

September 4, 2006.

[REDACTED]  
North York Ontario  
[REDACTED]

Ann Merritt  
Assistant Deputy Attorney General  
Court Services Division  
720 Bay St 2<sup>nd</sup> Floor  
Toronto Ontario  
M5G 2K1

Dear Ms. Merritt,

**RE: Erosion of our fundamental rights and spreading of misinformation to members of the public by Ontario court workers**

I am in receipt of your reply to my letter addressed to the Minister dated June 1, 2006 in which I expressed my concerns relating to misleading signage posted at the 47 Sheppard Ave. E. courthouse in Toronto. I have heard that this same problem exists at other courthouses in Ontario as well.

As a citizen of Canada who firmly believes in justice, accountability and openness of our courts, I was deeply disappointed to read in your letter on behalf of the Minister where you stated that "*judicial independence*" was the "*cornerstone of the Canadian justice system.*" I do believe that there would be a great many Canadian citizens, including many high ranking Canadians who would take great offence with your statement. I do not believe that such a statement would be the official position of the Minister on behalf of the government of Ontario. I believe that "*judicial independence*" would **NOT** be the highest consideration for our justice system as you appear to have indicated is the position of the Attorney General's Office.

Although most Canadians would agree that Judicial independence is one of the principles of the Canadian justice system, "*judicial independence*" was never meant to be "*the cornerstone*" of our justice system to the point where a judge can arbitrarily rule outside of the confines of the law or act in any way which would take away or violate a person's rights under the law. "*Judicial independence*" was meant to ensure that there is a division of power between the government and the courts so that the courts can make decisions without interference or influence from those in the government. "*Judicial independence*" was never intended to be a green light for a judge to do whatever he/she wants or to work outside of the law or to pervert the Rule of Law. One definition of judicial independence is as follows:

*Judicial independence is the doctrine that decisions of the judiciary should be impartial and not subject to influence from the other branches of government or from private or political interests. In most cases, judicial independence is secured by giving judges long, and sometimes lifetime, tenure and making them not easily removable.*

The law is the law. All persons are bound by the law, including our judges. The bottom line is that

the judges must still follow the laws as they are written and their decisions must fall within the meaning of the law. The laws are to protect the people of Canada and are supposed to be administered in a manner which promotes the Fundamental Principles of Justice and fosters respect for the Rule of Law in Canada. Judges enjoy immunity from prosecution as long as they act within their jurisdiction which means that they must act within the spirit and intent of the law. Judges cannot break the law under the excuse of "**judicial independence**".

The law is clear. Every person who appears before a court in the province of Ontario has the right to record his/her own court hearing. The intent of the Legislation is to promote the concept of openness and accountability for the protection of the citizens of Canada. Recording in the court is a form of protection for citizens under the law which is clearly recognized under our Charter. The Principles of Fundamental Justice and our constitution far outrank the principle of "**judicial independence.**"

It is not unreasonable for the Citizens of Canada to expect that the signage at the courts be as accurate as possible and not misleading. At the very least the words, "except where permitted by law" should precede any phrase on any sign on which it is written that recording devices are not allowed. Having this phrase inserted on all signs would not be an unreasonable request for the Attorney General's Office to accommodate.

For your added information, I would suggest that you review a copy of the report from the Panel on Justice and the Media which was presented to the Attorney General just last month. The report is published on your own website. This committee was created by the Attorney General himself as part of resolving the growing problems with the loss of public confidence in the court system. The Panel appears to be in full agreement with my position on both the issue of recording as well as the signage posted in the courts. The report states the following:

*The Panel recommends that as a general principle tape recorders be permitted in the courtroom by lawyers, persons acting in person and journalists for the purposes of accuracy. Accordingly, the Panel recommends that:*

*(a) s. 136 (2) (b) of the Courts of Justice Act be amended to permit the unobtrusive use of tape recorders at a court hearing without prior approval of the judge;*

*(b) in the interim, the use of tape recorders as now permitted by s. 136 (2) (b) of the Courts of Justice Act and the Practice Direction of Chief Justice Howland dated April 1989 be publicized by appropriate signage in all courtrooms.*

It appears to me as if there is an effort by staff within the Attorney General's office to stifle the rights of Canadians in the matter of recording in the court by misleading members of the public and to subvert openness in the court system. I find your response very troubling in a number of ways. It is not within the intent of the law, not within the expectations of the citizens of Ontario and not within what I believe are the goals and expectations of the Attorney General himself. Your use of the term "**judicial independence**" to justify inaction by the Attorney General's office puts freedom and democracy in this country at great risk. I would suggest that staff members at the Attorney General's Office, do some research so that staff members are familiar with the terms "The Rule of Law" and "The Principles of Fundamental Justice" and to have a better understanding of just what these terms mean. These principles take precedent over "**judicial independence**" and are the real

cornerstones of the Canadian Justice System. Canadian judges are not Gods and are subservient to the higher principles of the Rule of Law and the Principles of Fundamental Justice.

As I believe that my original letter was never viewed by the Attorney General to whom it was addressed, I would therefore ask that you take this letter and my previous letter to the Minister personally and to have the Minister personally respond to me on the issues I have raised in my letters. I believe that most Canadians would expect the Minister to ensure that the recommendations of the panel in reference to recording and signage at the courts are made law as these are so clearly reasonable and in the public's interest.

I will consider this issue settled if I receive a written commitment to have the signs changed and that a directive will go out to all courthouses throughout Ontario to fix these misleading signs. Ensuring accuracy of information posted in our public courts should be the least that the Attorney General's Office should be willing to do for the citizens of Ontario.

As a justice minded Canadian and as a taxpayer, I am deeply concerned that your response appears to be subverting the administration of justice in Ontario and contributing to a less open and transparent court system. It appears that you, as the Assistant Deputy Attorney General, do not have a very clear understanding of the Principles of Fundamental Justice nor of your role as a public servant serving the citizens of Ontario. While making and overseeing the courts is one of the functions of the Attorney General, the primary purpose of the Attorney General's Office is to serve the people of Ontario in the interests of the people of Ontario. It was never the intent that the Attorney General serve the judges or to help the judges maintain secrecy and unaccountability behind a shady veil of secrecy under what you have referred to as "*judicial independence.*"

Canada's former Prime Minister, John Diefenbaker once stated, "*We must vigilantly stand on guard within our own borders for human rights and fundamental freedoms which are our proud heritage.....we cannot take for granted the continuance and maintenance of those rights and freedoms.*" As a Canadian, I feel that the misleading signage at the Ontario courts and the refusal of some judges to allow recording in the courts as allowed under the Courts of Justice Act to be an assault on the fundamental rights and freedoms of all Canadians and an insult to the intelligence of most Canadians.

A personal response from the Minister would be most appreciated.

Sincerely,



Corey Jamieson

Attachment: copy of page 13 of the report from the Panel of Justice and the Media

cc: Mr. David Zimmer, MPP Willowdale  
Andre Marin, Ombudsman of Ontario  
Various Members of Federal and Provincial Parliaments  
Members of the Panel on Justice and the Media

The Panel strongly believes that Ontario has a great opportunity, and a great need, to improve both the reality and appearance of an open system. In keeping with the vision and principles the Panel suggests above, the Panel believes that a strong and consistent message needs to be conveyed to all in the justice system to embed “openness” as a value that can be applied as a practice daily in the justice system.

The Panel notes that a directive was developed by the Ministry of the Attorney General’s Court Services Division in the fall of 2005 with the stated goal of bringing together existing policies and procedures and having them catalogued in one place.

There are examples elsewhere in Canada where clear and coherent policies regarding access to court records are made available and implemented for all court staff, including New Brunswick, Manitoba and Saskatchewan.

The Panel would also make reference to the Superior Court of Justice’s Media Handbook – a Reference Guide. It is the Panel’s understanding that the guide is being updated, but its commitment to set out the relevant statutes, case law and administrative information is undoubtedly useful.

## Use of Tape Recorders

### RECOMMENDATION #2: USE OF TAPE RECORDERS

The Panel recommends that as a general principle tape recorders be permitted in the courtroom by lawyers, persons acting in person and journalists for the purposes of accuracy. Accordingly, the Panel recommends that:

- (a) s. 136 (2) (b) of the *Courts of Justice Act* be amended to permit the unobtrusive use of tape recorders at a court hearing without prior approval of the judge;
- (b) in the interim, the use of tape recorders as now permitted by s. 136 (2) (b) of the *Courts of Justice Act* and the Practice Direction of Chief Justice Howland dated April 1989 be publicized by appropriate signage in all courtrooms.

### **Issue:**

Although the *Courts of Justice Act* [s. 136 (2)] indicates that tape recorders may be used unobtrusively for note-taking purposes by lawyers, parties acting in person and journalists with authorization from the judge, Ontario courts are inconsistent in their practice of allowing tape recorders in courtrooms. This inconsistency of practice has persisted