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ORIGINAL VIA COURIER WITH ALL ENCLOSURES

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Attn: Hon. John W. Foran
Minister of Public Safety & Solicitor General

Dear Minister:

**Re: Bill 48, An Act to Amend the *Coroner's Act*,
and *Coroner's Act Law Reform***

We wish to commend you on your introduction into the Legislature of Bill 48, **An Act to Amend the *Coroner's Act***. This Bill represents the honouring of the commitment in your Government's Speech from the Throne to institute mandatory Coroner's Inquests for workplace fatalities. This is certainly a step in the right direction.

The Speech from the Throne also called for the enhancement of resources available to the Coroner when reviewing the circumstances of sudden and unexpected deaths.

This correspondence will suggest further means by which these goals might be achieved by your Government.

The current Coroner's system in New Brunswick is completely inadequate to the task of modern forensic investigation. Most Canadian provinces and territories have previously recognized the need for reform of their respective death investigation systems and modernized them. This has not been the case in the Province of New Brunswick, where we continue to operate under an antiquated Coroner's system. The people of New Brunswick deserve something better.

I enclose with this correspondence a copy of the report which we produced in February 2003 entitled "***Bringing Death Investigations in New Brunswick into the 21st Century: A Review and Recommendations for Necessary Changes in the***

Coroner's System". We submitted this report to the Government of Premier Bernard Lord in 2003. We received in response a letter from Public Safety Minister Wayne Steeves dated October 31st 2003 (copy enclosed for your convenience) which informed us that his Government had no interest in embarking upon any reform of the Coroner's system.

The recommendations which we made in our February 2003 report recommended repeal of the existing legislation, with adoption of new legislation incorporating the best aspects of the Medical Examiner's systems and Coroner's systems as they operate in Ontario, Alberta, British Columbia and Nova Scotia, including recognition of the right for interested parties or their legal counsel to appear and to fully participate in inquests, with recommendations of inquests being made public.

We still believe, and believe more strongly than ever, that a fundamental re-working of this system is necessary, for the meaningful investigation of sudden and unexpected deaths in New Brunswick, and for inquests which will produce helpful recommendations to avoid similar fatalities. We ask once again that the Department of Public Safety embark upon this process, and that your Government commit to the public that this will be done.

While such a process will take some time, there is one interim step which your Government might take immediately to substantially improve the quality of Coroners' Inquests in the meantime. We suggest that you amend Bill 48 to authorize the Coroner to designate an interested person with standing to participate at an inquest. This would allow the victim's family, as well as persons whose reputations might be at issue, to have legal representation at the inquest with the right to call witnesses, ask questions of other witnesses, and make submissions. At present, as you are undoubtedly aware, these rights are non-existent in this Province. Lawyers for such persons are limited by the present protocol to making suggestions to the Crown Prosecutor assisting the Coroner as to questions which might be asked. This is a cumbersome and frustrating situation for all involved. There is no need for it. That is why it has been changed in other provinces. I enclose with this letter a copy of Section 41(1) and Section 41(2) of the Ontario *Coroners Act*, RSO 1990, c.C.37, which provide for "standing" of interested parties and sets out the rights of persons designated as "a person with standing" at an inquest. **We suggest that Section 41(1) and Section 41(2) of the Ontario Act be added as Section 10.1(1) and 10.1(2) of the New Brunswick Coroners Act, immediately, by Bill 48. We have for your convenience drafted an appropriate amendment to adopt the Ontario provisions for New Brunswick, and enclose same for your review.**

This suggested change will not add to the public cost of Coroner's Inquests in New Brunswick. While Section 41(3) of the Ontario Act goes on to provide that costs of legal representation of victims may, in some circumstances, be paid out of the victims' justice fund in that Province, (and while we feel that this would be a very good idea in the long run for New Brunswick as well), we suggest that the interim change simply allowing individuals "into the process" **at their own cost** would be a substantial improvement over the present situation. It would give the Coroner the benefit of evidence and submissions

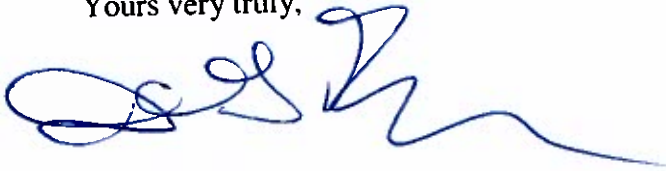
being made on behalf of the victim or other parties involved, at no increased cost to the Province.

This suggested immediate law reform is entirely consistent with the other provisions contained in your Bill 48. Your Government is making Inquests in some circumstances mandatory. While that is a good thing, it is also time for your Government to make Inquests in this Province more meaningful.

We therefore respectfully ask your commitment to:

- (a) amend Bill 48 to create standing for victims and other interested parties at Inquests, and**
- (b) initiate a comprehensive review of the *Coroner's Act*, with a view to modernizing it as almost all other Provinces have already done.**

Yours very truly,



David G. O'Brien,
Chairperson, Civil Litigation Section
Canadian Bar Association, New Brunswick

Cc/w.encl: Hon. Premier Shawn Graham
Hon. T.J. Burke, Minister of Justice
Jade Spalding, President, CBANB

Amend Bill 48 by adding after section 4 the following:

4.1 The Act is amended by adding after section 10 the following:

Persons with standing at inquest

10.1(1) On the application of any person before or during an inquest, the coroner shall designate the person as a person with standing at the inquest if the coroner finds that the person is substantially and directly interested in the inquest.

Rights of persons with standing at inquest

10.1(2) A person designated as a person with standing at an inquest may,

- (a) be represented by a person authorized to practise law under the *Law Society Act, 1996*;
- (b) call and examine witnesses and present arguments and submissions; and
- (c) conduct cross-examinations of witnesses at the inquest relevant to the interest of the person with standing and admissible.