

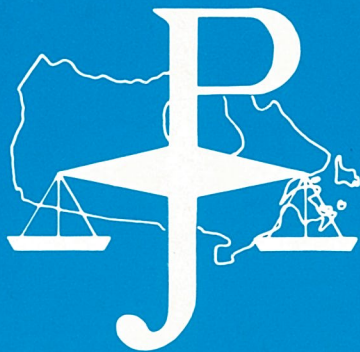
PROVINCIAL JUDGES

# Journal

DES JUGES PROVINCIAUX

VOLUME 8, No. 3

FALL, 1984



**President's Page**  
Page 1

**C.A.P.C.J. Committee Reports**  
Page 2

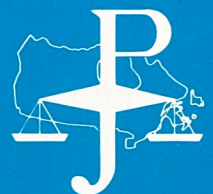
**In Brief**  
Page 11

**The Press, The Bench and The Bar**  
Page 14

**In Search of Reasonable Doubt  
A Transcript from Somewhere in Ontario  
Reasons for Judgment**  
Page 21

THE CANADIAN ASSOCIATION OF  
PROVINCIAL COURT JUDGES

L'ASSOCIATION CANADIENNE DES  
JUGES DE COURS PROVINCIALES





## THE CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES

### EXECUTIVE COMMITTEE MEMBERS 1984-85

Assoc. Chief Judge Edward Langdon, President  
 Senior Judge Ian Dubiensi, First Vice President and President Elect  
 Judge James D. Harper, Second Vice President  
 Judge Kenneth D. Page, Third Vice President  
 Chief Judge James R. Slaven, Past President  
 Judge Gordon Seabright, Secretary  
 Judge Douglas E. Rice, Treasurer and Executive Director

### PROVINCIAL REPRESENTATIVES

Judge M. Reginald Reid, Newfoundland  
 Judge Joseph Kennedy, Nova Scotia  
 Judge Camille Dumas, New Brunswick  
 Judge Bertrand Plamondon, Prince Edward Island  
 Sr./Judge Robert Hutton, Ontario  
 Judge Robert Hutton, Ontario  
 Judge Raymond J. B. Cramer, Manitoba  
 Judge H. W. Goliath, Saskatchewan  
 Judge Kenneth Plomp, Alberta  
 Judge Bruce Josephson, British Columbia  
 Chief Judge Barry Stewart, Yukon Territory  
 Judge Robert Halifax, North West Territories

### COMMITTEE CHAIRPERSONS

Sr. Judge Ian V. Dubiensi — Chairman — Education  
 Judge Yvon Mercier — Vice Chairman — Education  
 Judge Richard J. Kucey — Association Journal  
 Judge C. L. Roberts — Family & Young Offenders Courts  
 Judge Kenneth Page — Constitution  
 Judge Clare E. Lewis — Committee on the Law  
 Chief Judge Fred Hayes — Consultant — Committee on the Law  
 Judge Pam Sigurdson — Chairperson — Civil Court  
 Judge André Desjardins — Vice-Chairman — Civil Court  
 Judge Douglas E. Rice — Compensation  
 Judge James D. Harper — Court Structure  
 Judge Hiram Carver — Judicial Independence  
 Judge Raymond H. Harris — Conference '85  
 Assoc. Chief Judge Edward Langdon — Representative — National Judicial Centre

The Provincial Journal is a quarterly publication of the Canadian Association of Provincial Court Judges. Views and opinions contained therein are not to be taken as official expressions of the Canadian Association's policy unless so stated.

Editorial communications are to be sent to:

The Provincial Judges Journal  
 Provincial Court Bldg.  
 230 - 20th Street East  
 Saskatoon, Saskatchewan  
 S7K 0A8

Attention: Judge R. J. Kucey

EDITOR-IN-CHIEF  
 Judge Richard Kucey

EDITORIAL BOARD  
 British Columbia — Judge C. C. Barnett  
 Alberta — Judge A. W. Auger  
 Ontario — Judge Douglas Latimer  
 Quebec — M. le Juge Louis Jacques Léger  
 New Brunswick — Judge Blake Lynch  
 Prince Edward Island — Judge Gerald L. Fitzgerald  
 Nova Scotia — Judge R. J. McCleave  
 Newfoundland — Judge Ronald L. Jenkins  
 North West Territories — Chief Judge James R. Slaven

### EXECUTIVE COMMITTEE MEMBERS 1984-85

**President**  
 Associate Chief Judge Edward Langdon  
 Provincial Court  
 P.O. Box 5144  
 St. John's Newfoundland A1C 5V5  
 Tel.: (709) 726-6710 (Off.)  
 (709) 364-5893 (Res.)

**1st Vice President & President-elect**  
 Senior Judge Ian V. Dubiensi  
 5th Floor — 373 Broadway Avenue  
 Winnipeg, Manitoba R3C 0V8  
 Tel.: (204) 945-2781 (Off.)  
 (204) 855-2934 (Res.)

**2nd Vice-President**  
 Judge James D. Harper  
 Provincial Court  
 P.O. Box 6000  
 Fredericton, New Brunswick E3B 5H1  
 Tel.: (506) 453-2806 (Off.)

**3rd Vice-President**  
 Judge Kenneth D. Page  
 Administrative Judge  
 Provincial Court of B.C.  
 6263 Gilpin Street  
 Burnaby, B.C. V5G 3Z8  
 Tel.: (604) 294-3761 (Off.)  
 (604) 929-3849 (Res.)

**Past President**  
 Chief Judge James R. Slaven  
 Territorial Court  
 P.O. Box 550  
 Yellowknife, N.W.T. X1A 2N4  
 Tel.: (403) 873-7604 (Off.)

**Secretary**  
 Judge Gordon Seabright  
 Provincial Court  
 P.O. Box 5144  
 St. John's, Newfoundland A1C 5V5  
 Tel.: (709) 726-6910 (Off.)  
 (709) 364-2084 (Res.)

**Treasurer and Executive Director**  
 Judge Douglas E. Rice  
 Provincial Court  
 P.O. Box 246  
 St. Stephen, New Brunswick E3L 2X2  
 Tel.: (506) 466-2695 (Off.)  
 (506) 466-4739 (Res.)

### PROVINCIAL REPRESENTATIVES

**Newfoundland**  
 Judge M. Reginald Reid  
 Provincial Court  
 P.O. Box 5144  
 St. John's, Newfoundland A1C 5V5  
 Tel.: (709) 726-1603 (Off.)  
 (709) 753-4530 (Res.)

**Nova Scotia**  
 Judge Joseph Kennedy  
 Provincial Court  
 84 Pleasant Street  
 Bridgewater, Nova Scotia B4V 1N1  
 Tel.: (902) 543-7143 (Off.)  
 (902) 543-8228 (Res.)

**New Brunswick**  
 Judge Camilla Dumas  
 Provincial Court  
 P.O. Box 5001  
 Bathurst, New Brunswick E2A 3Z9  
 Tel.: (506) 648-2568

**Prince Edward Island**  
 Judge Bertrand Plamondon  
 Provincial Court  
 P.O. Box 2290  
 Charlottetown, P.E.I. V1A 8C1

**Quebec**  
 Judge Yvon Mercier  
 Court Provinciale  
 Palais de Justice  
 Montmagny, Que.  
 G5V 3E8  
 Tel.: (418) 248-0881 (Off.)  
 (418) 248-3921 (Res.)

**Ontario**  
 Sr. Judge Robert B. Hutton  
 Provincial Court (Criminal Division)  
 Fourth Floor  
 1 Nicholas Street  
 Ottawa, Ontario  
 K1N 7B7  
 Tel.: (613) 566-3901 (Off.)

**Manitoba**  
 Judge Raymond J. B. Cramer  
 Provincial Court (Family Division)  
 Bldg. 30, 139 Tuxedo Avenue  
 Winnipeg, Manitoba  
 R3C 1T5  
 Tel.: (204) 945-7145 (Off.)

**Saskatchewan**  
 Judge H. W. Goliath  
 3rd Floor, McIntosh Mall  
 800 Central Avenue  
 Prince Albert, Saskatchewan  
 S6V 6Z2  
 Tel.: (306) 922-7640 (Off.)  
 (306) 764-1638 (Res.)

**Alberta**  
 Judge Kenneth Plomp  
 Provincial Court of Alberta  
 5th Floor, Phase II  
 Law Courts Building  
 #1 A Sir Winston Churchill Square  
 Edmonton, Alberta  
 T5J 0R2  
 Tel.: (403) 427-7821 (Off.)  
 (403) 435-1320 (Res.)

**British Columbia**  
 (To Nov. 24/84)  
 Judge I. Bruce Josephson  
 Provincial Court of B.C.  
 Courthouse  
 555 Columbia Avenue  
 Castlegar, B.C.  
 V1N 1G9  
 Tel.: (604) 365-7778 (Off.)

**Yukon Territory**  
 Chief Judge Barry Stewart  
 Territorial Court of Yukon  
 Room 207, Federal Building  
 Whitehorse, Yukon  
 Y1A 2B5  
 Tel. (403) 667-5438

**Northwest Territories**  
 Judge Robert Halifax  
 Judges' Chambers  
 Courthouse  
 P.O. Box 1276  
 Hay River, N.W.T.  
 X0E 6R0  
 Tel.: (403) 874-6509

### COMMITTEE CHAIRPERSONS 1984-85

**Education**  
 Sr. Judge Ian V. Dubiensi (Chairman)  
 5th Floor — 373 Broadway Avenue  
 Winnipeg, Manitoba  
 R3C 0B8  
 Tel.: (204) 945-2781 (Off.)  
 (204) 855-2934 (Res.)

Judge Yvon Mercier (Vice-Chairman)  
 Court Provinciale  
 Palais de Justice  
 Montmagny, Quebec  
 G5V 3E8  
 Tel.: (418) 248-0881 (Off.)  
 (418) 248-3921 (Res.)

**Association Journal**  
 Judge Richard J. Kucey (Editor)  
 Provincial Court of Sask.  
 230 - 20th Street East  
 Saskatoon, Saskatchewan  
 S7K 2H6  
 Tel.: (306) 664-6690 (Off.)  
 (306) 933-4859 (Res.)

**Family & Young Offenders Courts (to Dec. '84)**  
 Judge C. L. Roberts  
 Court House  
 P.O. Box 5144  
 St. John's Newfoundland  
 A1C 5V5

**Judicial Independence**  
 Judge Hiram Carver  
 Provincial Court  
 84 Pleasant Street  
 Bridgewater, Nova Scotia B4V 1N1  
 Tel.: (902) 543-7143

**Convention '85**  
 Judge Raymond H. Harris  
 Provincial Court (Family Division)  
 Bldg. 30, 139 Tuxedo Avenue  
 Winnipeg, Manitoba  
 R3N 0H6

### SPECIAL COMMITTEES

**Constitution**  
 Judge Kenneth D. Page  
 Administrative Judge  
 Provincial Court of B.C.  
 6263 Gilpin Street  
 Burnaby, B.C.  
 V5G 3Z8  
 Tel.: (604) 294-3761 (Off.)  
 (604) 929-3849 (Res.)

**Committee on the Law**  
 Judge Clare E. Lewis  
 Second Floor, 444 Yonge Street  
 Toronto, Ontario  
 M5B 2H4  
 Tel.: (416) 965-7420 (Off.)  
 Chief Judge Fred Hayes (Consultant)  
 Provincial Court  
 Old City Hall  
 60 Queen Street West  
 Toronto, Ontario  
 M5H 2M4  
 Tel.: (416) 965-1108 (Off.)

**Civil Court**  
 Judge Pam Sigurdson (Chairperson)  
 Judges' Chambers  
 Provincial Court (Civil Division)  
 25th Floor, 400 University Ave.  
 Toronto, Ontario  
 M5G 1S8

Judge André Desjardins  
 Cour Provinciale  
 12, rue St. Louis  
 Quebec City, P.Q.  
 G1R 4P6  
 Judge Douglas E. Rice (Vice-Chairman)  
 Provincial Court  
 P.O. Box 246  
 St. Stephen, New Brunswick  
 E3L 2X2  
 Tel.: (506) 466-2695 (Off.)  
 (506) 466-4739 (Res.)

**Court Structure**  
 Judge James D. Harper  
 Provincial Court  
 P.O. Box 6000  
 Fredericton, New Brunswick  
 E3B 5H1  
 Tel.: (506) 453-2806 (Off.)

**National Judicial Centre (Representative)**  
 Assoc. Chief Judge Edward Langdon  
 Provincial Court  
 P.O. Box 5144  
 St. John's, Newfoundland  
 A1C 5V5  
 Tel.: (709) 726-6710 (Off.)  
 (709) 364-5893 (Res.)

---

# President's Page

---



by Associate Chief Judge E. J. Langdon

It is indeed a distinct honour for me to write this page for the Journal as the 12th President of our Association. I wish to express my appreciation to the membership for its confidence in me.

By now the excitement and fervor of Convention '84 has started to dwindle — not by too much, I hope. At this time, I wish to commend our Convention Chairman, Judge Gordon Seabright, for his program and organization of the Annual Conference. I understand a full report of the '84 Annual Conference may be found elsewhere in this issue.

Since the Annual Conference, I have found myself extremely busy. Immediately after the Conference, I attended the Annual Meeting of the Nova Scotia Judges' Association at the Digby Pines Resort from October 1 to October 3, 1984. As always, the friendship and hospitality was exceptional. I wish to express my appreciation to Past President Joe Kennedy for his kindness and courtesy extended to me during this event.

On October 11, 1984, accompanied by our Executive Director, I went to Ottawa for a meeting with the Minister of Justice, the Honourable John Crosbie. It is indeed fortunate that so early into my term as your President and his term as Minister, we were able to

arrange this meeting. I was very pleased at our reception by the Minister who seemed well versed on our existence particularly as it relates to funding. The meeting gave us an excellent opportunity to outline our program and activities of the Association. I look forward to continuing the good will found at this meeting with follow-up discussions with the Minister on various subjects of extreme interest and importance to our Association.

To ensure that I have no free time, Judge Rice arranged three further meetings for that day with Departmental officials including a very important meeting with the officials of the Secretary of State. This was in connection with our firm commitment to ensure simultaneous translation services at our New Judges' Seminar scheduled for Ottawa in late March of 1985. In this connection, we went to Montreal to meet with the persons who will be doing the simultaneous translating. I wish to thank the Chief Judges of all provinces for their strong and continued support of the New Judges' Program.

Our Association has entered its second decade in a very strong and vigorous way. I certainly look forward to an exciting and fruitful year as your President.



# C.A.P.C.J. Committee Reports

## EDUCATION COMMITTEE REPORT

I have the honour to present the report of the Continuing Judicial Education Committee of our Association for the year 1983-84.

### Your Committee consists of:

Chairman — Judge C. F. Perkins  
Member — Judge Ernie Bobowski  
Member — Judge Joe Woodrow  
Ex Officio — Chief Judge Jas. Slaven

### The consultants are as follows:

St. John's Conference  
— Judge Gord Seabright  
National New Judges Seminar  
Venue Chairman — Judge J. M. Bordeleau,  
Judge Steven Cuddihy  
Civil Div. Programme  
— Judge P. A. T. Sigurdson  
Fam. Div. Programme  
— Judge Raynel Andreychuk  
Western Regional Conf. — Judge J. Jacobson  
Eastern Regional Conf. — Judge J. Woodrow

Early in 1984 your committee was advised that the Northern Conference Board was sponsoring a Seminar on Circuit and Rural Court Justice in the north and that our President was assisting with the arrangements. Your Committee felt that certain judges in each Province and Territory would have special interest in the programme because of their role in the administration of justice among the native people. It was agreed through the executive committee that each Province and Territory would be subsidized to the extent of \$500.00 for the expenses of anyone from that province attending the Seminar. A few provinces took advantage of this financial support and it was reported that the Conference was of value to those who attended and they were then available to assist other judges in their respective provinces who were involved with justice and native people.

Also in January of 1984 the Nova Scotia Provincial Court Judges Association made application for financial assistance for speakers, etc. with respect to their provincial seminar to be held in March. Your Committee again through the good offices of our Executive Director was in a position to be of assistance with this Conference.

Later in the year your committee was faced with two very serious and substantial problems.

The first was the fact that financial restraints in the Western Provinces resulted in the inability of the Chief Judges in most of

those provinces to finance the attendance of judges at the Western Regional Conference. The second problem was the legitimate request of the Quebec Judges for simultaneous translation at the New Judges Conference.

To attempt to solve the first problem I attended with Ernie Bobowski at a meeting of the Chief Judges and Education Chairmen from each western province in Vancouver. Here it became evident that the solution involved a substantial increase in the amount of financial support to be provided by this Association to the Western Regional Conference. At the Executive Meeting which followed my meeting in Vancouver an agreement was reached with the representatives of the western provinces as to the amount of financial support necessary to operate the Western Regional Conference.

The Atlantic Regional Conference was able to operate on the usual subsidy.

The Association is indebted to all of those who made each of these Regional Conferences outstanding successes.

Preparations were made and the hotel reserved for the National New Judges Conference to be held in Ottawa from October 12-19. A separate programme was in process for each of the Civil, Criminal and Family Divisions.

After sending out several notifications to each of the Chief Judges, I was requested to telephone each Chief Judge to obtain the number of judges being sent to this conference. I called each Chief Judge on the 12th or 13th of September except Chief Judge Coultas and when I could not reach him I spoke to Judge Paradis, and in Quebec I spoke to Mr. J. P. Barrette, the Executive Director of the Quebec Judicial Council. The responses were turned over to the Executive Director on September 14th and subsequently I was advised that it had been decided that the New Judges Conference should be postponed. It should also be remembered that the budget of the Association would not finance simultaneous translation and the Secretary of State would not make a commitment.

The provision of simultaneous translation at this National Conference is, I am convinced, an absolute necessity since Quebec sends more judges than any other province and in this instance about half of those nominated to attend did not speak English.

I am advised that the postponement has produced substantially more available judges



finding on the evidence before me. I feel that this has been on your mind, the charge, for some time and that a conditional discharge should be in order on this matter, providing that the amount is returned to the Court for Towers Department Store. The amount of the refund.

THE ACCUSED: It is returned.

DEFENCE COUNSEL: The store already got the goods, Your Honour, there was no evidence that she received the cash. I don't understand.

THE ACCUSED: I brought back everything except for toilet paper.

THE COURT: "I brought back everything."

THE CROWN: With all due respect, on the basis of your finding you have come to the conclusion that she has received the cash, otherwise you could not have convicted her.

THE COURT: I convicted her because she got the money. That's why. Any submissions?

THE DEFENCE: The only submission I've got is that the clerk told you that he didn't remember giving it to her. I can't say anything else, Your Honour. The clerk told you that. He said, he does not remember giving her the cash and that's very crucial.

THE COURT: At the risk of going backwards,

looking at this refund notice and the fact that she got the money and so on, this Court is changing its opinion, and finding the accused not guilty of this charge. Thank you.

THE CROWN: Your Honour, with all due respect, you cannot at this point do that. It may very well be that for some reason you have come to a different conclusion in the last few moments as a result of what has been said to you, but I must respectfully request that you permit the original finding to stand. At that point I believe, the case law is clear, that you're res judicata.

THE COURT: That is right. Sir, you are right.

THE DEFENCE: Your Honour, if I may point out something to you, with the greatest of respect, this matter does not become, you do not become defunct on this matter until your sentence is complete, and I don't believe that your sentence was complete because you made some reference to a discharge, but then you didn't give any pertinent conditions and I still feel that you were seized with the matter. I've been before Courts where Judges have reconsidered points and changed verdicts.

THE COURT: Yes, I think you are both right. I am taking the step, on a guilty finding, to give this accused an absolute discharge. Thank you.

from other provinces and the committee is prepared on the basis of the new numbers to reschedule the programme early in 1985 and to attempt to negotiate with the new government for simultaneous translation if the executive so decide.

The other matter which is of particular interest to the Committee is the development of the Judicial Institute or Judicial College in co-operation with the Federal Judicial Council.

Through the good offices of Judges Mercier and Joncas of Quebec the Hugessen report was made available to us and that, coupled with our contacts with Chief Justice Bayda of Saskatchewan who succeeded Mr. Justice Hugessen as Chairman of our Seminar Committee when he went to the Federal Court has confirmed that the Provincially Appointed Judges will have an equal voice in that College.

I am advised that the Federal Judicial Council met in Halifax two weeks ago at which time they discussed the next step to be taken and it is my belief that Chief Justice Bayda will shortly ask for a meeting with our Committee which he indicated in a letter to me in June last would be his proposal.

It is my hope that 1985 will see this Judicial College become a reality.

And finally may I on behalf of the Committee express our thanks to Judge Seabright for the very informative educational programme which he has developed for this Annual Meeting.

#### COMMITTEE ON THE LAW REPORT by Chief Judge Fred Hayes

The Committee on the Law is composed of: Chief Judge Frederick C. Hayes,  
Chairman

Chief Judge Harold ff. Gyles  
Associate Chief Judge Georges Chasse  
Judge Thomas Ferris  
Judge Hughes Randall

Throughout the year the Committee has maintained contact with the Department of Justice concerning the criminal law review.

In the course of attending with the President, the Executive Director and others to discuss funding for the consultation process, we were provided with the discussion paper for the Mental Disorder Project and asked to provide our comments. The project team had circulated the paper to various courts in each province.

The discussion paper contained an outline of many issues dealing with mental dis-

order and set out various solutions.

The Committee gave extensive consideration to the issues and met in Ottawa to review and consider our position in respect of each of the issues.

Following the meeting, a memorandum of submissions was prepared in a format directing our answers to each of the issues.

The submission was acknowledged by Mr. E. A. Tollefson, Q.C., Coordinator of the Criminal Law Review, who indicated his appreciation of the thorough way in which the Judges had examined each of the issues in the discussion paper. In addition, he advised that he was pleased to see that many of the positions taken by the Judges were reflected in the draft report of the project.

We have received the draft report of the Mental Disorder Project.

The Department of Justice would be pleased to receive the comments of the Committee following the Annual Convention and, therefore, your early consideration of the matter would be of assistance. The Department of Justice has, after our meeting on funding for consultation and with the ongoing encouragement of our Executive Director, Judge Rice, entered into an agreement to pay certain expenses for travel and accommodation related to meetings of the Committee involving the consultation process.

The Committee would be pleased to have your views in respect of matters related to criminal law review in order to assist in reflecting the views of the members of the Association.

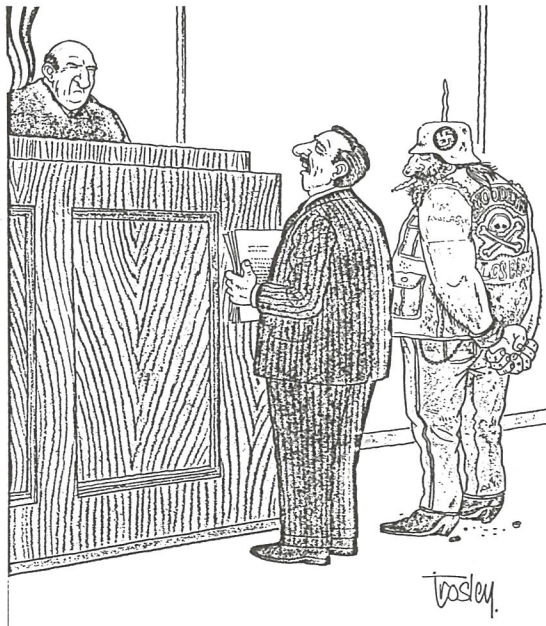
#### EDITOR'S NOTE:

While it is not possible to reprint the memorandum of submissions of this committee regarding the Criminal Law Review Mental Disorder Project or the Draft Report of the Department of Justice, copies may be made available upon request.

#### JUDICIAL INDEPENDENCE COMMITTEE REPORT

by Judge Ken Page

At the last Annual Meeting of the Association held in Yellowknife, N.W.T. in July of 1983, it was resolved that the Canadian Association of Provincial Court Judges apply for leave to appear as intervenor in the **Regina v. Valente** proceedings before the Supreme Court of Canada. It was further resolved that the appearance before the court was to be for the sole purpose of addressing the issue of the limits and scope of judicial independence within the meaning of the Charter of Rights and that except for the application for leave to



"My client is prepared to plead guilty to the lesser charge of double parking in front of the victim's apartment while the rape was in progress!"



intervene, the intervention was to be funded by means of a voluntary assessment of the members of the Association.

In accordance with the resolution counsel was retained on behalf of the Association to present the application to the Supreme Court and the motion was presented and heard on October 11, 1983. On October 17, 1983 the application was dismissed by The Honourable Madame Justice Bertha Wilson and no reasons were given for the dismissal. In November of 1983 I reported to the members of the Executive Committee in detail concerning the application and provided members of the Executive with the material filed in support of the motion together with a report letter from our counsel reporting on the proceedings before the Supreme Court in detail. Further copies of this material are available for any member of the Association who is interested in receiving those materials. As I indicated to the Executive Committee in November, the Committee feels that nothing was lost and much was gained in bringing on the motion to intervene in the Supreme Court of Canada. At the very least it is now formally aware of the fact that this Association is concerned and interested respecting the decision they must make in the Valente case. Mr. French, who is counsel for the Ontario Judges' Association, and Mr. Crane, who is counsel for the appellant in the Valente proceedings, are also aware of the interest that this Association has in the matter and it is hoped that when the Supreme Court of Canada comes to hear the appeal it may see fit to deal with the broad issue of judicial independence within the meaning of the Charter of Rights. Should this occur I think we may rest assured that Messrs. French and Crane will be prepared to address this issue in the broadest of terms. The appeal was originally scheduled to be heard in the early part of 1984. However, as a result of the backlog in Charter cases coming before the Supreme Court of Canada, the hearing has been adjourned to the October sitting of the court.

Since the application was dismissed it is now no longer necessary to seek donations from members of the Association to fund the appeal before the Supreme Court.

The Canadian Bar Association has struck a special committee to examine the foundations and parameters of the independence of the judiciary in Canada and to consider what safeguards, if any, are required to guarantee such independence.

The committee has met on several occasions during the past year, however, has not yet prepared its report. The Provincial Court Judges' Association in British Columbia has

submitted materials to Mr. D. M. M. Goldie, Q.C., the Vancouver member of the Bar Committee and his committee has also been provided with the report of the Committee of Chief Judges of Provincial Courts of Canada on minimum standards of Judicial Independence prepared in August of 1983. The position so far being taken by the Bar Association Committee is that there is no difference between Federal and Provincial Court Judges with regard to the requirements of judicial independence.

As reported at the last annual meeting, it was proposed that the committee undertake a review of all existing legislation establishing provincial courts with a view to preparing a draft statute for consideration by provincial associations designed to ensure judicial independence in all provincial courts. The subject legislation has all been collected and reviewed. I regret to report that the proposed draft statute has not been prepared. The responsibility for this lies with myself as chairman of the committee as I for various reasons have not found it possible to meet with the other members of the committee, Claude Joncas from Montreal and Howard Collerman from Manitoba. I am therefore proposing that a new chairman be appointed to this committee to proceed further with the preparation of the draft statute if that is the wish of the executive of the Association.

#### COMMITTEE ON COURT STRUCTURE REPORT

by Judge James D. Harper

Your Chairman, James D. Harper, and his Vice Chairman, His Honour Judge C. Emerson Perkins, have been actively engaged in "furthering the cause" over the past year.

Your committee of course realizes, being (if nothing else) pragmatic realists, that the direct statutory approach toward a uniform criminal court attempted by New Brunswick in its reference case is down the drain forever.

At first blush it might seem that, short of a constitutional amendment, no further action can be taken with any real possibility of success. Your committee believes that such is not the case.

All the members of the C.A.P.C.J. are well aware of the special committee set up by the Canadian Bar to investigate the manner in which judicial appointments are made.

In New Brunswick, in particular, serious steps have been taken to drastically alter and improve the present state of dialogue between the bench and the bar.

The Council of the New Brunswick Bar-

## In Search of Reasonable Doubt A Transcript from Somewhere in Ontario Reasons for Judgment

(Reprinted from Criminal Lawyer's Association Newsletter — July, 1984).

THE COURT: The Court will have to make a decision naturally, on what I have heard here this morning, and of course, the accused is here not to prove anything. The accused, even if found not guilty, it would not mean automatically that she is innocent. A lot of guilty ones are wandering the streets, but the Crown has to prove beyond a reasonable doubt to the Judge, that a finding of guilty can be made. In order to do that, of course, the Crown Attorney is not here looking for blood, or to win, but he's here as an advocate of justice and even to bring forward to the presiding Judge, certain views that would hurt his case and not to elaborate on things that aren't important in order to sway the Court. He's here as an advocate of justice. The defence counsel is here to defend his client with one ammunition, not two. He can indicate that there are certain laws or cases in effect, or that have effect on this matter, when he knows that they are false. Both parties to this action, the Crown of course, and the defence, have fulfilled their roles. Now a doubt, a Judge doesn't have to go into outer space to find a doubt. A reasonable doubt, of a reasonable man. If that doubt exists, I must dismiss.

Now, what have I got to work with. A cheque signed by the accused, November the 7th, eight-eight dollars and nineteen cents (\$88.19) to Towers. I presume, somebody wrote or printed on the back the information, and it's acknowledged, that you have to do these things in order to get a cheque through. The cheque appears to have come back from the bank, and two weeks later merchandise is taken back, and she's identified on this as the one who wrote the cheque by Miss Troup, and got merchandise for it. I can't beat myself to death on that point because the witness is under cross-examination and she says, "I know that, that's the girl that signed the cheque for eighty-eight dollars and nineteen cents (\$88.19) and got merchandise." Two weeks later a girl signs her name as Jane Doe, and gets merchandise back. At the end of December, a charge is laid. On December the 31st it was signed by a Justice of the Peace. This is April and it's before me.

Now, looking at Exhibit number 1, of course, I do not see the amount of eighty-eight dollars and nineteen cents (\$88.19) there. November the 10th is the last amount, a withdrawal of one dollar and fifty-three cents (\$1.53). There is nothing there, that indicates a cheque was returned or anything else. I'm amazed a bit by the fact, that anybody who would give a bad cheque would wait two weeks to go back and get a refund knowing, that everything should have been done in checking out these matters of the NSF.

In viewing the evidence that is before me and knowing that a decision has to be made and there's no use of going back and forth any more on this, I would say that Jane Doe on November the 7th, she gave a cheque for merchandise of eighty-eight dollars and nineteen cents (\$88.19) and that she went back two weeks later and she got a refund of the merchandise, and that she is guilty of the charge. Thank you. Any record?

CROWN: There's no record known to the Crown, Your Honour.

THE COURT: Any submissions?

DEFENCE LAWYER: I just can't make submissions.

THE CROWN: On behalf of the Crown, Your Honour, I'd ask that part of any penalty that you impose, that there be an order for restitution. I think the items were returned, and the cheque was not honoured, and therefore, Mrs. Doe, on the basis of your finding, would be enriched to the tune of seventy-eight dollars and eight cents (\$78.08). The amount that would have been handed to her when she returned on November the 22nd or so. Other than that, I would ask that there be a monetary penalty in addition to any order of restitution.

#### SENTENCING

THE COURT: Have you anything to say?

THE ACCUSED: No, Your Honour.

THE COURT: Would you stand up please? You've never been in Court before is my understanding?

THE ACCUSED: No.

THE COURT: No doubt your first time here today will be your last time. I've had to make a



televised portrayal of their alleged miscreant behaviour, unless they are mentally operating without all of their oars in the water.

Further, will fairness be displayed by the media in the choice and quantum of trials chosen for electronic reporting?

And even if the Charter's intention is not to leave decision of the matter to a particular accused, because of the broader public interest, we should not overlook the adverse impact (as in civil causes) on witnesses, not least of which are victims — both minors and adults — of "diddlers", "devees", and "dorks", and the families of accusers and accused.

I am inclined to the view that to grant a general licence to televise judicial proceedings, the courts must find that present public access to them — an event not to be missed, especially in rural Canada — is inadequate.

There is little hard evidence to support that conclusion.

### **Compromise**

I realize my remarks beg the issue a trifle, if we assume that television — and radio — are inevitable at Bar.

Legislative and judicial recognition of the electronic media are, admittedly, subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" under Section 1 of the Charter.

If and when that access, no matter how unobtrusive, occurs, I harbour two principal concerns. Both involve fairness by, and enhanced competence of, the media, in discharge of their avocation. These concerns relate to impact and content.

Present court reporting is not without its shortcomings, given exigencies of journalistic time, space and understanding.

Besides, as Mr. Justice Nathaniel Noel of the Newfoundland Supreme Court, Trial Division points out:

"The article writer is often finely polished. Words are used with finesse, as a doctor will use a hypodermic needle; one scarcely notices the point; it leaves but a tiny mark; the result, depending upon the injection, can be devastating." ((1977), 13 Nfld. & P.E.I. R. 80, at p. 81.)

My two primary concerns, and Noel J.'s dicta, are equally applicable to electronic journalists, with their potential for far broader impact because of their larger constituency. The substantive and adjectival of a (sometimes lengthy, complex) criminal trial, developed over 700 years, to afford protection to an accused, cannot be properly communicated in a televised or broadcast clip.

Selection is vital. How not to perform such responsibility is suggested by this judicial example. There was a Provincial Court Judge who was in the habit of opening and closing court with an 1877 Newfoundland fifty cent piece. An accused approached him following Court one day and asked why His Honour followed this unorthodox custom. The Judge replied: "Well sir, firstly, the coin is shiny and attracts attention; secondly, the coin makes a sharp resonant sound when I rap in on the Bench, commanding the attention of people in the courtroom; thirdly, the coin bears the impression of Her Majesty whom I represent when I sit on the Bench; and fourthly", said the Judge, flipping the coin in the air, "it helps me make up my mind on the evidence".

Further, the product of radio, more so television, resulting from selection, emphasis, and choice of explanation dubbed onto film for reporting purposes, is brief, fleeting and far reaching, without recourse to public replay, and with capacity for lasting that with the consent of litigants and the trial Judge, the subject matter of their judicial proceedings (if, one assumes, conveyed fairly, adequately and intelligibly), may in future be accessible to anyone within sight or hearing of the electronic media in Canada.

risters' Society has invited all of our Provincial Court Judges to be their guests at a dinner at the new Hilton in Saint John.

Further, the New Brunswick Section of the Canadian Bar has for the first time in history invited all of the Judiciary in this Province to not only attend its mid-winter meeting to be held in Moncton in January, 1985, but to actively participate therein.

Your Chairman has offered to deliver a paper before the meeting, outlining a method by which uniform unification could possibly be achieved.

Your chairman believes that Uniformity in Criminal Courts across Canada is inevitable and that the process of implementation may be greatly expedited should we succeed in enlisting the aid of the Canadian Bar Association through its committee on Criminal Justice.

Your committee has outlined a proposal for a bold departure from the present multi-tiered Court system and has requested that this matter be discussed at length at our joint meeting with the New Brunswick Section of the Canadian Bar.

In brief, your Chairman proposes to suggest to the Canadian Bar that there be but one trial Court in each province composed of three divisions, Civil, Criminal, and Family, the Judges of which Courts would have a dual charter from their respective provinces as well as from the Federal Government in order to permit the exercise of a wide jurisdiction without any potential constitutional conflict such as in **R. V. Valente** and would circumvent the Supreme Court of Canada decision in the New Brunswick Reference Case.

### **REPORT OF THE CIVIL COURT COMMITTEE**

**by Judge André Desjardins**

The Jurisdiction of provincially appointed Judges varies greatly across Canada.

As a general rule they all have a more or less extensive criminal jurisdiction under the Criminal Code as well as jurisdiction over those cases where a penalty is provided for a breach of a Federal or a provincial Statute, even though exceptionally in some Provinces some provincially appointed Judges do not have such jurisdictions, theirs being exclusively over other matters such as civil cases, juvenile offenders, adoptions, labor relations, expropriations etc.

On the other hand in some Provinces the Judges who have jurisdiction over criminal and statutory offenses, also have a civil jurisdiction and, sometime, a jurisdiction over

specific matters such as a recount in a Provincial election.

As Chairman of the Civil Court Committee I felt that the first step to be taken before considering the nature of a possible involvement of the Association in the civil field, was to determine the extent of these other jurisdictions.

I have accordingly written to the Provincial representatives and it appears from their answers that, outside of Quebec, in those Provinces where the Provincial Court Judges have a civil jurisdiction, this jurisdiction is limited to small claims or to cases where the amount involved is a maximum varying from \$1,000.00 in Newfoundland to \$5,000.00 in the Northwest Territories. By exception, in some districts of Ontario and Saskatchewan, the civil jurisdiction is exercised by Judges who do not have a criminal jurisdiction.

In Quebec the situation is far more complex. The seventy-one Judges of the "Cour des Sessions de la Paix" have no civil jurisdiction, the forty-three Judges of the "Tribunal de la Jeunesse" have jurisdiction over young offenders and adoption cases, while the one hundred and fifty-two Judges of "La Cour Provinciale", not only have the same jurisdiction as the Judges of "La Cour des Sessions de la Paix" (only about forty exercise it), but have a civil jurisdiction over cases where the amount involved \$15,000.00 or less and where the amount involved is unlimited in fields such as Municipal taxes, property evaluation, indemnities for expropriation, Provincial Income Tax etc. They also have jurisdiction in appeal over the decisions of twenty-three administrative bodies such as the Rental Board and the Police Commission.

As can be seen the only common denominator in the civil jurisdiction of provincially appointed Judges seems to be small claims, and I believe that it is in this field that the National Association could get involved.

Further studies are needed on the nature of such an involvement and it is my intention to undertake them in the next few months.

### **CONVENTION 1985 COMMITTEE REPORT**

Arrangements are well on the way for the preparation of the 1985 Convention of the Canadian Association of Provincial Court Judges to be held at the Fort Garry Hotel, Winnipeg, Manitoba, September 8-12, 1985.

In line with the purposes of the Convention and our relationship with the Federal Department of Justice for funding, the program is directed to education and social activities. It is hoped that we are able to get a



satisfactory mix in that area.

Also, the program is being designed to have content for criminal, family court judges, and judges have civil jurisdiction. There are, of course, certain topics that will be of interest to the judges of all jurisdictions.

As previously indicated, the proposed theme is "Justice is Truth in Action" (Disraeli) and will mainly concern itself with an assessment of three years experience under the *Canadian Charter of Rights and Freedoms*.

The general format of the Conference will consist of plenary opening sessions in the morning, to be followed by workshops discussing various problems and aspects of the law with reference to the Charter and specific areas concerning the Young Offenders Act, and those judges having civil jurisdiction.

On the social side, we are budgeting for the Presidential Reception, "Manitoba Night", three luncheons, and the Annual Dinner and Dance. It is also anticipated that there will be a reception provided at the Lieutenant-Governor's mansion.

At the present time, we expect to be able to budget based on the attendance of 120 judges and 80 spouses, with a registration fee of \$150 for the judges and \$75 for the spouses. We might say that comparing these fees to other registrations of a most innocuous organization that these are probably the lowest in the world, but in view of the fact that most of it is paid from our own budget, it does not seem to serve any useful purpose to raise it.

We are further anticipating funding contributions as follows:

City of Winnipeg — Reception . . . . .	\$1,000
Solicitor General — 1 luncheon	
re: Young Offenders . . . . .	3,000
Province of Manitoba — Manitoba	
Night Annual Dinner & Dance . . . . .	13,000
As a first Manitoba Judges'	
Convention Fund . . . . .	4,000

At the present time we have an advantage in Manitoba in that since we are in the centre of Canada, there is a considerable reduction in the total cost of airfares for those attending which will operate to the advantage of the National Association in their responsibility of funding the deficit.

At the present time we are anticipating a contribution by the C.A.P.C.J. of not in excess of \$40,000.

We have the assurance of our Attorney-General that he does not think there will be any difficulty with regard to the Manitoba contribution and I have heard from the former Solicitor-General that he would be pleased to support us; however, it will be up to the new

Solicitor-General to advise us of his intentions. He has also been asked to address the luncheon being sponsored by him.

At the present time, the spouses are included in all social functions and we are preparing some other tentative program outside of that during the daytime, if they so wish. However, some spouses have indicated they wish to attend some of the panels, and of course, I think they should be welcome.

Arrangements have been made with the hotel and we are assured that they will be first-class in view of the fact that by that date, all of the rooms and suites in the hotel will be completely renovated. Also, the hotel has completed new seminar rooms which will be available for use by us. It is anticipated that the hotel accommodation will not be in excess of \$60 single or double.

We expect to have the final details of the program completed by the end of the year, and we will be able to send out complete programs and brochures at that time in anticipation of circularizing judges for attendance.

It is our intention also to invite judges of other jurisdictions to our social functions (i.e. Supreme, Q.B. & Courts of Appeal) and possibly to send specific invitations to some of the judges of similar jurisdiction in the United States.

We realize that there is considerable restraint on travel outside of provinces, but we hope that provincial organizations will try to develop funds that would be available to permit judges to travel, either by paying for or subsidizing attendance at the Conference.

We feel it is very important that this become more a Conference of judges and not merely a meeting of delegates or a parliament.

It is the objective of the Manitoba Committee to try and attain the great heights of hospitality that it presented when the Convention was last held in Winnipeg; however, we must advise you that the "Lord Selkirk" is not available for travel on Lake Winnipeg, but is now a floating restaurant.

That is the report of your Committee to date and we hope that you are as confident as we are that it will be a successful Convention in 1985.

**FAMILY AND JUVENILE COURT  
COMMITTEE REPORT  
by Judge C. L. Roberts**

Your Committee has during the past year concentrated on two special areas of interest and concern:

Moreover, where fairness demands, many civil law causes are accessible to members of the public sufficiently interested to attend in person.

Remember that a fair trial involves fairness to litigants. In my experience, a sentiment expressed by most of the 2,200 divorce petitioners and respondents I have represented since 1968, is that their trials not be accessible to the public — on film, in type, or even by the presence of any spectator.

Litigants to civil causes become very private persons, concerned with very personal affairs. The trauma of the courtroom appearance would be aggravated, and their ability for recollection impaired, by the knowledge a camera lens was monitoring their forensic involvement. That prospect would discourage some from their rightful resort to the courts for relief, no matter how warranted their claims.

Not least responsible for the problem is the human reaction reserved for electronic exposure.

For most, unfamiliarity breeds mistrust, suspicion and discomfort before the eye of the camera. With practice and repetition, the Bench and Bar may marry with television. However, the majority of persons will not have a like opportunity to acquire such experience.

On the other hand, there are persons who would revel at the opportunity of meeting a camera lens at the Bar, though at the risk or expense of spanning the court's quest for truth, by embroidery of thought and/or flippancy in department.

These, Your Honours, are the prospects of civil trial conducted in a televised forum.

One thought more. The Charter does not appear to contemplate civil causes in its sights (unless by virtue of fundamental freedom of the press under subparagraph 2(b)). And if the record be examined, neither litigants or public in their views, nor the judiciary, in its performance, have inspired a need for greater public access to, or scrutiny of, judicial proceedings than presently obtains.

**Public Law.** That brings me, secondly, to trials in public law; more particularly, criminal matters.

There is no question the Charter contemplates public hearings of criminal trials. (Such has largely been the practice, historically.)

You are all acquainted with the relevant Charter provision.

"11. Any person charged with an offence has the right . . .

(d) to be presumed innocent until proven guilty according to law in a

fair and public hearing by an independent and impartial tribunal; . . .".

This is an important civil right.

Parenthetically, I note the State of New York, by dint of its civil rights law, prohibits televising of proceedings involving the testimony of witnesses.

The views of the Canadian Judicial Council appear to accord, in spirit, with this position. The 1984 (annual) report of the Ontario Supreme Court on the Administration of Justice in that jurisdiction, by W. G. C. Howland, C.J.O., advises (in part) that:

"In a letter of November 3, 1983, to the . . . Minister of Justice of Canada, [the then] Chief Justice . . . stated that after studying the matter in depth over the past few years, the Canadian Judicial Council came to the conclusion at its recent meeting in Newfoundland that television should not be allowed in court proceedings. . . . [O]n November 21, 1983, the Deputy Attorney General [for Ontario] stated that from the viewpoint of the Attorney General for Ontario, the position expressed on behalf of the Canadian Judicial Council was . . . strong, definite, unqualified and final . . .". (Gazette, The Law Society of Upper Canada, March, 1984, p. 11.)

As with some civil causes, certain criminal trials and other civil proceedings — or parts or aspects of them — may be proscribed from publication. They include

- (1) youth trials (Young Offenders Act, s. 39),
- (2) evidence of "sexual activity of a complainant" in the prosecution of certain charges (Criminal Code, s. 246.6(1)),
- (3) portions of, or entire criminal trials where "in the interest of public morals, the maintenance of order or the proper administration of justice" (Criminal Code, s. 442(1)),
- (4) applications for judicial interim release (Criminal Code ss. 457.2, 457.5(9), 457.6(9), 458(8), 459(8)).
- (5) evidence and other proceedings at preliminary inquiries (Criminal Code, ss. 465(1) (j), 467, 470(2)),
- (6) where jury trial proceedings take place in the jury's absence (Criminal Code, s. 576.1),

and

- (7) under subsection 14(2) of the Official Secrets Act.

In my experience as federal prosecutor and Criminal Code and Youth Offender Act defence counsel, I have known few accused who equate a "fair and public hearing" with



been able to witness Nurse Trainor's testimony, but rather relied on newspaper accounts. As it was, her actions, and her movements, said as much as her words. Television gave her the best opportunity to clear her name.

Before ending, there is one other area of concern which I think is relevant to your conference. This is a conference on the Press, the Bench and the Bar. Television access to the courts is only one element of that. Another is the accountability of judges. I would like to make a plea to judges to be more forthright with the press, and therefore with the public, about your decisions. Judges, like CBC television reporters, are public servants. Most important public servants. You make profoundly important decisions, and I believe it is in the public interest to explain those decisions. Why was a brutal rapist, for example, sentenced to two years in prison? What does it mean when the Commissioner of the Ocean Ranger Inquiry says in his report that oil companies may have been negligent in the Ocean Ranger disaster? I believe the public has the right to know these things, and judges have a responsibility to provide answers.

Perhaps we'll have a discussion on the accountability of CBC reporters at another conference.

**VIEWPOINT BY  
MR. DAVID C. DAY, Q.C.  
Barrister and Solicitor  
St. John's, Newfoundland**

**Problem**

At the heart of the debate surrounding whether or not the television camera — prodding live transmission or edited video — crosses the portals of the court room, is this issue: whether it is necessary or appropriate to afford an accused in a criminal trial "a fair and public hearing".

These are the words of subparagraph 11(d) of the Canadian Charter of Rights and Freedoms.

This is the constitutional language which bedevils this question.

No legislation in Canada specifically addresses this matter. And the words of the Charter are far from decisive of the issue.

A "fair trial" involves a hearing by "an impartial and disinterested tribunal; . . . which hears before it condemns" or acquits. (Black's Law Dictionary, 4th ed., p. 717).

A "public trial" is one conducted "in the presence of the public, or in a place accessible and open to the attendance of the public at large . . . for the benefit of the accused; [so

that] the public may see he [or she] is fairly dealt with and not unjustly condemned [or acquitted] . . . [keeping] his triers keenly alive to a sense of responsibility and to the importance of their functions; . . .". This "requirement is fairly observed if, without partiality or favouritism, a reasonable proportion of the public" is enabled to attend, . . ." (Black's Law Dictionary, 4th ed., p. 1676.)

Shortly stated, one of the assurances of a fair trial is a public trial.

**Scope and Implications of Problem**

Firstly, let me identify the potential scope of the judicial theatre.

There are two areas of substantive law which are the subject of thousands of trials and hearings, daily, in Canada. They are public law and private (or civil) law.

Public law includes administrative, constitutional and criminal law.

Private (or civil) law embraces torts, property, contracts, estates and family, to mention a few.

**Influence**

Secondly, I will consider the influence of television as an instrument for increasing public accessibility to the courts, to ensure fair trial or to educate them.

**Private Law.** Dealing first with private law; a great number of trials within this territory involve family. They pertain to the parting of private relations, punctuated by the prattle of pillow friends submitting to the illicit urge to merge.

They pertain to the legatees of those who have been gathered up to their fathers, litigating the private financial affairs of the departed.

They pertain to the physiological and psychological impact of negligence upon its victims.

Is a public trial necessary or appropriate to ensure a fair trial of these civil claims?

I think not.

Some civil litigation is, by statute, absolutely shielded from publication.

Other litigation achieves privacy through control by the trial judge of the process of his or her court.

Fairness is, nonetheless, achieved by legal representation and public financial access to counsel; by judicial accountability in the rendering and reporting — by legal journal and media — of reasoned judicial decisions (a requirement implied, perhaps, under subparagraph 11(d) of the Charter); and by recourse to appeal.

1. Our Committee applied for and received a grant of approximately \$16,000 from the Department of the Solicitor General, Ottawa "to develop, in consultation with Youth Court Judiciary from each Province and Territory, Uniform Rules of Procedure under the Young Offenders Act".

Judge Guy Goulard, of the Ottawa Youth Court was appointed Chairman of the Project Sub-Committee with representatives from each Province and Territory. A research person was engaged to help the Committee in its preparation, and, at a second meeting of the Committee in April, 1984 a final draft of Uniform Rules and Procedure for Canadian Youth Courts was approved.

This draft of Uniform Rules will now be considered by the various Provincial Youth Court bodies and it will be the responsibility of each Provincial Authority to adopt with any necessary adaptations or modifications these Uniform Rules of Procedure.

2. Your Committee has expressed concern, and, even, frustration, for some time now over the seemingly ongoing difficulties in acquiring for the Family and Youth Court judges a sense of true participation in the structure, activities and goals of the C.A.P.C.J.

This whole issue was the main subject of a Committee meeting at Toronto in February, 1984 and from that meeting some recommendations were forwarded to the C.A.P.C.J. Executive also meeting in Toronto at that time. The Vice President of this Association, Associate Chief Judge Langdon, attended our Committee's April meeting and his discussions with us were very helpful indeed. Our Committee's budget for 1984-85 was increased by your Executive to \$5,000 from \$3,000 and this extra amount is appreciated.

Following are the proposals and recommendations made to the C.A.P.C.J. Executive at its April meeting in Toronto:

The Family and Juvenile Court Committee unanimously proposes to the Executive of C.A.P.C.J. that a committee be formed and funded by the C.A.P.C.J. The committee's purpose would be as follows:

- (1) to recommend changes in C.A.P.C.J. for greater participation and representation by judges serving Family and Juvenile Courts at the Executive, Committee and membership level of the Association;
- (2) to recommend changes for firm allocation of financial resources to Family and Juvenile concerns and needs in continuing education, annual meetings, New Judges' Seminar, etc.

The proposed committee should be a joint committee of representatives of the Executive and of the Family and Juvenile Court Committee to report to the C.A.P.C.J. at its September meeting in St. John's, Newfoundland.

The Family and Juvenile Court Committee further unanimously recommends:

1. that the President appoint the Chairman of the Family and Juvenile Court Committee;
2. that a representative of the Family and Juvenile Court Committee be appointed to the Education Committee;

and that these two appointments be made on the recommendation of the Family and Juvenile Court Committee.

And further, as our concerns are family and juvenile concerns and the Association's welfare, we would concur that the Civil Division judges be included or consulted as is their wish on these matters.

We were indeed very appreciative of the prompt action of the C.A.P.C.J. Executive in considering our proposals at its Toronto meeting, and, as a result Associate Chief Judge Langdon, who was the presiding Chairman of the C.A.P.C.J. executive at that meeting, advised me in early March that his Executive was anxious to establish a joint Sub Committee of our two groups to consider our suggestions and seek some solutions to this continuing problem.

That joint Committee of the C.A.P.C.J. Executive and the Family and Juvenile Court Committee met at Toronto in June, 1984 and had a very frank and meaningful discussion. From this meeting came many ideas and suggestions which it felt could contribute greatly to the process of having the Family and Youth Court judges play a more meaningful and appropriate role in the C.A.P.C.J. structure thus destroying this sense of frustration which has clouded our relationships over recent years.

Therefore, the Family and Juvenile Court Committee presents the following recommendations to the Canadian Association of Provincial Court Judges at its 1984 Annual Meeting for approval and implementation.

1. that a Family and Youth Court Committee of the C.A.P.C.J. be established as a Standing Committee of the Association.
2. that this Committee be composed of six judges from the Family and Youth Court Bench. One such judge shall represent the Province of Ontario, one judge represent the Province of Quebec, one judge to represent the Provinces of



British Columbia and Alberta and one judge to represent the Provinces of Saskatchewan and Manitoba and one judge to represent the two Territories and one judge to represent the Atlantic Provinces. Each Province in rotation shall have its member as representative where such member represents more than one Province

3. the Chief Judge of each Province or Territory shall recommend to the Association Chairman for membership to this Committee, a member judge in good standing, from the respective Provincial or Territorial Association. Membership shall be for a two-year period
4. the Chairman of this Committee shall be appointed by the President of the Association on the recommendation of the Committee
5. a specific budget amount shall be granted the Committee at each Annual Meeting of the Association, and, shall, consistent with the financial abilities of the Association, be sufficient to facilitate at least two meetings annually of the Committee one of which may be held at the Annual Meeting of the Association.
6. that a representative of the Family and Juvenile Court Committee be appointed to the Education Committee of the Association with such representative being appointed by the President on the recommendation of the Committee.

## EXECUTIVE DIRECTORS REPORT

### by Judge Douglas E. Rice

As Executive Director, I attended all of the General and Special Meetings of the Executive Committee, including the Executive Meeting following the Annual Meeting in July 1983 and the meeting of the Executive Committee held in Montreal in November, 1983 and in Toronto in April, 1984.

In addition to the Executive Committee Meetings in October, 1983, I attended at Quebec City for a meeting with Juge Yvon Mercier, Provincial Representative for Quebec, concerning the status of this Association with the Judges of that Province. From Quebec I proceeded to Montreal where I made arrangements with the Hyatt Regency Hotel for the Executive Meeting to be held in November, 1983. I then proceeded to Toronto where I met with Chief Judge Fred Hayes of the Provincial Court of Ontario and Judge Cy Perkins with regard to matters pertaining to the Committee on the Law and the Education

Committee. I returned via Ottawa, Ontario where I met with a number of the Officials of the Department of Justice and the Department of Solicitor General regarding outstanding projects which involved the Association.

In February, 1984, I again proceeded to Ottawa where I again met with the Officials of the Department of Justice regarding the Young Offender's Legislation Seminar and the Sentencing Handbook and proceeded home via Toronto where I again met with Chief Judge Hayes. In June of 1984, and at the direction of the President-elect, I proceeded to Ottawa where Judge Langdon and I met both as between ourselves, with various Judges from the Ontario Provincial Court and with the Officials of the various Departments of Government, and in particular the Department of Justice. Further in June, Judge Langdon and I met in Toronto with Judges of the Family Division of the Provincial Court and subsequently returned via Montreal where we had a meeting with three of the Chief Judges of the Provincial Court of Quebec to discuss instantaneous translation for the New Judges' Program. This meeting was at the request of Monsieur Jean-Pierre Barrette, the Secretary Director of the Conference of Judges of Quebec. Later in June, I attended the Atlantic Provinces' Seminar in St. John's, Newfoundland as a Judge from New Brunswick and at that time, I had an opportunity to discuss further plans for Conference '84 with the Conference Committee Chairman and had further discussions with Judge Langdon relative to many matters considered important to the Association.

The Toronto meeting referred to with the Judges of the Family Court was at the direction of the Executive Committee Meeting in April, 1984.

In addition to such meetings, I had personal correspondence and contact with Committee Chairmen and other members of the Association regarding a number of matters and projects, and have attempted to resolve all matters in a satisfactory manner.

Since the Association has a Secretary, it has been unnecessary for me to keep the minutes of the various meetings, but as such were supplied to me by the Secretary, I have circulated them to the members of the Executive Committee.

During the year I published and circulated some fourteen Executive Memos to all members of the Executive Committee, Committee Chairmen and others, as well as other memorandum as necessity demanded. I prepared and published a Newsletter during the year and through the courtesy of Judge Yvon Mercier, this was translated into the French

more access we have, the better the public will be served by television.

But getting back to editing. Yes, we edit. We have no choice. Believe me, editing is not an easy job. We have to do it because of time constraints. I have been in this business for ten years. And in all that time I have met very few journalists who edit in a cavalier fashion. Most television journalists I know, take great pains to edit in a way that will not distort the story, nor deliberately take someone out of context. You may not believe this, but journalists, for the most part, are in this business because we care about truth. I can tell you, I've spent many painful hours in the editing room, struggling with an expression or a single word that will ensure that the true nature of what has been said will be reflected.

I can also tell you that at the CBC, if we did distort or take people out of context, through editing, we could lose our jobs; we would certainly have to explain ourselves to our superiors.

Editing is serious business. But it is not something confined only to television journalists. Newspaper reporters, covering trials or inquiries, also edit their material. They also select what is the important aspect of the story, but in print there is more, not less, room for distortion. The newspaper reporter is not constrained by the reality of what the pictures say. The television reporter is. I believe television, at its best, is the most honest medium. It is the truest reflection of what actually took place.

Let me give you an example. A couple of years ago I had the privilege of covering the inquiry into the sinking of the Arctic Explorer off Newfoundland. Silent cameras were allowed. But we were not able to record sound. Nor were we able to set up lights. Without lights, pictures were horrible — poor quality. But more importantly, without sound, there was more room for distortion. I have to leave the inquiry early, each day, to prepare a report for the evening news. I was not able to check court transcripts. I have to rely on my notes of what had been said. I did the best I could, but I know that a couple of times my quotations were inaccurate. Had I had both pictures and sound, that would not have happened.

Some people have argued that television coverage of trials will not allow people a fair trial — it will produce trial by press. To that, I would simply say, it is trial by press. There are press accounts each day of what transpires. Trial by a press, that is without television cameras, is trial by an interpretive press.

Another argument that's been made here is that television cameras may be obtrusive. They may inhibit or intimidate witnesses. They

may provoke witnesses, jurors, judges and lawyers to grandstand, or perform. First of all, technology is such these days that the tiniest television cameras can produce quality pictures and sound. Spotlights are no longer necessary. TV cameras can be replaced and operated in a way that nobody will know they are there. I agree that in some cases witnesses may be intimidated, knowing that their movements and words are being recorded for all the world to see. My experience is that for the most part, fear and intimidation dissolves once a person begins speaking. But I am concerned that some witnesses, particularly victims of traumatic experiences, may simply not wish to relive their horror in public. I don't think they should have to. And I think guidelines could be set up whereby victims, in certain circumstances, are exempt from television coverage.

On the question of grandstanding and showmanship. I had the privilege of working on Parliament Hill when TV cameras were introduced in the House of Commons. Generally, I believe the fact that proceedings are televised, and available in news reports, has given the public a much better understanding of Parliamentary procedure. May not respect their politicians more, but they are better equipped to judge them.

As for the performance of Parliamentarians, I can say unequivocally that there is less grandstanding and showmanship and general foolishness as a result of TV cameras. Questions are more refined; answers are more knowledgeable. The participants are generally more responsible. Television has had an extremely positive effect.

There's one other example that I'd like to mention. That is the experience of Susan Nelles. The coverage of Miss Nelles' initial arrest and preliminary hearing was interpretive. We, as the public, did not see her or hear her speak. We relied on journalists' accounts of what she did and said. I would not argue that when her case was thrown out of court there were probably many people who said "Ah, a technicality — she's probably guilty." It was only through the televised accounts of her appearance at the televised Grange Commission of Inquiry that Miss Nelles really had her day in court. After witnessing her testimony, I think few people would still believe she is guilty. Yes, we all played juror — but what's wrong with that?

Something else transpired at that inquiry that is worth mentioning. There were several days where several people made reference to a Nurse Trainor, and her actions concerning the infant deaths. What would have been the impression left in the public had people not



not be printed unless there is a conviction.

The obligation of newspapers is to put as much information before the public so they can make the informed decisions necessary to make a parliamentary democracy work.

Once newspapers or radio stations or television stations become involved with police, lawyers or courts in withholding information, we start to desert that principle. The media looks at the judicial system objectively; if we become part of the judicial system in any way, we have lost our objectivity, our independence and our ability to serve the public.

As it is now, courts, lawyers and judges are treated much differently by the media than other public institutions. Judges and courts have been the beneficiaries of a reluctance on the part of the general public and the media to criticize.

The Canadian legal system operates on the basis that established legal principles are applied by judges in dealing with the endless variety of civil and criminal legal situations.

Rarely, though, do we see a public examination of one judge's application of those principles. Rarely do you see a comparison of several judges' application of those principles.

Judges deal with far more than narrow legal issues. You deal with issues affecting the political and social lives of your communities. But even when the Supreme Court of Canada renders a decision, there is rarely discussion of whether the decision matches established legal principles, or whether it is in accordance with previous decisions, or whether it is in accordance with accepted social and political standards.

In the recent federal election, the issue of appointments to the bench was raised as part of the larger issue of patronage. There was little, if any, discussion about the antecedents of judges; indeed, not since 1953 has a major Canadian media outlet dared to raise the issue of appointment of politicians to the bench, and ask what prejudices political appointees might carry with them to the bench.

The reason criticism is so muted is the broad contempt powers held by judges; powers so broad that any time I have gone to a lawyer with the question: Is this contempt? the lawyer's reply has been: If you have to ask the question, it is.

Canadians now have a Charter of Rights and with it courts have been given greater opportunity to deal with social and political issues.

The Charter also guarantees freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

The media has an obligation to analyze the political and social attitudes of judges and the effects of those attitudes on judicial behavior; to analyze decisions from the viewpoint of established legal principles.

The Charter (Section 2(b)) gives the media that right; a right the media and the public should always have had.

**VIEWPOINT BY  
MS. KATHRYN WRIGHT  
"National Reporter", C. B. C.**

As a television journalist, naturally I am biased in favour of television access to the courtroom.

From a very selfish perspective, it would simply make our jobs a lot easier. The very nature of television journalism requires that pictures of an event, and statements from the principle participants in an event, tell the story. In other words, what actually transpires visually and verbally is what we'd like to put on the air. Our writing simply strings the visual and verbal together, hopefully in some sort of cohesive fashion.

With pictures and statements television journalists have less, not more room to distort the actual event. Pictures seldom lie. Without them, we have a lot more latitude for interpretive reporting. It's not the other way around. For example, we cannot say "the victim, looking distraught, was barely able to take her place on the witness stand . . ." if the pictures don't clearly show that. Even if that is our honest interpretation of what we saw. With pictures we don't have to say anything. The reality, or the truth is there for everyone to see. Print Reporters, or television journalists without pictures, are not constrained by the same sort of visual reality.

Much of the reporting of your conference has focused on a concern about editing. The argument being that because television reporters must edit ten hours of material into a two minute report, there is a great deal of room for selective reporting and distortion.

First of all, all journalists, television or otherwise, are selective. Not only do we select what we believe to be the most important aspect of a story, or trial, we decide whether to cover that particular event in the first place. That is true for all mediums. In television, much of the selection process has to do with whether we can get pictures of the same story. That means we sometimes choose not to fully cover important stories, or trials, because we have no pictures. Often the public interest, or what the public should know is not reported by us because we do not have access to the event. Obviously, I feel that the

language and circulated to the members of the Quebec Provincial Bench.

I assisted the Editor of the Association Journal by maintaining an up-to-date mailing list of the Association members, and prepared and supplied mailing envelopes for the issues of the Journal published during the year. I also supervised the distribution of the Journal to libraries, law libraries and government officials, as requested. Also during the year, I was requested to undertake distribution of the Sentencing Handbook. The distribution of the Sentencing Handbook, both the English version and the French version, has been completed and the remaining copies of the handbook are presently with me for sale or distribution as required.

I have endeavored to supply a service to Conference '84 by continuing discussions with the Conference Chairman and by undertaking the dissemination of information on the Conference as supplied to me by Judge Seabright, Conference Chairman.

Following the Annual Meeting in 1983, a concerted drive was made by Juge Mercier for membership in Quebec, which has been successful and a substantial number of Quebec memberships have been renewed. Many of these memberships came forward at the turn of the year and by agreement of the Executive Committee, it was directed that such memberships would be valid through to the end of the current fiscal year.

I believe that I have carried out my terms of reference for the past year. I may say that while it has not always been convenient for me to comply immediately with all requests for information and attendance at various Committee Meetings, I endeavored to do my best in the limitations of my own Court commitments. I would like to take this opportunity of expressing my appreciation to all the Officers of the Association, to the Members of the Executive Committee, to Committee Chairmen and to all Members of the Association, with whom I have had contact during the past year. The courtesies extended to me wherever I have travelled have been much appreciated.

Finally, may I extend my special appreciation to our President, Chief Judge Jim Slaven, for whom this year has been extremely difficult, to the President-elect, Judge Edward Langdon, who has ably accepted the responsibility when the Association President was not available, to the Secretary, Judge Michel Bourassa, both for his services in that capacity and as the Chairman of Conference '83 and the manner in which the financial aspects of that Conference were so ably completed, to Dick Kucey, Editor of the Journal, and lastly

but by no means least, to Chief Judge Andrew Hargan of the Provincial Court of New Brunswick, without whose cooperation it would not be possible for me to carry out the functions of this Office.

**THE TREASURER'S REPORT  
by Judge Douglas E. Rice**

I have the honor to submit herewith my eighth annual report as Treasurer of the Association. I place before you the statement of the general account of the Association for the fiscal year April 1, 1983 to March 31, 1984, and request that the same be adopted by motion made by me at the conclusion of this report at this annual meeting. I also submit the statement for the 1983 annual conference held at Yellowknife, Northwest Territories and made the same motion for the adoption of this financial statement. And finally the statement for the Sentencing Handbook account for the year ending March 31, 1984. All of these accounts have been audited and are presented for your pleasure.

During the year, and in addition to my duties in the supervision of the general account of the Association, I have administered the accounts of the New Judges' Programme, the Western Provinces' Seminar and the Atlantic Provinces' Seminar, together with the Sentencing Handbook account and the account for the federally funded seminars re Young Offender's Legislation.

Several federally funded projects are still being maintained. The Institute for Juvenile Justice feasibility study has been completed, with the exception of the filing of the final report and the payment of some \$2,000.00 to the Association of the Department of Solicitor General for administration fees. The Young Offender's Act Legislation Seminars have been completed. All accounts have been paid and the outstanding funds returned to the Department of Justice and we simply await the departmental audit for the completion of this project.

The Sentencing Handbook Project continues. It was initially understood that the profit for the sale of the surplus handbooks would remain with the Association for the purpose of updating the handbook. Cost overruns on the project have made this impossible and the funds which were held for the sale of surplus books has been used to pay off the printer's costs overrun on the printing and publication of the French version. In addition to this, we had to get an additional grant of \$2,000.00 from the Department of Justice, which grant was obtained and all accounts have been paid to date. Since the account was cleared I



have been able to sell an additional quantity of the handbooks and the present balance in that account is some \$958.00.

By way of new projects, we have secured funding and entered into an agreement with the Department of Justice for consultations as between the Department and the Canadian Association of Provincial Court Judges, specifically the Committee on the Law, with regard to Criminal Code amendments. What may happen to this project in view of the change of Ministers in this Department remains to be seen, however, it is the intention of the incoming President and myself to attend in Ottawa to meet the new Minister at the earliest date that an appointment can be obtained and to discuss this project, together with other projects and funding relative to the Association.

A copy of the financial statement from April 1st, 1984 to date is attached. It is to be noted that the level of income for the present current year is generally the same as for the previous fiscal year with the exception that an additional grant of \$10,000.00 is available from the Government of Canada providing we can meet the matching grants requirement in the educational expenditure requirement as set forth in our agreement with the Government of Canada through the Department of Justice. You will note that up to the present time that receipts and expenditures are close together. However, an additional advance to Conference '84 will have to be made at this time in the sum of at least \$20,000.00, which will have to be drawn from the reserves of the

Association. At the same time an additional advance from the Government of Canada grant in the sum of \$20,000.00 has been applied for. When the balance of the grants and dues have been received from the Provinces and Provincial Associations, we shall have adequate funds to carry on the outstanding projects, taking into account an additional advance of \$20,000.00 against the Government of Canada grant, in addition to the \$20,000.00 now applied for and the expenditure of a similar amount in relation to the educational projects referred to in the report of the Executive Director.

The Executive Meeting of April, 1984 produced a budget with a deficit of some \$900.00, which might be considered by some to be a balanced budget. Restraint will have to be maintained if the Association is to keep its head above the fiscal waters, but I must honestly report that in virtually all cases, Committee Chairmen have cooperated in exercising restraint so that all of the budget allocations may not be required during the fiscal year.

Since the Conference held each year is the major demand upon Association funds together with the Education Committee, I would sincerely ask that future Conference Chairmen consider the need for restraints in the preparation of Conference budgets. We have seen classic examples in the past of what may be done with small dollars and large imaginations and I would hope that this trend would continue in the future.

duty by the knowledge they are on public display, accused persons photographed, not in the best light and shown this way to the public — and Jurors are no longer sequestered at night, so they could see TV excerpts of the trial they are sitting in and thus an accused person may be prejudiced in having a fair trial. There are so many possibilities for interference with the due and proper administration of justice that I find it difficult to see how it can work. Another area where real problems could arise would be in family matters, for example — Divorce. How could you televise such trial when the law forbids publishing evidence other than the names of the parties — and I just cannot see lawyers and clients agreeing to have such trials put on display to the public, where family dirty linen is being washed. They certainly would not want it televised, at least, that's my opinion.

I have one other brief comment, that is with regard to the Chief Justice's suggestion that there be a new openness in the court system and that judges talk to the media.

For myself, I just do not see what such interview between judge and media representative could be about. It certainly could not concern a case that is to come on for trial or a case in course of trial. A judge cannot have any opinion about such matter until it is concluded. If he were to express an opinion it may be considered as prejudice in favor of one side or another. Sufficient to cause a mistrial. After he has finished with a civil case, be it involving family law or otherwise, he gives a decision, oral or written, and that is the end of his connection with it. He has nothing further to say, and neither should he, in my opinion, for that matter may very well be under appeal almost immediately.

I have not dealt with the hearing of criminal trials by judge alone in the Provincial and District Courts, as I have no experience in that area, but I am aware that this has very likely been exhaustively already dealt with by you earlier this week. I leave that aspect of television in the courtroom to able counsel with much experience in all courts, Day, Q.C. and the Chairman Williams, Q.C. if the latter would like to enter into the discussion beyond acting as moderator.

**VIEWPOINT BY  
MR. SEAN FINLEY,  
Editor, The Evening Telegram,  
St. John's Newfoundland**

The fact news media spokespersons have come to judges and lawyers pleading to be allowed to use television cameras to cover the public courts is one indication of everything

that is wrong with the Canadian court system.

What we should be discussing is the ground rules for television cameras, still cameras and tape recorders in courtrooms, not whether they should be allowed.

The House of Commons has its ground rules; only the person speaking can be photographed or televised. We should be discussing whether we start there or start with rules more adequate than those.

The argument for greater media and public access to the public courts was put best by Madame Justice Janet Roland of the Ontario Supreme Court, in Regina and Robson 1983.

She said: "The essential quality of the criminal process in a democracy is the ABSENCE OF SECRECY. From the information to the acquittal or conviction, our judicial process is characterized by public access. The public has the right to be informed and the media HAS A DUTY TO ADVISE THE PUBLIC WHAT IS HAPPENING IN OUR COURTS. Openness prevents abuse of the judicial system and fosters public confidence in the fairness and integrity of our system of justice. The press is a positive influence in assuring a fair trial."

My newspaper, The Evening Telegram, has been criticized for publishing the names of those convicted for the first time for shoplifting and impaired driving. The most recent criticism was given to you by the mayor of St. John's.

In a nation where adults are presumed to be responsible for their own actions, there must also be the presumption that an appearance in a public court will result in an appearance in the public prints or on public airwaves.

Having your name published in the newspaper or broadcast as being convicted of a criminal offence does have consequences beyond the legal consequences of the conviction.

I, too, can tell heart-wrenching tales of the consequences of conviction.

But I am not going to take responsibility for those consequences. After all, these people who are convicted are responsible for their actions — all the consequences. Part of the responsibility is being on the public record; of knowing that your actions and their consequences are available to any member of the public at any time.

It has been suggested several times to me and I am sure to other editors and news directors that the media show some sense of responsibility and not print all the names. It has been suggested that there be legislation allowing courts to order that names not be printed, or legislation flatly saying that names

**STATEMENT OF RECEIPTS AND EXPENDITURES**

**April 1, 1984 to Sept. 17, 1984**

<b>RECEIPTS:</b>	<b>BUDGETED</b>	<b>RECEIVED</b>	<b>BALANCE</b>
Grants:			
Government of Canada.....	70,000.00	20,000.00	50,000.00
Provincial/Territorial.....	35,000.00	22,500.00	12,500.00
Dues.....	27,000.00	18,100.00	8,900.00
Miscellaneous.....	2,000.00	1,349.78	650.22
	\$134,000.00	\$61,949.78	\$72,050.22
<b>EXPENDITURES:</b>	<b>BUDGETED</b>	<b>EXPENDED</b>	<b>BALANCE</b>
Executive Meetings.....	13,000.00	12,142.97	857.03
Pres. Pres-elect, Off. & Travel.....	6,500.00	1,627.21	4,872.79
Ex. Dir., Off., Travel & Exp.....	7,800.00	4,285.93	3,514.07
Conference '84.....	45,000.00	24,140.29	20,859.71
Membership Development.....	250.00	NIL	250.00
Audit.....	1,000.00	860.00	140.00
Miscellaneous.....	250.00	NIL	250.00
Education Committee.....	38,000.00	15,859.08	22,140.92
Committee on the Law.....	1,000.00	NIL	1,000.00
Family Court Committee.....	5,000.00	1,395.63	3,604.37
Journal.....	12,000.00	1,303.14	10,696.86
Committee on Judicial Indep.....	3,500.00	1,369.23	2,130.77
Constitutional Review.....	100.00	NIL	100.00
Civil Court Committee.....	1,500.00	NIL	1,500.00
	\$134,900.00	\$62,983.48	\$71,916.52



# The Press, The Bench and The Bar

**EDITOR'S NOTE:** The theme of the Newfoundland Conference was "Publicity: The Soul of Justice". A particularly interesting panel, consisting of Mr. Sean Finley, Editor of The Evening Telegram, Ms. Kathryn Wright, National Reporter for the CBC, Mr. Justice Mahoney of the Newfoundland Court of Appeal, and Mr. David Day, Q.C., Barrister & Solicitor, presented their viewpoints respecting the interrelationship of the Press, The Bench and the Bar. Their viewpoints follow.

## VIEWPOINT BY MR. JUSTICE JOHN MAHONEY Court of Appeal, Province of Newfoundland

On August 28, 1984, Canada's Chief Justice, in an address to judges and lawyers at the Annual Convention of the Canadian Bar Association, called for a new openness in the Court system, suggesting that judges talk to the media and give consideration to allowing television cameras into TRIAL courtrooms.

He said television, too, may be a useful educational tool and added in an interview later that cameras could be permitted into the courtroom on an experimental basis, when judge, lawyers and clients agree. That all related to trial courtrooms.

I take it the scope of this discussion is not restricted to trial courtrooms, and for that reason, and because I am now a judge in the Newfoundland Court of Appeal, I should say a word or two about my thoughts on having television cameras in our Court of Appeal. My own opinion is that the television media people would not think of introducing TV into an appeal court setting. Who would look at it? The setting is just not conducive to audience interest. You have an odd number of judges, and I hope I am not misquoted, I didn't say a number of **odd judges**, who sit and listen to lawyers debate, briefly, matters of law, quoting other decided cases as precedents, giving case citations and referring to particular facts to bolster their cases — it would require the presence of an experienced lawyer to tell the reporters and the TV audience just what is going on. And, again, all documents, legal arguments and cited cases are filed in writing prior to the appeal being heard — so the audience for the TV cameras would not have that. I really think I have said enough on that subject. It would not be of sufficient public interest to warrant TV cameras in the Appeal

Court. I did spend six and one-half year sin our Supreme Court, Trial Division, as a trial judge and during that period I presided over a fair number of criminal trials, sitting with a jury in each case, both in St. John's and on circuit in various other parts of this Province, including Goose Bay, Labrador and Wabush. In addition, I presided alone at many civil trials and at family matters also, and in addition, sat in the Unified Family Court from time to time. This included divorce hearings, child custody cases and applications to divide matrimonial property. But before giving my views on TV and the trial courts, let me read an excerpt from an editorial which appeared in the Globe and Mail of September 3, 1984, in relation to Chief Justice Dickson's address to the Canadian Bar.

"Today's television camera need be no more intrusive than the sketchpad and crayons to which television is now limited. Still, there would be little point in modernizing the courtroom by replacing one form of intimidation by another, and it would be wise not to rush into televised court proceedings without carefully monitoring the effect it is having on witnesses, juries, lawyers, judges and the accused.

"The presence of television cameras at the Royal Commission enquiring into baby deaths at Toronto's Hospital for Sick Children certainly brought real, live drama into the living room — along with a most uneasy feeling that it was imposing a near — intolerable emotional burden on witnesses.

Granted, this had a good deal to do with the highly unusual form of the inquiry, the sensitivity of its subject matter and the nature of the questioning that was permitted. Still, in giving new relevance to our legal system we must be careful not to inflict injury on it."

That really covers much of what I can say. It is anticipated as suggested by the Chief Justice, that TV cameras be introduced on an experimental basis, but then only when judge, lawyers and client agree. My own feeling is that the interference with the administration of justice would come from, not the physical presence of the TV equipment, but the knowledge that the proceedings are being televised, or we could have budding judicial actors, lawyers hamming it up before the public in the hope of advancing their professional success, witnesses cowering and afraid at the publicity; jurors being distracted from their

## In Brief



### ST. JOHN'S HOSTS SUCCESSFUL CONFERENCE

The 12th Annual Meeting of the Canadian Association of Provincial Court Judges held in St. John's in September was a great success. Well attended by more than one hundred provincially appointed judges, and approximately sixty spouses, it was a fitting place to reminisce about the beginnings of the association, for it all started in St. John's in 1973.

Under the chairmanship of Judge Gordon Seabright, assisted by members of the Newfoundland Provincial Court Bench, the conference offered a well balanced educational program, an excellent social program, and an ample opportunity to explore a beautiful and historic city.

The theme of the conference was "Publicity: The Soul of Justice".

One popular panel, "The Press, The Bench and The Bar" had the panelists present interesting views on the role of the press in the courtroom. The viewpoints of the panelists appear elsewhere in this issue.

A most informative and well-researched paper entitled, "Courts, Cameras and Fair Trials: Confrontation or Collaboration?" was presented by Professor Wayne MacKay of Dalhousie Law Faculty, and will be reproduced in the next issue of the Journal.

A delightful reception at the Bally Haly Golf and Country Club was hosted by the Treasurer and Benchers of the Law Society of Newfoundland. The following night, Lieutenant Governor W. Anthony Padden and Mrs. Padden hosted a reception at Government House. "Newfoundland Nite" was a fun-filled event featuring good entertainment and a special Newfoundland meal consisting of Jigg's Dinner and Fish 'n Brewis. A mass "swearing in" ceremony followed, wherein all delegates and spouses were enrolled in "The Royal Order of Screechers".

The conference concluded with a Dinner hosted by the Premier and Government of Newfoundland at which the speaker was the Hon. A. Brian Peckford, Premier of Newfoundland and Labrador.

The alternate program included several bus tours, and luncheons at City Hall in St. John's and Mount Pearl.

It was a very successful conference and Judge Seabright and all who assisted him are to be commended for a job well done.

### APPOINTMENTS:

— Attorney General Penner of Manitoba, has announced the appointment of John F. Hinton, a retired police inspector, and Eric G. Cox, retired Commissioner of Corrections, both of Winnipeg, as Magistrates for Bail duties. Mr. Hinton's appointment takes effect January 1, 1985.

— Attorney General Roy McMurtry of Ontario, has announced the following appointments to the Provincial Court (Criminal Division).

William C. Babe, Q.C.

— to preside in Toronto in the Judicial District of York.

Ayres V. Coutts, Q.C.

— to preside in Toronto in the Judicial West of York.

Derek T. Hogg, Q.C.

— to preside in Toronto in the Judicial District of York.

### JUDGE CONROY NAMED LIFE MEMBER

At the annual meeting of the Association, Judge Robert N. Conroy of Saskatoon was elected an honorary life member of the Canadian Association of Provincial Court Judges.

Judge Conroy has been active in the Association since its inception in 1973 and has served on several committees, has been a member of the Executive Committee, and in 1982-83 served as President of the Association.

He has contributed much to the Association, and the Canadian Association of Provincial Court Judges looks forward to Judge Conroy's continuing contributions in the years ahead, and thanks him for all his work and personal sacrifices in the years past.

### PETER V. MacDONALD, Q.C., SOLICITS "TRUE LIFE" HUMOUROUS LEGAL STORIES

Mr. MacDonald is hard at work on a book on Canadian Legal Humour . . . and he has a deadline of April 1, 1985. He is looking for as many true, humorous, legal anecdotes as he



can get, as well as any transcripts which may contain humorous material.

He writes as follows:

"Judges and lawyers love to tell each other true-life stories of the witty cracks of other judges and lawyers. A "folklore" has grown up around some of our best wags. Here in Ontario, there are countless stories about George Walsh, "Smiling Ed" Murphy, Arthur Maloney, Dave Humphreys, "Jake" Dunlap and many others of their ilk. Nova Scotia abounds with stories of the often-hilarious sayings of Magistrate A. B. MacGillivray. Albertans have tales galore about Paddy Nolan, K.C., the fastest wit in the west.

There's an almost inexhaustible supply of funny Canadian legal anecdotes. But, alas and alack, no one seems to be jotting them down for posterity. We have had, and probably will continue to have, many fine raconteurs in the Canadian legal world. But their tales are "oft interred with their bones."

Canadians are reputed to be a pretty dull and colourless lot. This is a bum rap, in my opinion, and my book should prove this beyond a reasonable doubt.

But the book won't see the light of day unless I get a lot of help from Bench and Bar — from the people who tell those wonderful stories among themselves but, unfortunately, don't let them fly very far afield. This is a great opportunity for us, working together, to share our stories with the world at large. God knows, we could **all** use a few laughs to lighten our load in "this vale of tears."

"I'm working on ways of making my "pitch" to as many Canadian Judges and lawyers as possible. I'm pleased to report that in the few months I've been at it I've received a lot of encouragement — and quite a few good stories — from judges and lawyers from coast to coast. I've spread the word to court-reporter associations across the country, and these wonderful people, who have so many hilarious stories (and transcripts) at their fingertips are responding with great enthusiasm.

The Canadian Bar Association has asked me to write a regular monthly column on this subject in *The National*. I have agreed to do this, and the column will start appearing in the fall. It should flush out many good yarns that might otherwise have gone unrecorded.

Busy as you are, I ask for your contributions. If you have true, humorous legal

anecdotes from anywhere in Canada (and who hasn't got **some?**), please take a bit of time and send them to me.

I'd also appreciate your passing the request on to others — the more the merrier. I request that contributors act as promptly as possible, while the spirit still moves them, for "the road to hell is paved with good intentions". They can write or they can tell their tales on tapes (cassettes can be transcribed and returned to sender).

I think it's important to tell you that no one gets hurt in this book. If, for example, I have an anecdote that shows the judge as a very witty man and a lawyer as a little slow on the uptake, the judge will be named (so that everyone will know how witty he is) and the lawyer will simply be called "a lawyer" or "counsel" or some-such. And vice versa. If the judge comes off second-best, the lawyer will be named (so that everyone will know how witty **he** is) and the judge will simply be "the judge". It's the fun that counts, not the box score.

This is a big project, no doubt about it, but it's long overdue and I'm willing to tackle it. If enough people chip in the results will be quite hilarious — and our profession will be the richer for it."

#### CHAIRMAN OF SENTENCING COMMISSION SPEAKS TO DELEGATES AT ST. JOHN'S CONFERENCE

Mr. Justice William R. Sinclair, Chairman of the Commission of Inquiry with respect to Sentencing, outlined the terms of reference of the Commission and advised that its report is to be submitted to the Governor-in-Council by May 9, 1986.

Young Offenders legislation is not within the terms of reference of the Commission. The Commission will be looking to setting out the principles of sentencing in the Criminal Code. The role of the Court of Appeal in terms of sentencing appeals will be examined.

Mr. Justice Sinclair advised that the Commission would be requiring accurate information regarding sentences of judges within each province and throughout Canada, not for the purpose of suggesting uniformity in sentencing, but as a helpful source of information in considering sentencing guidelines.

Also to be considered would be the *Parole Act*, *The Penitentiaries Act* and related statutes.

In a letter dated September 6, 1984, to each judge in Canada, Mr. Justice Sinclair wrote:

"In due course we will be inviting submissions, and public hearings will be held. It goes without saying that we need and will welcome the views of the judiciary in matters which are to be considered by the commission. My purpose in writing is to ask for any suggestions you might care to make as to how such views might best be obtained."

Readers are reminded that the Commission has an office in Ottawa at  
8th Floor West  
C. D. Howe Building  
240 Sparks Street  
The telephone number is (613) 996-2059

#### POET'S CORNER

**(Editor's Note — The Judge who penned this is somewhat shy and asked that he not be identified at this time).**

I had a claim once, an interesting claim  
A lady had a chair redone and thought  
the job a shame.  
So she filed her suit in Small Claims Court  
And it fell to me to hear  
I listened most judicially by giving each an ear.

Both quoted witnesses they never thought to bring  
Anyway, it was "good hearsay" and I wrestled with the thing,

The evidence was over, time them to deliver  
They sat in their places with expectant faces  
My chosen thought like arrow shot  
From a learned legal quiver.  
Sale of goods and labor, mutual mistake and all  
Rattle and boom around the room and bounce off down the hall.

Three hundred years of precedent, dusty but wonderful cases  
Came to aid the decision being made,  
You should have seen their faces.

There were principles and phrases so basic to our trade,

And yards of Latin maxims with good translation made,  
Their yawning finally tipped me off,  
I start to wind down

By repeating the primary reasons and a few other thoughts just found.

Finally it was finished,  
I paused for dramatic cough,  
It was just as well, my ear could tell  
That my alarm just went off.



"O.K. I'll be back to pick you up in 25 years.  
What time?"