the advice he gave.

[106] Thus, from February 29, 2000, to September 29, 2008, when the "off cut" was effectively returned to Mr. Sabo and transmitted with certain conditions by court order of Senior Judge Veale to Mr. Sabo's chosen testing laboratory, *Power Tech Labs Inc.*, the GSC had no legal authority from the owner of the "off cut" to retain that object.

9. THE TOOL MARK EVIDENCE

[107] The basis for a significant portion of Mr. Sabo's claim is that a meteorite substitution took place. He makes this claim on the basis of tool mark evidence (or the lack of it). Mr. Sabo called Mr. Ron Schiefke, a tool mark expert and a highly qualified former employee of the RCMP. The court has no difficulty with the qualifications of the expert or his opinion.

[108] Mr. Schiefke reviewed electron microscope slides at the business premises of another expert hired by Mr. Sabo. This inspection was in 2010. Mr. Schiefke concluded simply that there were tool marks on the sample in one location, but not in another, or not on another slide of the same area taken at a different time. The manner in which this evidence was introduced makes it hard to follow. The tool marks were observed under

significant magnification, so the expert could not determine the identity or width of the tool that had inflicted the marks, nor could he determine what had caused the marks.

[109] The expert admitted that he had never interpreted a tool mark from an electron microscope photograph before, and he correctly limited his expertise as not being able to tell the time the tool mark was made although he indicated that in a visual inspection of the real thing one might get a sense of freshness of a tool mark. A fresh mark looks different from one that has faded with age time and erosion.

[110] Mr. Schiefke does not opine that the government created an exact replica down to the molecular consistency of the meteorite. However, Mr. Sabo says Mr. Schiefke's evidence allows the court to draw the conclusion, that the tool mark evidence supports a substitution of the meteorite. Mr. Sabo asserts an extraordinary proposition! It is not alleged we are dealing here with a matching model that, for example, an art gallery, might make to protect a rare sculpture by displaying a replica, perhaps fabricated by a mold and cast. Mr. Sabo is alleging the GSC created a complete replica of a piece of rock right down to both its internal composition and molecular arrangement.

[111] I should also say that it is difficult to interpret Mr. Sabo's evidence on these points because his evidence, as given in his affidavit, his timeline, and his oral evidence in court is neither as precise nor consistent as it could have been. No additional precision emerged in cross examination.

[112] Perhaps the best approach is that I start with Mr. Sabo's views as I understand them from his testimony at trial, and make the presumption that I have it correct. Mr. Sabo opines that he compared the photos of a certain region of the meteorite which were taken by Dr. Richard Herd, and photos taken from the same area at a later point.

The newer photo showed the meteorite had a tool mark on it. He postulates therefore that an absence of the tool mark in Dr. Herd's photograph means a substitution took place.

[113] I am unable to accept that thesis. The photos taken by Dr. Herd were taken during a period shortly after the initial GSC receipt of the meteorite. The photos were taken before consent was given to allow the GSC to remove the "off cut". It is highly probable that the "off cut" process caused the tool mark, and that would serve as a full explanation of why the tool mark does not appear in the initial photos.

[114] There is an alternate explanation. Mr. Sabo altered his meteorite (or its duplicate) by chopping it into three pieces after its return to him from GSC [Affidavit 34, tab J]. Any tool mark could therefore be imparted by Mr. Sabo or any others who handled the meteorite after it returned from Ottawa. The cutting by Mr. Sabo is not the only time the meteorite was manipulated after it was returned to Mr. Sabo. Affidavit 34, exhibit A includes a timeline that records a number of events and manipulations. There is a reference to photographs being taken on August 3, 2000 by Dr. Leuth in Socorro, New Mexico. The timeline goes on to state that the next day the Plaintiff removed an "off cut" from the object and travelled to a Dr. Williams' lab, located in Douglas, Arizona. The object was not left with Mr. Schneck until November 11, 2000, and therefore this intervening destructive testing on the meteorite by Mr. Sabo or persons he employed probably explains any tool marks. An e-mail, made part of the record [Affidavit 34 tab H], indicates that the sample received by Mr. Schneck had yellow paint on it. Mr. Sabo admits under oath that he used a yellow hacksaw blade to cut a sample off the meteorite. This provides definitive evidence that Mr. Sabo worked on the specimen

mechanically after its return from Ottawa, and possibly before the comparative photographs were taken in New Mexico, and absolutely before the sample came to Mr. Schneck. The tool mark evidence therefore does not lead to a conclusion that a substitution of the meteorite took place.

[115] After his investigation of the meteorite and the alleged tool marks, Mr. Schneck also found himself as a Defendant in this matter. Mr. Sabo asserts that the tool marks disappeared while the meteorite was in Mr. Schneck's possession. Mr. Sabo does not explain how that change could have been done.

[116] Does the tool mark evidence support the claim of conspiracy against Mr. Schneck? This fuels the conspiracy theory because, implicit in the conspiracy, is the suggestion that Mr. Schneck somehow removed the tool mark from the meteorite, to better match the object in Dr. Herd's initial photographs.

[117] Mr. Schiefke did not opine on whether that is even possible - that a tool mark can be completely removed without leaving some evidence of the removing tools. Further, it is not so clear that Mr. Schiefke's evidence about the tool mark and the later alleged absence of tool marks involves exactly the same location on the meteorite. However, even if I interpret his evidence in the way most favourable way to Mr. Sabo, that evidence still poses some difficulty. Mr. Sabo gave oral evidence that he noticed the tool marks gone from the meteorite when his friend Mr. Hawes received the now fragmented meteorite (or its duplicate) from Mr. Schneck, perhaps around January 22, 2001.

[118] I believe the picture comparatives that Mr. Schiefke looked at were one of Dr. Herd's photos from August 1999, compared against the photos taken in New Mexico on August 3, 2000, according to Mr. Sabo's timeline. However, the forensic tool mark

review did not occur until 2010 and there is really no evidence ruling out the possibility of an artifact appearing in some fashion on the slide, or deterioration of the slide as a consequence of time, or the reality that the sequence of relevant times and dates indicated by Mr. Sabo may be inaccurate. It is difficult for experts to interpret matters objectively when they receive isolated pieces of information from the Plaintiff who is in complete control of the exhibit and provides and filters all of the evidence on which the expert must base his or her investigations.

[119] Alternately, if Mr. Schiefke looked at slides manufactured at a point closer in time to when he made his observations in 2010, then the lengthy delay between the handling of the meteorite by Dr. Herd, and the taking of photos then interpreted by Mr. Schiefke would make any forensic evidence and conclusion by Mr. Schiefke of little weight. Too much time would have passed in the interim, with the possibility of a third-party introduction or modification of tool marks on the meteorite.

[120] I therefore conclude that Mr. Sabo has not proven on a balance of probabilities that Mr. Schneck altered tool marks on Mr. Sabo's meteorite (or its alleged GSC manufactured duplicate). That conclusion is fatal to any action against Mr. Schneck, but becomes irrelevant for the reasons outlined in paragraphs 132-133 of this judgement.

10. A SHORT COURSE ON METEORITES

[121] The Defendant Dr. Richard Herd has a bachelor of science, a master's degree and a doctorate in philosophy in the fields of mineralogy (the study of minerals) and petrology (the study of the origin of rocks). He appears highly qualified to be the curator of the national geological collection, which includes many samples of meteorites from Canada and around the world.

[122] Dr. Herd equates the national collection to a "library of rocks". The specimens are documented, categorized, analyzed, and conclusions drawn from them that assist in the study of our own Earth and the universe of which we are a small part. Dr. Herd has held this important government post for a considerable time. He is a career federal civil servant and proud of it. His goals are the advancement of science, not monetary advancement. Nor does he appear to have any desire to suppress important scientific finds such as the Plaintiff's meteorite, with or without an extraterrestrial life form growing upon it.

[123] In round numbers, the Canadian collection has about 1100 specimens of meteorites, of which only 50 or so were recovered in Canada. Of those, only two are from Yukon. Both Dr. Herd and Dr. Roots were very excited for Mr. Sabo if it could be established that he had located only the third known Yukon meteorite.

[124] Just like Earth rocks, meteorites are not all the same. A common type of meteorite is an iron/nickel meteorite, in which the greatest majority of the materials are the elements that give that category its name: iron and nickel.

[125] It is not uncommon for the GSC to be approached by Canadians for assistance to determine whether their find is a meteorite. As part of Dr. Herd's general job description, he is the in-house government "go to guy" on matters involving meteorites. Although he is fairly able to rule out the possibility that something is not a meteorite with simple, inexpensive tests, including visual inspection and microscopic analysis or a simple chemical assay of the rock material; the opposite conclusion - that an object is a meteorite, requires much more elaborate testing, evaluation, and finally certification by an international body.

[126] Based on Dr. Herd's experience, often a visual examination or a look at some pictures will rule out whether an object is a meteorite. Only about one in 1000 rock samples that are still suspected to be meteorites *following the initial evaluation* actually make it all the way through to receive a declaration by the Meteorological Society (an international accreditation body) that this object is, in fact, a meteorite. The marketplace, and scientific value, of a rock increase when an object achieves this highest level of classification.

[127] Mr. Sabo's meteorite went through the initial evaluation by Dr. Herd who remains, even at trial, confident that it is a meteorite but is quick to point out that even the experts have been fooled. While at trial and in this decision it has been convenient for us to refer to Mr. Sabo's geological sample as a meteorite, the now fragmented parent has not absolutely been ruled or certified to be a meteorite. Thus, nothing in this judgment is to be construed by any reader, or any scientific accreditation body, that the court in this case has made a determination that Mr. Sabo's specimen is really a meteorite. The evidence falls short as the experts are not in complete agreement, nor absolutely sure. Other testing is still required, and the International Society which is solely entrusted with the accreditation of a rock formation as a meteorite has not certified that status. Had Mr. Sabo maintained trust in the men and women of the Canadian Geological Survey (including Dr. Herd), the ongoing investigation of his rock formation would have continued, and possibly by now led to acceptance of the object as a meteorite.

11. THE COURT APPOINTED EXPERT – DR. STEPHEN A. KISSIN

[128] To assist the parties and expedite this litigation Senior Judge R.S. Veale directed the appointment of an expert – Dr Stephen A. Kissin. Dr. Kissin examined Mr. Sabo's meteorite, for the court, and reported on its nature.

[129] Dr. Kissin is an eminently qualified Canadian scientist, holding a B.Sc. degree from the University of Washington, a M.S. degree from Pennsylvania State University, and a Ph.D. in geology at the University of Toronto. He has been involved in the aerospace industry, the geological, and geological chemistry industry his entire career. He is a past member of the Meteorites and Impacts Advisory Committee to the Canadian Space Agency, and a member of the Astromaterials working group of the Canadian space industry. He has published five book chapters on the subject, 33 learned journal papers, 4 conference material proceedings, 8 technical reports, 81 abstracts, and presented papers at 20 workshops. He was referred to by Dr. Herd as Canada's preeminent expert in the area of meteorite assessment and is currently a full tenured professor in geology at the Lakehead University [Kissin Report, June 20, 2006]. He was qualified by the court as an expert in the area of geological analysis including meteorite analysis.

12. DID THE GSC SUBSTITUTE MR. SABO'S METEORITE WITH A REPLICA?

[130] Dr. Kissin received two samples to analyze. The first was the "off cut" retained by the GSC in February of 2000 that was later returned by court order to a lab hired by Mr. Sabo. Dr. Kissin identifies this as the "NRcan" specimen in his report. The second fragment was supplied by Mr. Sabo.

[131] As I have earlier observed, at some point after Mr. Sabo returned from Ottawa in February of 2000 he took a hacksaw to the meteorite, cutting it into smaller pieces [Affidavit 34, para 123]. None of these pieces were presented in evidence; however, at least one of the three was delivered to Dr. Kissin. Dr. Kissin referred to this part of the parent as "the Sabo section".

[132] Dr Kissin observes:

So far as can be seen in comparison of the NRcan and Sabo sections as described above, they are portions of the same original object. In particular, the finger-like sulphide-containing zone common to both is very distinctive. It is not conceivable that this feature could be reproduced by any means. [Emphasis mine.] [Kissin report page 7 June 2006 and also page 12]

[133] I accept that evidence! It is the arrow through the heart of the "substituted meteorite conspiracy theory". Although neither group of samples were presented in evidence to the court, pictures of the meteorite that Mr. Sabo had taken before it left for Ottawa show a base of the sample, and its butterfly-like profile, which is nearly identical to the pictures contained in the Kissin report (for example figure 1). I have no concerns on the identity of the object in these photographs.

[134] Through the course of the trial two pictures were frequently mentioned. Picture six from Exhibit 3, tab 2, and picture P2 from tab 57. The first is Mr. Sabo's early picture of his meteorite. The second is Dr. Herd's picture of the meteorite, boxed and ready for return to Mr. Sabo. They are very similar. I am satisfied that what was returned to Mr. Sabo is what Mr. Sabo sent the government absent only the small "off cut" the

government took with Mr. Sabo's permission and the material ground away when the new base was polished.

[135] There is another piece of compelling evidence. Mr. Sabo had another independent lab run a chemical assay on a piece of his meteorite after this dispute entered the courts. He was applying the common sense logic that if the chemical composition was different than the *Bondar-Clegg* analysis of 1987 [Exhibit 3, tab 1] then that would support his belief that a substitution had taken place. In what is not proper independent scientific testing, Mr. Sabo, not the lab, selected both the sample and the sample area. He simply drilled into his meteorite and sent the drillings for analysis. The drill holes in the pictures of the deconstructed meteorite show the drillings from a different area than the *Bondar-Clegg* assay testing area (if we assume that *Bondar-Clegg* took a slice off the base as the object would indicate).

[136] Mr. Sabo first attempted to return this drilled material to *Bondar-Clegg* for a re-test. They refused to analyze the extracted material. So Mr. Sabo turned to ASL Analytical Service Laboratories Ltd. [ASL] of Vancouver British Columbia. Their analysis likewise revealed a large portion of the material consisted of two elements - iron and nickel. The results however were not identical to those reported by *Bondar-Clegg*, and this emboldened Mr. Sabo. He concluded that this discrepancy supported the thesis of a substitution. Whitehorse lawyer Mr. Lorne Astring, who at one point acted for Mr. Sabo, asked ASL certain follow-up questions. ASL concluded:

"...it is our opinion that the two sets of results obtained in the submitted reports are not significantly different. As a corollary, the data generated by the two tests could conceivably have been the result of analysis of some

samples taken from the same source ...". [Emphasis mine- the two sets of results being referred to are the *Bondar – Clegg* assay, and that performed by ASL.] [Exhibit 3, tab 53, page 4, June 29, 2000]

When one takes into account analysis error and variability inherent in assay techniques, the 2000 chemical analysis is essentially the same as the *Bondar-Clegg* analysis of 1987. I note that the earlier analysis occurred long before Mr. Sabo and the GSC interacted.

[137] Therefore, the premise upon which Mr. Sabo bases his whole case, that the government substituted his meteorite (and its extraterrestrial passenger) for a replica is rejected in the strongest possible terms. It is simply not supported. Elementally, the original meteorite and its alleged duplicate have an indistinguishable elemental composition. Mr. Sabo's allegation that a sulphide containing part of the original meteorite has a different chemical composition than the alleged duplicate is also rejected. Dr. Kissin explained how that part of the rock can change when exposed to terrestrial conditions.

[138] Mr. Sabo's litigation approach has been to hire responsible labs and experts to create specific and isolated evidence. Mr. Schiefke, as an example, was to look at tool marks. ASL is another, as is Power Tech Labs. Power Tech took some photographs as did a Dr. Sidney Williams in Arizona and Microvision Northwest-Forensic Consulting Inc. All these experts have one thing in common; they were asked to create specific and isolated evidence. Not one of these credible agencies and professionals expressed the view that either that the GSC substituted Mr. Sabo's meteorite for some kind of duplicate, or that the meteorite Mr. Sabo recovered had an extraterrestrial life form

growing on it. It is Mr. Sabo who attempts to provide the intuitive expertise to tie this hodgepodge of fragments together and reach two conclusions: a substitution took place, and there was an extraterrestrial life form growing on the meteorite. Bluntly, the technical data does not support this thesis. The court-appointed expert opinion is to the contrary.

13. METEORITE OR NOT?

[139] The second question that Dr. Kissin was asked was whether the Sabo rock formation was a meteorite. Dr. Kissin was able to identify some "meteorite-like" characteristics, however, he remained uncertain. As of June 20, 2006, he was leaning to the opinion that it was not of extraterrestrial origin, when he concludes at page 14: "However, the weight of evidence available to me leads me to conclude that the specimen is not a meteorite but man-made steel".

[140] Dr. Kissin did however keep an open mind on the subject and despite having completed his report in 2006 he continued to give the matter some thought. Between the June 2006 report and his trial evidence in 2010 Dr. Kissin's opinion has changed. He initially concluded that the meteorite, utilizing the chemical analysis performed by *Bondar-Clegg* in 1987, was similar to a piece of nickel steel with the classification NBS 809B. That conclusion was based on the meteorite's nickel iron content. However, after his initial report, elsewhere in the world an object almost identical in composition to that found by Mr. Sabo did receive accreditation as a meteorite and this caused Dr. Kissin to re-evaluate his thinking. Thus, at the time of giving evidence in court Dr. Kissin is prepared to tentatively suggest that Mr. Sabo's rock formation is indeed a meteorite of the most common type - a nickel/iron meteorite.

[141] Dr. Kissin's professional opinion is still qualified by the fact that the final certification of Mr. Sabo's geological formation as a meteorite has not yet been completed. I combine the strong opinion of Dr. Herd with the revised opinion of Dr. Kissin and tentatively conclude, for the purpose of this trial only, that Mr. Sabo's rock is possibly a meteorite that has not yet received formal certification.

[142] This case then presents two tragedies. First, for Mr. Sabo, is that he became so convinced that the GSC had substituted his formation that to find evidence of the substitution he cut the meteorite into three smaller and less exciting pieces with a hacksaw, rather than retain it in one nice piece.

[143] Second, for some considerable years, as Mr. Sabo slowly marched his way through his lawsuit, the professional reputations of Dr. Herd, Dr. Roots, Ms. LeCheminant, and Mr. Woods were besmirched by Mr. Sabo's conspiracy theory allegations and allegations about their honesty and integrity.

[144] All of those individuals took the witness stand in this case and denied any wrongdoing in relation to Mr. Sabo's rock formation. I accept their evidence. I reject Mr. Sabo's evidence on this point. His conclusions are far-fetched and fanciful, and unsupported by any rational thread of evidence.

14. THE EXTRATERRESTRIAL GROWTH

[145] I do not accept Mr. Sabo's evidence that the growth he described on his rock formation is any type of extraterrestrial life form; his is the only evidence that supports this, and he is not scientifically qualified to make that statement. Further, he has lost all objectivity about this issue, and has for some time based his evidence on his subjective

belief, and discarded any evidence which would suggest a more earth-based explanation.

[146] The more probable, practical, and prudent observation is the simplest one that makes the most common sense. The green formation is a "made on earth" product of oxidation. Before a court could determine that the formation found on the meteorite was extraterrestrial in origin a credible professional expert would be required to give that evidence. Mr. Sabo's evidence was given sincerely; he honestly believes that it was an extraterrestrial life form which emerged from the crevasse on his meteorite.

[147] However, absent a certified and credible expert, and recognizing that over 10 years had gone by between the time that Mr. Sabo found the rock and noticed the growth, the more probable cause is that outlined by the Defendants. I recognize that the Defendants have self-interest in their position but their explanation is logical and accords with common-sense and science that is in the grasp of any grade 9 or 10 student in Canadian schools. Thus I conclude that it is more probable than not that the "colour bloom" was a common chemical reaction between the meteorite, composed mostly of iron and nickel but also other trace elements, and the oxygen in the air, heat and moisture. The other possible explanation is that it was lichen, a mundane organic and terrestrial organism. As neither the meteorite nor any of its parts, were introduced in evidence it is difficult to be any more precise on this point.

[148] These conclusions defeat the claims that involve substitution of the meteorite by some kind of duplicate, or suppression and/or removal of the alleged extraterrestrial life form.

15. CONCLUSION ON THE CAUSE OF ACTION

[149] Mr. Sabo found and turned over to the GSC a small rock formation that was possibly a meteorite of the least valuable type, an iron/nickel composite. He consented to the government taking and retaining an "off cut". When Mr. Sabo asked for his specimen back he received it back, other than the small "off cut" which he had authorized the government to take and retain for further investigation.

[150] In February of 2000 he revoked his permission for the government to retain the "off cut", but by that time the government was concerned about civil litigation and retained the nearly valueless "off cut" until it was turned over to an expert retained by Mr. Sabo. I conclude that the government employees had no legal right to retain that piece of the parent meteorite; as Ms. LeCheminant admitted that part of the meteorite was and remains Mr. Sabo's property.

[151] The Plaintiff's claim that the Defendants conspired with one another and with each other to deprive him of his property is dismissed in its entirety. His suggestion that the government employees identified in the statement of claim stole this property from him is rejected. All of his other causes of action are likewise rejected against all Defendants as not having been proven on a balance of probabilities.

16. DAMAGES

[152] Civil litigation is expensive and even where a case is dismissed on the basis that liability has not been proven it is still appropriate that comment on damages be made. Mr. Sabo sued for over \$12 million dollars. I also conclude that Mr. Sabo has not proven that he sustained any damage.

[153] Mr. Sabo admits that he assessed his damages by simply looking on the Internet for the highest priced meteorite sample he could find and when he found one for sale at the highest price possible per gram he multiplied that by the number of grams to obtain the damage figure of over \$12 million dollars. Under oath, Mr. Sabo indicates that he inflated his damage figure in his statement of claim for bargaining purposes.

[154] The proof of damage in Canadian law is not a bargain or negotiation. Credible evidence must be advanced by the parties that the judge can accept. In this case, dealing with something as difficult to market as a meteorite, over which there is a regulatory control scheme that prevents unapproved exportation outside of Canada, expert evidence must be called - not simply the opinion of the plaintiff. Mr. Sabo has led no evidence about damages that any court could accept.

[155] Shortly after Mr. Sabo found the meteorite (along with two other smaller but similar appearing pieces), he sold one of the smaller pieces to a rock collector for \$50.00. When Mr. Sabo had thought he found Jadeite on his mine site he was willing to donate the meteorite to the federal government.

[156] When Mr. Sabo was interviewed by the Royal Canadian Mounted Police on September 2, 1999 he stated:

I thought that by just looking at it, he would say okay, this would be worth \$50 a gram, which is what I thought they would pay because this is what the YTG [Yukon Territorial Government] pays, the geology department. And that is the base price that I would accept. No lower than that. [Page 8 of the transcript.]

And further Mr. Sabo says:

Well that I would be getting at least \$10,000 because Richard knew, this is US dollars, that Richard knew that was my base price, that I was not going to go below that so they would have to either that, or above, and I was willing to settle for that, but I knew it was worth a lot more, and that was what I needed at the time and I was willing to settle for it. [Page 10 of the transcript, part of last answer.]

And further :

Q: ... do you know what the value of this meteorite you have right now would be worth?

A: right now it's worth one dollar a gram.

Q: Okay and prior to that when you sent it to Ottawa?

A: Open question. Anywhere, I wouldn't accept anything probably less than 300 to 600 and I would probably right now go over \$600.00 because as, talking to Joe, he said that he had never seen anything on the internet to compare with the mineral formations on this one.

[157] Dr. Herd had reflected in some correspondence that if Mr. Sabo's object was truly certified to be a meteorite it might have a total value of \$1000.00, but perhaps the GSC could go as high as \$2500. Dr. Herd was not qualified as an expert to give evidence on the value of this meteorite, but had he been qualified as an expert, absent his attachment to the case as a Defendant, his valuations would have been given much weight by the court.

[158] Mr. Sabo is entitled to take any part of the evidence in the trial to support his claim and in result I will accept that Mr. Sabo has proven on a balance of probabilities

that his entire meteorite had a total value of \$2500.00, conditional on it being certified by the International Meteorite society as a meteorite. Absent that certification, its only value is the “curiosity factor” of having triggered a litigation that undoubtedly cost the government thousands of dollars, while adding to the legend and lore of Yukon.

[159] There is no evidence on what the meteorite, cut into three smaller pieces would be worth, and whether that would increase the value by allowing it to be marketed in smaller sections or decreases it, by destroying its pleasing visual appearance.

Irrespective of the value assigned to the meteorite, Mr. Sabo got it back (less the GSC “off cut”) when he requested it, and therefore suffered no damage. He did not prove that the delay in its return (if any) cost him anything. His damage claim presupposes a meteorite substitution and a huge per gram value – neither were proven.

17. PUNATIVE DAMAGES FOR THE TEMPORARY RETENTION OF THE METEORITE “OFF CUT”

[160] There is notionally a period of time when the government retained Mr. Sabo's property without his permission. This is when the government retained the “off cut” to advance their litigation position. I am satisfied that up to that point the GSC had the “off cut” with Mr. Sabo's permission. However once he retracted his permission, and they made a decision to retain the property the GSC employees should have immediately applied to the courts for directions and judicial permission to secure the sample. They did not take that step.

[161] Litigation strategy is not a legitimate excuse to deprive somebody of their property. However I conclude that the “off cut” was valueless, representing but a small

portion of a rock not yet declared to be a meteorite, and therefore my only judgment against the government is this declaration that they made an error.

[162] Punitive and exemplary damages are not appropriate in this case because the error was made in good faith and with full and open communication to the RCMP that at the time when the RCMP still had a file although they were no longer pursuing the investigation. Shortly after the government retained the meteorite "off cut", litigation did start. From that point forward neither party saw fit to ask a court for any declaratory rulings concerning the GSC possession of the sample, until it much later became the subject of an application to the case management judge.

[163] "Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency." *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 196, 126 D.L.R. (4th) 129. The GSC acted incorrectly, but its misconduct does not in any way approach the threshold standard. Thus, in my view this is not an appropriate case for punitive or exemplary damages.

18. THE CASE AGAINST BILL SCHNECK

[164] There was no evidence satisfactorily led before me that indicated that expert Bill Schneck, initially hired by Mr. Sabo, was part of any conspiracy. Nor, that he breached any trust as asserted by Mr. Sabo in his final argument. Further, the keystone fact of the conspiracy allegation, that there had been a meteorite substitution, has failed. As a result, the action against Mr. Bill Schneck must also fail. Mr. Schneck was involved in this lawsuit for considerable years simply because he concluded that as an expert he could not lend credible evidence to Mr. Sabo's theory that the government had substituted Mr. Sabo's meteorite with a worthless specimen.

19. JUDGMENT

[165] Mr. Sabo made scurrilous accusations against Dr. Richard Herd, and Dr. Charles F. Roots about their honesty and integrity. By implication similar allegations were made against others of the GSC, Mr. Bill Schneck, and Cpl. Parlee. This was completely unfair and inappropriate. These assertions were based on Mr. Sabo's strong beliefs about their conduct, but these beliefs were not based on any rationally acceptable evidence that was brought before me at this trial.

[166] Mr. Sabo has not proven on a balance of probabilities any of the claims, causes of action, or the heads of damage alleged in his statement of claim. In result, his claim is dismissed against all Defendants.

20. COSTS

[167] The Defendants have asked for costs. Costs normally follow the cause and therefore the Defendants are entitled to their costs. Also, the case management Justice has from time to time ordered costs irrespective of the cause but to be paid at the conclusion of trial. I am prepared to hear from the parties, if necessary, on cost issues, however I would also suggest and recommend that the litigants take any cost issues which arise, back to the case management justice, Senior Judge R.S. Veale.



GERMAIN J.