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NATIONAL COALITION FOR LAW SOCIETIES REFORM
Ontario Chapter

Mr. Katch Koch
Clerk
Standing Committee on Justice Policy
Room 14 05
Whitney Block
Queen's Park
Toronto, Ontario
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January 27, 2005

OPEN LETTER VIA FAX

Dear Mr. Koch:

As agreed during our telephone conversation, we are now submitting our requirement for a day's hearing before our full Standing Committee on Justice Policy, in order to inform our elected government about the most egregiously damaging behaviour of an unacceptably high proportion of the legal profession and its purported regulators.

Due to our full awareness of the habitual bureaucratic apologia, that the lay public knows nothing of justice and its workings, allow me to commence with the most negative criticism emanating from notables of the profession itself.

At a Saskatoon conference on the future of the legal profession, Supreme Court Justice Frank Iacobucci stated, that: "law has become more of a business than a profession or a calling and many lawyers are rapidly losing sight of their obligations to the public and to the pursuit of justice. Iacobucci said the profession is at a crossroads and must take steps to prevent being overcome by commercialism designed only to amass profits. We cannot forget our humanity in the practice of law".

Similar sentiments voiced by Justice Abella and dozens of other jurists are too numerous to quote here; as are hundreds of observations published by knowledgeable legal journalists. One Master of our Superior Court of Justice (who shall remain

legal accountability in the public interest

anonymous for now) cursed the Law Society into bankruptcy when overcome by nothing but irregularities comprising the matter before him. A Justice, presiding in the same matter, became so irritated by the record, that he exclaimed to one of the parties, in camera, that he wished they had sufficient funds to produce a documentary of these proceedings, then show it, make a million dollars - but then get out of town. He was, or had himself removed.

Please witness the following excerpts from a GLOBE AND MAIL article of August 16, 2004, page B9:

A Supreme Court of Canada decision favouring a retired Quebec schoolteacher in her 14-year battle against a now-disbarred Montreal lawyer and a Quebec Bar association (whom) the (Supreme) court accused of "gross carelessness" and "serious negligence" has sent a chill through the corridors of the provincial law societies that police the conduct of lawyers.

Guy Pratte, the prevailing lawyer, commented:

"Protection of the public means dealing diligently with complaints against members of the profession which threaten the well-being or the rights of the public".

"I was fighting a 20,000 member law society and they didn't fight very nicely against me," says Ms. McCulloch-Finney, 61, who adds she lost a small fortune and suffered health problems, including high blood pressure and chronic insomnia, from her battle with the bar. "They pulled out all the plugs and they lost".

McCulloch-Finney had commenced her action against the Barreau in Quebec's Superior Court and:

Appearing without a lawyer, and sometimes accompanied by her wheelchair-bound mother for moral support, Ms. McCulloch-Finney sued the Barreau in Quebec Superior Court but lost.

Offended by the court's insistence (that) she plead her case in French, Ms. McCulloch-Finney, an anglophone, took the case to the Court of Appeal and - again representing herself because she says she could not find a willing lawyer - succeeded in having the decision overturned.

The appeal court was unequivocal in its rejection of the lower court's ruling, declaring Mr. Belhassen (her former husband's lawyer) had engaged in a "guerilla war" against Ms. McCulloch-Finney and that the Barreau "ignored its mandate" and committed "a civil blunder", and that its long delay in attending to the matter was inexcusable.

The Barreau, presumptuously, but unsuccessfully, appealed to the Supreme Court of Canada, which is slowly beginning to acquaint itself with reality on the street.

Several litigation and legal ethics experts say that, while the new definition (of care) may have caught law societies by surprise, it is a valuable wake-up call because the immunity of professional regulators - a privilege granted by government - was never intended to make officials invulnerable and comes with a strong duty of care for the public.

"Anything less would render their partial immunity absolute." (Underlining added by me.)

Regrettably, this state of affairs is mirrored in Ontario time and again.

Sitting and retired Justices of Ontario openly call the Law Society a farce. If you press us for evidence we shall readily oblige, though we are not interested in embarrassing individuals while the entire system is in shambles.

How can this be a credible description of the situation on the street? After all, the Law Society's web-page, mission statement, publications, Rules of Professional Conduct and sundry espousals fairly drip with mention of honour, ethics and its noble obligations vis-a-vis the public. For additional smoke and mirrors, Section 13(1) of the Law Society Act stipulates, that : "The Attorney General for Ontario shall serve as the guardian of the public interest in all matters within the scope of this Act or having to do with the legal profession in any way, and for this purpose he or she may at any time require the production of any document, paper, record or thing pertaining to the affairs of the Society".

Only a functional illiterate would see nothing wrong with an Attorney General's written reply to a question, as to how often his office acted pursuant to this Section, that: "The Law Society has sole authority to investigate questions of lawyer conduct and to take disciplinary action where appropriate".: thereby unilaterally negating his legislatively-imposed mandate with habitual, presumptive impunity.

The Law Society itself speaks on its website of a law firm established solely for the purpose of real-estate fraud. Lawyers' clients are viewed as cash cows, to whose milking the profession holds a monopolistic entitlement. The clients are subjected to overbilling, fraud and outright theft, often losing their very roofs over their heads without reason, carrying off psychological and physical scars, faced with newly dysfunctional and destroyed families, all because this

profession is dead set on "amassing profits". And, if "amassing profits" comes to an end, there is always sex-for-fees left, against which criminal abuse, inter alia, the illustrious Law Society has appointed a female commissioner.

Counsels for the Law Society, defending lawyers, bribe opposite counsel with jobs of career advancement from walk-in to high-brow law firms in the middle of a process, assured of their impunity as guardians of the Law Society's coffers. Never a ripple after reporting. They forge, by deletion of self-incriminating marginalia, the lawyer-defendant productions submitted to the judge: never a ripple - not even an instantaneous comparison.

I witnessed June Callwell testifying at one of your Committee's hearings, that during her tenure as lay-bencher she and several colleagues examined the complaints laid against lawyers and the procedures in handling them. She found all of it lacking and asserted, that only a tiny proportion of what they deemed actionable was actually pursued by the Disciplinary Committee. Such was and is, but will not be in the future, the rank mutual protectionism: notwithstanding the narcissistic, self-serving and disinforming gobbledegook of the illustrious Society.

Every single one of our elected Members of Provincial Parliament, as carrier of our Social Contract vote, our taxes, our assets, our infrastructure, our political power and will to the centre of power at Queen's Park, which itself is and owns nothing without us, certainly not its authority, must ponder the following before peacefully putting their children to sleep tonight, while fashioning the tomorrow of Ontario. The stakes are nothing less than the difference between our Ontario, ruled by affordable law, genuinely ethically applied and verified, or our lazily, government-condoned continued descent into a likeness of mid-twenties Louisiana, ruled by Hughey P. Long, as a private, lucrative and exceedingly corrupt enterprise.

Fortuitously, our Attorney General is simultaneously and profoundly significantly designated Minister Responsible for Democratic Renewal. It must surely duly delight him professionally, at least while wearing his second hat, to assist us eleven million Ontarians and voters in freeing ourselves from decades of self-serving, lawyer - drafted, legislatively-institutionalized brotherly brigandage.

Too few Members of Provincial Parliament, after nudging from their constituents, tripped over their social and political conscience: suddenly rediscovered.

Among too few, John O'Toole, M.P.P. for Durham, addressed a letter to our Premier, spurred on by four constituents'

nightmarish encounter with our utterly corrupt system.

Two very old parents and their two sons, immigrants from Yugoslavia, hard-working but uneducated, in other words perfect targets, assembled 780 acres as a subsequently licenced gravel pit, professionally drilled, tested and estimated to contain ca. 450,000,000 tons of gravel, down to a permissible above-water depth of 300 feet. This pit was contiguous with a depleting pit owned by a man whose name is familiar to most Ontarians.

Soon they experienced purported difficulties with their small Credit Union, respecting their previous house-building business. O'Toole's constituents sued. A thoroughly disgusted Justice, presiding over the first part of the trial, opined, that rather than owing the Credit Union, the party had overpaid it by some \$ 23,000.00. This Justice had himself removed, or was removed, because he did not consider the matter before him other than a compendium of irregularities.

The second Justice stated at the end of the eleven day trial, that O'Toole's constituents had won and that he would render a written judgement in two weeks. Said judgement was finally rendered after a year and the Justice ruled against the plaintiffs.

There was great difficulty in even obtaining the trial transcript in time for an appeal. An extra three months was granted to the reporter by the court. When it was made available it lacked the transcripts for the last two days of trial. There was a dispute. I have seen the letter addressed to the Canadian Judicial Council, in which the presiding Justice admits, that there were eleven days of trial, the last for argument; i.e. two days of transcripts missing.

A motion for dismissing the appeal was filed, heard and granted. The plaintiffs never received the prescribed notice. The lawyer purportedly acting on their behalf on this motion was neither retained, nor even known by them: it appears to have been the lawyer acting for the Credit Union, which was/is itself managed by a lawyer.

A second house on plaintiffs' property was destroyed by fire under mysterious circumstances. Parents and sons were going about their business, uninformed of the eviction order based on the dismissal of the appeal, when the sheriff, accompanied by several O.P.P. cruisers, appeared, threatened all that they would die then and there if they were to resist, carted out their aged mother on a stretcher and delivered her to a hospital.

The three men stood out on the street, their reward for their

tax-paying decades of physically hard and honourable work in Ontario.

This proved insufficient for Justice Iacobucci's "humanity" admonition. Shortly thereafter, their 86 year old mother died in the hospital, probably of a broken, deceived heart and shock. Her dying words to her husband were, as related to me under tears: "They didn't give me anything to drink for three days!"

A very experienced and well-known Toronto legal journalist came to investigate this criminal outrage for more than one day and found in the plaintiffs' favour. Pursuant to the other smoke and mirror travesty perpetrated on the public daily, that of our free press, yet another entirely absurd "guardian of the public interest", her publisher, a friend of the final beneficiary of plaintiffs' gravel pit, forbade her to publish the story.

A sympathetic area lawyer, fed up with his profession and the Law Society, was prepared to analyse their case to give them a push in the right direction. Understandably, he was not willing to act on their behalf, because "these people are ruthless...I have a family with children!"

Images of a narco-state-judiciary in Ontario.

Their 92 year old father is not in "Boca", avoiding the winter, where he might fraternise with Toronto lawyers. He is building a mobile home, outside, in these temperatures, along with his sons in their fifties, to earn enough to pay for their groceries: living on a neighbour's property, in a construction trailer without hydro, phone or running water.

I was unable to chauffeur them to the appointment with this sympathetic lawyer because this 92 year old was in bed, at home, given his wife's hospital experience, writhing in pain, without proper pain management, because he got his arm caught in a commercial planer, whose high-speed cutting blades reduced it to the thickness of the plank he was feeding through.

The results of coming into contact, not so much with the planer, as with our pin-striped, narcissistic and selectively blind, nobility-feigning judiciary and Law Society and its "amassing of profits"; which lends priority to their recent gala Lieutenant Governor Award for the most angelic lawyer. Kafka would have sufficient material for a second life.

What happened with the pit you ask? The Credit Union was offered 2.1 million; 1.8 million and 800,000. Ontario-style justice demanded that it be sold to the friend of the Toronto publisher for 148,000, who flipped it to a partially owned

company, which will use it as an aggregate in its product. On the day the pit closes, it will have generated ca. 4 billion in revenues. Given the age and frailty of the father, he may succumb to his injury and a betrayed heart. His sons will be able to collect old age pension in ten years to live in a rooming-house. The latter Justice and the lawyers will pass away in luxurious honour, possibly eulogized by our Lieutenant Governor.

Back to O'Toole, M.P.P. On February 18, 2004, he wrote a letter to our Premier, on behalf of Bill Link, a similarly abused constituent and neighbour of the aforementioned multiple victims. (This demonstrates the density of these cases across every Riding). Mr. O'Toole recommended, inter alia, that: "he (the Premier) consider the establishment of legal 'ombudsman' who would be empowered to investigate and respond to situations in which clients are dissatisfied with the services they have received from lawyers and have not had their issues resolved through the complaints process".

A novel idea: but only to those who have not read the excellent website Of the OFFICE FOR THE LEGAL SERVICES OMBUDSMAN of England. As a result of public pressure, the illustrious Law Society of England and Wales had to surrender its disciplinary proceedings to this public Ombudsman, due to the very same failures, of which the Law Society of Upper Canada has been at least equally guilty, but politically-financially, legislatively and judicially protected since its inception.

Additionally, three Law Societies in Australia met the same fate for identical cause: one lost total self-regulatory control.

The defrauded and impoverished pit owners cannot find a lawyer willing to put the safety of his or her family on the line because of the generally acknowledged "unreachable" opponent. A comparison to the third world would be unfair to the third world. Yet this is today's reality in Ontario.

Mrs. Bursky, of Grand Bend, spent her savings and sold her house in order to retain her farm. After it is sold within the month, and lawyerdom has created yet another aged, homeless person, while "amassing profits", her London law firm will disburse the proceeds, taking 70,000 + off the top for their dubious machinations. Even death-row inmates, inches from the chair, have a greater chance for a reprieve. To whom can she appeal, in all "humanity"; and why should she have to?

Premier, Members of Provincial Parliament, Committee Members, Mr. Koch, multiply these narratives by a thousand and that will not suffice.

Our Parliament correctly enacts thousands of laws designed to protect one from the other: yet the greatest harm and "amassing of profits" continues unabated due to the legal profession's lucratively applied hubris of "l'etat c'est moi!". It will remain a state within the state, unless our MPPs regain their mandated initiative and rethink as to whom they are elected to serve.

After merely incidental publicity our own membership numbers ca. 1000. This week we post our website and expect an exponential explosion. Members of other websites are in complete agreement with our assessment for the absolute requirement of an impartial Ombudsman to curb the present abuses.

Our elected representatives and the public would be forced to wonder, if a purportedly enlightened leadership of the profession were not to welcome, indeed, a distancing from its controversial and differentiated handling of its disciplinary proceedings, rather than face a potentially orchestrated onslaught of individual and class-action suits emanating from a densely-packed, seething electorate in every Riding, pursuant to the goalposts, as moved by McCulloch-Finney and our Supreme Court. In the alternative, the aforementioned Master's curse and wish vis-a-vis the Law Society may well come to assisted, bountiful fruition.

Given our judiciary's predilection for rummaging among centuries-old English precedents, they would have an easy time of it to all but adopt the English model for Ombudsman in toto, instead of studying the matter to death, until it is all but forgotten, to continue the "amassing of profits".

We the public do not trust the current beneficiaries, "amassing profits", to change their own stripes. For the purpose of bringing this systemic problem to the attention of our own elected representatives, we require a full day's hearing before the full Standing Committee of Justice Policy as soon as possible.

We are thinking in terms of five or six personal presentations, covering as many categories of professional malfeasance, as well as certain unalterable principles for selecting the Ombudsman, to guarantee his incorruptibility.

We will copy this letter to all of the investigative journalism television media, as well as to the print media: followed up by a notice of time and place of our presentation, which will hopefully occur inside of our tax-funded parliament buildings, as opposed to the alternative.

Ms. McCulloch-Finney, who has expressed interest in our

endeavour, will probably attend, possibly accompanied by her wheelchair-bound mother: genuine homespun folk-heroines and benefactors of all Canadians. It is expected, that a great many concerned legislators and media representatives, perhaps even both honest lawyers, will wish to talk with these ladies. I mention this, because we will require accommodation of sufficient size, rather than a room too small, designed to stifle our popular demands.

We would not agree to hold this hearing "in camera", i.e. without transcript and the exclusion of the public and the media.

Auspiciously it is held under the aegis of our multi-tasking Minister Responsible for Democratic Renewal.

Yours truly,

A handwritten signature in cursive script, appearing to read "Charles H. Fries". The signature is written in dark ink on a white background.

Founding Member
National Coalition for Law Societies Reform

cc: Open Letter