November 27, 2008

Mr. Norman Sabourin
Executive Director and Senior General Counsel
The Canadian Judicial Council, Ottawa, Ontario
Ottawa, ON KIA 0W8

Dear Mr Sabourin:

Thank you for your letter dated ?? 2008, for which I am much obliged, and which has unfortunately crossed with a letter I was just about to send you. In this letter I I suggest that my letter of complaint of 25th October be withdrawn and substituted with a more detailed analysis of the fundamental injustice I experienced, at the hand of Mr. Justice McLellan. Perhaps I should emphasize that a principal motive for making this substitution is to lay bare the truth of the core nature of my complaint. I therefore invite you to accept this letter in its place, and would ask you to respond.

Canadians have a right to fundamental justice before a Judge of any Court. New Brunswick Court of Queen's Bench Judge, Justice Hugh McLellan acted in my view with judicial misconduct. The judge, according to The Canadian Judicial Council guidelines may have his or her conduct in court questioned. It is a fact that I delivered an oral submission in appeal before Justice McLellan in open court on October 24, 2008 in Fredericton, New Brunswick. That submission contained detailed matters of law amounting to 32 pages and 19,311 words in a case concerning the governing law of Canadian society, the Charter of Rights and Freedoms.

None, not one, of my legal arguments was referred to in Justice McLellan's peremptory and autocratic decision which consists of one page and a mere 522 words!

This fact alone attests to my complaint of his judicial misconduct. He said in his decision that I was "not making a valid legal argument." Without any address to the extremely important legal issues contained in my two and one half hour oral submission, Justice McLellan summarily dismissed my appeal ***in five minutes***, ex tempore, in a disparaging and arrogant manner. It is this fundamental judicial misconduct that brings disrepute to the entire legal system of Canada.

Section 11 par. D of the Charter of Rights and freedoms declares: "d) (Any person charged with an offence has the right) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal."

I contend that Justice Hugh McLellan did in no way grant me a fair hearing of my appeal as he did not prove me guilty according to law in that he offered not a single legal argument in refutation of my appeal.

I appeal to this Judicial Council that this is clear judicial misconduct and must be addressed in a fair manner.

I have set out in the Appendices below a copy of the original Decision of Jackson

C.J.P.C., against which I appealed. I have also exhibited the Decision of Mr. Justice McLellan. This letter, together with these documents will enable you to draw your own inferences, and assess for yourself whether my grievance is justified. I have also included a copy of my latest Notice of Appeal, which identifies the legal character of my complaint.

The issue centres on Mr. Justice McLellan's attitude to my case, and his apparent lack of care and interest. He failed to address any of the relevant matters, and his short ex tempore decision ignored what was relevant. His was a complete failure to act, and he did it in such a way that it showed a complete lack of good faith, which is another way of saying he acted in bad faith; a grave charge.

In the circumstances, I have decided to withdraw the comments I previously made about his abrupt manner, as such things are not easily proved, and will instead focus my criticism on his fundamental failures as a judge in Canada's legal system, of which there is more than enough evidence, in my opinion, for you to form a proper judgment. To substantiate these matters, I shall have to deal with the law and facts of the case. I keep in mind that an Appeal is pending, and suggest that it may be best for your office to rule upon the matter at a later date, after the pending Appeal has been heard.

Legal History

I was charged with three strict liability offences of unlawfully failing to comply with notices, requiring me to file income tax Returns, on forms T.1. for the taxation years 2000, 2001 and 2002 contrary to section 238 (1) of the Income Tax Act 1985.

My trial came before Jackson C.J.P.C. at the Provincial Court of New Brunswick. My appeal came before Mr. Justice McLellan in the Division of Queen's Bench on October 24th 2008. He confirmed the trial judges Decision to uphold the convictions.

Background to offences

I deliberately refused to file the Returns, because the Government was funding direct induced abortions from tax receipts. It is against my conscience and my religion to contribute towards abortions. The Government's position and legislation remain unchanged.

My case concerns Constitutional law - The Canadian Charter of Rights and Freedoms - Freedom of religion - The filing of tax returns knowing that taxes fund abortions under the Canada Health Act - whether the criminal charges

brought by the Minister of Natural Revenue were justified under section 1 of the Charter, or infringed freedom of religion guaranteed by section 2 (a) of the Charter.

At my trial, C.J.P.C. Jackson acknowledged that had I completed the T.1. Returns, I would have paid taxes. He also confirmed that the Government funds abortions under the Canada Health Act. These activities are funded from taxation.

I am a practicing Roman Catholic and believe that abortion is a violation of the Fifth Commandment promulgated by Moses on Mount Sinai; 'Thou shalt not kill'. I therefore hold a sincere belief rooted in my religion that abortion is murder, and I am quite unable to complete a tax return, when both parties have in contemplation, at the time of filing, that my contributions will be used for abortions. My arraignment and convictions are a serious interference with my right to freedom of conscience and religion under section 2 (a) of the Charter, and are in conflict with my constitutional right to practice my faith. The convictions and their punishments are not justified and are an infringement of my rights under the Charter. The fact that there is a law, which exculpates certain people from legal guilt when aborting children in the womb, does not alter my position. Section 52(1) of the Constitution Act, 1982, states, "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect". At the appeal hearing before Mr. Justice McLellan, I established a protected right under the Charter, and demonstrated, according to law, that there were no grounds to prevent me exercising that right. Mr. Justice McLellan, however, made no reference to this, and shut his eyes to what would have been an obvious point at issue to any reasonable judge hearing the case. His Decision ignored the issue and contained no reasons.

There are two ways in which the Charter can be infringed: first by the legislation itself, and second, by the actions of the delegated authority which enforces the law. In each instance there is a remedy for the individual who has established a Charter claim. I established a Charter Claim, as evidenced by the first Decision of Jackson. C.J.P.C. yet what was, or should have been, abundantly clear was, in my opinion, obfuscated. (See Multani v. Commission Scolaire Marguerite-Bourgeoys [2006])

My complaint

To understand my complaint, one must be mindful of a few facts.

When a court has before it a Claim under Section 2 (a) of the Charter it must consider the issues in accordance with a pre set formula. The process was devised for Section 2 (a) Charter claims, and is well established. It is a step-by-step guide, whose purpose is to enable the court to discern the will of the legislature and make a reasoned decision. The Supreme Court has described the method as mandatory, and is the sine qua non for determining such claims under

the Charter, without which claims cannot be determined.

The method is described in Syndicat Northcrest v. Amselem, 2004 SCC 47. and Multani v. Commission Scolaire Marguerite-Bourgeoys [2006] . It is specific, and has been applied in all reported cases of its kind. McLellan J. completely ignored it. His failure to take it into account in his judgment was in dereliction of his judicial duty. In civil law 'dereliction of duty' is malpractice. The allegation I am making is, therefore, very serious; as in your guidelines, it meets in my view, judicial misconduct.

The Formula

I have set out the formula below. You will see for yourself that it is a thorough set of guidelines, meticulously set out for cases such as mine, which makes it all the more surprising that it could ever be ignored.

The preamble in Amselem makes it clear that a claimant under Section 2(a) of the Canadian Charter of Rights and Freedoms must demonstrate that he or she harbours beliefs or undertakes practices, having a nexus with religion. The particular belief is to be judged subjectively. It need not follow official dogma, it being the religious or spiritual essence of the action that attracts protection. The role of the Court is to assess whether the belief or practice is sincere. The assessment is a matter of fact.

The first step in the process, therefore, is for the Court to assess whether the claimant has a belief or undertakes a practice, which has a nexus with religion and is sincere. If the court is satisfied, that the claimant sincerely believes in a practice or belief that has a nexus with religion, the claim is triggered. This is, perhaps, the most significant part of my case, and a good understanding of the circumstances in which a claim is triggered, is crucial to interpreting my complaint.

Once triggered, the claim is regarded as an implicated right, which is protected under the Charter, and may therefore be put into practice, subject to the remaining steps, within the formula, being adjudicated in the claimants favour. What this means is that once the right is established it is then subject to proof that the interference is non insubstantial, and, if that is proved, that no limitations are necessary to protect public safety, order, health, or the fundamental freedoms or rights of others. But subject to this, no one is to be forced to act contrary to his beliefs or his conscience. (See Multani : Para 32). During the appeal process, I demonstrated that the interference was not insubstantial, and also showed that no one else was affected by the exercise of my right. Notwithstanding this, all was ignored. And in my personal opinion, I believe the reason was that the judge had no answer, and was pusillanimous, fearful of releasing me from the incidence of tax, which could have brought him into ridicule. In other words, he knew I was right, but saw problems for himself if he

acceded to my claim.

Paragraph 56 in Amselem, contains the words of Iacobucci J, who spoke for the majority of the judges in the Supreme Court. He said, “Thus, at the first stage of a religious freedom analysis, an individual advancing an issue premised upon a freedom of religion claim must show the court that (1) he or she has a practice or belief, having a nexus with religion, which calls for a particular line of conduct, either by being objectively or subjectively or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual’s spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and (2) he or she is sincere in his or her belief. Only then will freedom of religion be triggered.”

At my original trial Jackson C.J.P.C., made the following findings of fact:

“The Defendant clearly holds a sincere belief that abortion is wrong which view is rooted in his Roman Catholic faith” [Para 12].

According to Amselem, that finding contains all the constituent parts required by law to trigger a claim under the Charter. Jackson C.J.P.C. stated that I held a sincere belief in a practice or belief that had a nexus with religion. Accordingly, there can be no question but that my claim to freedom of religion should have been triggered.

However, the trial judge then made an error, for he went on to say “In my view, section 2(a) is not triggered”. [Para 14]

With respect, this was entirely wrong, yet McLellan J. having heard my submissions, on this issue, refused to accept the error, saying without reference to the point, “he has not shown legal error by the Chief Judge of the Provincial Court in the decision appealed from”. McLellan J. gave no reasons for this conclusion. It was an arbitrary response to a basic line of reasoning.

What must be understood is that once a claim is triggered under the Charter it becomes an implicated right, meriting protection. Paragraph 78 in Amselem makes the point, when Iacobucci J explains that once a claim is triggered, the question becomes whether the appellant’s rights have been infringed. At this stage, however, the claimant is not permitted to exercise the right. He must wait until the remaining steps within the formula have been determined in his favour. Every claimant, who has triggered a claim, can expect the court to adjudicate on the remaining steps. It would be a breach of natural justice for a court to refuse, or ignore the process.

What McLellan J. failed to do was firstly to heed or accept the trial judge’s findings of fact, secondly to observe judicial precedent, thirdly to adopt the prescribed formula, and fourthly to give reasons. Had he accepted the findings of Jackson C.J.P.C., who held that I had a sincere belief, having a nexus with

religion, and had he observed the prescribed formula, he would have had no alternative but to acknowledge that the claim had been triggered, and allow the appeal. Having reached that stage in the process, he should then have gone on to consider the remaining steps, from which he could have further adjudged

whether the interference with the implicated right was justified. There was absolutely no ground for denying that my claim had been triggered, as I had totally satisfied the first part of the formula, and I can only surmise that his motive for side stepping the process, was an apprehension of having to concede that my convictions should be quashed.

Once a claim is triggered, a court must then ascertain whether there has been non-trivial or non-insubstantial interference with the exercise of the implicated right so as to constitute an infringement of freedom of religion.

In paragraph 57, Iacobucci J. says, “Once an individual has shown that his or her freedom is triggered, as outlined above, a court must then ascertain whether there has been enough of an interference with the exercise of the right so as to constitute an infringement of freedom of religion under the … Canadian Charter.”

The word ‘must’ above means that I was entitled to expect McLellan J. to deal with the due process of law, especially when it had been brought to his attention. He did not!

Iacobucci J then clarifies that some interference may be justified. He says:-

a. “Section 2(a) does not require the legislature to refrain from imposing any burdens on the practice of religion. Legislative or administrative action whose effect on religion is trivial or insubstantial is not, in my view, a breach of freedom of religion; and

b. “Section 2(a) of the Canadian Charter prohibits only burdens or impositions on religious practice that are non trivial”. Quoting Dickson C.J. in Edwards Books and Art Ltd [1986] 2 SCR 713, he states, “All coercive burdens on the exercise of religious beliefs are potentially within the ambit of s. 2(a). This does not mean that every burden on religious practices is offensive to the constitutional guarantee of freedom of religion … Section 2(a) does not require the legislatures to eliminate every miniscule state-imposed cost associated with the practice of religion. Otherwise the Charter would offer protection from innocuous secular legislation such as a taxation act that imposed a modest sales tax extending to all products, including those used in the course of religious worship. In my opinion, it is unnecessary to turn to s. 1 in order to justify legislation of that sort … The constitution shelters individuals and groups only to the extent that religious beliefs or conduct might reasonably or actually be threatened … For a state- imposed cost or burden to be proscribed by s. 2(a) it must be capable of interfering with religious belief or practice. In short, legislative or administrative action, which increases the cost of practicing or otherwise manifesting religious beliefs is not prohibited if the burden is trivial or insubstantial.

McLellan J. did not consider this aspect at all. My submissions argued that the

requirement to file a return on form T.1. knowing that abortions would be facilitated, went to the root of my Catholicism, which prohibits me from funding abortions, cooperation of which would be a grave offence against God. It was, therefore, a threat to and a breach of my freedom of religion. None of this was considered.

In paragraph 59, Iacobucci J. goes on to state, “It consequently suffices that a claimant show that the impugned contractual or legislative provision (or conduct) interferes with his or her ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial.”

What merits emphasis here is the reference to ‘legislative provision’. In my appeal, the legislative provision, which interfered with my ability to act in accordance with my religious beliefs and practices, was section 238 (1) of the Income Tax Act, which required me to file returns. ***For me the whole matter was very serious indeed – a matter of life and death for a child, and a matter of life or death hereafter for me.*** Subjectively, at least, there was nothing insubstantial about the interference, and the subjective standard or test was the test applicable.

In my case, having triggered a claim, consideration should have been given as to whether a requirement to file a return and a charge under section 321.2.(1)(a) of the Income Tax Act, for failure to do so, were, in each instance, a non trivial interference with the exercise of my protected rights. If these aspects of the process had been examined, I believe there could have been only one conclusion, namely that the interference was not insubstantial. The imposition or interference would have the effect of attacking and obliterating the substance of my right. If my submissions had been heeded, I would have successfully completed the second step within the formula. However, this was not judicially considered at all.

In paragraph 74 Iacobucci J states, “Mr. Amselem sincerely believes that he is obligated by the Jewish religion to set up and dwell in his own succah, then a prohibition against setting up his own succah obliterates the substance of his right, let alone interferes with it in a non trivial fashion. A communal succah is simply not an option. Thus, his right is definitely infringed.”

In paragraph 75, Iacobucci J further states, “infringement depends on the substance of their belief. If they sincerely believed that they must build their own succah because doing so engenders a greater connection with the divine or with their faith, then their rights to freedom of religion will be infringed by the declaration of co ownership … For the purpose of determining if freedom of religion is triggered or whether there is a non trivial interference therewith, there is no distinction between sincere belief that a practice is required and sincere belief that a practice, having a nexus with religion, engenders a connection with the divine or with the subject or object of a persons spiritual faith. If, however,

they sincerely believed that they must build a succah of their own because the alternatives, of either imposing on friends and family or celebrating in a communal succah as proposed by the respondent, will subjectively lead to extreme distress and thus impermissibly detract from the joyous celebration of the holiday, the joy of which … is essential to its proper celebration, then they must prove that these alternatives would result in more than trivial or insubstantial interferences and non trivial distress."

These matters were all addressed during my appeal. The Crown, as Respondent, brought no evidence to contradict my claims, and made no oral submissions concerning them. Yet from the Judges ex tempore judgment, Ex facie, they were not considered.

The final step in the process is to ascertain whether the religious conduct [the conduct which has its basis in religious beliefs; in my case the refusal to file a return for the reasons given] would potentially cause harm or interference with the rights of others. Ultimate protection of any particular Charter right must be measured in relation to other rights with a view to the underlying context in which the conflict arises. In this regard, I submitted that there was no one who could be identified as a person or body whose rights might be potentially harmed. And the Crown tendered no evidence or argument to the contrary.

In paragraph 84 of Amselem, Iacobucci J went on to say, "In the final analysis … I am of the view that the alleged intrusions or deleterious effects on the respondent's rights or interests under the circumstances are, at best, minimal and thus cannot be reasonably considered as imposing valid limits on the exercise of the appellant'' religious freedom … to what degree would the respondent be harmed were the appellant's allowed to set up a succah…? The evidence before us does not provide a satisfactory answer. The respondent has simply not adduced enough evidence for us to conclude that allowing the appellants to set up such temporary success would cause the value of the units… to decrease…. Consequently, in this case, the exercise of the appellants freedom of religion, which I have concluded would be significantly impaired, would clearly outweigh the unsubstantiated concerns of the co owners about the decrease in property value. Similarly, protecting the co owners property cannot be reconciled with a total ban imposed on the appellants exercise of their religious freedom. .. Potential annoyance caused by a few success being set up… would undoubtedly be quite trivial. The argument that Nominal, minimally intruded upon aesthetic interests should outweigh the exercise of the appellant's religious freedom is unacceptable. Indeed mutual tolerance is one of the cornerstones of all democratic societies. Labeling an individuals steadfast adherence to his or her religious beliefs, "intransigence" … does not further an enlightened resolution of the dispute…Safety aspects if soundly established would require appropriate recognition in ascertaining any limit on the exercise of the appellants religious freedom."

These matters were addressed in my appeal. You can read them for yourself in

Appendix B. None were challenged by the Crown. In paras 42 and 43 of Multani v. Commission Scolaire Marguerite-Bourgeoys [2006] 1 S.C.R. 256The onus is on the Respondent to prove that, on a balance of probabilities the infringement is reasonable…" Yet not one point was raised in opposition. All were good and sound arguments, and all merited proper consideration, or reasons, which would establish the basis for any disagreement. All were brushed indifferently aside without comment.

This is not a full assessment of the law, but I believe it is enough for our purposes. For a closer examination one can turn to Multani v. Commission scolaire Marguerite- Bourgeoys [2006].

I wish to conclude this letter by saying that I was very upset by the attitude of the appeal judge, as can be seen from the first letter I sent you, but the core of the matter remains: Mr. Justice McLellan summarily dismissed my appeal ***in five minutes***, extempore, in a disparaging and arrogant manner. It is this fundamental judicial misconduct that brings disrepute to the entire legal system of Canada. I and all Canadians have a right to expect fundamental fairness and justice from a judge in a Canadian court. Does not simple justice demands that an appellant hear *reasons of law* to support a judicial decision in a *court or law?*

I will write again following the conclusion of the pending appeal hearing, and in the meantime, I should be grateful if you would kindly confirm receipt and that Mr. Justice McLellan has seen a copy of this letter. If he wishes to write to me, I will gladly respond.

Yours faithfully,

David T. Little

APPENDIX A

Decision of Trial Judge Jackson CJPC.

APPENDIX B

Decision of The Honourable Mr. Justice McLellan made on 24th October 2008

APPENDIX C

Notice of Appeal.