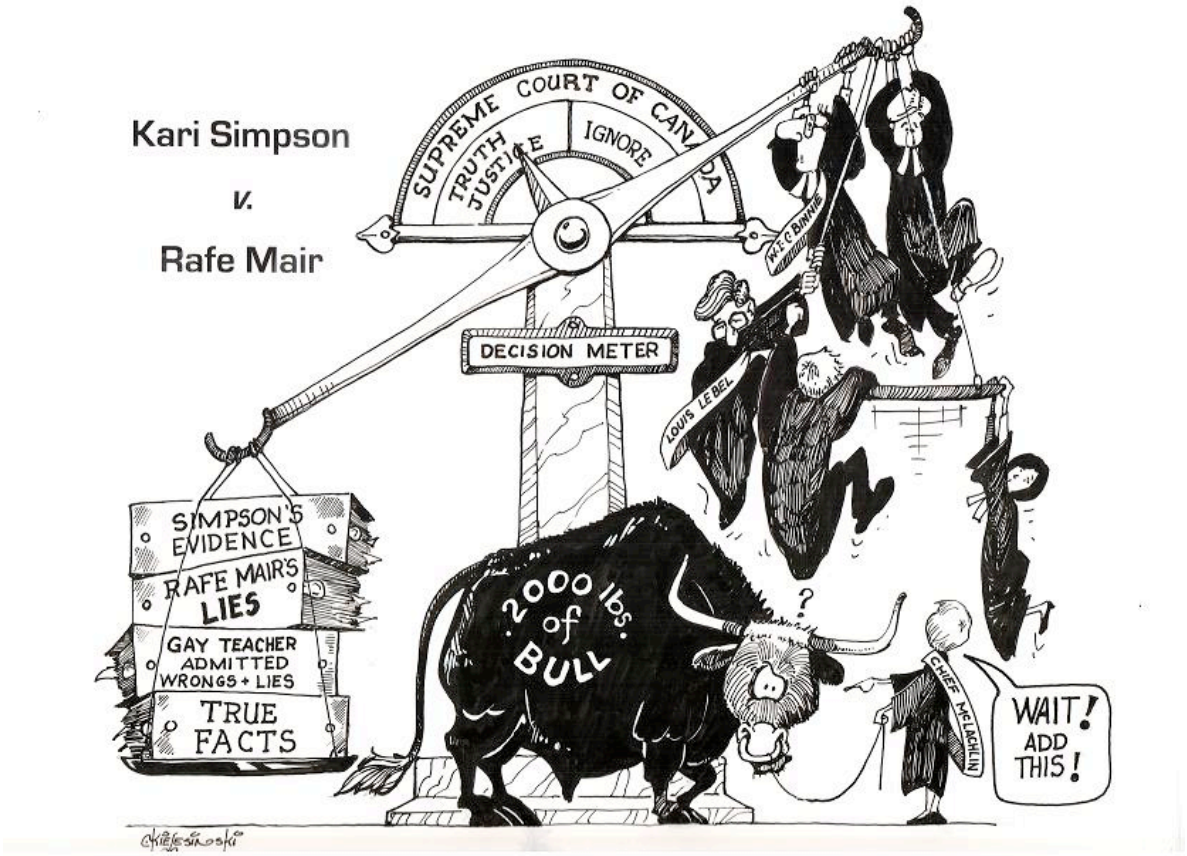
Courting Corruption



Summary Brief

The matters described herein relate to the Corruption of Justice, Judicial Breach of Good Behaviour and Violation of theRights of a Canadian to a fair and impartial hearing as evidenced by the factual events portrayed in:

***Simpson v. Mair & WIC Radio Ltd.*, 2004 BCSC 754**

- and -

***WIC Radio Ltd. v. Simpson*, 2008 SCC 40**

-and-

Kurtz v. (Justice)Mary Marvyn Koenigsberg & Lubomyr Prytulak aka **Lubomir Prytulak, Luby Steven Prytulak, Luby Stephan, Myroslaw Prytulak, Miroslaw Prytualk, Myroslav Prytulak, & Miroslav Prytulak**

Problem

Judicial corruption; unlawful conduct by judges—including the justices of the *Supreme Court of Canada*; cover-up and the deliberate violation of Kari Simpson's right to a fair and just hearing; and furthermore, her lawful right to protect her reputation.

The conduct of the judges (and lawyers) involved in this matter far exceeds the criminal definition of "obstruction of justice", and is better defined as ***judicial tyranny***; Namely:

- Madam Justice Beverley McLachlin, Chief Justice of the Supreme Court of Canada
- Mr. Justice Michel Bastarache, formerly of the Supreme Court of Canada
- Mr. Justice Ian Binnie, formerly of the Supreme Court of Canada
- Mr. Justice Louis LeBel of the Supreme Court of Canada
- Madam Justice Marie Deschamps, Supreme Court of Canada
- Mr. Justice Morris J. Fish, Supreme Court of Canada
- Madam Justice Rosalie Abella, Supreme Court of Canada
- Madam Justice Louise Charron, Supreme Court of Canada
- Mr. Justice Marshall Rothstein, Supreme Court of Canada
- Former Chief Justice of the Supreme Court of British Columbia, Justice Donald Brenner (now deceased)
- Madam Justice Mary Marvyn Koenigsberg, of the Supreme Court of British Columbia

This list is not complete, as it does not include the lawyers; but it suffices for the purpose of this briefing document.

Brief Overview

October, 1999—Kari Simpson hired the soon-to-be President of the *Canadian Bar Association*, lawyer Eric Rice, to commence a legal proceeding in the *Supreme Court of British Columbia* against Rafe Mair, a lawyer, former politician and (at the time) a well-known radio talk show host.

The defamation suit filed against Mair resulted from Mair's two-year public campaign of lies, misinformation, hate and vilification, targeting Kari Simpson for her public role in defending the rights of the parents of children in the public education system against sex activist teachers who, self-admittedly, were contravening Ministry of Education policy.

Simpson also supported the removal of a young child from the classroom of one militant gay activist teacher, James Chamberlain, who was abusing his role as a Kindergarten/Grade One teacher to promote gay political ideology and left-wing politics. Mr. Chamberlain is also a religious bigot, and an admitted liar. Any sensible parent, knowing what Kari Simpson knew about this teacher, would have removed their child

from his classroom—not because the teacher is “gay”, but because he is unprofessional, and because he abused his role as a teacher. This is the same teacher involved in the Surrey Book case, who was shown judicial favour by the high court in a matter involving three books depicting same-sex-headed families—a matter in which Simpson was ***not*** involved; but somehow the courts creatively ***rewrote*** the facts of her case, incorporating the fiction—originated in Rafe Mair’s editorials—that she was involved in “opposing” the books cited in the Surrey “three book” case.

Rafe Mair wrote, published and broadcast his hate, vilification and provably vicious lies in over ***forty*** editorials between 1997 and 2000 (and continued to publish a selection of these same editorials until Simpson sued him again in 2009, after which he removed these editorials).

On October 25, 1999 Mair published an editorial so vicious that Simpson, a single mother of four, was left with no alternative but to sue. (It should be noted that Kari Simpson wrote numerous letters to Mair and management of CKNW advising him that his repeated statements about her were wrong; further, when Simpson requested an opportunity to debate Mair on his show, he cowardly refused.) In his October 25th, 1999 editorial, Mair compared Simpson to nefariously vile historical individuals and groups, including Hitler, skin-heads and the Ku Klux Klan. It should also be noted that at the time, Kari Simpson and her children were also under police protection because of death threats, hate mail and the riots organized by the International Socialists in cahoots with the BC Teachers’ Union and the Gay and Lesbian Educators of BC—their inflamed actions fanned by Rafe Mair’s continuing lies.

Rafe Mair also influenced other members of the media. It became “open-season” on Kari Simpson; after all, Mair knew Kari Simpson, so the lies seemed believable. It became a bit of a bizarre competition: some engaged in lemming-like copycatting of Mair’s manufactured false reputation of Kari Simpson, and in some cases tried to upstage him. When other media members were confronted with having to prove their absurd assertions about her, they couldn’t. Some apologized, some made a monetary settlement; others simply refrained from spreading any more lies.

Kari Simpson, up until 1997, had a long and respected public record of protecting children and their families from unwarranted state intrusion. For her work, Simspon was recognized by being appointed in 1995 to ***BC’s Child and Family Review Board,*** a quasi-judicial position overseeing and protecting the rights of children in the care of the BC government. Simpson was also the catalyst and force behind a 1991 inquiry into the government’s abuse of families in matters relating to child protection and apprehension. BC’s Ombudsman at the time, Stephen Owen, conducted the inquiry and published his findings in *Public Report #24*. He agreed with Simpson—there had been too many spurious apprehensions; children and their families were being harmed.

Kari Simpson also became the lightning rod needed to make the BC government accountable on matters relating to children who died while in the custody of the government. In 1996, an Aboriginal family whose children had been unwarrantedly

apprehended contacted Simpson and asked for her help, as thousands of other families have done over the past two decades. In this case, the family's young infant son had died while in a foster home; and social workers refused to provide the family with any details about the baby's death. It was Simpson who galvanized the opposition (BC Liberal) party to demand that the governing NDP investigate the matter—an investigation that resulted in systemic change, and accountability that now requires mandatory reporting of all children who die in the care of the government.

The list of Simpson's accomplishments goes on.

Kari Simpson's record is consistent on matters relating to the relationship between the state and the family. She often echoes the words of former Supreme Court of Canada Justice, Gerard La Forest, in her then numerous speaking engagements—words that Simspon acknowledges as truthfully portraying the reality of the challenges a free and informed society must acknowledge if the best interests of children are truly our goals: that the "state is ill-equipped" to care for children and/or to raise them, and that the nurturing and moral up-bringing of children by their own parents is of fundamental importance to our society. The Supreme Court of Canada states in *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315:

> In recent years, courts have expressed some reluctance to interfere with parental rights, and state intervention has been tolerated only when necessity was demonstrated, thereby confirming that the parental interest in bringing up, nurturing and caring for a child, including medical care and moral upbringing, is an individual interest of fundamental importance to our society.
>
> While parents bear responsibilities toward their children, they must enjoy correlative rights to exercise them, given the fundamental importance of choice and personal autonomy in our society. Although this liberty interest is not a parental right tantamount to a right of property in children, our society is far from having repudiated the privileged role parents exercise in the upbringing of their children. This role translates into a protected sphere of parental decision-making which is rooted in the presumption that parents should make important decisions affecting their children both because parents are more likely to appreciate the best interests of their children and because the state is ill-equipped to make such decisions itself.

Simpson's public record—not Mair's or the courts' manufactured lies—on issues involving public education, the unprofessional antics of activist teachers and the rights of Canadians is clear, recorded and provable. She is not anti-gay; far from it. She was not involved in the *Surrey Book Case* or "opposing" the books; in fact, she is on record as *inviting* these books into the school. She has never advocated violence—quite the contrary; in all her speeches to the thousands of British Columbians that gathered to hear her, Kari Simpson encouraged the people of BC to use ***democratic*** means for change. ***They did***. In 2001, the people of British Columbia politically decimated the governing NDP—and the government responsible for stomping on parental rights was left with only two electoral seats after the election.

Rafe Mair is demonstrably a vicious liar, who strives to ensure that influential Christians (like social policy activist Kari Simpson) will have no place in public policy debates and/or leadership. ***Mr. Mair has stated this position publicly.***

Ironically, Kari Simpson's position on these matters is ***not*** rooted in any religious belief. Common sense, civil morality and the law have formed the basis of her actions. But Rafe Mair repeatedly declared otherwise. Christian-bashing seems to be a proven tactic in Canada for attacking a person's reputation—a form of tactical hate speech seemingly also approved of by the courts. On October 27, 1999 Rafe Mair asserted that this was a "religious war, not an educational war." This statement is absurd when you consider that Rafe Mair later testified that he had never heard Kari Simpson speak on the issues about which he was pontificating.

October, 2003 – The trial *Simpson v. Mair & WIC* commenced. Unbeknownst to Simpson at the time of her trial, the judge assigned to her case, Justice Mary Marvyn Koenigsberg, was personally embroiled in another defamation suit involving her spouse—a man known by numerous aliases, but most commonly referred to in legal proceedings as "Lubomyr Prytulak." It appears from court documents that Mr. Mair and Justice Koenigsberg's spouse shared a common passion for actively promoted hatred, lies, and unbridled vilification against those whom they seek to destroy. In addition to the aforementioned court proceedings, Justice Koenigsberg's spouse was at the time being investigated by the Canadian Human Rights Commission for promoting hatred against an identifiable group, namely Jewish people.

The Trial: October 6 and December 8-11, 2003—Rafe Mair is a proven liar. He admitted he had never heard Kari Simpson speak on the issues he felt so compelled to lie about: he admitted this under oath. The case was a slam-dunk; it was not complicated. So why, then, after numerous days of trial, did Justice Koenigsberg request that the parties attend a "settlement conference?"

Simpson's antennas were up. It was a strange turn of events.

During the semi-formal conference, Justice Koenigsberg admonished Rafe Mair, and told him he owed Simpson an apology; she chastised him further about his false claims concerning a letter Simpson had written to him. Koenigsberg then introduced the politically-charged (and irrelevant) subject of abortion into the discussion while focusing on Simspon. The judge stated that she, herself, was pro-"choice" (*i.e.*, pro-abortion) and then delved into issues related to Simpson being a Christian—***matters utterly unrelated to the case***.

Koenigsberg then looked at Simpson and made a bizarre declaration. She said, "Mrs. Simpson, you and Rafe Mair are both influential people in this province; you can help the court here by settling this matter."

Simpson was taken aback at the strange request of the judge, and recalls thinking,“You must be joking, I am not here to help the court; I am here to get this matter finally dealt with, restore my reputation and to make Rafe Mair stop lying.”

Koenigsberg then asked them to settle the matter. The parties then adjourned to their assigned rooms; Rafe Mair failed to apologize, and refused to settle the matter.

On June 4, 2004 Justice Koenigsberg delivered a craftily-worded decision. The art of judicial chicanery is masterfully displayed in her manipulation of facts, and the outright lies that formed the basis of her decision. ***As in all effective deceptions, the lies are more believable when embedded in truth***.

Koenigsberg found that Rafe Mair ***had*** defamed Simpson; and that he did so maliciously. He promoted hatred and contempt against “her and her ilk” (Mair’s contempt-inspiring words). Then came a few examples of the twists: Koenigsberg found, however, that Rafe Mair and had “an honest belief in what he said”—even though he had admitted that he’d never heard Simpson speak on the matters he published, and Simpson had written to him and CKNW management, advising them that his statements were wrong.

Koenigsberg did a creative rewrite of the facts, and weasel-worded them into a fictional story. Some of the highlights include that Simpson was involved in opposing the three books in Surrey. This is a lie. Simpson is on the public record as supporting their use—providing parents are informed, as per the requirements of the Ministry of Education.

It should also be noted that transcripts of Simpson’s public appearances, including an interview on CBC where she clearly states that she was not involved in the book case, formed part of the evidence ***that was before Koenigsberg***.

Another blatantly absurd finding was Koenigsberg’s reasoning that found Mair’s assertions regarding the “gay teacher” issue to be “comments”, and not asserted as “facts”, thus saving him with the defense of “fair comment.” If she had found them to be asserted as “fact”, logical law would have found him without a defense.

Two important points on this; a comment is usually a one-off. But Rafe Mair falsely and repeatedly stated that Simpson supported the parents’ removal of their son from the classroom simply because the teacher was gay; this ***lie*** was repeated in at least ***eight*** editorials—hardly a “one-off.”

More troublesome for the jurist is the fact that Rafe Mair himself, on October 29, 1999, referred to the same situation involving the gay teacher and stated it as a “***fact***.” Rafe Mair’s own published words: “*The **facts,** briefly, were that a Mr. and Mrs. Prepchuk demanded that their child be taken out of Mr. Chamberlain’s class, presenting a clearly homophobic document called the Declaration of Family Rights in support.***”**

Note – The lies and misinformation embedded in the Koenigsberg decision are numerous and not limited to the aforementioned.

June, 2006—Simpson appealed the Koenigsberg decision to the British Columbia *Court of Appeal* and won. June 13, 2006 the Appeals court found, in a unanimous decision, that Mair could ***not*** have had an honest belief in what he said, based on the facts. The *Court of Appeal* also made a serious declaration ***reprimanding*** the drafter of Simpson's pleadings. Lawyer Eric Rice, now Justice Rice, was the President-in-waiting of the *Canadian Bar Association* at the time Simpson retained him. The court berated him for not following the rules of the court as they relate to libel cases. ***And while the Court of Appeal did not admonish the trial judge, their message was clear: she also did not follow the rules***.

December 4, 2007—Mair and his then-employer, CKNW, appealed to the *Supreme Court of Canada ("SCC").*

Supreme Court of Canada*, December 4, 2008**—During that hearing, the SCC, with a full panel, "modified" (*i.e*., changed) the legal test for "honest belief", and then relied on numerous errors of fact to support their decision to restore the trial judge's decision—apparently largely for the sake of making a timely statement signaling a new defence of free speech. This was the first defamation case the SCC had agreed to hear in 30 years. Kari Simpson became "Road-kill***" on the information highway of public controversy, according to the *Supreme Court of Canada*.

The Real Story is about to Unfold

October 26, 2008 Simpson applied for a rehearing before the *Supreme Court of Canada*, as she could easily prove a gross miscarriage of justice, since her first lawyer had failed to provide crucial facts to the trial judge as requested by Simpson and as required by the rules.

Further, Simpson rightfully claimed that she was ***denied*** the right to know the legal test she had to meet as a result of the fact that the SCC "modified the law," but failed to send the case back before the trial judge to be re-considered under the new test. In addition, the *Supreme Court of Canada* refused to hear the matter, thus denying Simpson the right to know the test, and denying her the right to a fair hearing.

Important Note—Not included in her application for a rehearing was the factual information relating to the trial judge's lack of qualification to preside; nor was Simpson aware of the judicial shenanigans that were transpiring. At this point, she was not fully aware of all the facts and the implications of the perversion of the law unfolding in her case.

Equally disconcerting is that it appears that numerous judges and lawyers <u>were</u> well-informed—and failed to act. One of those judges, Chief Justice McLachlin, must have known (or ought to have known) that any decision of Justice

Koenigsberg would be tainted—especially one involving a similar fact pattern of religious hatred, vilification, and defamation; and, of course, Justice Koenigsberg's personal actions of obstructing the right of a successful plaintiff to collect a court award against her spouse by her fraudulent transfer of assets. No one advised Kari Simpson that her trial had been thus compromised.

2009—Simpson persevered, ***naively*** believing that justice would prevail and that the trial judge, if just given the facts as the *Rules of Court* required, would have to acknowledge that she had got it wrong. Simpson read and reread the *Rules of the BC Supreme Court* and found what she believed was a provision that would open the door.

Simpson applied to the original trial judge, Justice Koenigsberg, for a hearing of a motion, pursuant to Rule 2 of the Supreme Court of British Columbia Rules. Justice Koenigsberg agreed to hear Simpson's application in a hearing scheduled for Feb. 3, 2009.

February 3, 2009—Simpson appeared in front of Koenigsberg on the matters relating to a fraud being committed on the court. At this point, Simpson was still ***unaware*** that the true fraudster was Koenigsberg herself; but this lack of knowledge was soon going to change. Koenigsberg, of course, denied Simpson's application.

Immediately after this hearing, just outside the courtroom, Simpson was approached by an individual who indicated a desire to talk to her. Simpson excused herself from her supporters and listened intently to the information being divulged to her by this obviously well-informed man. The information disclosed was troublesome, and compelled Simpson to further investigate the trial judge and her spouse's legal and personal problems. The man provided Simpson with court file reference numbers.

The Full Picture Begins to Form

On **February 13, 2009** Kari Simpson went to the Vancouver courthouse and began her own investigation. She conducted a full review of the available filed documents involving the legal actions against Justice Koenigsberg and Prytulak. The troubling facts contained in the court records painted a disturbing picture of a corrupt judge financing a spouse's campaign of religious hatred, lies and bigotry against influential Jewish businessmen. A corrupt and disgraceful judge who engaged in deliberate acts, designed to thwart justice. A corrupt judge who seemed to have special favour with BC's then-Chief Justice, Donald Brenner; a Chief Justice who assigned and seized himself to preside over the legal challenges of one of his own judges.

The court records show that the Chief Justice engaged in a most creative and bizarre form of jurisprudence, so mystifying that it finally frustrated those who are lawfully entitled to justice, namely a respected Jewish lawyer named Gary Kurtz. Court records document Brenner's attempt to protect Koenigsberg and frustrate justice by engaging in conduct designed to deplete the resources of and deny justice to the plaintiff, Gary Kurtz.

February 20, 2009—Simpson wrote to the Chief Justice and confronted him with the details exposed in the court records involving Justice Koenigsberg and her spouse. Simpson ***wasn't*** shocked when Brenner didn't write back. A copy of her letter to him is included and follows this brief.

Court of Appeal, May 27, 2009—Kari Simpson appealed the February 3, 2009 Koenigsberg decision and appeared in the BC Court of Appeal before Madam Justice Pamela Kirkpatrick on May 27, 2009. A lively discussion ensued with the matter being adjourned so Simpson could obtain a signed order from Koenigsberg.

Now armed with the facts and growing insight into the level of corruption within the court, the dots were easily connected. The picture portrayed a level of deceit and corruption and judicial fixing of a case that suddenly made sense out of the seeming insanity.

Simpson contacted the Vancouver registry and asked again to appear in front of Koenigsberg for the purpose of clarifying and getting the order signed. This of course would require Koenigsberg to act in a "judicial capacity"—an ***act*** she wasn't qualified to do, not being "during good behaviour." A date was set: **June 18, 2009**.

June 10, 2009—Simpson made a request to appear in front of the Chief Justice, Donald Brenner. The *Rules of the BC Court* require the Chief Justice or next senior judge to preside over an application for disqualification of a judge.

The emailed request stated:

> **From:** citizens@direct.ca [mailto:citizens@direct.ca]
> **Sent:** June-10-2009 9:54 AM
> **To:** citizens@direct.ca; dburnett@owenbird.com
> **Subject:** Chief Justice Brenner or the next senior judge--VA C996052--*Kari Simpson v. Rafe Mair & WIC Radio Ltd*.--CONF#610099530533
>
> Chief Justice Brenner or the next senior judge--VA C996052--Kari Simpson v. Rafe Mair & WIC Radio Ltd.
> **Type of hearing:** Chamber
> **Time estimate:** 30 minutes
> **Available dates:** any time next week
> **Nature of Application:** Pursuant to Rule 64(10)(11) an order for directions and/or an order disqualifying Madame Justice Koenigsberg from exercising any further jurisdiction in the matter of *Kari Simpson v. Rafe Mair & WIC Radio LTD*. Further, for directions on how to proceed and obtain a signed, valid and lawful order from the February 3, 2009 hearing if Madame Justice Koenigsberg is disqualified and it is determined that it is "impossible" for her to act in any further judicial capacity. Madame Justice Koenigsberg has asserted that she will again act in a judicial capacity and exercise jurisdiction in this matter and has refused to hear an application by the applicant for her disqualification. I request that the Chief Judge or the next senior judge deal with this application prior to the hearing before Madame Justice Koenigsberg that is scheduled for June 18, 2009.

Reason why this must be heard by (Chief Justice Brenner or the next senior judge): Rule 64 requires that the Chief Justice or the next senior judge hear the application.
Opposing Counsel's/Litigant's position on this application: Unknown

This application was never heard by the Chief Justice as he resigned the next day.

June 11, 2009—*Chief Justice Donald Brenner resigns*.

June 18, 2009—Simpson appears in front of Koenigsberg with a motion asking Koenigsberg to disqualify herself. Koenigsberg refuses to hear the motion and instead suggests Simpson start a new lawsuit and/or appeal her decision.

At this juncture it became clear to Simpson that justice would be futile without leveling the playing field. How foolish would it be for her or anyone to wallow any deeper into the bowels of this judicial abyss without changing the odds.

RoadKill Radio.com

2009—Simpson established an internet presence by developing a online webcast called ***RoadKill Radio*** that has now grown into a multimedia corporation.

DriveForJustice.com

June, 2012 saw the launch of RoadKill Radio's new reality series called ***Drive For Justice***—a no-holds-barred, "take no prisoners" reality series that will follow Simpson's every step, every letter, every court appearance… as she seeks justice. Yes, the show names names and provides documents that will prove every word uttered by Simpson. A series that will continue until j**ustice is done**.

Lies and More Lies

It should be noted that the Internet is today full of lies and misinformation about Kari Simpson as a direct result of the ***Supreme Court of Canada's*** willingness to publish deliberate and known lies about her, and the facts related to the Rafe Mair defamation suit. The harm that has been foisted upon Simpson by the unlawful actions of the court is immeasurable. Those who are privy to the facts of this case are outraged; and those numbers grow each and every day. Those numbers now include elected representatives, lawyers and judges—but most importantly, they include many ordinary Canadians who know that the foundations of justice upon which our nation is set have been compromised and reconize that the rule of law is at best a charade; and that their own rights to justice are threatened by this miscarriage, by these incidents of misfeasance and malfeasance.

Reference Material

Applicable Law (not an exhaustive listing) & the CJC Ethical Principles

Wewaykum Indian Band v. Canada, 2003 SCC 45, [2003] 2 S.C.R. 259 stated:

> Public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so. A judge's impartiality is presumed and a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified. The criterion of disqualification is the reasonable apprehension of bias. The question is what would an informed, reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude. Would he think that it is more likely than not that the judge, whether consciously or unconsciously, would not decide fairly?

The *Supreme Court of Canada* goes on to say:

> With respect to the notion of automatic disqualification, English case law suggests that automatic disqualification is justified in cases where a judge has an interest in the outcome of a proceeding.

Justice Koenigsberg had a personal interest in the outcome of this case. This crucial issue is explored and determined before the Royal Courts of Justice in ***LOCABAIL (UK) LTD v. Bayfield Properties Ltd et al*.** The Supreme Court of Judicature Court of Appeal, beginning at paragraph 3, stated:

> Any judge (for convenience, we shall in this judgment use the term "judge" to embrace every judicial decision-maker, whether judge, lay justice or juror) who allows any judicial decision to be influenced by partiality or prejudice deprives the litigant of the important right to which we have referred,

> and violates one of the most fundamental principles underlying the administration of justice.
>
> Where in any particular case the existence of such partiality or prejudice is actually shown, the litigant has irresistible grounds for objecting to the trial of the case by that judge (if the objection is made before the hearing) or for applying to set aside any judgment given. Such objections and applications based on what, in the case law, is called “actual bias” are very rare, partly (as we trust) because the existence of actual bias is very rare, but partly for other reasons also.
>
> The proof of actual bias is very difficult, because the law does not countenance the questioning of a judge about extraneous influences affecting his mind; and the policy of the common law is to protect litigants who can discharge the lesser burden of showing a real danger of bias without requiring them to show that such bias actually exists.
>
> There is, however, one situation in which, on proof of the requisite facts, the existence of bias is effectively presumed, and in such cases it gives rise to what has been called automatic disqualification. That is where the judge is shown to have an interest in the outcome of the case which he is to decide or has decided.

***Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, Cory J. writing on behalf of The Supreme Court of Canada states:**

> The duty to act fairly includes the duty to provide procedural fairness to the parties. That simply cannot exist if an adjudicator is biased. It is, of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result, the courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator.

Cory J. continues in his analysis by identifying *The Consequences of a Finding of Bias*, he says:

> Everyone appearing before administrative boards is entitled to be treated fairly. It is an independent and unqualified right. As I have stated, it is impossible to have a fair hearing or to have procedural fairness if a reasonable apprehension of bias has been established. If there has been a denial of a right to a fair hearing it cannot be cured by the tribunal's subsequent decision. A decision of a tribunal which denied the parties a fair hearing cannot be simply voidable and rendered valid as a result of the subsequent decision of the tribunal. Procedural fairness is an essential aspect of any hearing before a tribunal. The damage created by apprehension of bias cannot be remedied. The hearing, and any subsequent order resulting from it, is void.

Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated:

> Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function—thus where the impartial functions of the court have been directly corrupted.

The Supreme Court of Canada clearly illustrates and recognizes the sound, judicial judgment of Madam Justice Abella in ***Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 91, 2005 SCC 39.** The court addressing this issue of bias or perceived bias states at paragraph 8:

> Within days of her appointment, upon reading the list of cases scheduled to be heard in December 2004, Abella J. recused herself of her own accord on September 16, 2004. Her husband, as chair of the War Crimes Committee of the Canadian Jewish Congress, a party to these proceedings, had conveyed representations about this case to the then Minister of Citizenship and Immigration, the Honourable Denis Coderre. The Registrar of this Court immediately informed the parties that Abella J. would not be taking part in this appeal.

In the publication produced by the Canadian Judicial Council; "***Ethical Principals for Judges***" Chapter Three addresses "Integrity" as it pertains to Judges. The Statement asserts:

> ***Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary***.

Chapter Three further asserts these two "Principles":

1. Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair-minded and informed persons.

2. Judges, in addition to observing this high standard personally, should encourage and support its observance by their judicial colleagues.

Further -

5. A judge's conduct, both in and out of court, is bound to be the subject of public scrutiny and comment. Judges must therefore accept some restrictions on their activities—even activities that would not elicit adverse notice if carried out by other members of the community. Judges need to strike a delicate balance between the requirements of judicial office and the legitimate demands of the judge's personal life, development and family.

6. In addition to judges' observing high standards of conduct personally they should also encourage and support their judicial colleagues to do the same as questionable conduct by one judge reflects on the judiciary as a whole.

7. Judges also have opportunities to be aware of the conduct of their judicial colleagues. If a judge is aware of evidence which, in the judge's view, is reliable and indicates a strong likelihood of unprofessional conduct by another judge, serious consideration should be given as to how best to ensure that appropriate action is taken having regard to the public interest in the due administration of justice. This may involve counselling, making inquiries of colleagues, or informing the chief justice or associate chief justice of the court.

Chapter 6 requires of judges:

6. Impartiality

Statement:

Judges must be and should appear to be impartial with respect to their decisions and decision making.

Principles:

A. General

1. Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances confidence in their impartiality and that of the judiciary.

2. Judges should as much as reasonably possible conduct their personal and business affairs so as to minimize the occasions on which it will be necessary to be disqualified from hearing cases.

3. The appearance of impartiality is to be assessed from the perspective of a reasonable, fair minded and informed person.

E. Conflicts of Interest

1. Judges should disqualify themselves in any case in which they believe they will be unable to judge impartially.

2. Judges should disqualify themselves in any case in which they believe that a reasonable, fair-minded and informed person would have a reasoned suspicion of conflict between a judge's personal interest (or that of a judge's immediate family or close friends or associates) and a judge's duty.