

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Cools: Mr. Justice Cory spoke firmly to malicious injury, saying:

In summary, every aspect of this case demonstrates the very real and persistent malice of Scientology. Their actions preceding the publication of the libel, the circumstances of its publication and their subsequent actions in relation to both the search warrant proceedings and this action amply confirm and emphasize the insidious malice of Scientology.

About the conduct of Scientology and its barristers, Ruby and Manning, Justice Cory said:

Scientology's behaviour throughout can only be characterized as recklessly high-handed, supremely arrogant and contumacious. There seems to have been a continuing, conscious effort on Scientology's part to intensify and perpetuate its attack on Casey Hill without any regard for the truth of its allegations.

Honourable senators, Toronto's newspapers report daily on the enormous problems of the Law Society of Upper Canada and the legal profession in Ontario. The new Attorney General of Ontario, the Honourable Charles Harnick, has vowed to mend the myriad problems which have developed and hardened over several years. No doubt Mr. Harnick will meet resistance from members of the profession and the Law Society itself. I encourage Mr. Harnick to meet this challenge, to stand firm, and not to back down in the face of opposition, detraction or resistance from the lawyers. At risk are the proper administration of justice in Ontario, the elimination of unjust practices and offensive and dishonourable initiatives in the administration of justice and in the practice of law. Mr. Harnick's initiatives as Attorney General are timely and necessary.

Honourable senators, this judgment by the Supreme Court of Canada, rendered by the distinguished and learned Mr. Justice Cory and concurred in by Mr. Justice La Forest, Mr. Justice Gonthier, Madam Justice McLachlin, Mr. Justice Iacobucci, and Mr. Justice Major, is a benchmark decision, not only because of the legal principles and statements, but especially because of the moral position adopted. Justice Cory, in his judgment, upholds the position that moral ground and moral principles must found the basis of judicial action and the practice of law. He upholds the Aristotelian maxim that moral principle and moral ground must be inherent in the exercise of power in the courtrooms and in Parliament. He upholds the principle that lawyers, because they are officers of the court, have a duty to the administration of justice, to justice itself and to truth itself.

The barristers in this case, representing the many interveners, included Brian Finlay, Q.C., Christopher Tzekas, Marc Somerville, Q.C., Ross Wells, Robert Armstrong, Q.C.,

Kent Thomson, Lori Sterling, Hart Schwartz, Robert Sharpe, Kent Roach, Edward Morgan, Peter Hogg, Brian MacLeod Rogers. The interests were numerous and financially enormous. About their intervener status, the pecuniary interests and their interventions, Mr. George Bain, in a *Maclean's* article dated August 28, 1995 called "The Pressure to Change Libel Law, writes:

By their demonstrated interest in the case, the media have encouraged Scientology in arguing that Canadian libel law contradicts the 1982 constitutional guarantee of freedom of expression....The media also encouraged the notion that the time has come to make Canadian libel law more American...

Mr. Bain notes that:

...of the 11 bodies that had standing as interveners at the appeal, only two — the Canadian Civil Liberties Association and the Attorney General of Ontario — had no discernable interest in the commerce of putting words on paper or on the air. The others were: the Writers Union of Canada; the Canadian sprig of the international writers-and-rights organization, PEN; the Canadian Association of Journalists; the Periodical Council; the Canadian Daily Newspaper Association; the Canadian Community Newspapers Association; the Canadian Association of Broadcasters; the Radio-Television News Directors Association of Canada; and the Canadian Book Publishers Council jointly with the Canadian Magazine Publishers Association.

On recognizing the media intervention in the case, and pointing directly at the commercial interests and profitability fuelling these interventions, George Bain goes to the heart of the matter with his question:

What was such a nice bunch of nationalist publishers doing in the Supreme Court arguing for the Americanization of Canadian Law?

Honourable senators, many commercial interests are at work in this country, not the least of which is that of the legal profession and the Law Society of Upper Canada. The Law Society of Upper Canada is governed by the benchers. Justice Cory points out in the judgment that Mr. Ruby, during this unconscionable and mean-spirited legal offensive, was simultaneously a bencher of the Law Society. About Mr. Ruby's harsh letter to Mr. Hill of September 6, 1984, Mr. Justice Cory said:

It should be noted that at the time this letter was written, Clayton Ruby was a Bencher of the Law Society and Vice-Chairman of the Law Society's discipline committee.

The letter implied that there could be disciplinary proceedings brought before the Law Society of Upper Canada....