

Fitzpatrick & Culic

August 5, 2008

PERSONAL & CONFIDENTIAL

Canadian Judicial Council

To Whom It May Concern:

RE: Justice Paul Cosgrove Inquiry

Justice Cosgrove is a fine, upstanding, caring, courageous and principled jurist, in my humble opinion. In all likelihood I have lost as many close motions and cases before Justice Cosgrove as I have won, so my opinion is not based upon puerile self-interest. It is based upon my assessment of Justice Cosgrove as a person, both in and out of the Courtroom.

Justice Cosgrove has championed numerous community programs locally, many of which only came to fruition at all because of the personal impetus of Justice Cosgrove himself. I openly admit my biases in this matter; I am deeply committed to family oriented issues. In the end the family is the core of any civilization or culture. In the end it is family that defines who we are from cradle to grave. In my opinion Justice Cosgrove understands that well, again both on and off the bench. He himself comes from a close family and that is reflected in his own children and their accomplishments.

In my own practice of law I specialize in civil cases, mostly family and personal injury cases. In the cases I have had that were heard by Justice Cosgrove I cannot recall one single incidence of improper behaviour from the bench. I cannot even recall a seriously annoying incidence of behaviour from the bench. In that regard I should disclose that, unlike some of my local brethren, I am not annoyed by being asked pointed, thoughtful questions from the bench. Such questions only serve to guide and focus my approach as the case evolves, which is undoubtedly their purpose. In my respectful opinion such a judicial demeanour should not be viewed as the judge "high-jacking" an advocate's case or dominating the court room, although I perfectly understand how unprepared counsel may well feel that way.

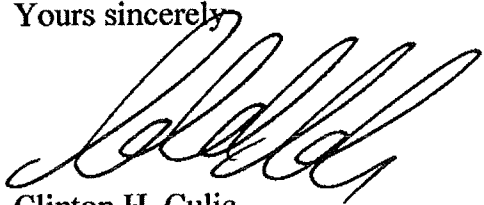
I have only had one criminal trial in front of Justice Cosgrove and that was many years ago early in my career. It involved a defendant whose behaviour had radically changed after suffering a traumatic frontal lobe brain injury. He went from a straight “A” student to a hooligan; he was two entirely different people. Justice Cosgrove, on his own initiative, contacted a brain-injury organization and obtained their assistance for the defendant as part of his rulings in the matter. It was my first encounter with such a thoughtful, involved judge. Now, if I understand correctly, the proposal before you is to remove Justice Cosgrove from the bench because he became too personally involved in the legal defence of Julia Elliott. How ironic. How unfortunate.

In my respectful opinion, even if you take the allegations against Justice Cosgrove entirely at face value they should be insufficient to remove him from office. On balance they may warrant some thoughtful introspection and re-assessment by Justice Cosgrove, an abundance of which has undoubtedly already occurred. At worst they may require some public scolding and re-education, in the non-Maoist sense of the terms.

Finally there is the troubling constitutional aspect of removing a judge from the bench specifically for his rulings in a particular case. That is augmented by the fact that these rulings went against the very litigant who now prefers an “indictment” before you against this same judge. In my respectful opinion that should be a very troubling potential precedent for every member of your Honourable Council of Judges.

All of which is respectfully submitted.

Yours sincerely



Clinton H. Culic
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