

SUSAN L. MULLIGAN
Trial & Appellate Lawyer
P.O. Box 43
Kingston, Ontario K7L 4V6

Phone: (613) 359-5819

Fax: (613) 359-5144

May 21, 2003

May 23, 2003 Made Linda Beland Tape
arrived May 23, 2003

Robert Stewart
c/o Collins Bay Institution
1455 Bath Road
Kingston, Ontario

Dear Mr. Stewart:

R. v. Stewart & Mallory

I am writing to you with respect to our most recent telephone conversations and the messages you have left for me over the past few weeks. As I indicated to you the last time we spoke, on March 26, 2003, I was about to begin a very long trial out of town and would determine what I should do in relation to the issues you raised with me at the end of that trial. That trial has now been completed and I am, therefore, in a position to respond to your accusations, orders, and requests.

First, I remain deeply troubled by our last telephone conversation wherein you made serious accusations of professional and ethical misconduct and maligned my personal integrity. In response, I absolutely deny that I ever purposely acted to harm you. I always did my very best for you and at all times acted in what I sincerely believed to be your best interests. Yours was a long and difficult trial, and until March, 2003, I had understood you were satisfied with my efforts on your behalf. Now, suddenly, you have attacked both my competency and my honesty. Given the length of our professional association, the close solicitor-client relationship that necessarily developed between us, and the toll my work for you took on every aspect of my own life and career, your accusations are astonishing to me. You are, of course, entitled to your opinion, and you may very well want to raise my competency and integrity as part of your appeal before the Court of Appeal; I do not, however, intend to have any further discussions with you about same. Should your appellate counsel (assuming you eventually retain one) wish to speak to me regarding my competency/honesty as defence counsel, I will make myself available.

Next, I have received two messages from you, the latest on May 17, 2003, wherein you demanded two things of me. First, you have ordered that I locate and deliver to your father a tape recording you indicate you made of your wife, Linda Beland, and that you believe is contained in your file at Pinkofsky's office. Second, you have demanded that I ship all of your disclosure to Collins Bay Institution for you.

In relation to both these "requests" please be advised that when your matter was transferred to Mr. Lockyer for the appeal and when I left Pinkofsky, Lockyer, that firm retained your file materials. As well, please be advised that I am no longer retained by you for any purpose. I have no funds available to travel to and from Ottawa on your behalf or to ship approximately 50 bankers boxes of heavy material to you. Furthermore, I have no access to any of your file materials presently, because I am no longer your counsel. Your counsel, most recently, was Mr. Lockyer. Your file is his responsibility, but as a matter of convenience for him (since it is usually unnecessary to review the original disclosure in preparation for an appeal) I am aware that the majority of your file remains in storage at Pinkofsky's office in Ottawa.

Having said all of that, though, I will request access to that office and your file the next time I am in Ottawa, and will make an effort to locate any recordings of Linda Beland that may exist and may have been retained in your file in Ottawa. I do not have an independent recollection of which tapes were supplied to me directly, which tapes came with the file from Mr. Edelson/Ms. Hawthornes' offices, and which tapes were retained by your father. I do not now recall the contents of any particular tapes off hand, but I will review any tapes I am able to locate and attempt to identify those that could be the tape you are seeking. I will not, however, be in Ottawa again for some time, but when I am there (and I have a day out of court to go through your file) I will undertake this work on your behalf and hand deliver anything I locate to your father. That is the best I can do in relation to that "request."

With respect to your entire file, at last count there were approximately 40 to 50 boxes of materials. As you are well aware, all defence counsel were required to sign undertakings not to provide disclosure directly to the individuals charged in order to have the disclosure released to defence counsel. These undertakings arose long before my involvement in the case and continued to be in effect after I was retained by you. As I recall they were required as a result of a video tape that may have gone missing from a defence lawyer's office and ended up on the street. After that, Crown counsel refused to provide disclosure for some time. Finally, a compromise was reached whereby all counsel signed undertakings in relation to disclosure. I was required to sign an undertaking and/or to be bound by earlier undertakings before I was able to obtain disclosure in your case. I am still bound by the undertaking not to provide disclosure directly to you. Further, I suspect Collins Bay could quite properly refuse delivery of 40 to 50 boxes of disclosure unless arrangements were made in advance for the secure storage of same. Finally, you will want to have the trial transcripts as well, and they comprise several more boxes.

In order to gain access to your disclosure you will need to bring an Application for Disclosure and an Order Releasing Counsel from the Undertakings, before the Superior Court in Ontario, and serve notice of that Application (at least three clear days in advance) on the Crown Attorneys office in Ottawa. You will also need to arrange a date for the Application to be heard with the trial co-ordinator of the Superior Court of Justice in order to ensure that a Judge is available to deal with the matter.

In other words, you must obtain a Court Order (1) overturning the signed undertakings of defence counsel; and (2) requiring Collins Bay Institution to accept the boxes and make available a secure place for the storage of and your access to same. If you are representing yourself you will also need to obtain an Order from the Superior Court of Justice requiring the police to transport you to and from the Superior Court for the purpose of arguing this application, as well. Once that Order is obtained originals of it must be served on the appropriate Police Service and on Collins Bay Institution.

For what it's worth, I urge you to reconsider your position with respect to representing yourself. Bringing Applications at the Superior Court and the Court of Appeal, and preparing and arguing an Appeal as complex as yours is extremely difficult work for a lawyer with decades of experience - it is next to impossible for an unrepresented individual in custody. You are a very intelligent man, but you cannot possibly comprehend and apply the Rules of the Court of Appeal and you will ultimately, in my view, be unable to pursue your appeal on your own. Even the logistical problems of serving and filing documents and applications will be very difficult for you, if not impossible. There are very few criminal lawyers in Canada capable of dealing with an immense appeal such as yours, but I urge you to find one and have your appeal proceed as expeditiously as possible. I have always believed in your innocence and I would be very sad to see you serve out your entire sentence before you are ever in a position to argue the appeal on your own.

I hope that this is of some assistance to you. I will, of course, assist you in having your disclosure shipped from Pinkofsky's office in Ottawa upon receipt of a Court Order releasing me from the Undertaking, requiring either myself and/or Mr. Lockyer to deliver the disclosure to Collins Bay, and ordering that Collins Bay accept the materials on your behalf upon delivery.

I trust this letter has answered your queries and provided some direction as to how to obtain your file. Notwithstanding my shock and sadness at your sudden turn against me, I wish you nothing but the best with respect to your appeal and your future.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Susan Mulligan".

Susan L. Mulligan