

Ontario Civil Liberties Association

2018 Civil Liberties Award to Donald Best

Acceptance Speech of Donald Best - Transcript

(Check video/audio recordings for 100% accuracy)

Thank you, Professor Macfarlane for your kind words and especially for your dedication in the battle to make our justice system accessible, affordable and reliable for ordinary Canadians.

To the Ontario Civil Liberties Association and the Executive, Advisory Board and staff, my sincere thanks for honouring me with this award. I cannot overstate the importance of this Civil Liberties Award both to myself as validation and support for my work – but also the importance of the award in drawing attention to the great danger to our civil liberties when corruption invades our justice system and becomes normalized – as it has.

Today I have been asked to talk about what happened to me as my legal case – a civil dispute over a high-value estate - made its way through various levels of courts in Ontario, Canada.

I'm also going to explore how so many decent ordinary Canadians are forced to represent themselves in our courts without a lawyer - and how common it is for them to experience outright hostility, procedural abuses and deliberate misconduct by a legal profession that has come to value winning at any cost – a legal profession where too many value winning over honour, over integrity, over duty to the public trust and the Rule of Law.

We are going to look at how the legal profession is allowed to self-govern and operate without modern standards of independent oversight and external accountability.

And on that very subject...

Today I am calling upon the Law Society of Ontario and the law societies in every province to cease investigating complaints against their own members. This most serious conflict of interest undermines the profession's credibility and the public's trust.

Self-investigation by the lawyers' unions is a real conflict of interest that is unacceptable by any modern standard and cannot be resolved – except by the establishment of independent organizations in each province to receive complaints against lawyers, to perform professional unbiased investigations and to lay charges where appropriate. The retention of investigative functions by the law societies is indefensible.

Later, as my final topic, I am going to reveal details of an ongoing major scandal and active cover-up by the Courts Administration Service and the Federal Court of Canada that impacts every Canadian who has appeared before that court for any reason in the last few years. If you are a

lawyer with clients appearing before the Federal Court of Canada now, or in the last few years, you will be keenly interested in the news that I will be breaking today. A number of lawyers have contacted me and are already exploring legal options for their clients.

There should be no secret evidence or secret backroom hearings in our courts. This misconduct undermines the very foundations of our justice system and destroys the public's faith in a fair and impartial court. Secret proceedings and secret evidence are devastating to all Canadians before the courts - but especially so for those who cannot afford a lawyer and are forced to represent themselves. Yet, as you will see, secret evidence and private backroom hearings happen every day in our courts.

Before we begin the story of my personal case, for those interested in examining the details in more depth, you will find court documents, source evidence, affidavits, voice recordings and other exhibits at my website DonaldBest.CA. There you will also find the names of the corrupt lawyers, law firms, judges and police officers that I am not going to mention by name here today. We're going to keep it big picture for this talk, I only have so much time, but if you want to know the names of the corrupt lawyers and the others, they can be found at my website where they have been published for several years.

A google search will also reveal some of the news media coverage of my case, including print and radio interviews and most recently my appearance on the Jimmy Dore Show out of Los Angeles.

I'll begin by telling you how several corrupt senior lawyers from some of Canada's largest law firms together fabricated false evidence, bribed police and lied to the courts to convict me of Contempt of Court in a civil lawsuit costs hearing – a hearing that I was not notified of and not present for, as I was in Asia at the time and not in Canada.

As one example of their corrupt actions, during a group telephone conversation, the lawyers asked me whether I had received a certain court order. Twelve times during that call, I denied receiving the court order and asked that it be sent to me. After the call, the lawyers immediately created a formal 'Statement for the Record' document that falsely indicated I had informed them during the call that I had indeed received the court order the day before. This was a deliberate fabrication of evidence, a lie – but they submitted their false statement as evidence to court.

Later, during a hearing that I was not notified of, and was therefore not present for, the lawyers doubled down on their false Statement for the Record by confirming it orally on the court transcript. Further, they submitted a sworn affidavit - falsely stating that they had couriered the order to me at an address in Canada. The judge convicted me of contempt of court upon the lawyers' false evidence, sentenced me to three months in prison and issued a warrant for my arrest.

The lawyers did not know that I had secretly and legally recorded my telephone call with them. They did not know that I was in Asia. Evidence from the courier company showed that – contrary to their sworn affidavit – the lawyers had never sent the court order to me in Canada or anywhere

else and they couldn't produce any courier record, tracking number, invoice or receipt for delivery.

They lied to convict me, a self-represented person who did not have a lawyer. They lied because they knew they could, because they had the power, authority and credibility as Officers of the Court and as senior partners of large and respected law firms. They did it because they were corrupt and wanted to win a civil case so badly that they would commit criminal offenses to do so.

My case also involves the actions of a corrupt Ontario Superior Court Justice who backdated that same court order by ten days to assist the corrupt Bay Street lawyers. That same judge a few years later went to a backroom where he secretly, off the court record – made a new and secret court order increasing my prison time by fifty percent. The judge did this without informing me (a self-represented person with no lawyer) and gave the only copy of the new warrant to the prison – leaving no trace of his secret actions on the court record or in his own judge's notations. This was backroom Star Chamber corruption in our own courts – yet, the Canadian Judicial Council - supposedly responsible for holding federal judges accountable – refused to investigate my complaint or to even read the court records.

I spent 63 days in prison – every day in solitary confinement as I am a former Toronto Police Officer. The prison authorities told me that solitary was the only place they could keep me alive – and from what I saw, they spoke the truth. In my solitary cell I had to clean the faeces and blood of previous occupants from the floor and walls. The lights in the cell were on 24 hours a day - but the screams and moans of my fellow prisoners didn't allow for much sleep anyway.

All this is still celebrated online as a victory by the group of corrupt Bay Street lawyers and their large law firms who wanted to win, and did win, a high-value civil case by any means possible – including fabrication of evidence, perjury, obstructing justice and bribery of police to illegally obtain confidential police records.

But as disgusting as all that is - there is much much worse – much worse. The Canadian legal profession, the Law Society of Ontario and the Courts themselves, when confronted with legally made certified voice recordings and other irrefutable evidence proving that the Bay Street lawyers deliberately fabricated false evidence and lied to the court to convict me while I was out of the country...

... when confronted with that irrefutable evidence, the legal profession, the Law Society and the Courts closed ranks to save the corrupt Bay Street lawyers - even when that meant knowingly sending an innocent man – a self-represented person in a civil case - to prison.

In response to my solid evidence of criminal wrongdoing by senior Law Society of Ontario lawyers, the courts refused to consider my evidence, my exhibits and refused to even listen to the voice recordings. In all these years before various levels of courts, no judge has ever listened to the voice recordings – at least officially.

The courts refused to allow me to cross-examine the very witnesses that the judge relied upon to convict and sentence me. That's right – both as a self-represented litigant and later when represented by a lawyer - I was not permitted to cross-examine the lawyers who lied to the court, nor was I permitted to cross-examine the corrupt police officer who had taken a bribe to illegally investigate me for a private civil matter.

As a Canadian facing prison, I was not allowed to cross-examine the witnesses who provided the evidence the court used to convict and sentence me.

Let me repeat that slowly and clearly: As a Canadian facing prison, I was not allowed to cross-examine the very witnesses who provided the evidence the court used to convict and sentence me.

Right now, many of you are thinking, "That can't be true. No way. This is Canada."

How naïve you are.

Tens of thousands of your fellow Canadians though – perhaps more - who have been forced to represent themselves in our courts without a lawyer - know exactly what I am talking about. The rules of litigation, normal court procedures and the Rule of Law are not applied equally to self-represented persons – and especially when respected senior lawyers or judges have been caught red-handed in deliberate misconduct.

When in prison, I finally found a lawyer willing to represent me – and after a month I was released on bail pending an appeal.

But the higher courts would not allow my appeal to be heard unless I first paid, upfront, in cash, hundreds of thousands of dollars in court costs that had already been awarded to the other side on the basis of their provably false evidence and the lawyer's lies to the court.

The courts knew that this requirement to pre-pay hundreds of thousands of dollars would prevent my appeal – stop it cold – as it would for any ordinary Canadian. And so my appeal was strategically sabotaged and denied by the higher courts. When I could not pay hundreds of thousands of dollars as an entry fee to have the court consider my appeal, I had to return to prison and solitary confinement to serve the remainder of my sentence. But that was the intent of the Bay Street lawyers and the courts – and they succeeded in denying me an appeal – and once again prevented my evidence from being heard by any court.

By the time I returned to prison in 2014 – many judges, hundreds of lawyers, the leadership of the Law Society of Ontario – knew of my case, my voice recordings and other irrefutable evidence. Yet despite my evidence (or perhaps more accurately because of my evidence) the legal profession united to protect the senior lawyers - their fellow Club Members - from

accountability or any consequence for their criminal misconduct, their perjury, bribery of police and obstruction of justice.

My false conviction and imprisonment was possible only because there is a level of tolerance by judges and lawyers for corruption in the legal profession and in the courts. There is strong reluctance to damage the careers of fellow lawyers and judges - or to tarnish the profession itself by acknowledging serious deliberate wrongdoing.

And, as I was informed by the over one hundred Ontario lawyers who refused to have me as a client – lawyers fear professional and social sanctions from the group if they expose wrongdoing by other lawyers or judges. So the vast majority of lawyers and judges look the other way and stay silent when they witness deliberate misconduct by other legal professionals.

When people in positions of power and authority in our justice system lack the courage and integrity necessary to hold corrupt lawyers and judges accountable – they become participants in the corruption. Looking the other way empowers the corrupt – and undermines public trust in our courts and in the legal profession.

In the last few years a major Toronto news media investigation found that in over two hundred incidents, Ontario lawyers had committed criminal offenses against their own clients. Theft, fraud, breach of trust totalling over 60 million dollars – yet except for a tiny handful, these lawyers faced no criminal charges or sanctions.

In the vast majority of these cases, the Law Society of Ontario covered-up and kept the offenses secret from the public. The Law Society quietly cleaned up each mess, and protected the corrupt lawyers – fellow members of the Club - from criminal prosecution - thus concealing the rot and corruption from the public.

Until the news story was published Canadians were kept in the dark.

In my case and in so many others, when we examine the behaviour of the legal profession and of its individual members – both lawyers and judges – we find protection of fellow club-members and protection of profession's image at all costs. We see regular cover-ups of misconduct - and a sense of superiority, entitlement and impunity. We also find enforcement of professional and social sanctions against internal whistleblowers and members who would place Rule of Law and duty to the public over loyalty to the group.

History has taught us to expect these behaviours where powerful professions or groups have no independent oversight and no external accountability. Why should lawyers and the legal profession be any different?

For good reason, we don't allow our police to operate without independent oversight and external accountability. The stories of police abuse, corruption and incompetence are legion –

and in the last few years became a deluge as incidents are regularly documented with solid video and/or audio evidence from mobile phones, security and dashboard cameras.

Ontario and many other jurisdictions formed civilian investigative units to independently investigate serious police wrongdoing and to lay charges where appropriate.

And still, we have trouble holding the police accountable.

Unlike police officers, lawyers do not generally commit crimes in the street while surrounded by surveillance cameras and citizens wielding mobile phones.

Lawyer misconduct is often done in backrooms with a signature, a few words – or a wink and a nod that betray a small client in favour of a big-spending long-term corporate client. Or, in the courts where self-represented persons are deliberately steamrolled with a tsunami of tactical motions, aggressive summary judgment applications and abuses of process that would not be attempted or tolerated if the person was able to hire a lawyer.

Many of these abuses against self-represented persons are tolerated and accepted by the courts. So many self-represented litigants report accidentally discovering that the opposing lawyers have been secretly briefing or communicating with the trial judge – sometimes in writing, sometimes in case meetings where the self-represented litigant was not informed. When this happens – and it happens frequently – self-represented litigants perceive – correctly or not - that opposing counsel and the judge are working together against them. This destroys the public's confidence in our courts.

The law societies across Canada are on one level, a labour union for lawyers. They are a group of friends and co-workers who are responsible for investigating and 'disciplining' the same people they went to school with, socialize with and meet in the workplace and in court. That works out exactly as you think it would and the law societies' primary concern is never about the public trust no matter how many times the law society executives say the words.

It is no longer acceptable that the Canadian legal profession, that exerts vast influence and authority into every area of life, continues to self-regulate without independent civilian oversight and external accountability.

Now don't get me wrong here... the vast majority of Canada's lawyers and judges do their best every day to deliver the best justice they can within the rules, laws and system that we have. And thank g*d that they do, because we have all the examples we need in some other countries to see what an entirely corrupt system does to individuals and civil rights.

To borrow a phrase from Winston Churchill... Canada's justice system is the worst – except for all the others.

So despair not... It's not all bad. There are good people inside and outside of the justice system working to repair the damage. Working to provide accessible, affordable and reliable justice for Canadians.

A few months ago I had the honour of being invited to the University of Windsor Law School to attend a conference of ordinary people, lawyers, judges, law professors, law society executives and others in the legal system – organized by the National Self-Represented Litigants Project.

I met and spoke with so many dedicated people – it was uplifting and gave some hope for the future...

... but nothing will really change unless and until lawyers and judges have the courage and integrity to act when they see misconduct, abuse or injustice in the legal profession and in the courts.

Which brings me to our final topic:

The fact that Federal Court of Canada secretly uses the Internet to investigate and gather evidence about people and cases appearing before judges of that court was revealed in the news media last June.

It is proven that Judges and/or employees of the Federal Court of Canada ('FCC') conducted extensive secret online investigations into my case, my witnesses, my lawyer and me during the over a year and a half that my Canadian Judicial Council - Judicial Review case was before the FCC court.

As reported in the Financial Post, the above has been forensically confirmed by US computer networking expert (and former commissioner on cybersecurity for President Obama) Dr. Eric Cole in a sworn affidavit filed in Ontario courts.

So what's the problem with judges and their staff secretly collecting information online about the cases, litigants, accused persons, witnesses and lawyers appearing before the judge?

That's easy – this secret and unlawful court activity strikes right to the heart of our standards for a fair and open trial process. Secret evidence is prohibited in our courts.

Persons before the court have a right to see, examine and challenge all evidence considered by the court and to do so in public. This standard goes back over eight hundred years to the Magna Carta and is what differentiates English-based judicial practice from so many other countries and cultures.

Thus in the British, American and Canadian courts, jury members and judges are not supposed to do independent research into the cases they are considering. This is to ensure that all the evidence the court or jury members consider is on the record and in public so the prosecution

and defence are aware of the evidence, can test it for accuracy and make submissions as to its value and interpretation in the case.

If the judge or jury members consider evidence that nobody else is aware of, they are conducting a portion of the trial in secret.

The issue of no secret evidence in the courts is so important to justice and fair trials that in the United States and Britain jury members are regularly jailed for violating this prohibition. Recently in Canada two lengthy criminal proceedings were declared mistrial when jurors were caught independently researching the case.

Jurors are usually caught when another member of the jury finds out and alerts the court staff. As one can imagine though, catching judges secretly investigating cases is exponentially more difficult although there have been a few recent instances in the USA and Canada.

But this is exactly what happened in my case and the Federal Court of Canada is in full cover-up mode.

It is apparent in the sworn affidavit of Dr. Eric Cole that the Federal Court of Canada was caught red-handed using the internet and google searches to secretly gather information about my case and the involved parties and witnesses for over a year and a half.

Further, Dr. Cole confirms that the Courts Administration Service that operates the computer network for the Federal Court of Canada maintains records and knows exactly which judges and court staff are involved.

In a series of letters between the Judicial and Registry Services and my lawyer, the courts...

- admitted that court personnel conducted the secret investigations,
- indicated that the courts have knowledge of the people involved, but...
- refused to identify the judges and/or court staff who conducted the secret investigations into my case, and my lawyers and witnesses – and me.

Today for the first time I am reporting to you that additional forensic evidence has come to light showing that information about which judges or court personnel engaged in this activity exists in computer network records that are outside of, and not in control of the courts.

This means that not only will my witnesses, intervenor, lawyer and I be able to identify which Federal Court of Canada personnel secretly investigated us and collected evidence when my case was before the court –

It means that anyone who has appeared before the Federal Court of Canada in the last few years will be able to know if FCC judges or personnel secretly conducted investigations or gathered evidence about their case while it was before the court.

As I'm sure any lawyers and judges listening are aware this new revelation has profound implications for every case that has been before the court in the last few years.

One lawyer who contacted me after reading the Financial Post article said he was horrified by the thought that his client's outcome before the Federal Court of Canada might have been a result of secret investigations and evidence gathering by the court.

I am aware that a number of lawyers are exploring legal options for their clients – and that at least one new motion will be filed within weeks.

The Federal Court of Canada can continue to cover-up and stonewall as much as it wants to – Canadians now know that this damning information about misconduct by judges and/or their court staff exists in computer network records that are outside of, and not in control of the courts.

I will leave you today with a quote from Supreme Court of Canada Justice Rosalie Abella.

“So what’s the noise our profession can’t ignore? The sound of a very angry public. And it’s a public that’s been mad at us for a long, long time. Like the character from the movie Network, I’m not sure they’re going to take it anymore. And frankly, I’m not sure they should.”

That from Supreme Court of Canada Justice Rosalie Abella.

I can assure Justice Abella that Canadians are not ‘taking it’ anymore. – And this Ontario Civil Liberties award – that I am so honoured to receive – is further evidence that Canadians want their justice system back.

Thank you so much.

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