Submission to:

Standing Committee on Justice and Human Rights

for consideration of:

Bill C-9, An Act to Amend the Judges Act

Author: Christopher Budgell - appearing as an individual

November 23, 2022 - Submitted Electronically

From the record that I've been able to review so far it appears that I'm the first witness, and may be the only witness, that the committee hears from who is not a "system insider", though I note that you've heard from a couple of them - Professors Craig Scott and Richard Devlin - who are telling you things you haven't heard from Justice Minister Lametti and his DoJ staff.

I am here solely because of my determination to be here. Where are the other voices speaking for the public? And I note that you haven't heard from any of the judges who are, or were before they retired, subject to the Judges Act.

My immediate purpose in speaking to Bill C-9 is to argue that it should not be enacted, because it cannot be fixed.

But I can go beyond that. You, the members of this committee, have a golden opportunity. The legal establishment's own dialogue, a good deal of which is accessible to the public, attests to the fact that Canada's justice system is in crisis. Or perhaps that is justice systems in crises, because there are many components and many issues.

If you proceed now to recommend to the House of Commons that it pass Bill C-9 and send it on to the Senate you'll have missed that precious opportunity. The CJC perfectly illustrates the crisis, or crises, that the legal establishment is facing.

The ship crewed by the legal establishment needs to be turned around to face the bow into the wind. And this is an opportunity to start turning that ship around.

The publicly accessible record of the legal establishment's dialogue with itself shows that a, if not *the*, principle concern, is the impact of these crises on lawyers (including judges) themselves. Two sources I can note are The Lawyer's Daily, an excellent publication that has served the legal profession for years, and the blog slaw.ca. There have been many articles and posts about the stresses that lawyers and judges are facing, resulting in a good many of them suffering depression, and even what they concede is mental illness. There has been far less concern expressed about the impact of those systemic problems on litigants, especially those of us who are compelled to be self-represented.

But on that note I want to specifically mention two members of the legal establishment: Justice Yves-Marie Morissette of Quebec's Court of Appeal and Donald J. Netolitzky, who as an employee of the Alberta superior courts has the curious title of Complex Litigant Management Counsel. I would characterize what they have been doing as building a thesis about what they like to call "querulous litigants", the most extreme kind of what are conventionally called "vexatious litigants". Justice Morissette did not coin the term "querulous litigants". He attended an international conference held in Prato, Italy in 2006 and subsequently addressed a meeting of the Canadian Association of Counsel to Employers with a speech entitled, ***Querulous and Vexatious Litigants as a Disorder of a Modern Legal System***. The CACE posted a copy of that speech on their website. After I found it there and began commenting publicly about it, they removed that copy. There is a copy currently on the website of an entity called ProQuest. I have had some success accessing it there, but not consistently as it appears to be a subscription website. I am attaching the copy that I saved.

Donald Netolitzky has built on Justice Morissette's original thesis and is continuing to do so. They don't of course claim that all self-represented litigants are "querulous", or even "vexatious". But those are the ones on which they have focused their attention.

One reason this interests me is that my own history of litigation matches their description of the classic querulous litigant. So I can see what they are doing.

I have just found this program of a meeting held last May to which Mr. Netolitzky contributed another version of his thesis: ***The Responsibility of the Tribunal to Accommodate Users With Mental Health Issues***. To access it go to this link, expand the first item on the list (May 27, 2022) and then click on the link to Donald Netolitzky's 12 page PowerPoint presentation. The second file I have attached is a copy of this presentation.

There is much more evidence to be cited that demonstrates that the legal establishment, while not accepting responsibility for the problems besetting the justice system, continues to wage a propaganda campaign against self-represented litigants. Material such as that being produced by Mr. Netolitzky does not reach the public directly because few people have had the time to research these issues. But the rhetoric permeates the whole system, and it feeds into what the media feeds the public. One result is that prospective litigants are routinely told that if they cannot afford a lawyer then they really should not attempt any litigation on their own. That then implicitly justifies any tactics to ensure that self-represented litigants are not successful and are quickly discouraged from continuing or from resuming litigation.

I can cite many of those tactics because I have experienced them. They include section 13 of British Columbia's Labour Relations Code and what started out in 2003 as section 2.2 of the CJC's then new *Complaints Procedures*. (These are both what I call "gatekeeper" devices, and I think much would be revealed by looking closely at them and noting the similarities and differences.)

But, here is the point everyone should understand. This strategy isn't working. It hasn't stemmed the tide of self-represented litigants, and it isn't going to.

All the legal establishment has succeeded in doing is putting off "a day of reckoning". I'm quoting there the words of the journalist Christie Blatchford at the end of the first chapter of her last book, "*Life Sentence*". The subtitle is, "*Stories from Four Decades of Court Reporting -- or, How I Fell Out of Love with the Canadian Justice System (Especially Judges)*".

I would suggest that not only should this committee not be rushed into completing its consideration of Bill C-9, but that also it should consider striking a new sub-committee to begin taking a closer look at the access to justice issues, with an emphasis on the perspectives of ordinary Canadians who are faced with dealing with the justice system.

Thank you for your time. I would be delighted to answer any questions.