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Commentary by Robin Mathews

Monday mourning in Courtroom 54—the end of justice in British Columbia, October 18, 2010

The figure of Justice lies in the dust, bloated and decayed this morning, her blindfold torn from her face, her scales smashed and in pieces beside her. The vultures of the corrupt province circle over her—all recognizable, all with names. Feeding on her rotting body is their major occupation.

So ends the seven year 'case' against the three order-in-council appointed aides charged with a panoply of offenses involving, mostly, the corrupt transfer of BC Rail to the CNR.

The story—told in banner headlines in the Mainstream Press and Media—is that the three accused [all charges against Aneal Basi being withdrawn], are the beneficiaries of a bargain. Two admitted guilt to scaled down charges (becoming less than indictable offenses)—and received two years less a day of house arrest and community service—with Dave Basi, additionally, paying a fine of a little over \$75,000 (the sum of monies he admits to receiving illegally in the BC Rail and Sooke ALR cases).

The 'surprise' news of the 'astonishing' development (Mainstream Media words) was so surprising that 'the club' was fully informed in advance, knew what was coming, and filled the courtroom so they could express 'surprise and astonishment'. Journalists rarely there suddenly appeared. Friends of friends, equally rarely present, were suddenly there, dressed for the occasion! So confident were the real winners that they went so far, obviously, as to inform the RCMP, and the courtroom was host to about eight RCMP in black business suits, there to show their 'surprise' and 'astonishment' at the news.

You didn't know what was coming. And I didn't know. But the Gary Bass RCMP team was told and arrived in their best suits to be present and 'surprised'.

Indeed, controversial (BC Rail Scandal) investigation leader (Inspector?) Kevin Debruyckere was there. He was

brother-in-law to Kelly Reichert, B.C. Liberal Party Executive Director in 2003-04, and was alleged by Defence to have been communicating with Reichert—himself alleged to have been communicating with Gordon Campbell and Dave Basi ... and ... and ...

When Vancouver Sun reporter Neal Hall asked Debruyckere about those allegations (none proved), the officer tripped over his consonants, stumbled on his vowels, unleashed a stream of nonsense and looked for all the world as if falling on his face is a normal occupation.

To the surprise of everyone in the courtroom, Associate Chief Justice Anne MacKenzie accepted the adjusted package of charges and the suggested sentence presented by the Prosecution and the Defence without changing a comma. What a surprise! The point was made that she is wholly independent of Prosecution and Defence, of course – but, surprisingly, she saw the wisdom of their actions and fell in quickly with the proposals. And, indeed, she produced her sentencing and the reasoning for it in a scant twenty minutes or so when the court stood down for her to do so. A remarkable person! No wonder she was raised to Associate Chief Justice shortly after taking over the Basi, Virk, and Basi case. She didn't even need half a day to formulate her reasons and to her compose her sentencing.

Attention of the Mainstream Press and Media was, of course, on the two men who admitted guilt. Indeed, Mr. William Berardino, QC, Special Prosecutor, praised them for coming forward and voluntarily admitting guilt, seeming to suggest, as I understood him, that their openness merited gentle consideration in their sentencing.

The fact that they fought the charges laid in December 2004 until this morning, October 18, 2010, does not seem to have occurred to the Special Prosecutor ... or for that matter to the judge on the case. But six years is not, after all, a long time (as courts measure time).

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Email: islandtides@islandtides.com.

Phone: 250-629-3660. Fax: 250-629-3838.
Website: <http://www.islandtides.com>

The 'costs' of the accused, we are told, have been paid thus far by you, the taxpayer, and there will be no move to recover the costs—even though the men accept their guilt. Nor, announced the Attorney General, will there be a public inquiry into the BC Rail Scandal—which scandal, plainly, was only scratched by the aborted trial of the three men. The circling vultures, we may be sure, will therefore go on feeding on the rotting body of Justice in the province. And none of them will be exposed by public inquiry....

Some will think that the three men got off astonishingly cheaply. But perhaps there was good reason to rush them out of the courtroom. Perhaps the rush out the door was not for their sakes at all – but to get many others off cheaply....

Remember that the two Crown witnesses heard so far gave evidence they didn't mean to give. That evidence was that the Defence team would rip the Crown witnesses—especially those closely connected to Gordon Campbell—to shreds. Witness after witness after witness would pile up public ridicule and contempt, each one for himself or herself, and for Gordon Campbell and his government.

That would be because – as the first two Crown witnesses gave evidence – not many of them would be able to answer simple questions. They would, mostly, forget, would fumble, would obfuscate, would dodge, would weave, would misunderstand – would, in short, give many, many observers the sense that they were lying outright or so obviously refusing to answer questions that they had something gigantic to hide. Mr Berardino told the judge this morning that he was sure the trial—if not stopped now—would go on well past the projected March 2011 ending date.

Could that have been code-language for saying the Gordon Campbell government would be stripped of every remaining shred of credibility it possesses? And so the trial must be stopped?

The others, then, getting off cheaply ... seem to be many of the witnesses scheduled to be called by the Crown—almost all of them close associates of Gordon Campbell in one way or another.

But they, it appears, are not the only ones.

For the Special Prosecutor was appointed in violation of the legislation covering the process to appoint Special Prosecutors. And whether or not Mr. Berardino is the best and most honest criminal lawyer in the Commonwealth (he might be so), the violation of process in his appointment makes his every action in the case possess the potential for the perception of bias on his part by observers.

That 'potential for the perception of bias' makes (and made) his presence in the courtroom improper and unacceptable, for justice must be done and it must be seen to be done and cannot be so if there is the potential for the perception of bias in the actions of the Special Prosecutor.

As I have said, it was essential – since the three accused men were 'government' - that the Attorney General's ministry appoint someone wholly unconnected to the accused or anyone in, or closely connected to, government.

But Mr Berardino was appointed by a ministry in which the Attorney General, Geoff Plant, and the Deputy Attorney General, Allan Seckel, were his former long-time partners and colleagues. And then in the Spring of 2007 when Gordon Campbell (truly astonishingly) inserted himself into the judicial process and erased a functioning protocol for the vetting of cabinet documents sought by Defence, he appointed as sole arbiter Allan Seckel, then Deputy Attorney General, who would consult, said Campbell, with the Special Prosecutor – who just happened to be the former, eleven year long, partner and colleague of that sole arbiter, Allan Seckel.

Those facts—and the primary one that he was appointed in a violation of the legislation governing such appointments –were becoming more and more known—and potentially explosive. And, so, it may be fair to ask if one of the people who more and more wanted the accused pushed out the door was William Berardino, QC, the 'Crown' in the case against Basi, Virk, and Basi? Is it possible that Mr. Berardino became more and more interested in a 'deal' that would benefit the accused, end the trial, and get them out the door?

It may be. But, if so, he was, perhaps, not alone in the courtroom wanting that development. For the judge, Associate Chief Justice Anne MacKenzie, was fully informed of Mr. Berardino's wrongful place in the courtroom. And she would do nothing whatever to remedy that situation. And so she was permitting the jury to listen to testimony and to attempt to judge a trial which was, in effect, illegitimate. She was allowing men accused by a wrongfully appointed Special Prosecutor to sit in the accused box. She was, I suggest, courting real trouble if the trial went on much longer, for more and more people were becoming aware of the implications of the wrongful appointment.

One of the implications was that the presiding judge could not go on acting as if the wrongful appointment was of no consequence to the legitimacy of the trial.

For the charges against the accused could not be

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legitimately made by a Crown Prosecutor who was appointed in violation of the legislation covering the process of his appointment.

And so, one may ask, was the judge on the case, Associate Chief Justice Anne MacKenzie, anxious to see some kind of deal to get the accused out the door and the trial over ... quickly?

The questions about the Special Prosecutor and the presiding judge were so clear and so plain that the NDP should have been asking questions publicly and demanding attention to the irregularity. But the NDP would not act or recognize the situation in any way. Now that opportunity for a major breakthrough in the BC Rail Scandal is past, the NDP is asking for a Public Inquiry, which the Attorney General has, of course, brushed aside.

Was there anyone else, could there be anyone else, you might ask, wanting the trial over and the accused out the door? What about the lawyers for the accused? They would be expected to want their clients cleared of all accusations and ... out the door. Apparently they judged (rightly or wrongly) that couldn't happen. It would seem they judged that their clients would be convicted. If so, they may have been wrong in their judgement.

But if (as has been hinted elsewhere) the trial dragged on until far past March, and the judgement by the jury was 'guilty', and an uncooperative Attorney General set about getting back the 'costs' paid to the Defence lawyers for years of work—then not only the accused, but their lawyers, would be in an embarrassed financial position.

Did Defence lawyers (and the accused) want the deal made in order to get the accused out of the courtroom?

That opens another question which—in pursuit of answers—must be asked. Why did the Attorney General agree—though a plea of guilty by the accused has been made—to pay their costs? That question cannot be avoided.

Was it because the Attorney General (that is to say the cabinet of Gordon Campbell) was willing to pay to end the trial, to have the accused 'out the door' because, giving testimony later, they might have heaped embarrassment on the Campbell government? Was it to prevent many of the coming Crown Witnesses from being shredded under cross-examination? Was it to cut off questions about the wrongful appointment of the Special Prosecutor and refusal of the presiding judge to act in the matter? Did the Attorney General (which is to say the cabinet of Gordon Campbell) have many, many unsavoury reasons to pay the costs of the accused in the BC Rail Scandal criminal trial?

Questions spring up like weeds in the spacious inner courtyard of The Law Courts, under the immense glass roof

erected by Arthur Erickson to symbolize the openness and transparency of the search for justice in British Columbia. Among the weeds lies the bloated and rotting body of Justice, the blindfold torn from her face, her scales smashed and in pieces beside her—while the vultures (all recognizable, all with names we know) circle and circle overhead.

Robin Mathews is a poet, academic, and political activist. He lives in Vancouver and on Saturna Island. He has taught at the University of Alberta, Carleton University, and Simon Fraser University. His books include The Struggle for Canadian Universities, Treason of the Intellectuals, The Death of Socialism, and Being Canadian in Dirty Imperialist Times.

Mathews has attended much of the Basi-Virk trial, even when the mainstream press has virtually ignored it. He was refused accreditation to the court by a committee of four CanWest employees, on the grounds that he was 'not a working journalist'. You judge. ☞

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