Brief to support the deliberations of the Parliamentary Committee on Justice and Human Rights.
Debate on Bill C-40

AN ACT TO AMEND THE CRIMINAL CODE, TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS AND TO REPEAL A REGULATION (MISCARRIAGE OF JUSTICE REVIEWS)

Submitted by Trevor Holsworth

Thank you for this opportunity to contribute to the advancement of the better administration of justice.

I am in the unfortunate position of having informed the legal system of problems in the administration of justice which has resulted in retribution, which reflects poorly on the constitutional requirement for fair and impartial trials.

My experience included a lawyer committing fraud on a court order and a refusal to comply with a court order to provide monthly trust account statements, evidence tampering and trial fixing. I reported the problems to the BC Law Society and the lawyer involved admitted to the default in writing and pleaded for mercy. There was no hearing and the matter was dismissed by the benchers with no discipline whatsoever and a refusal to provide the written reasons for their decision as required by statute of the legislature.
How can Canadians trust this relationship critical to accessing justice?

Unfortunately the Judge who presided over the trial was Mr Shaw whose fitness as a judge was debated in the House of Commons in early February 2002 with near unanimous condemnation however they almost all folded their position when the MOJ Anne McLellan pleaded with them to permit the justice system to resolve the matter internally. Unfortunately a local Judge had seized himself of the trial and there was no explanation for why he was not in attendance and the police were informed of substantial removal of documents from the court file and redacting of all references to failures by the lawyer to comply with court orders. There was no investigation conducted beyond interviewing me, and dismissing my concerns as being paranoia.

A complaint was made to the Canadian Judicial Council of Judge Shaw's behavior at trial where when presented with the transcript to conclusively demonstrate the fraud perpetrated on the court order he called upon the Plaintiff and requested she provide testimony and preferred that to the best evidence that any Canadian could provide.

The council approved of the conduct as complying with the "good behavior" constitutional requirement. How that judicial conduct complies with the Judges Act s 80, "the judge's continuation in office would undermine public confidence in the impartiality, integrity or independence of the judge or of their office to such an extent that it would render the judge incapable of executing the functions of judicial office..." specifically subcategory "d) the judge is in a position that a reasonable, fair-minded

and informed observer would consider to be incompatible with the due execution of judicial office".

The Council dismissed the complaint without examination as being one of "judicial discretion" as if discretion is absolute and not bounded when the acceptance of the transcript is a duty, to protect Canadians to their right to access the public service of justice.

I subsequently made a complaint to the Council regarding that decision which the lawyer assigned to reviewing complaints dismissed as an abuse of process instead of following the Council's procedures to send complaints regarding members of the council to an independent lawyer for independent advice. Despite reminders this has never been resolved and further communications with the council remain unanswered.

I properly served the enforcement procedure of the Charter s 24(1) upon the AG/MOJ which failed to generate a response, including a response to a constitutional question on the matter, which continues to remain unanswered and subsequently an explicit refusal to respond to the constitutional question and constitution.

The concern is a lack of regard by the administrators to deliver the public interest in a legal system that provides justice, complies with the constitutional constraints and procedures.

When I presented these facts and lots more before the BC Supreme Court including a writ of mandamus on the MOJ to comply with his duty to protect the public and ensure that the administration of justice was in compliance with the law it was dismissed as "irrelevant" and subsequently for a right to appeal to the BC Court of Appeal where my lived experience was not only "irrelevant" but a "conspiracy theory...does not reflect reality".

The reality of the consequences of that decision confirm that I have no rights in the BC Courts as everything I say can be denied as a conspiracy theory and given that the Judicial Council claims discretion over all evidence the legal system is arbitrary and worse. I was subsequently incarcerated for 80 days with a refusal by all lawyers to represent me, and no ability to appeal the decision as the incarceration occurred immediately. I did submit a habeas corpus application the Supreme Court of Canada which was ignored for over a month, until a complaint to the Canadian High Commission in Australia by my parents generated a response from the Court, that termed my habeas corpus application, "a letter" in denial of s 9, arbitrary imprisonment" and s 10 c the right to habeas corpus. I can confirm that there was no legal advice available through prison legal services on habeas corpus applications at all. The prison law library had no Supreme Court of Canada decisions in its legal database, only Western Provincial decisions which for my purposes were irrelevant.

If the Canadian Judicial Council approves of judges ignoring the best evidence that any Canadian could provide then justice is subject to every whim and bias of a judge and offends s 9 of the Charter. The problem appears to be that Judges are not competent at fair and impartial judging of their own conduct, and the conduct of lawyers. That should have been apparent long ago, as it is a well established principle of fundamental justice that no-one can be a judge in their own cause.

The desire to assert the important separation of powers doctrine of judicial independence forgot that the principle exists to protect the public. During the debate on the Bill c-9 the Judges Act in the Senate I proposed amendments that would correct that deficiency but it appears that the government refused to accept most of the amendments suggested by the Senators. My proposal was that judicial conduct should be examined by a jury as a bulwark of individual liberty and the reality that judicial conduct can

only be legitimately examined by the citizen, whom they purport to serve.

I informed both the Speaker of the House and the Committee on Procedures and House Affairs regarding the problems in the administration of justice and requested procedural details regarding the process to follow to request Parliament to assert its constitutional responsibility for peace, order and good government for Canadians. Parliament is the penultimate protector of the liberty of the citizens of Canada and the separation of powers doctrine requires checks on the legitimacy of the claims of constitutional compliance by the Judiciary. PROC never responded, which is somewhat understandable given that the MOJ's legal advice is to deny the enforcement procedure of the Charter which creates a constitutional crisis as the Executive claims it is not bound by the procedures of the Charter and have refused to justify that conduct in a free and democratic state as required in s 1.

It is not fair to subject Canadians to abuse by lawyers and judges and provide them with zero ability to protect themselves. This is a responsibility of Parliament. Law Societies are a creation of the provincial legislatures with the protection of the public interest as their primary objective. But the Judges Act and the Supreme Court of Canada Act are responsibilities of the Federal Parliament. If there is no protections for the public then they have no purpose.

Having a judge or a lawyer check for situations of false imprisonment does not properly check the powers of the Judiciary.

On a personal note, I shouldnt be incarcerated for telling the truth about my bad experiences in the legal system, requesting accountability, transparency and constitutionality to be rigidly tested and enforced according to the established legal rules. We are supposedly guaranteed these legal rights. I wouldnt return to a store that didnt honor their guarantees because I have other options, but the legal system is operating a monopoly and Parliament has a duty to enforce the terms of the guarantee upon the Judiciary. It is one of the core responsibilities of the Executive and the House of Commons, failure to do so constitutionally should result in the dismissal of the MOJ and the PM. That is how important upholding the rule of law is in a democracy. They hire them, often based on political party affliations, probably political bias and the MOJ has the responsibility to request Parliament to fire them for failure to provide their constitutionally required “good behavior”.

The best solution for democratic deficit is to reinforce democracy. For the current bill it would be important to have a citizen jury at the head of the process in order to protect the public interest. The Jury system is well respected as a bulwark against a biased, overzealous or vindictive Judiciary.

I support the problem identified in the brief, by the Canadian Criminal Justice Association, Dr. Myles Frederick McLellan
“The available remedies in Canada to pursue compensation include civil litigation for malicious prosecution, negligent investigation, a Charter breach and the highly politicized exercise of discretion by a government to make a payment without acknowledging liability. Except for the very few, none of these remedies are very helpful. Liberal democracies like Canada are honour bound if not constitutionally mandated to provide for innocence compensation far beyond the onerous and cost prohibitive pursuit of litigation against the State and the current highly secretive and inadequate executive remedy requiring an elusive exercise of mercy.”
“Clearly, this is an area that calls for legislative action. The right to be free from a wrongful accusation, conviction and imprisonment and the corresponding right to be compensated for the damages caused thereby is enshrined in international human rights law. The need is palpable to create a legislative remedy that is transparent, consistent, removed from the political process and perhaps most

importantly, accessible to those in need."

I support the problem identified in the brief, by Harry LaForme, Kent Roach and Juanita Westmoreland-Traoré
"The creation of this commission has been recommended by commissions of inquiry since 1989. Canadians and most importantly victims of miscarriages of justice have waited much too long to be presented with such an unnecessarily inadequate bill....We recommended a commission of between 9 and 11 commissioners chosen by an independent committee.", although they recommended lawyers and I recommend a jury of citizens, expanding on s.696.75 requirement of only 50%, this would also solve the independence from government problem.
I emphasize their comment, "Almost 20% of the 87 people on the Canadian Registry of Wrongful Convictions pled guilty." Section 696.4(3) requiring an adverse decision from a Court of Appeal would make the commission inaccessible for many, indeed most, victims of miscarriages of justice and
"Section 696.2 should be amended to allow applications from persons who are currently serving a sentence of imprisonment."
"Section 696.6(2) should be amended to delete the phrase "and considers that it is in the interests of justice to do so". The phrase is vague." and subject to abuse on the perception of whose interests justice should represent.

I support the problems identified in the brief by the Innocence Project particularly the investigation of causes for false guilty pleas.

I support the statements in the brief by Darren Seed,
"David Milgaard was wrongly convicted, and the people who wrongly convicted him felt "tension" and "resentment" because their laughable, were it not so tragic, incompetence was pointed out. Out of the buffet of available emotions, there were arguably many more appropriate ones available. Such as Shame. Sorrow. Regret. Guilt. Remorse. Desire to improve. Rejoicing that justice was finally achieved. Yet in Saskatchewan, they still act like kindergarten kids who lost their favourite marbles in a game on the playground. Childishly sulky and bad tempered. Sore losers. They don't have the quality of character to either stop or rectify wrongful convictions.: In February 1991, former Saskatchewan prosecutor Serge Kujawa was outraged that the Supreme Court was reviewing the Milgaard case and called Milgaard a "guilty kook," reported the Winnipeg Sun. "It doesn't matter if Milgaard is innocent of the 1969 murder for which he's spent 22 years in prison – his case should remain closed," Kujawa, then an NDP MLA, told the Winnipeg Sun. "The whole judicial system is at issue – it's worth more than one person," said Kujawa. THAT is the longstanding, ongoing attitude toward wrongful convictions by prosecutors, police and the ministry of justice for Saskatchewan. DON'T dare Question the System. Especially when they are wrong."

I support the comments made by the Advocates Society, "We recommend that the commission have jurisdiction to do systemic reform work related to the prevention of miscarriages of justice".

The last thing that anyone who has been wrongfully convicted is to submit themselves to a Judiciary that denied them on typically multiple occasions. That is abusive. I will not voluntarily submit myself to that abuse under the current regime.

Parliament has the ultimate responsibility to protect the public interest from abuses of power by the Judiciary or the Executive.

Trevor Holsworth