



April 14, 2009

Fax: 506-453-5893

The Honourable Greg Byrne, Q.C.
Minister of Business New Brunswick
670 King Street
Fredericton, New Brunswick
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Dear Minister:

RE: Mr. Erin Walsh

The Association in Defence of the Wrongly Convicted (AIDWYC) urges your government to call a Public Inquiry into Mr. Walsh's case. A Public Inquiry, headed by a respected member of the judiciary, would be empowered to make findings about the case, including factors that contributed to the miscarriage of justice in Mr. Walsh's 1975 trial, and to make recommendations which arise from the case for systemic reforms to the administration of justice in New Brunswick.

Public exchanges on the case have become increasingly polarized and fractious in recent weeks. The relationship between counsel in the civil proceedings has deteriorated sharply and this has culminated in some unfortunate public comments from the Attorney General. We have been troubled for many months at the tone taken in the case by your Government officials and lawyers. We recall, in contrast, the meeting of January 17, 2008 at which Attorney General Burke hosted a discussion among Crown counsel, the defence lawyers and Mr. Lockyer as an AIDWYC representative. Throughout the meeting, reasonable positions were taken on all sides amidst a shared determination to achieve a just result in a difficult case. This same spirit prevailed during the argument before the New Brunswick Court of Appeal and was manifested in the Court of Appeal's judgment. In consequence, Mr. Walsh's case has quickly become one of the leading cases in Canada's jurisprudence on wrongful convictions. Indeed, we at AIDWYC have held up the Province's response to Mr. Walsh's wrongful conviction to Attorneys General in other Provinces as a model for addressing these types of cases.

It is therefore all the more regrettable that the proceedings surrounding Mr. Walsh's case have descended into acrimony and entrenched adversarial stances. It is our earnest belief that we can all do better, both for Mr. Walsh, whose case AIDWYC adopted and in whose innocence it believes, and for the administration of justice in New Brunswick. The mixed messages and protracted posturing a year after the Court of Appeal entered its verdict of acquittal are a legitimate cause for public concern.

Judicial inquiries into miscarriages of justice have proved to be a healing and cleansing process in every jurisdiction in which they have been convened. They have been effective because the participants have a shared commitment to getting at the truth, and to ensuring that mistakes of the past are not repeated. In recommending essential systemic reforms, they restore confidence in the administration of justice. They have the additional advantage of demonstrating that those responsible for the administration of justice take seriously their obligation to continually scrutinize the workings of the justice system, and to ensure its proper evolution. They provide a striking contrast to the present state of Mr. Walsh's case in the public forum.

A Public Inquiry could look at a number of questions. For example:

- * Are present disclosure practices in New Brunswick sufficiently comprehensive that they ensure that an accused person can exercise his or her right to make full answer and defence and, with particular reference to the Erin Walsh case, was disclosure made of the critical CNR workers' evidence at the trial, and was disclosure made of the cellblock conversations?
- * Was the shooting of Mr. Peters investigated with sufficient thoroughness before a charge was laid against Mr. Walsh?
- * Were appropriate scientific tests conducted during the investigation, and were their results placed before the jury?

- * Was New Brunswick's response to the miscarriage of justice sufficient once justice officials were alerted to it?
- * Is the adversarial process an appropriate system to engage when a wrongful conviction claim is made?
- * Are the key participants in the criminal justice system in New Brunswick, including police, prosecution and defence counsel, properly trained and adequately funded?

AIDWYC would want to see raised the question of how wrongful conviction claims should be dealt with in our system of justice. We have campaigned for years for the creation of a Criminal Convictions Review Commission to replace the present Ministerial review process. Such a Commission would, as in the United Kingdom, operate independently of the political system and function on an inquisitorial, not adversarial, basis. The history of this case in New Brunswick, from the commendable way it was dealt with by the Crown at the Court of Appeal, to the difficult situation that presently obtains, provides a unique context for the Commissioner to consider the role of the adversarial process in a wrongful conviction setting.

The Public Inquiry should also include consideration of whether Mr. Walsh should receive compensation. The adversarial impasse presently stalling Mr. Walsh's claim for compensation was avoided at the Thomas Sophonow Inquiry in Manitoba in 2000 by including the issue of compensation in its terms of reference, and a similar provision promises the same advantage in the case of Mr. Walsh.

Nova Scotia (*David Marshall Jr.'s case*) and Newfoundland & Labrador (*the cases of Ronald Dalton, Randy Druken and Greg Parsons*) have conducted inquiries into wrongful convictions. The administration of justice in those Provinces is better off for having done so. Ontario (*Guy Paul Morin and the Dr. Charles Smith cases*), Manitoba (*Thomas Sophonow and James Driskell*) and Saskatchewan (*David Milgaard*) have done the same. The time is now ripe in New Brunswick for an Inquiry. A case which

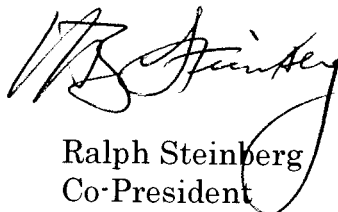
has caused deep personal pain and widespread public confusion can be used as a spring-board to improve the administration of justice in New Brunswick and, at the same time, deliver final justice to Erin Walsh.

We would be pleased to meet and discuss these issues with you if you are open to this.

Yours faithfully,



Jonathan Freedman
Co-President
AIDWYC



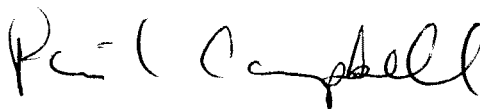
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