> "It is not Tim Froese's 'practice to seek instructions by mail' But mail is a reliable way to get in touch with someone. I have lived in the same residence since July 2005 for 7 years. McKercher has always had my address."

From the law firm's file it is apparent that they had trouble contacting Laliberte at the time of mediation in 2007. Somewhat to their surprise, this was not a difficult accomplishment for Court officials, who arranged the appointment and notified Laliberte. Much later, the Star Phoenix was able to contact Laliberte immediately after release of the Judgment.

Despite never having taken instructions from Laliberte or having discussed the matter with him, Froese felt that he had sufficient ability to represent Laliberte at the hearing of the application for summary judgment. On the limited subject of opposing the application, and seeing this as a narrow engagement for this purpose alone, perhaps he can justify his behaviour. For instance, if he had been consulted, Laliberte probably would have agreed with the need to oppose the application, but his complaint goes well beyond that. Froese would have been obligated to act differently if he had met with and received instructions from Laliberte.

Froese should have obtained instructions from Laliberte, as his client, and he should have explained to Laliberte what he proposed to do. The points raised by Laliberte, particularly as to shared responsibility, the apology, the Liberal Party and the delay, were not unimportant or irrelevant.

Froese could have accepted the Chief Justice's proffered adjournment based on his discomfort with the sparse and thin evidence, and used the opportunity to find Laliberte, and then to have taken action, such as joining other parties, amending the pleadings or filing an Affidavit giving Laliberte his say. It was not fair to permit the inference that Laliberte "chose not to file any sworn material." He never had the chance. Froese never explained such a procedure - or any procedure - to him. Presumably the lawyers from the same firm who dealt with Laliberte earlier did not either, although they certainly had time. By declining the adjournment, Froese in effect lost the final opportunity to articulate Laliberte's position. The decision was made to grant summary judgment and the matter ended abruptly.

Another possibility or choice was that Froese could have withdrawn for Laliberte's sake, although he says Laliberte would have been worse off. However what good did Froese do by appearing, other than perhaps limiting the amount of damages awarded? As it appears, limiting damages was only to the benefit of the Liberal party, if it were to pay as Froese suggested. At least counsel withdrawing would have alerted the Chief Justice by creating a minor crisis. The Judge probably would have insisted that new counsel be found, or at least that the Registrar of the Court contact the defendant directly, which is what was missing here.

Froese knew, or could have known from the file, something of Laliberte's position as to issues wider than just opposing summary judgment. I note that Froese has not claimed that, because he had never met Laliberte, he did not know of the additional concerns. If they had met or at least discussed the matter, we can speculate that the result might