

January 8, 2007.

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Toronto, Ontario

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The Honourable Michael Bryant  
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Dear Mr. Bryant

**RE: Altered Court Transcripts**

I am filing a complaint regarding the altering of the transcripts in my family court matter which was held at the Superior Court of Justice in Hamilton, Ontario before the Honourable Madame Justice L. Walters on January 8, 2004.

During the court hearing, in a mean spirited and malicious manner, Justice Walters ordered my witnesses out of the court, even though they were professionals and had come to provide evidence in person to the hearing. One witness was a police officer and two were professional teachers. These witnesses could only submit evidence in person as they were barred by their professional bodies from submitting affidavit materials. They were significant witnesses and I considered their evidence crucial for determining the best interest of my child who was being abused by his mother. Yet, Justice Walters chose to ignore these important witnesses and instead turned away the valuable assistance they were offering to the court.

The section of the transcripts in which the judge ordered my witnesses out of the court was removed (altered?) from the transcripts. I have been told that this section of the transcripts which clearly showed that the judge refusing to accept evidence relevant to my child, and a mean spirited and malicious manner of doing that, would have given grounds for an appeal in my case.

I did not file a complaint about my transcripts being altered before now because I did not know how to deal with this issue. Last week, a friend of mine told me that another Judge in Toronto was the subject of an investigation involving the "fixing" of transcripts to remove statements which would have assisted another party in an appeal. I have attached a copy of this article from the Globe and Mail. I was told that I should file a complaint in my case for the record and for getting to the bottom of this incident, including but not limited to, finally obtaining the true/correct version of the transcript which I need in my forthcoming court applications/cases.

I was also told by a lawyer who advised me that it was well-known in the legal community that Madame Justice Walters was a feminist judge and extremely biased against fathers. This comment from a experienced member of the Law Society certainly reinforced my own observations that something is terribly wrong with our family justice system.

Needless to say, the ruling by Justice Walters only reinforced the mother's absolute control over my son and allowed her to perpetrate further psychological abuse on him. I have not seen or heard from my son in more than two years. The mother's first objective after obtaining custody of our son was to destroy my son's relationship with his father and to thwart access to my son. From what a number of other lawyers have told me, getting mothers to obey family court orders in regards to access provisions is a joke in Canada with mothers being routinely allowed to destroy their children's relationship with the fathers with impunity.

I would appreciate it if the Attorney General's office could arrange to have the Court Operations department of your Ministry provide me with accurate transcripts. If the Court Operations department of your Ministry claims that the transcripts that they already done are accurate, then I would ask that the Ministry arrange to have me sit with the court reporter and to listen to the original audio recording of the proceedings. I know what I heard in court that day and the transcripts simply do not reflect what was said by the judge in court. Witnesses in court also said that the transcripts are not true.

As an immigrant Canadian who came to this country many years ago for a better life, I am shocked to learn by my own experience with the courts that transcripts are being significantly altered by the very institution that is supposed to be ensuring truth and justice to the people of Canada. It seems that this interference is to protect the judges and to help make them unaccountable and above the law.

A number of lawyers and court workers also told me the judges get to review and to "approve" transcripts prior to being released to the parties in court. I find this shocking. The preparation of transcripts should be done without any involvement of the judge. What is said in court is what should be what is written on the transcripts. If any party in court, including the judge, says something inappropriate, then the record should show this. Judges should not be allowed to go anywhere near the transcripts or have any kind of relationship with those who do the court transcripts. Judges have a vested personal interest in changing transcripts so the judges should have no prior access to them before they are released to the parties in court. If the judges get to review and to "approve" transcripts prior to being released, it, among others, directly undermines the very appeal process and renders the fundamental process of Complaint to the Judicial Council impossible. Allowing judges to have access to transcripts does not help to maintain a justice system which is transparent and accountable as you have promised to promote in Ontario.

To avoid the possibility of transcripts being altered or "fixed" by judges, I would suggest that procedures be implemented immediately which would ensure that transcripts are protected from judicial tampering. Indeed, the tapes and the transcripts are in the custody of provincial government, in the Court Operations department of the Ministry of the Attorney General, and thus (being in Executive branch of government) has to not to be contaminated by the Judicial brunch of government.

As an additional measure of safety, I would also suggest that all courts should clearly advise people of their rights to record their own court hearing as currently permitted under section 136 of the Courts of Justice Act. Maybe if the judges and court reporters know that there is a second record of the hearing in the possession of the parties, that some of the court workers and judges may be less inclined to obstruct justice by removing or altering portions of transcripts. The integrity of the transcripts must be upheld and all opportunities to judicial tampering removed through effective procedures.

I await your written response.

Yours truly

A large black rectangular redaction box covers the signature and name of the sender.

Attachment: Article from Globe and Mail October 6, 2006 - Judge to face misconduct probe

cc: Prime Minister of Canada  
Premier of Ontario, Dalton McGuinty  
Various members of the Provincial Legislature and the House of Commons.  
Ombudsman of Ontario

# Judge to face misconduct probe

Hearing ordered over complaint key remark deleted from transcript

KIRK MAKIN - JUSTICE REPORTER

An Ontario judge will be probed for misconduct by his peers in the wake of allegations that he deleted a key remark from a court transcript.

The Ontario Judicial Council ordered a rare misconduct hearing after it completed a preliminary investigation into a complaint lodged against Mr. Justice Marvin Zuker of the Ontario Court of Justice.

The complainant is disbarred Toronto lawyer Harry Kopyto, who was prevented from acting as a legal agent in Judge Zuker's court last year on the basis that Mr. Kopyto has a reputation for being overly adversarial.

After being excluded from the July 29, 2005, proceeding, Mr. Kopyto ordered a transcript so that his client, Robin Mayer, could appeal the ruling.

He alleges that the crucial phrases underlying Judge Zuker's ruling were mysteriously missing.

"I had to pinch myself," Mr. Kopyto said in an interview. "Did I dream it? That was my grounds of appeal. How can she [Ms. Mayer] proceed with an appeal if the grounds aren't there?"

Mr. Kopyto said the case has important repercussions for the justice system. "He [Judge Zuker] is highly regarded among the judiciary," he said. "If he feels comfortable editing a transcript for content, what are the other judges getting away with? If Judge Zuker is doing it, then it's widespread."

In one of several highly unusual twists, the case brings together two old adversaries whose initial courtroom clash in 1985 resulted in a milestone judgment on freedom of speech.

In that case, Mr. Kopyto, who was already well known within the legal community for his left-leaning causes and his combative style, was suing the RCMP for alleged political dirty tricks on behalf of a client, Ross Dowson.

After accusing Judge Zuker in *The Globe and Mail* of perpetrating a mockery of justice and favouring police "as if they're stuck together with Krazy Glue," Mr. Kopyto was charged and convicted of contempt of court. However, the Ontario Court of Appeal later acquitted him, striking down the contempt provision he had been charged under, known as "scandalizing the court."

In subsequent years, Judge Zuker, a highly regarded specialist in family law, rose from being a small claims court judge to a mainstay of the family court branch. Mr. Kopyto, meanwhile, was disbarred for cheating legal aid.

Mr. Kopyto's current complaint arises from a case in which Ms. Mayer was battling the Jewish Family and

Child Service, which was investigating her treatment of her children.

According to the transcript, Judge Zuker questioned Mr. Kopyto's understanding of family law and stated several times that the welfare of Ms. Mayer's children was at stake.

"The best interests of the children come first; not who's right or who's wrong," Judge Zuker told Ms. Mayer. "At the end of the day, I may make an order that you don't agree with, and then you'll say: 'Well, I should have had a lawyer represent me.' What is more important in our society than the future of our children?"

Mr. Kopyto's complaint to the judicial council alleges that by removing the reference to his overzealous tactics from the court transcript, Judge Zuker effectively deprived Ms. Mayer of her ability to appeal the ruling.

"I believe that such conduct amounts to clearly improper conduct and, in the instant case, resulted in a miscarriage of justice to my client in the appeal process," he said.

Ms. Mayer states in a document prepared for the appeal that she was "dismayed and appalled" when she discovered that the transcript had been altered.

She said that "my life and family are being subjected to a judicial process before a judge whose apparent conduct has raised serious issues about the administration of justice."

Mr. Kopyto said yesterday it is absurd for a judge to accuse a lawyer of being too adversarial. "That's a bunch of crap: Everything in court is adversarial," he said.

"Lawyers are terrified to lay complaints against a judge," Mr. Kopyto added. "The perceived wisdom is that you're cutting your throat, so you just don't do it. For every complaint that is laid, there are probably a few dozen that should have been."

Mr. Kopyto said that he had to fight hard in order to obtain a copy of the guidelines judges are given which set out the rules for editing transcripts; rules which specifically restrict changes to matters of accuracy and punctuation, and say that nothing of substance can be removed.

"This judge thinks he can get away with anything he wants to," Mr. Kopyto said. "He did it with Dowson in the 1980s, and he is doing it to my client now. . . . In a sense, he was the author of my misfortune then. Now, I may be the author of his misfortune."

Philip Epstein, the judge's lawyer, said he couldn't comment on the matter.