

Our Canadian legal system is failing us every bit as badly as journalism is

Journalists may be held to a less exacting standard than lawyers, though a free press is scarcely less important to democracy than a fair justice system

by Conrad Black



As a party to, in legal parlance, “the matter of Hollinger Inc.,” I received last week, along with dozens of other people, a notice that the “matter” was now concluded: there are no more resources or issues outstanding involving the company and the corporation will be wound up.

This meant that the legal and accounting professions, with the self-satisfied approval of the commercial courts, had not just

picked the last meat and flesh off the bones of a once- and long-prosperous company, but had pulverized the bones, put the powder in their champagne, and downed that too. One of the legal beneficiaries of this financial orgy signed off to all his fellow professionals, forgetting perhaps that they were not all fellow bloodsuckers: "T'was a mighty run." This assertion, nothing but the shameful truth, put me in mind of the question that I frequently ask myself, of whether my disappointment is greater in considering the current state of the legal profession or that of the craft of journalism. I have qualifications in both fields, as a law graduate and frequent contributor to many publications and former media co-proprietor. It is a grippingly close race.

In 2005, my associates and I proposed the privatization of Hollinger Inc., retaining a litigation fund for anyone who wanted to sue us. We very carefully worked out with Ontario Securities Commission (OSC) staff a plan that would take public stockholders out, safely and fairly. The director of the OSC championed our proposal at the public hearing that some of the independent directors requested, petrified (with reason) about the future of their \$100,000-a-month directors' fees. Commissioner Susan Wolburgh Jenah presided at the hearing. However, our chief tormentor in the United States, former Securities and Exchange Commission chairman Richard Breeden, "lectured" our local commission, as he proudly told *The Globe and Mail*. Jenah disregarded the OSC staff and rejected our proposal.

The directors had been implicitly facilitated by then-justice Colin Campbell, of the Ontario Superior Court, even though their fees constituted an emolument of unheard-of extravagance. Campbell had evicted almost all the directors who had any knowledge of the company's business (newspapers), and expressed comfort in the presence of former junior provincial cabinet minister Gordon Walker, with that \$100,000 monthly director's fee. The new management, led by Newton

Glassman and the unfeasible Wes Voorheis, drained the treasury, quarrelled (as such people usually do with each other), and Hollinger Inc. went into bankruptcy two years later.

Accounting firm Ernst & Young collected well over \$20 million from Campbell's appointment of them as inspectors and, later, receivers, performing entirely redundant activities and failing to unearth one misspent cent under our regime. A competent bookkeeper could have accomplished the same task at one per cent of the cost. I collected a historic \$5-million libel settlement from Breeden and his fellow authors of the infamous special committee report, and regiments of legal and accounting saprophytes took until last week to transfer to their own pockets the last cent of what had rightfully been the shareholders' money. Jenah has flourished, despite her role in what knowledgeable observers have described as the stupidest and most unjust decision of modern Canadian securities regulation.

Jenah is associated with a prominent law firm, which represents her as an asset; Campbell is in the arbitration business. I had a considerable legal sleigh-ride in the United States but it ended satisfactorily. I was never accused of wrongdoing in this country and a couple of civil suits were abandoned or settled, and I am spending my golden years laboriously rebuilding my fortunes. Life goes on quite well, but my wife, Barbara, a distinguished writer, editor and former journalist, whom Campbell removed as a director although she was never accused of the slightest impropriety, sent this (and more in the same spirit), to the celebrant of the "mighty run" and his fellow-glutton addressees: "To call you a bunch of jackals would be to defame that noble creature. You managed to suck fees out of a bankrupt company – whose thousands of shareholders you betrayed while lining your own pockets and feasting like vampires until now." She revisits this in one chapter of her book, which will appear later this

year (and will be a page-turner).

This is an extreme instance of the failings of the legal system. But it is symptomatic. There are too many lawyers, too many laws and regulations, and the lawyers who legislate and decree the regulations are, even if inadvertently, constantly expanding the number and onerousness of their authority, forcing the entire adult population and all officially incorporated or registered institutions into ever greater and more costly reliance on the legal profession to comply with the herniating mass of new restrictions and penalties each year.

The whole process is absurdly expensive, clogged, impossibly time-consuming, and filled with people whose financial interest is served by the protraction of all legal questions and most of whom despise and resent their clients as largely less educated than themselves yet holding them in the demeaning position of being the people who pay them. The law is one of the greatest pillars of democratic civilization and it does not now deserve a passing grade, but gets by with cozy and contemptible self-regulation, a 360-degree cartel swaddled in pious claptrap about a society of the rule of law.

Journalists rarely put on the airs of a learned profession, do not enjoy a monopoly, and are not notoriously avaricious. Thus they may be held to a less exacting standard than lawyers, though a free press is scarcely less important to democracy than a fair justice system. There is now little distinction drawn in practice between reporting and comment, and the great majority of journalists are entirely focused on getting and publicizing a story and are very unlearned about the more complicated events they are describing, reducing public information to faddish media opinion.

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Here are two current examples of this: Canadians don't like Donald Trump, largely because his confident and sometimes boorish manner is un-Canadian. He is in some respects a caricature of the ugly American. But he has been relentlessly exposing the U.S. federal police (FBI) as having been politicized and virtually transformed into the dirty tricks division of the Democratic National Committee. Few now doubt that the former FBI director, James Comey, was fired for cause, and the current director, backed by the impartial inspector general and Office of Professional Responsibility, asserts that Comey's deputy director, Andrew McCabe, was also fired for cause. There are shocking revelations of the Justice Department's illegal use of the spurious Steele dossier, paid for by the Clinton campaign, and of dishonest conduct in the Clinton email investigation, the propagation of the nonsense that Trump had colluded with Russia, and of criminal indiscretions and lies in sworn testimony by Justice officials. It is an epochal shambles without the slightest precedent in American history (certainly not the Watergate piffle), yet our media slavishly cling to a faded story of possible impeachable offences by the president.

The American refusal to adhere to the Paris climate accord is routinely portrayed as anti-scientific heresy and possibly capitulation to corrupt oil interests. The world's greatest polluters, China and India, did not promise to do anything in that accord; Europe uttered platitudes of unlimited elasticity, and Barack Obama, for reasons that may not be entirely creditable, attempted to commit the United States to reducing its carbon footprint by 26 per cent, at immense cost in jobs and money, when there is no proof that carbon has anything to do with climate and the United States under nine presidents of both parties has done more for the ecology of the world than any other country. Journalistic failure on this scale, and across most of what is newsworthy, added to an education system that is more of a Luddite day-care network, produces a steadily less informed public, who, while

increasingly tyrannized by lawyers, elect less capable public office-holders.

Lenin famously wrote: "What is to be done?" We must ask ourselves the same question but come up with a better answer than he did.

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