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PROVINCIAL COURT JUDGES

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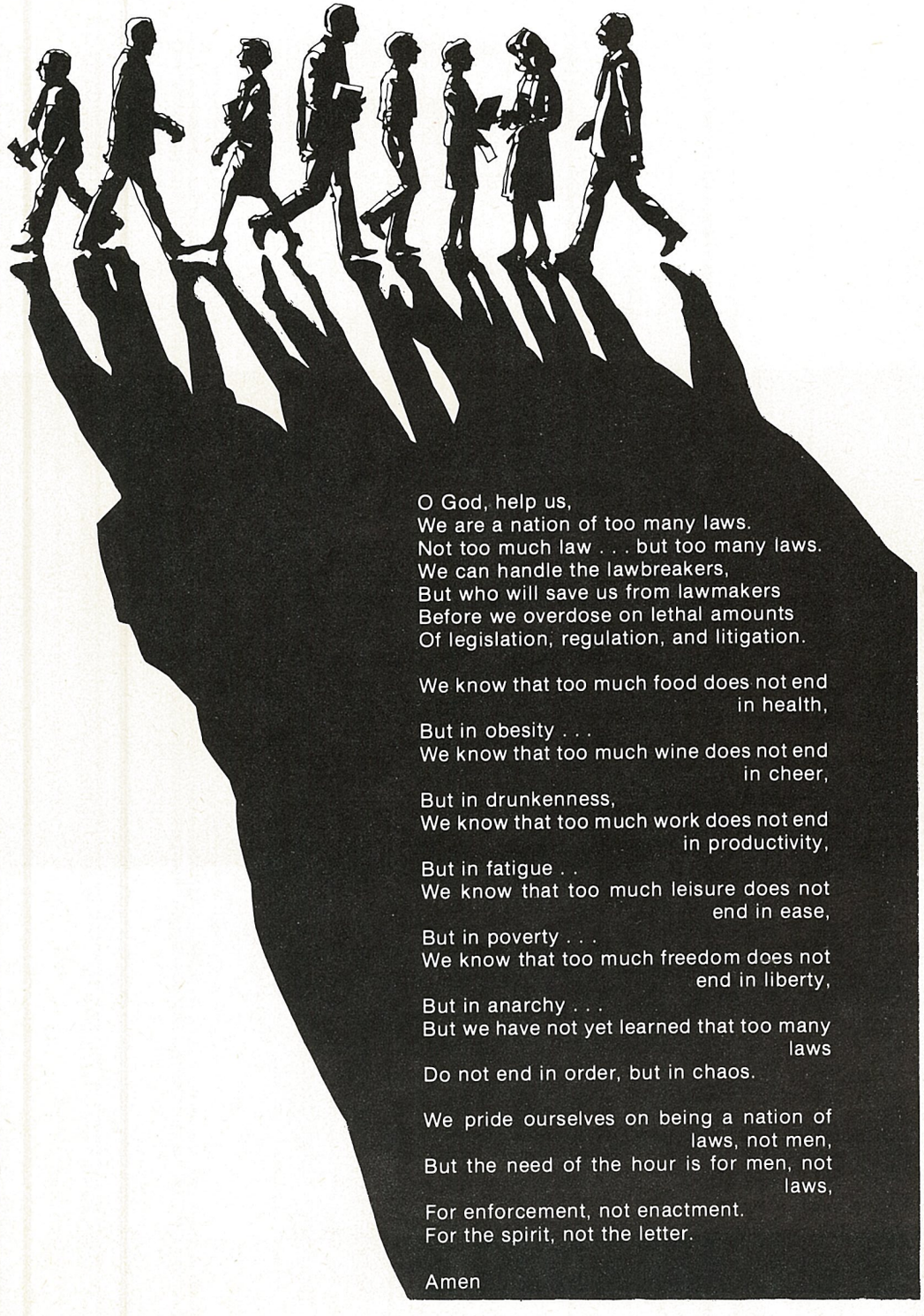
AN ORIGINAL PRAYER

At the Saskatoon Annual Meeting, Judge E. C. Diehl delivered a preamble to the mealtime grace, which is reproduced here, courtesy the Christian Legal Society Quarterly.



O God, help us,
We are a nation of too many laws.
Not too much law . . . but too many laws.
We can handle the lawbreakers,
But who will save us from lawmakers
Before we overdose on lethal amounts
Of legislation, regulation, and litigation.

We know that too much food does not end in health,
But in obesity . . .
We know that too much wine does not end in cheer,
But in drunkenness,
We know that too much work does not end in productivity,
But in fatigue . .
We know that too much leisure does not end in ease,
But in poverty . . .
We know that too much freedom does not end in liberty,
But in anarchy . . .
But we have not yet learned that too many laws
Do not end in order, but in chaos.

We pride ourselves on being a nation of laws, not men,
But the need of the hour is for men, not laws,
For enforcement, not enactment.
For the spirit, not the letter.

Amen

Other Views

DOES KINDNESS CURE CRIME?

by Frank M. Bastin

Last year a great deal of publicity was given to the trial of a young man on a charge of conspiring to traffic in narcotic drugs. At the trial many days were spent giving the jury the tape recordings of numerous telephone conversations obtained by tapping the accused's telephone. He was found guilty by the jury and this verdict was confirmed by the Manitoba Court of Appeal which held that there was nothing improper in the conduct of the trial and that on the evidence a jury properly instructed was justified in the verdict of guilty. I did not follow the case so I know nothing of the facts but I consider I am entitled to assume that this young man conspired in some aspect of the drug traffic such as financing, procuring, importing or distributing a narcotic drug.

I am sure his trial and conviction has taught this young man one thing and that is not to conduct this type of business on the telephone. Whether in the short period since his conviction he has learned to accept the verdict of society on the drug trade is more doubtful. That verdict is that trafficking in drugs is in some respects worse that murder in that for the sake of money the trafficker contributes not only to the destruction of a man's body but also of his mind and character.

A short time later - I believe I saw this young man in the cafeteria of the University of Winnipeg which indicates to me that he had been granted day parole from the penitentiary to attend a course at the University. It is impossible to believe that in the short period since his conviction there is evidence that he has undergone a sincere reformation. The alternative conclusion is that his release is routine practice unrelated to his attitude. In my opinion such a course makes a mockery of our whole system of law enforcement.

Those charged with fighting the drug trade must have spent hundreds of man-hours and thousands of dollars accumulating the evidence to secure a conviction.

This evidence was presented to the judge and jury at the assize court over a period of many weeks and then transcribed and laid before the learned judges of the Manitoba Court of Appeal who carefully considered the fairness of the trial and the suitability of the penalty. Apparently the purpose of all these proceedings was to deceive the public into believing that our laws were being enforced by an efficient police and a competent judiciary. This charade may fool the public but you can be certain that criminals know the score.

We have permitted a duplicate system to develop in our criminal law administration. Parliament has enacted a code of offences with appropriate penalities, based on the assumption that punishment is a deterrent, we have established an efficient police force and a carefully selected judiciary ostensibly to maintain law and order by detecting crime and imposing penalties designed to discourage law breaking. But behind this facade and hidden from the public is this agency, the parole board, which controls the treatment of convicted persons and applies an entirely different philosophy. An important part of our laws has been changed without any debate in Parliament or any public dialogue in which those who have brought about such change must justify their opinions.

I have the greatest doubt that a few kind words from a well-intentioned parole officer can change the attitutde of a hardened habitual criminal. But I am sure that those who share my views are quite willing to be convinced if we have facts and figures to prove that we are wrong. But the issue should not be allowed to go by default. If statistics show that these well-intentioned theories are not working this attempt to cure crime by kindness should be abandoned.

(The Hon. Mr. Bastin, retired, is a former Justice of the Court of Queen's Bench of Manitoba.)

Editorial

by Judge Rodney Mykle

This issue of the Journal is devoted to a review of the work of the Canadian Association of Provincial Court Judges over the last year.

The presence of the Association is noticed most often at the times of the Annual Meeting, and at the seminars and conferences which the Association sponsors. However, the wide-ranging interests of the C.A.P.C.J. are on-going and active in such diverse fields as the review of the Criminal Code, sponsorship of the Sentencing Handbook project, proposals for a Juvenile Justice Institute and an Institute for Continuing Judicial Education, and investigation into new organizational models for Canadian court structure, to say nothing of the continuing activities of the Education committee and the Journal.

With a view to giving members an annual overview of the various activites of the Association, in this issue the Journal is publishing the year-end reports of many of the C.A.P.C.J. committees, including that of the Family and Juvenile Court, Committees on the Constitution and the Law, the Education Committee, the Court Structure Committee and, for those with an eye to the balance sheet, the Financial Statement of the Association for the fiscal year 1981-82.

The work of the Association, therefore, is set out concisely in the next few pages, in the hopes of informing all members of the directions the Association has been taking, and giving some indication of where we are going in the future.

Now comes the next step. Each province and territory has a provincial representative to the Executive Committee of the Association, to carry your views to the national body. If you have any comments, suggestions or complaints about what you have learned about the Association, contact the representative about your concerns. They will be passed on.

In any widespread organization such as ours, the easy task is to get information **to** the membership. The more significant challenge - and the more important - is to get information **from** the membership. In this area, your provincial representative be of vital assistance.

Dates to Remember

July 26-29, 1983	C.A.P.C.J. Annual Meeting	Explorer Hotel, Yellowknife, N.W.T.
Sept. 24-28, 1984	C.A.P.C.J. Annual Meeting	Hotel Newfoundland St. John's, Nfld.
Sept. 24-28, 1985	C.A.P.C.J. Annual Meeting	Hotel Fort Garry Winnipeg, Man.
July 15-19, 1986	C.A.P.C.J. Annual Meeting	Algonquin Hotel St. Andrews by the Sea, N.B.

President's Page

by Judge Robert Conroy

I was greatly honored to become President of the association at the general meeting in Saskatoon in September. The year promises to be busy and interesting; however it is easy to look a few months ahead and realize that these responsibilities will soon end and I will stand the risk of falling prey to the "past-presidents' syndrome" of comparative idleness. That clearly points out how much of the credit for the success of our efforts and programs must go to those who toil year after year on various committees or who have accepted responsibilities of a long term nature, such as our Executive Director Doug Rice, and the Journal editor Rod Mykle. Remember that no one receives any pay for their efforts, and all carry their full judicial workloads as well!

Since the Saskatoon conference I have had the privilege of attending the annual meetings of the provincial associations of Nova Scotia in Digby, Newfoundland at St. Johns, Le Conference des Juges in Quebec City, and British Columbia in Vancouver. I also was able to attend much of the New Judges program in Ottawa for the first time, and will have attended the annual meeting of the Manitoba association before this goes to print. I was impressed by the quality of the programs everywhere I went, and I do wish to express publicly my deep appreciation for the hospitality shown to me everywhere by those who hosted me; their friendship and the warmth of the welcome more than makes up for the many hours spent in airport waiting rooms, taxis and buses, the carrying of suitcases and adjusting to time changes.

We were saddened to learn of the death of Nathan Green, a fine gentleman as well as Chief Judge of the Provincial Court of Nova Scotia, and with whom I had the privilege of fellowship only a few days before his passing. We have extended, and continue to express our sympathy to his gracious wife and family.

The next meeting of the Executive of our Association takes place in Ottawa in January. Please help to assure that your provincial representatives are able to echo your views and your interests when they come by communicating your thoughts to them in advance — and do plan to attend the next Annual Meeting, to be hosted by Chief Judge Jim Slaven in Yellowknife next July 26th to 29th for what for many will be a once-in-a-lifetime opportunity to Canada's north.

This is a challenging new era for the Judges of Canada. The Provincial Courts are in the front line of the battle to interpret and apply the Charter of Rights — an arena into which we have been thrust unwillingly but forcefully. We have been entrusted with responsibilities never before allocated to the judicial systems in this country, and with that responsibility there comes as well an opportunity to influence the whole direction the future of our nation will take. I must say that I personally was gratified that the supremacy of God was eventually included as a preface to the Charter. I pray that every Judge of this country, in whatever Court he presides, may have the humility of heart to seek the assistance He promises to give to those who seek it, and that you might join with me in praying daily that God will grant us the wisdom, discernment, compassion and courage required to enable us to discharge our responsibilities in a manner that will recognize His supremacy as the Charter does.

Institute could provide limited training to practitioners, judges, etc. and assist with other programs.

9. A Role In Bringing Down Barriers

There are often societal tendencies which isolate disciplines. This tends to alienate human beings from themselves and from their fellows. What is quantifiable is retained and what is not thoroughly understood is rejected. A centre for juvenile studies would favour a better understanding of the concept of "delinquent" behaviour. The new **Young Offenders Act** will place more responsibility on youths for their actions. However, understanding the causes of his actions may require extensive study.

10. Consultation and Technical Assistance

The Institute could, through its staff and associates, assemble teams which would offer assistance in planning, evaluation, and policy decisions to local, provincial or federal organizations. Candidates for assistance could include individual courts, ministries of social services or corrrection, membership organizations, etc.

11. Membership Organization Support

For example support could be given to the Juvenile Court Judges Committee of the Canadian Association of Provincial Court Judges. A portion of Institute resources could be set aside for bolstering the activities of this committee. Services could include acvice around organizational issues, production of a comittee newsletter, "law clerk" services to judge-members around difficult cases, staff functions for sub-committees, a central directory, etc.

7. POSSIBLE ORGANIZATIONAL AND FINANCIAL STRUCTURE OF A CANADIAN JUVENILE JUSTICE INSTITUTE

There are numerous possible organizational structures that could be used to set up a Canadian Juvenile Justice Institute.

We would suggest the following as a relatively simple and sufficiently effective structure.

Status: Private, non-profit corporation with federal letters patent. Its ultimate fiscal and program responsibility would rest exclusively on its Board of Directors and should not be affected by changes in Government or its policies.

Board of Directors: 13 members chosen as follows:

Not less than 3 judges from juvenile and family courts.

Not less than 3 juvenile justice experts (from the human sciences, medicine, law, etc.).

Not less that 2 representatives from the legislative and/or executive branch of government.

The remaining five may be from any source but regional representation should be considered and the participation of young people and other citizens-at-large should be encouraged.

Such a board could give both substantive direction to the Institute and help in assuring its viability in terms of funding and an audience for its products.

Staff: Director
Legal Analyst
Social Researcher
Communications Specialist
Clerical Support Staff (1 or 2)

Some of these positions could be on a part-time basis at the beginning and could be provided by already existing agencies or organizations are already established in Association of Provincial Court Judges, etc.

Headquarters: The Institute should be situated in a city where other related orgnizations are already extablished in order to facilitate cooperation and reciprocal assistance.

The Institute could initially be affiliated with an existing organization in order to facilitate:

a) creating the first Board
b) setting up office facilities
c) preparing initial budget
d) assisting in the formulation of the Institute's initial thrust in programs
e)lending credibility

Ultimately, the Institute must be absolutely distinct and separate from governmental or self-interested control.

Budget: The Institute could be financed through subsidies and grants from foundations, individuals, members, etc. Funding from governmental sources such as the Social Sciences and Humanities Research Council should also be sought as long as it does not jeopardize the independence of the Institute.

It is estimated that the cost of setting up the Institute would be in the $25,000 to $30,000 range and that the operational cost would be approximately $250,000 to $300,000 per year for the first three years.

and exchange of information within this system, and on the other hand, the existence of a number of centres and institutes providing such a network in Europe and the United States, we believe that there could be a place for a Canadian Juvenile Justice Institute.

Such an Institute must not attempt to replace or duplicate the services already provided by existing organizations. Rather, it should act as a service to these organizations. It must be a centrally located point where major issues in juvenile justice could be addressed to a formal consortium of professionals with a broad knowledge in the various fields involved in juvenile justice. This body could, amongst other functions, undertake to stimulate, facilitate and coordinate major juvenile justice and youth services research.

6. THE ROLE OF A CANADIAN JUVENILE JUSTICE INSTITUTE

The following are some possible roles that could be played by the Institute. It is not an exhaustive list and is not set in any order of priority. After consultations with the different organizations involved in setting up the institute, the directors and staff would decide which of these functions, and any others, should be undertaken by the institute and the priority they should by given.

POSSIBLE ROLES:

1. **Improving The Juvenile Court System**

To examine the nature of and to implement the development and improvement of juvenile courts and the laws and services pertaining thereto, encouraging the progressive administration of juvenile justice and all of its components by training, research, and the dissemination of pertinent data.

The passage of the **Young Offenders Act** is a most opportune time to embark on a number of projects to improve the juvenile court system.

a) An education and training program on the new legislation for judges and other professionals who will be involved with the legislation.
b) A project, with the participation of judges, to develop rules of procedure.
c) A project to develop standards for the creation of diversion programs.
d) A project to develop standards and possibly a form of accreditation for service agencies.

2. Consultation And Information

The Institute could act as a body which could stay abreast of current developments in juvenile justice research and develop mechanisms assuring that research findings were made available to practitioners and policymakers. It could further act as a liaison between researchers and practitioners to facilitate research and ensure that its results are useful and available to the practitioners.

3. Dissemination Of Information

To disseminate to judges, court personnel and other disciplines, by any feasible means, the knowledge and information acquired by the institute through its various activities.

4. Basic And Applied Research

The institute could instigate and facilitate the juvenile justice system and juvenile delinquency research which addresses major questions such as: efficacy of treatment approaches, deinstitutionalization, service delivery models, due process safeguards, security and privacy, court management systems, etc. Obviously such a list could go on and on.

5. Public Awareness Activities

The Institute could provide a link between government and private organizations and the public. Through the production of media materials, speakers, press releases, the Institute could help in public education activities addressing the problems of delinquency, pending legislation, innovative program strategies, etc.

6. A Role In The Examination Of Diverse Legislation

The centre could review the laws affecting the lives of youths. Comparative studies of differences in application of these laws under the policies and practices underlying their implementation could assist in understanding and improving the juvenile justice system.

7. A Role As Initiator In Exchanges And Interdisciplinary Education

The Institute could assist in organizing exchanges amongst professionals concerned with the problems of the young. Bringing together professionals from diverse disciplines might well facilitate a better understanding of the juvenile justice system.

It could also facilitate the participation of professionals from different disciplines in their respective educational and training programs.

8. Training

To the extent that other activities could produce meaningful training programs, the

COMMITTEE REPORTS

REPORT OF THE COMMITTEE ON COURT STRUCTURE

by Judge C. E. Perkins

The author is a judge of the Provincial Court of Ontario in Chatham, and is presently the Education Chairman of the C.A.P.C.J.

The virtues of patience and perseverance coupled with the philosophy of the power of positive thinking must be the guidelines of the committee on court structure.

Since the annual meeting last year when we had the feeling that the federally appointed judges were mounting an attack on our proposal we believe that we have now seen the result of the study by Chief Justice Mc Eachren and his committee reflected in the article by J.J. Barkwell in the June edition of the 'National'. This article is basically supportive of our proposal for concurrent jurisdiction so that all criminal matters, save murder and treason, could be processed in one court with the attendant saving of time and money.

This committee believes that certain comments in the article are erroneous and merit a response to clarify them together with an expression of gratitide for the basic support given our proposal and the Committee is submitting such an article for publication in the 'National'.

Following our annual convention last year I met with Mr. Edward L. Greenspan, Q.C., a prominent criminal defence counsel and the nominee of the Ontario Association to the Ontario Provincial Courts Committee. At that meeting he offered to represent the Canadian Association as an amicus curiae intervenor supporting the application of the Province of New Brunswick for constitutional approval by the Supreme Court of Canada of their desire to set up a unified criminal court. He very graciously agreed to do this without fee and your executive on the recommendation of this committee accepted his offer and undertook to be responsible for his disbursements. Mr Greenspan has been supplied with copies of a great deal of material and he is preparing his presentation in consultation with counsel for the Province of New Brunswick.

It is expected that the matter will be heard in Ottawa in the fall session of the Court.

The committee is committed to the success of this major project of our association -- it is more that involved. It has been said that to understand the difference one should think of bacon and eggs, the hen is involved, the pig is committed.

We feel that the committee has had a successful year and that a break through is imminent.

CONVENTION 1984

by Judge Gordon W. Seabright

The author is Provincial Representative to the C.A.P.C.J. for Newfoundland.

The Annual Convention for the Canadian Association of Provincial Court Judges will be held in St. John's, Newfoundland, on September 24 to September 28 inclusive. In this regard, 170 rooms have been reserved at the new Hotel Newfoundland for delegates, members and their wives.

Our initial discussions for the setting up of the Convention with Government and others look very encouraging. In this regard, the Executive Director, His Honour Judge Doug Rice, will be visiting our province this fall. The purpose of this visit will be to look over the preliminary plans for the Convention, as well as setting up the administrative structure and budgeting to put in place.

It should be pointed out that this will be our eleventh Convention. It is the hope of your planning committee that each association will encourage the original delegates to return either as a delegate or at their own expense.

We are not advertising our Convention now as we do not wish to be in competition with our brother Slaven who will host next years' annual meeting.

It should be pointed out that a full Ladies as well as Judges social programme is being planned which will reflect Newfoundlandia.

THE COMMITTEE ON THE CONSTITUITON

by Judge C. E. Perkins

The author is a judge of the provincial Court of Ontario in Chatham, and is presently the Education Chairman of the C.A.P.C.J. The draft report attached to his original report, although too lengthy for publication here, may be obtained from the provincial representative.

This Canadian Association of Provincial Court Judges must soon come to grips with an organizational problem which has arisen because of the dominance of our criminal jurisdictilon over the family and civil jurisdiciton. This has given rise to a federation of associations essentially representing criminal court judges.

It is my view that we should strive to give each jurisdictional division an equal voice in the business of this association and an equal amount of concern for continuing judicial education for each of the jurisdictions.

The alternative is to cut the family and civil jurisdictions loose and rename the association as the Canadian Asseociation of Provincial Criminal Court Judges.

During the year your committee made two attempts to revise the constitution to accommodate all of the judisdictions and at the same time recognizing the problems of numbers and cost of a large executive body.

It was felt that this was not an opportune time to introduce an amended constitution, but a good time to introduce the proposals to the provincial associations and to seek their support.

I do not wish to outline all of the ramifications of the basic problem, however we must convince all of our judges that if the Provincial Court is to have any voice in Ottawa it must be through a strong Canadian Association and an association that represents all of the Provincial Judges in Canada.

Attached to this report is a copy of the draft made by this committee. I trust that you wil give sympathetic consideration to the problem and be ready to deal with it in 1983.

FAMILY AND JUVENILE COURT REPORT

by Judge Guy Goulard

The author is the chairman of the Committee on Family and Juvenile Courts for the C.A.P.C.J.

I am pleased and honoured to present the Annual Report of the Juvenile and Family Court Judges Committee of our Association.

I wish to express my sincere appreciation to the members of the committee and to the Chief Judges of all the provinces who have permitted participation of judges from their benches.

The main event of this year has been the passing of the **Young Offenders Act**.

Shortly after the bill was passed, our committee requested financial assistance from the Department of Justice of Canada to enable us to organize educational programs for the Juvenile Court Judges on the new act. A contract has been entered between our Association and Department of Justice whereby a sum of $60,500. will be given to the Association to organize educational programs. What is planned, is to have one central seminar to be held in Ottawa on January 20-22, 1983, where judges will be brought in from all the provinces to a two and a half day conference on the new act. The grants received will cover all expenses for this central seminar. Thereafter, provincial seminars will be organized and the funds received will pay for the room and board of all judges attending. It will be required that the provinces pay the cost of transportation to these seminars. It appears now that the proclamation date will not be before October 1, 1983. This should give us ample time to be adequately prepared before the law becomes effective.

At the last Annual Meeting, I had indicated that our committee had prepared a proposal to do a feasibility study on the creation of a Canadian Juvenile Justice Institute. Funds for this study were granted and the study has continued since September of 1981. A draft report has been prepared and discussed at our committee meeting this week. This draft report has been forwarded to approximately seventy-five persons across the country involved in different aspects of criminal justice and approximately one third of them have so far returned their comments on the proposal. (*Ed. Note: see p. 27 of this issue.*)

A final report will be submitted to the Ministry of the Solicitor General in

completely by government, whereas others must rely on a wide range of financial assistance such as: fees for service; membership; sales from publications and other material; and grants from foundations, corporations and other sources.

The study of these seven institutes and centres provides a broad sample of the possible alternative structures and models which a Canadian Juvenile Justice Institute could adopt.

Before considering which model could be adopted in Canada, it is essential to analyze the complexities of the Canadian juvenile justice system.

4. THE CANADIAN SCENE — ITS COMPLEXITIES

The Canadian juvenile justice system is extremely difficult to describe. The persons it is meant to serve are described differently in terms of age and need, in the different legislation and programs designed to deal with them. To find a common denominator is virtually impossible.

In compiling a list of services our aim was not to produce an exhaustive catalogue of every existing service within the Canadian juvenile justice system, but rather to provide a somewhat representative, if not comprehensive, listing of the major services within the system. This will provide a basis for considerations and discussions concerning the possible benefits of a Canadian Juvenile Justice Institute.

For the purpose of creating a framework for describing and discussing, the services have been divided into four categories:

1) Provincial Level services;
2) National level services;
3) Training and Educational Centres; and
4) Research Centres.

The services in each of these four categories are described in Appendix C to F respectively. To draw a conceptual picture of the Canadian juvenile justice system and its numerous elements is extremely difficult. The system is so fragmented, if not chaotic, that it appears practically impossible to bring the pieces together in one picture. Nevertheless, by starting with a focal point and extending therefrom, we will attempt to put forward a cohesive picture.

A logical focal point of the juvenile justice system is the court, where many issues of juvenile justice are resolved. Juvenile courts in Canada differ substantially from province to province. In some provinces, juvenile matters are heard in provincial courts, where it is still possible to find judges who are not legally trained (although this is now the rare exception). In other provinces, juvenile trials are heard in the Supreme Courts which is a growing trend with the recent advent of the unification of courts and the creation of Unified Family Courts. Studies on the comparative values of different tribunals as juvenile courts have never been undertaken. In some provinces, the juvenile court is administered by the Ministry of the Attorney General whereas in others, it is by the Ministry of Social Services. Hundreds of Statutes and Regulations exist under which a child can be brought before the courts (See Appendix G). A comparative analysis of these statutes might be beneficial.

The juvenile courts are used to prosecute and protect the child and the dichotomy between these two aims is often unclear, especially in the mind of the child and his parents. Even when prosecuted for an offence (which in some cases would not be an offence were the accused not a child) the child is involved in a process where the emphasis changes from prosecution to protection and assistance. The child is often uncertain why he is being "helped" and what he is being "protected" from.

Complicated mechanisms and procedures have been created and diversionary steps have been superimposed at different stages of the process. It has never been clearly explained why diversionary mechanisms were created rather than attempting to improve the system that the child is being diverted from.

The **Young Offenders Act** which, when proclaimed, will replace the **Juvenile Delinquents Act** and bring forward new principles to juvenile courts with renewed emphasis on the child's responsiblity for his acts. Diversionary procedures will be encouraged. To insure some degree of uniformity in the application of this new legislation, it would be beneficial to develop standard Rules of Procedures which would include the diversion stage of the process.

5. IS THERE A PLACE FOR A CANADIAN JUVENILE JUSTICE INSTITUTE?

Having considered, on the one hand, the complexity of the Canadian juvenile justice system and more specifically the lack of a network for the communication

If a Canadian Centre for such studies were developed, it obviously has to provide a real and worthwhile service not duplicating that which is already fully available to the Canadian public. Such a Centre, if deemed desirable, should be designed to primarily serve the interests of the youth of Canada as directly as possible and not to serve the interests of any particular group. Obviously, for example, jucicial education is of unmost imlportance. A Centre created, however, primarily to educate the judiciary, would not serve the general interest of youngsters in the manner conceptualized by the framers of this study. Police statistics as another example, may be framed for police use. Therefore, statistics should be developed from many sources.

Court caseloads and statistics may also be framed with a particular purpose in mind and must, therefore, be used with caution.

The focus of individual groups and people is often too narrow to provide the kind of accurate data and information exchange required to develop a reliable decision-making base.

It is in this spirit then that the issues relating to the creation of a Canadian Juvenile Justice Institute are considered and evaluated.

In our opinion, it is very important to ensure that, if created, such a centre be:

1. Multi-disciplined in its approach.
2. Free of the direct control of any Government or interest group.
3. Basically serves the interest of children and youths in both the Young Offender and Child Welfare contexts and not primarily the interests of any one group over another.

Such a centre amongst other things might:

1. Discover what information already exists in the field.
2. Collect and critically evaluate such information.
3. Create independent research where it feels such research is necessary.
4. Disseminate such information to the public.
5. Answer directly the private enquiry of any citizen or Government.
6. Educate interested disciplines in any of the fields relating to its subject.

One must emphasize again that such a centre must maintain a totally non-political stance. It should not involve itself in lobbying Government or affiliating itself with any group or organization whose interests would prevent it from freely carrying out its objectives.

A description of a number of international and Canadian organizations in this area was undertaken for the purpose of determining whether there indeed was a viable need to create a Canadian centre for juvenile justice studies. We asked ourselves the following questions:

1. Is there a place for such a centre?
2. What should its role be?
3. How should it be organized to function?

If the report concludes that there is a place for a Canadian Juvenile Justice Institute, it will propose possible objectives and purposes as well as operational and financial structures.

3. INTERNATIONAL CENTRES AND INSTITUTES

Seven of the most important and renowned institutes have been studied and an extensive description of their objectives, programs, services, operational structures and financial resources is proviced in Appendix B.

The following objectives seem common among most of these institutes:

(a) The improvement of services to juveniles.
(b) The administration and evaluation of juvenile programs.
(c) The dissemination of information.
(d) The training of professionals from all walks of life.
(e) The prevention of delinquency.
(f) Publication of various materials.
(g) Fundamental and applied research.
(h) Data processing.

The majority of the institutions studied concern themselves with several of these objectives.

The organizational structures of these institutes vary greatly from relatively simple private agencies with independent board of directors and modest budgets, to very imposing government run and financed centres wih multi-million dollar budgets and numerous divisions and committees.

The programs and services offered by these institutes vary in degree of sophistication and specialization, some concentrating on information gathering and dissemination, others on reasearch, while others cater mostly to the educational and training needs of those involved in the juvenile justice system.

The funding structures also show a wide diversity. Some institutes are funded

October. Our committee has assisted the Educational Committee in the preparation of the program for the newly appointed judges which is to be held in October in Ottawa. For a while, it appeared that the Family Court program might have to be cancelled for the lack of judges newly appointed to the Family Courts. It now appears that there will be at least ten judges participating in this program. It has been decided at the Annual Meeting of our committee this week that we recommend the following as Directors for the committee:

Chairman - Judge Guy Goulard of Ottawa
Secretary - Judge Douglas Campbell of Vancouver
Treasurer - Judge Basil Danchyshyn of Montreal.

TREASURER'S REPORT

by Judge Douglas E. Rice

Judge Rice, a Provincial Court Judge from St. Stephen's, N.B., is treasurer and executive director of the C.A.P.C.J.

I have the honor to submit herewith my sixth annual report as Treasurer of the Association. I place before you the audited statement of the general account of the Association for the fiscal year April 1, 1981 to March 31, 1982, 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 audited statement for the 1981 annual meeting held at Toronto, Ontario and make the same motion for the adoption of this financial statement.

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, the Atlantic Provinces' Seminar, the Institute for Juvenile Justice Feasability Study and the Sentencing Handbook account. I am now launching an account for federally funded seminars re Young Offenders Legislation. In addition, I have also maintained a payroll account for the Educational Secretariat.

It is to be noted that we have several federally funded projects on the go, for which we are responsible for the receipt and disbursement of funds. The feasability study for the Institute for Juvenile Justice is winding down, while the seminars on Young Offenders legislation is just starting up. The former is sponsored by the Department of Solicitor General, which is slow in meeting the accounts, and they presently owe the Association some $7,810.00, a situation I find most unsatisfactory. The latter seminars, as well as the French Video tape project are sponsored by the Department of Justice, who readily advance funds, in advance. The Sentencing Handbook Project will be continuing one for the Association, as the Handbook is sold, updated and revised. There now develops that there is to be no administration fee on Justice sponsored projects.

Income to the Association has remained static for the present fiscal year, in that grants and dues have remained the same as last year. The Executive Committee forcasted a $15,000.00 rise in income by way of grants for 1983-84, $10,000.00 federally and $5,000.00 provincially, but the current restraint programmes of governments may not permit.

The Association budgeted a $21,250.00 deficit of expenditures over income for the current fiscal year, to be made up from a surplus of $22,000.00 on hand at the beginning of the year. This was to allow committees to function in their normal manner and allow for inflation. My observation at this point, half way through the year, is that expenditures in virually all areas are indeed running ahead of a year ago. Thus a substantially reduced surplus is predicted at the end of the present fiscal year.

At the same time all are faced with greatly increased costs predicted for Convention '83 in Yellowknife. This has been considered by the Executive Committee, and every effort is being made to reduce expenses. Even so, some drastic steps may be necessary to keep the convention expenses within the limits of the funds available. In addition to this, Convention '84 is scheduled for Newfoundland, the cost of which will be greater, especially in travel.

All of this leads but to one conclusion, that income must be raised and expenditures must be reduced, if we are to survive financially.

CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES

STATEMENT OF RECEIPTS AND DISBURSEMENTS
GENERAL FUND
YEAR ENDED MARCH 31, 1982

RECEIPTS		
Grants -		
Federal Government		$ 60.000.00
Provincial and Territorial Governments		30.000.00
Association Member Dues		16,625,00
Miscellaneous Interest	$ 3,874.17	
Administrative Fees	400.00	4,274.17
Government of Canada (Special Projects)		
Sentencing Handbook	9,000.00	
Institute for Juvenile Justice	4,000.00	
French Video Project	1,500.00	14,500.00
		125,399.17
DISBURSEMENTS		
1981 Annual Meeting		19,863.09
1982 Annual Meeting		2,471.30
Executive Committee Meetings		14,106.03
Expenses, President		5,889.48
Expenses, President-elect		455.70
Expenses, Executive Director's Office		5,112.97
Education Committee		
Secretariat	4,071.55	
Programme Development	2,352.71	
Regional Seminars	8,346.03	
New Judges' Programme	17,585.94	
Speaker's Tours	1,000.00	
Small Claims Seminar	2,709.24	
Bilingual Seminar	1,246.42	37,311.89
Grant to Commonwealth Magistrates' Association		1,000.00
Association Journal		7,534.88
Committee on Court Structure		3,778.70
Committee on the Law		309.61
Family and Juvenile Courts		2,326.57
Membership Development		160.60
Professional services		475.00
Miscellaneous		250.00
Government of Canada (Special Projects)		
Sentencing Handbook	9,000.00	
INstitute for Juvenile Justice	12,029.07	
French Video Project	29.00	21,058.07
		122,103.89
EXCESS OF RECEIPTS OVER DISBURSEMENTS		3,295.28
CASH ON HAND April 1, 1981		28,645.12
CASH ON HAND March 31, 1982		$ 31,940.40
CASH ON HAND INCLUDES:		
Bank, current account		$ 3,940.40
13 1/2% term deposit receipt due April 21, 1982	$ 8,000.00	
13 1/2% term deposit receipt due April 23, 1982	5,000.00	
13 3/4/5 term deposit receipt due April 26, 1982	15,000.00	28,000.00
		$ 31,940.40

Approved by Executive Council

A Proposal for a Juvenile Justice Institute

These are excerpts from a report of the Family and Juvenile Committee of the C.A.P.C.J. which were circulated at the Annual Meeting in Saskatoon.

1. INTRODUCTION

In July 1980, representatives from the Juvenile and Family Court Judges Committee of the Canadian Association of Provincial Court Judges met with representatives from the Ministry of the Solicitor General of Canada and with Mr. Richard J. Gable, Director of Research, National Center for Juvenile Justice, Pittsburgh, PA., U.S.A.. The purpose of the meeting was to discuss the possibility of considering the creation, in Canada, of a National Juvenile Justice Institute.

Following a number of meetings, it was determined that the Juvenile and Family Court Judges Committee of the Canadian Association of Provincial Court Judges would prepare and submit, to the Ministry of the Solicitor General,a proposal to conduct a feasibility study on the creation of a Canadian Juvenile Justice Institute. A copy of this proposal is included in this report as Appendix A.

This proposal was submitted to the Ministry of the Solicitor General of Canada and a grant was obtained to undertake the study.

A research consultant and a director of research were hired on contract and met with the Juvenile and Family Court Judges Committee to formulate the objectives of the study and to plan the strategy of the study. It was decided that the research would focus on four main issues:

1. A description of some of the most important American and European organizations involved in the study and improvement of juvenile justice.
2. A study of the complex Canadian scene in the field of juvenile justice.
3. A description of the major issues to be considered in determining the desirability and feasibility of a Canadian Juvenile Justice Institute.
4. Assuming that the creation of a Canadian Juvenile Justice Institute proved to be desirable, describe its possible roles, functions and scope of operation as well as alternative administrative and financial structures.

It was further decided that once a draft report was prepared on these four issues, it would be distributed to a number of experts in the field of juvenile justice. Consultations with them on the report, its conclusions and recommendations would then take place. A final report was then to be prepared taking into consideration these consultations.

2. RATIONALE

The proposal to undertake this study (see Appendix A) describes the rationale behind such a study in the following terms:

"No aspect of the national interest is more significant than what happens to young people when they are troubled, particularly those who are soon to be called 'dependent children', 'neglected children', 'juvenile delinquents', or 'youthful offenders'. No problem is more troublesome than the delicate balance between promoting the individual rights and potentials of children in a free society and protecting that society against youthful criminal behaviour.

The enterprise of juvenile justice in Canada, recognizing the intricacies of these counterbalancing values, has been in a state of dynamic change and growth for the past decade. At both federal and provincial levels, policy and planning activities have attempted to prescribe a more effective approach to the dilemmas posed by the constant stream of youngsters before the juvenile bench. Often with little coordination between entities and with almost no empirical indicators of impact, juvenile justice processing has been jostled to and fro by current and short-lived trends in legal, jurisdictional and treatment theory.

The need exists for an organization which would act as a central point where important issues in juvenile justice could be addressed by a formal consortium of professionals with significant knowledge in the field."

The idea of a Canadian Juvenile Justice Institute arose out of the concerns, of both the juvenile court judges and other professionals involved in the field with troubled youth. The concept of such an institute is examined in this report as an instrument which could be conducive, in the final analysis, to an improved system of juvenile justice by focusing on the interests of the young people.

The Commonwealth Conference

by Judge Joseph J. Flynn

The author is a judge of the Provincial Court of Saskatchewan, sitting in Regina. He missed the Saskatoon meeting to attend the Commonwealth Conference in Port of Spain, Trinidad in September.

The theme of the conference "The Judiciary and Justice" got off to an excellent start with the keynote address by the Right Honourable Lord Diplock, P.C., and that level of excellence was almost without exception carried through in all the papers which were delivered in the days that followed. It was not, however, just the papers and the discussions which rose out of those papers which provided intellectual stimuli, but rather, as in all conferences of this nature, it was the opportunity to sit down over a cup of coffee, or a rum punch, with delegates from diverse parts of the commonwealth and to discuss our mutual problems, our concerns and to share our ideas as to how the administration of justice might be improved.

There were delegates there from 35 of the 56 member countries of the commonwealth. There were, of course, immense cultural differences between our country and many of the other countries present. Those cultural differences, however, far from being a detraction, were an added stimulant for it made one realize that some of the complex cultural problems, which some of those magistrates and judges exercising a jurisdiction similar to ours had to deal with, made our problems here in Canada wan into insignificant proportions.

I am pleased that the Canadian Association of Provincial Court Judges has seen fit to become a member of the Commonwealth Association. In the words of Lord Diplock, "The sharing of experiences is, I am sure, a most valuable way of maintaining and improving the standards of administration of justice in any country".

Our evenings were no less exciting that our days. The romance, the intrigue, the nights of tropical splendour, the sounds of steel bands, of calypso singers and all the images that the mind conjures up with the mention of the name "Port-of-Spain" somehow found fulfillment in the sixth Commonwealth Conference at that city. There was something there for everyone but more than that, there was something there for each aspect of the multi-faceted personality of man.

Trinidad proved an excellent host country. In organizing our evenings and the daytime activities of our spouses, the organizing committee together with the host country left nothing to chance. I did not meet a single person, delegate or spouse who failed to express their pleasure with the hospitality and warmth of the people of Trinidad. To me the highlightof the social events was the cultural show hosted by the Honourable Russel Martineau, Attorney General, on the evening of September 14. The richness, the vibrance and the versatility of Trinidadian culture displayed to us that evening made it an event we will all cherish in our memories.

On Wednesday evening the Canadian High Commisioner and his lovely wife held a reception for all delegates and their spouses at their home and a cocktail party in their gardens. Canadians will be pleased to know that they are represented abroad by a very charming couple who proved to be an excellent host and hostess. In spite of the fact that the High Commissioner and his wife had been in Trinidad less than two weeks, they already appeared very much at home and delegates from many countries told me after that it was the finest of all the receptions they attended.

I am fully satisfied that the Commonwealth Magistrates Association serves a very useful purpose. I feel we as Canadians must look at it, not just for what we can gain, but equally important for what we can contribute. England is interested in exploring the idea of direct exchanges with their Canadian counterparts. Personally, I would like to see our Canadian Association explore the idea of utilizing our Western and Eastern seminars for such a purpose. If both the Eastern and Western seminars were modified once every four years to accommodate our counterparts from the British Isles on, let us say, odd years with us having the opportunity to attend a conference in England on even years, the effort required on our part would be small compared with the benefits to be gained.

REPORT OF THE EXECUTIVE DIRECTOR

by Judge Douglas E. Rice

Judge Rice, a Provincial Court Judge from St. Stephen's, N.B. is treasurer and executive director of the C.A.P.C.J.

I have the honor to submit my sixth annual report of the Executive Director of your Association, as required by paragraph 12 of the terms of reference of this office.

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 September of 1981, the meeting of the Executive committee in January 1982 in Ottawa and the Meeting of the Executive Committee in Winnipeg in June of 1982. In addition, upon request, I met with President Robert Hutton in Ottawa, in November, 1982, in conjunction with the New Judges Programme, and in April 1982, in planning for the N.J.P. 1982.

Directly in connection with Convention '82, I met with the Convention Committee in Winnipeg in June, 1982, at the time of the Executive Committee Meeting. In December 1981, I travelled to Charlottetown, P.E.I. and met with the committee for the Atlantic Provinces Seminar, as to programme and financing.

During the course of the year, I received invitations to attend the Annual Meetings of other Associations, but was unable to do so due to my own Court commitments and in general, I only attend when it is not possible for the President or President-elect to do so, and thus I was forced to decline these invitations.

Since the Association has a Secretary, during this year it was unnecessary for me to keep the minutes of the various meetings, but these were supplied to me by the Secretary and circulated through this office to the members of the Executive Committee.

During the year I published thirteen 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 again, through the courtesy of Judge Jacques Lessard, these were translated into the French language and circulated to the members of the Quebec Provincial Bench.

During the year I received a substantial number of inquiries from members of the Association from across Canada and on various subjects and I believe that I was able to respond helpfully to all such inquiries.

I assisted the Editor of the Association Journal by maintaining up-to-date mailing lists of Association members, and preparing and supplying mailing envelopes for the issues of the Journal published during the year. I also looked after the distribution of the Journal to libraries, law libraries and government officials, as requested.

Efforts were maintained again throughout the year to sponsor membership in the Province of Quebec. At the request of Judge Lessard I invoiced through my office, former and potential members in Quebec, and the response has been gratifying, with memberships still coming in.

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 attendances at various Committee Meetings, I have endeavored to do my best in the limitations of my own Court commitments. I would like this opportunity of expressing my appreciation to all of the Officers of the Association, to the Members of the Executive Committee, to Committee Chairmen and to all of the 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 by special appreciation to the President, Judge Robert Hutton, to Judge Dick Kucey, and others of the Convention '82 Committee, to Judge Mykle, Editor of the Association Journal and lastly, but by far no means least, to Chief Judge Andrew Harrigan of the Provincial Court of New Brunswick without whose co-operation it would not be possible for me to carry out the functions of this office.

THE COMMITTEE ON THE LAW

by Chief Judge Fred Hayes

The author is Chairman of the Committee on the Law for the C.A.P.C.J., and is Chief Judge of the Ontario Provincial Court.

The Committee on the Law is composed of Chief Judge F. C. Hayes, Chairman, Chief Judge Harold F. Gyles, Associate Chief Judge Georges Chasse, Judge Hughes Randall and Judge Thomas Ferris.

Your Committee has not had a formal meeting during the past year, but has proceeded by way of correspondence, and the Chairman has met with your President, Senior Judge Robert B. Hutton and the Immediate Past President, Judge Jacques Lessard.

The Committee has considered the sexual offences bill in its early stages and made available to the Department of Justice its comments with respect to this bill, but as you are aware from the recent meetings of the Justice Committee, the bill has subsequently been substantially amended. Ths bill, in its final form, when available, will be distributed for the information of the members of the Association.

The Canadian Association of Provincial Court Judges was asked for its views on the Clemency Review Issues Paper, and the Chairman made available to the Department of Justice the general views with respect to the issues indicated in this paper.

The Canadian Association has been consulted by the Department of Justice with respect to the general review of the criminal law and, in that regard, the Committee reviewed the paper of the Canadian Law Reform Commission with respect to "Our Criminal Law". Following receipt of the views of the members of the Committee, by telephone and by correspondence and the views forwarded from some Provincial representatives and Chief Judges, the Chairman, Senior Judge Hutton and Judge Lessard, after considering these collective views, attended on behalf of the Association a consultation meeting with the Department of Justice which was chaired by Mr. E. A. Tollofson, Q.C., the Director of the Criminal Law Review.

There was then prepared the submissions of the Canadian Association with respect to the appropriate scope, objectives and principles of the criminal law, which submissions were previously submitted to the Executive and are enclosed with this report.*(Ed. Note: Available from provincial representatives)*

It will be seen from the submissions that the principles being considered were posed by the Department of Justice in the form of a number of questions, and although our submissions may not be entirely in accord with all of the views of the various members, your Committee hopes that they are reasonably representive of the view of the Judges of the Provincial Courts in Canada. You will note from the submissions that we have expressed our view on some matters, and also expressed our concern with respect to the position being put forward in other areas of the law and have also reserved for further comment our position with respect of offences relating to property.

Folowing the consultation meeting and the tendering of the submissions of the Association, the Chairman and your President were given an opportunity by Mr. Tollefson to review a draft discussion paper which followed upon the consultation session and which was being prepared as a discussion background paper for the consideration of the Government. We were pleased to see that this material reasonably reflected some of the positions which we had taken at the consultation meeting.

You will recently have received from the Department of Justice two volumes - one entitled "The Criminal Law in Canadian Society" and another volume entitled "Highlights of the Criminal Law in Canadian Society." Thses volumes are general statements with respect to the criminal law which include many of the matters discussed at the consultation meeting.

The Association has now been asked to prepare its views with respect to the Law Reform Commisison of Canada Report on Theft and Fraud, and the material has been forwarded to the members of the Committee for their consideration.

The Committee would urge each of the provincial representatives to respond to the Committee with their views on this report in order that any submissions which we make may reasonably represent the views of the Provincial Judges

We have not received any further information on the progress of the "omnibus bill' concerning amendments to the Criminal Code, and as soon as this information is obtained in a form upon which your views can be solicited the information will be passed to the provincial representatives.

28. The procedure for discipline should be in camera; however, judgements in disciplinary proceedings may be published.

29.(a) The grounds for removal of judges shall be fixed by law and shall be clearly defined.

(b) All disciplinary action shall be based upon standards of judicial conduct promulgated by law or in established rules of court.

30. A judge shall not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself mainfestly unfit to hold the posotion of judge.

31. In systems where the power to discipline and remove judges is vested in an institution other than the Legislature, the tribunal for discipline and removal of judges shall be permanent and be composed predominantly of members of the Judiciary.

32. The head of the court may legitimately have supervisory powers to control judges on administrative matters.

E. THE PRESS, THE JUDICIARY AND THE COURTS

33. It should be recognized that judicial independence does not render the judges free from public accountability, however, the press and other institutions should be aware of the potential conflict between judicial independence and excessive pressure on judges.

34. Subject to #41, judges may write articles in the press, appear on television and give interviews to the press.

35. The press should show restraint in publications on pending cases where such publication may influence the outcome of the case.

F. STANDARDS OF CONDUCT

36. Judges may not during their term of office serve in Executive functions, such as ministers of the government, nor may they serve as members of the Legislature or of municipal councils, unless by long historical traditions these functions are combined.

37. Judges may serve as chairmen of committees of inquiry in cases where the process required skill of fact-finding and evidence-taking.

38. Judges shall not hold positions in political parties.

39. A judge, other than temporary judge, may not practice law during his term of office.

40. A judge should refrain from business activities, except his personal investments, or ownership of property.

41. A judge should always behave in such a manner as to preserve the dignity of his office and the impartiality and independence of the Judiciary.

42. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.

43. Judges may take collective action to protect their judicial independence and to uphold their position.

G. SECURING IMPARTIALITY AND INDEPENDENCE

44. A judge shall enjoy immunity from legal actions in the exercise of his official functions.

45. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.

46. A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

H. THE INTERNAL INDEPENDENCE OF THE JUDICIARY

47. In the decision-making process, a judge must be independent vis-a-vis his judicial colleagues and superiors.

(b) In countries where the power of division of judicial work is vested in the chief justice, it is not considered inconsistent with judicial independence to accord to the chief justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.

(c) Subject to (a), the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.

12. The power to transfer a judge from one court to another shall be vested in a judicial authority and shall be subject to the judges consent, such consent not to be unreasonably withheld.

13. Court services should be adequately financed by the relevant government.

14. Judicial salaries and pensions shall be adequate and should be regularly adjusted to account for price increases independent of Executive control.

15.(a) The position of the judges, their independence, and their adequate remuneration shall be secured by law.

(b) Judicial salaries cannot be decreased during the judges' services except as a coherent part of an overall public economic measure.

16. The Ministers of the government shall not exercise any form of pressure on judges, whether overt or covert and shall not make statements which adversely affect the independence of individual judges or of the Judiciary as a whole.

17. The power of pardon shall be exercised cautiously so as to avoid its use as interference with judicial decisions.

18.(a) The Executive shall refrain from any act or omission which pre-empts the judicial resolution of a dispute or frustrates the proper execution of a court judgement.

(b) The Executive shall not have the power to close down or suspend the operation of the court system at any level.

B. JUDGES AND THE LEGISLATURE

19. The Legislature shall not pass legislation which retroactively reverses specific court decisions.

20.(a) Legislation introducing changes in the terms and conditions of judicial services shall not be applied to judges holding office at the time of passing the legislation unless the changes improve the terms of service.

(b) In case of legislation abolishing courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same status.

21. A citizen shall have the right to be tried by the ordinary courts of law, and shall not be tried before ad hoc tribunals.

C. TERMS AND NATURE OF JUDICIAL APPOINTMENTS

22.(a) Judicial appointments should generally be for life, subject to removal for cause and compulsory retirement at an age fixed by law at the date of appointment.

(b) Retirement age shall not be reduced for existing judges.

23.(a) Judges should not be appointed for probationary periods except for legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of appointment.

(b) The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.

24. The number of the members of the highest court should be rigid and should not be subject to change, except by legislation.

25. Part-time judges should be appointed only with proper safeguards.

26. Selection of judges shall be based on merit.

D. JUDICIAL REMOVAL AND DISCIPLINE

27. The proceedings for discipline and removal of judges should ensure fairness to the judge, and adequate opportunity for hearing.

THE EDUCATION REPORT

by Judge Jacques Lessard

The author is a past president of the association, and served as Education Chairman of the C.A.P.C.J. during the 1981-82 term. At the Saskatoon Annual Meeting he was elected a life member of the Association for his contribution throughout the years.

Allow me to simply sum up such activities that had preceded the presentation of my former report and by proceeding with my personal comments over such other events that followed while bringing also your attention as to the existence of programs actually in progress of being contemplated.

During this last term, our committee has been involved amongst others in the following programs:

1.Seminar on Sexual Aggression-Vancouver, B.C.-October 16-18, 1981
2.New Judges' Training Program-Ottawa, Ontario- October 28-November 6, 1981
3.Conference on Small Claims Courts-Vancouver, B.C.- January 27-30, 1982
4.Western Regional Conference-Regina, Saskatchewan- June 6-10, 1982
5.Atlantic Regional Conference-Charlottetown, P.E.I.-June 6-10,1982

The Education Committee was first involved with a Seminar on Sexual Aggression which took place at the Four Seasons Hotel in Vancouver, on October 16 to 18, on the initiative of the Department of Criminology and continuing studies of the Simon Fraser University and being co-sponsored by our Association and the Canadian Institute for the Administration of Justice, and was meant to seek the perceptions of this kind of offender by the judiciary and the general community.

Although it was feared at the time that the Conference on Small Claims Courts was a hazardous venture by reason of a poor response from all expected participants, this program actually proceeded as scheduled with a limited success considering the restricted number of participating judges.

I wish to express my thanks to our Vice-Chairman, Judge Robert Halifax, for having attended this program on behalf of our Association and for his report on the matter.

On the same subject, I am pleased to state that the minor dispute which had arisen over the responsibility of sharing with the Canadian Institute for the Administration of Justice the deficit that resulted in the holding of this Conference, was elegantly solved by our finance committee. Recent correspondence received from officers of this institution leaves no doubt as to the actual and very cordial relationship between both groups.

My recommendation would be therefore to bring to the Canadian Institute our full collaboration in the implementation of projected joint programs of common interest, by clearly ascertaining in advance our financial commitment and without giving up our creativeness.

My attendance at both Western and Eastern conferences has allowed me to discuss with some members of our committee and other local judges involved in educational programs the most suitable plans for the fulfilment of the duties entrusted with this committee. My conversation with the regional chief judges was also at one and the same time most pleasant and fruitful.

The Western Regional Seminar was held in Regina, on March 28th to 31st, 1982, under the chairmanship of Judge E. S. Bobowski, who deserves our congratulations for the presentation of a fine program and the favourable result it has reached.

The Eastern Regional Conference took place in Charlottetown, at the Rodds Motor Inn, from June 6th to June 10th, 1982, with Judge Jacques Sirois acting as project Chairman for this event. There again the program was covering most selective topics of great interest.

On this occasion, I had the privilege of delivering an address at a luncheon on the subject "The witness and Justice".

May I say that Judge Sirois deserves a good part of the credit for the success of the conference.

Since our last executive meeting, my efforts have however mainly been focussed on the New Judges' Training Program which is to take place in Ottawa, at the Park Lane Hotel, from October 24th to Noverber 3rd, 1982. Needless to say that this program must receive the highest priority, and this for various conceivable reasons that have been emphasized in the past.

At this point, I am very pleased to state that the program for this seminar has received its final shape. It is expected that copy of the drafted program together with the pre-reading material should soon be distributed to all judges appearing on the list already received or about to be completed by each province or territory.

A most recent survey carefully drawn up with the assistance of our Venue Chairman and other members of our committee allows me to predict the attendance of 36 judges as a lowest figure with a possible increase to 40 students.

Perhaps I should point out that until this result was achieved, there was some uncertainty as to whether or not this seminar would go on.

It is a known fact that since last year the number of newly appointed judges has been kept at the lowest level in each province or territory, perhaps because of the economical situation that hits our country, perhaps because our persistent vitality or even more our efficiency in absorbing the entire task.

As it stands, there is room for additional participants to this program and it may be desirable to offer the benefit of this program to experienced trial judges. Some precedents have been created last year and have proved to be beneficial to judges who had not participated in the past to this program. Having in view the creation of a national college, a project that is dear to us, perhaps the time has come to change the format or the concept of this program with a substituted designation such as "permanent education conference" or other appelation alike.

Last month, four new judges have been appointed in the judicial district of Montreal. The very next day, they were all presiding in trials in our courts while being expected to fulfil their duty and to meet with the same difficulties as their brothers and colleagues.

In his report dated January 12th, 1981, Judge Albert Gobeil acting as Chairman of the sub-committee on the creation of a national college was suggesting that seminars for newly appointed provincial judges could serve as a basis for the eventual college.

All other seminars organized in each province make no such distinction.

Priority could still be given to newly appointed judges notwithstanding such enunciated designation for this annual seminar operated on a permanent and national basis.

Without making any specific recommendation, I submit this proposal to your thoughts.

Going now to the project of the mounting of two video-cassettes on sentencing, as a French program similar to the one that has already been presented in English, I wish to report that members of this committee are to meet at the Mount Ste. Mary Manor, in Quebec, near Hull, on September 22nd to 25th, to complete this program. A script actually drafted will then be used for this purpose. I wish to thank Judge Guy Goulard for having made all necessary arrangements for accomodation and materials.

I regret however to announce that our committee has been unable to finalize the project on the seminar for the conduct of bilingual trials, and this, for the following reasons.

May I recall that this project had originally been planned by my predecessor with the apointment of Judge Joseph Tarasofsky from Montreal as project chairman.

In my previous report, I had underlined the dificulties we were encountering because of differences of opinion as to the very concept of that seminar.

In the mind of Judge Tarasofsky, the requirements of French speaking judges should bear on substantive law, while others views are towards courses strictly dealing with the French language for the purpose of allowing judges to conduct trials in French.

To add to the confusion, there seems to be some correspondence in support of both opposite views.

Since I had alerted the members of our executive committee, I had attempted to reach a consensus on the matter with a suggested compromise but to no avail.

Finally, Judge Tarasofsky wrote to me on September 7th, stating that he was no longer able to assume to responsibility or organizing this program although he would be pleased to bring some assistance to any substituted chairman.

Notwithstanding this situation, I strongly recomment that additional efforts be made to organize this program which could be so beneficial to a fair number of our members. I certainly would be pleased to have some views on the matter.

In terminating, I would like to thank the members of our committee and all others who have so greatly assisted me in the discharge of my duties.

Minimum Standards of Judicial Independence

Judge Claude Joncas of Quebec has forwarded the following article for publication, and explains, "The International Bar Association has adopted Minimum Standards of Judicial Independence at its last two annual meetings held in Lisbon in 1981 and Jerusalem in 1982.

"This text will be discussed at the annual convention of the International Bar Association next fall in New Delhi.

"I believe these Minimum Standards should be endorsed by our association. . . and published in an issue of the Journal."

These standards were approved by the Drafting Committee, based on the proposal submitted by Dr. Shimon Shetreet, General Rapporteur, on March 5, 1982.

A. JUDGES AND THE EXECUTIVE

1.(a) Individual judges should enjoy personal independence and substantive independence.

(b) Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control.

(c) Substantive independence means that in the discharge of his judicial function, a judge is subject to nothing but the law and the commands of his conscience.

2. The Judiciary as a whole should enjoy autonomy and collective independence vis-a-vis the Executive.

3.(a) Participation in judicial appointments and promotions by the Executive or Legislature is not inconsistent with judicial independence provided that appointments and promotions of judges are vested in a judicial body in which members of judiciary and the legal profession form a majority.

(b) Appointments and promotions by a non-judicial body will not be considered inconsistent with judicial independence in countries where by long, historic and democratic tradition judicial appointments and promotion operate satisfactorily.

4.(a) The Executive may participate in the discipline of judges, only in referring complaints against judges, or in the initiation of disciplinary proceedings, but not the adjudication of such matters.

The power to discipline or remove a judge must be vested in an institution which is independent of the Executive.

(b) The power of removal of a judge should preferably be vested in a judicial tribunal.

(c) The Legislature may be vested with the powers of removal of judges preferably upon a recommendation of a judicial commission.

5. The Executive shall not have control over judicial functions.

6. Rules of procedure and practice shall be made by legislation or by the Judiciary in cooperation with the legal profession subject to parliamentary approval.

7. The state shall have a duty to provide for the execution of judgements of the Court. The Judiciary shall exercise supervision over the execution process.

8. Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.

9. The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.

10. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.

11.(a) Division of work among judges should ordinarliy be done under a predetermined plan, which can be changed in certain clearly defined circumstances.

followed by the subtle mention that relatives of the victims (hostages) would be feeling the very same. Conversations about the families of hostages tend to identify them as more than a victim or official and could be very beneficial. The request to see photos of the hostage-taker's family could lead to the showing of photos of the victims. This strategy could be reversed to show personal photos and they request to see those of the hostage-taker's family.

Judges are normally persons in authority and it is not suggested that any Judge lose any dignity in a hostage situation but rather let the hostage-taker view the Judge as more than just a "figure" on the bench. It is highly probable that at the outset a hostage-taker fails to see any victim as more than just a means to an end and the strategy essentially is to change this view for the reason indicated earlier.

(JUDGING . . . continued from page 20)

always controversial; the Canadian *Bill of Rights* was an ordinary act of parliament. It related only to the laws of Canada. Now the principles on which our rights and freedoms are based have the status of constitutional law; the courts' mandate to deny effect to offending legislation is now explicit, and itself entrenched in the constitution. Now both federal and provincial legislation are subject to the *Charter*. Now when a court must balance the rights and liberties of the individual against the objectives sought to be achieved by offending legislation, the court will be balancing a constituitonal value against a statutory one. I cannot help but think that the decision to entrench fundamental rights and freedoms means that these values are higher and more sacred that other public interests. That does not mean they are absolute. They are still subject to "such reasonable limits prescribed by law as can be justified in a free and democratic society". In deciding when it is "reasonable" to circumscribe fundamental rights, it seems to me that our courts must be influenced by the fact that they are entrenched in the constitution. I am reminded of the federalist papers. Alexander Hamilton said that constitutional review by the courts does not

> by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the constitution, the judges ought to be governed by the latter rather that the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental (the *Federalist Papers*, Number 78).

Another important respect in which the *Charter* differs from the *Bill of Rights* is that, unlike the *Charter,* the *Bill of Rights* declared that the rights and freedoms there enumerated "have existed and shall continue to exist" in Canada. This phrase was often interpreted as meaning that the *Bill* recognized existing rights and freedoms, but granted no new ones. There is no such phrase in the *Charter;* furthermore it is quite clear that the *Charter* does declare new rights. An amber light has now turned green.

It is perhaps wise to conclude with the observation that the purpose of an entrenched *Charter of Rights* is to give Canadian residents a right to look to the courts, as well as to the legislature, for the protection of their rights and freedoms. So perhaps the important question is not "what impact will the *Charter* have on the judiciary?", but rather, "what impact will it have on the individual citizen?".

The genius of our new constitution will not reside in any static meaning but in the adaptability of its great principles to cope with the problems of a developing Canada. The *Charter* is not an ephemeral document designed to meet sporadic needs. It must take account of what has been, what is, and what may be. We as judges in the '80's must put flesh on the bones of the *Charter* and give lasting substance to the basic freedoms it extends to every citizen.

I think the next decade may be one of the most important in the history of the Canadian judiciary. The parliament of Canada and nine provinces agreed that Canadian courts should have new powers and a new role in the area of civil liberties. We face a great challenge; we have been given a weighty responsibility. and the eyes of individual Canadians will be upon us as never before.

Are You Coming to Yellowknife?

by Chief Judge James R. Slaven

The author is Chief Judge of the Territorial Court of the North West Territories. This report was first given at the 1982 C.A.P.C.J. Annual Meeting in Saskatoon.

The 11th Annual Conference of the Canadian Association of Provincial Court Judges will be held in Yellowknife, Northwest Territories, from July 27-29, 1983. In view of the high costs of travel, meals and hotel rooms in the Northwest Territories, we propose to make a number of changes in the usual format in order to minimize those increased costs. By way of example, the meeting of the Executive Committee and Provincial Representatives will be held on the evening of Tuesday, the 26th of July, rather that the day before. This will result in a saving of one night's hotel accommodation and meals for the members of the Executive Committee and Provincial Representatives.

With respect to travel we have tentatively arranged with Pacific Western Airlines for a Boeing 737 charter, leaving Edmonton International Airport on Tueday the 26th of July, 1983. The timing of the departure will be coordinated with incoming Air Canada flights out of Toronto so that Judges ariving from the east can make direct connections to Yellowknife. While we do not as yet have firm quotes from P.W.A., we are given to believe that the return trip, Edmonton to Yellowknife, should not exceed $260 per person. Again, the timing of the return charter flight to Edmonton on Saturday, July 30th, 1983, will be such as to allow those from the east direct connections to Toronto or Montreal that day. Depending on numbers, arrangements have been made for either two Boing 737s, seating 117 each, or one Boing 737 and a Convair Turbo Jet, seating 50. The same aircraft will be available for the return flight on Saturday, July 30, 1983. The Executive Committee members and Provincial Representatives whose travel is paid for by the Association, will only be paid the charter price whether they fly on the charter or not. For any Judges wishing to arrive on the charter and then remain in Yellowknife for a holiday or further travel, we may be able to arrange for one way flights on the charter and discounts on the return scheduled flight, but at this point in time such arrangements will have to be made by the individuals concerned. We would point out that the only alternative to the P.W.A. flights out of Edmonton to Yellowknife are flights from Winnipeg on Northwest Territorial Alirways, and through other carriers through Montreal via Rankin Inlet.

Our Convention Headquarters is tentatively set at the Explorer Hotel here in Yellowknife and all Executive and Provincial Representatives will be lodged there. We have had 90 rooms set aside at the Explorer for our use, but at this point have not been quoted a room rate. Should the room rate be excessive we will use the Yellowknife Inn as Convention Centre, where we have set aside 80 rooms at a tentative price of $72 per room. Arrangements can also be made at the Twin Pines Motor Hotel which has 44 rooms, 32 of which have kitchenettes; this accommodation may appeal to any Judges who are bringing children with them. The rates for these rooms wil be in the neighbourhood of $75.

Confirmation of aircraft departure times, room costs, and other related details will be provided well in advance of the Convention. Our only purpose here is to give a rough indication of the arrangements that are being made and the general costs to be expected.

If any Judges are interested in combining a vacation in the Northwest Territories with the Conference, this can be done through your own local travel agancy or directly through the two Yellowknife travel agencies which are both reputable and have been in business for many years. They are:

Yellowknife Travel
Box 308
Yellowknife, N.W.T.
Phone: (403)873-4481

Mack Travel
box 2190
Yellowknife, N.W.T.
Phone: (403)873-5933

In this regard we will be arranging a children's program which may include tennis, bowling, swimming, golf, fishing, and other activities with the youngsters in mind. Needless to say there will be numerour activities planned for both the Judges and their spouses.

Judge R. Michel Bourassa is Conference Chairman and any queries can be directed to him, Chief Judge J.R. Slaven,

or Mrs. Janet Hornby at (403) 874-7604. Written queries should be directed to Judges Conference, Box 550, Courthouse, Yellowknife, N.W.T., X1A 2N4.

A pre-registration form follows this article, and I would ask judges who are planning to attend the Annual Meeting to fill out the form together with the requested deposit should they wish to be booked on the charter flight from Edmonton to Yellowknife and return, to be received by our office by January 31, 1983.

C.A.P.C.J. ANNUAL MEETING
YELLOWKNIFE, JULY 27 - 29, 1983
Notice of Intention to Register
(to be received by January 31, 1983)

To: Judge R. Michel Bourassa,
Conference Chairman
Box 550
Courthouse
YELLOWKNIFE, N.W.T., X1A 2N4

Name of judge _____

Address (business) _____ Tel. No. _____

_____

(home) _____ Tel. No. _____

_____

Name of attending spouse _____

Names of attending children, and ages _____

Charter Deposit:

☐ I am enclosing a cheque for $100 for each member of my party attending, to be applied to charter air transportation from Edmonton — Yellowknife return (July 26 - July 30). This deposit is refundable **only** if my seat can later be resold. Please make cheque payable to "Convention '83".

Accommodation:

I am interested in the following accommodation, and I request further information:

- ☐ Hotel
- ☐ Kitchenettes
- ☐ Family Hostel
- ☐ Camping

Activities:

Please send information on the following activities:

- ☐ Fishing
- ☐ Hunting
- ☐ Pre or post-convention tours
- ☐ Family Program

Tips For Hostages

by Bruce L. Northorp, C.M.

The author, formerly with the R.C.M.P. and an expert on hostage negotiations, spoke to the Annual Meeting of the C.A.P.C.J. in September. He has prepared a list of tips for those who may be taken hostage which he included in his presentation. This list is copyright by the Journal, and may not be reproduced in any form without express permission of the Editor. Mr. Northorp is available to give presentations on hostage incidents or other police topics, and may be reached at his address, 4692 Clinton Street, Burnaby, B.C. v5J 2K7.

1. Generally speaking, a hostage should not take unnecessary chances, they may cost his life or the lives of others.
2. Don't be a hero; wait for the authorities to solve the problem. They have an efficient organization in operation with one goal in mind; bring hostages out alive and unharmed.
3. The first hour of the incident is probably the most dangerous. Do as you're told. Don't provoke the hostage-taker. The general experience is that the longer you're with a hostage-taker, the less chance there is he'll harm you. (Stockholm Syndrome aka Survival Identification).
4. Communication - there are two schools of thought; don't speak unless spoken to and the other that suggests conversations be initiated by the hostage. The nature of the hostage-taker will dictate which course of action will be followed, however try to be a neutral friend, don't lie to them, they may detect the lie and feel you're phony. That destroys trust. e.g. Let me go and I won't give evidence or they won't prosecute.
5. Calm down and this may calm the hostage-taker down. Don't get excited. Both excitement and calm can be contagious.
6. Be observant of everything that's going on; what is seen and heard. This information is important to the authorities in the event a hostage is released or is able to speak to the authorities.
7. Hostages should be ready to answer yes or no to questions, if the authorities speak to them.
8. Hostages should move slowly if they have to; they shouldn't startle the hostage-taker and if applicable to their own situation, should explain what they are about to do.
9. Hostages should drink all the liquids they can and encourage the hostage-takers to do likewise. This eventually requires movement to and from washrooms, which is desirable from the authorities point of view. The term "liquids" does not include liquor if it should be available.
10. Hostages should not attempt to escape unless they are positive they can make it. Even if they are sure, they should think it over. Will they make it and what impact it may have on other hostages that are still held?
11. Hostages should
    (a) Eat
    (b) Rest & sleep
    (c) Exercise
    (d) Keep active mentally
12. Hostages should report all medical problems to the authorities.
13. Last, but not least, when it's all over, don't discuss these tactics with the media as the next hostage-takers will read about them.

Presuming one has a basic understanding of the Stockholm Syndrome, it is suggested that a hostage capitalize on in by more or less, passive means.

From the authorities' point of view, it is more desirable for the hostage-takers to view their captives as "persons" rather than just captives and a means to an end. The view held is that it is harder to harm someone you have come to know more personally. To this end, police negotiators are trained to refer to hostages not by words such as "hostage", but rather by their first names or Mister or Mrs.

Further to item 4, with communication there is the chance that something personal will develop. The communication must either be sincere or appear to be so and should arise as naturally as possible. This could be accomplished by mentioning how concerned the relatives of the hostage-takers would be for their safety

worth remembering:

> No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him or send upon him, except by the lawful judgement of his peers and by the law of the land.

One might find many fundamental rights in those few words: The right to trial by jury, the right not to be "disseised" (of property presumably), except by the "Law of the Land", the right to life, liberty, and security of the person, and so on.

Professor Tarnopolsky in his book on the *Canadian Bill of Rights* points out that as early as the 14th century an English statue provided that no man should be harmed "except by the due process of law" (*The Canadian Bill of Rights,* Tarnopolsky, P.222).

The right to elect a new federal parliament every five years (*Charter,* S.4) was contained in the *Constitution Act, 1867*: Similar provisions were passed by every provincial legislature. The requirement that there be a session of parliament every year is also found in the *Constitution Act, 1867*; every province except Nova Scotia, New Brunswick and Newfoundland has similar legislation.

The *Criminal Code* also protects some of the rights now guaranteed by the *Charter*. The right to be secure against "unreasonable search and seizure" is not found in the *Canadian Bill of Rights*; however, as you all know, the *Criminal Code* permits the police to search a suspect's property only upon a showing that there are "reasonable" grounds for the search.

Furthermore, in a few instances the common law has protected fundamental rights and freedoms, *Kienapple* being a case in point. The *Kienapple* principle now has constitutional status under S.11 (H) of the *Charter.*

I should certainly not be taken as saying here that the *Magna Carta,* the *Criminal Code* and the common law have adequately protected the fundamental rights and freedoms of Canadians. Rather, I want to emphasize that Canadian courts have to some extent always been involved in protecting fundamental rights and liberties. Courts of criminal jurisdiction in Canada have always been alert to ensure that an accused is presumed innocent until proven guilty, notwithstanding that before the *Canadian Bill of Rights,* there was no statutory basis for the right. Again, when courts have applied the *Criminal Code* sections dealing with arrest procedures, search warrants, and the seizure of property, they have always been sensitive to the accused's right not to be deprived of his life, liberty or property "except in accordance with the principles of fundamental justice" (*Charter,* S.7). And when criminal courts decide whether a confession should be admitted in evidence against an accused, they are always responsive to the principle that a person charged with an offence should "not be compelled to be a witness . . . against (himself) . . . in respect of the offence" (*Charter,* S.11(C)). Our civil courts have also been involved; administrative tribunals and government officials exercising statutory powers must act in accordance with the principles of "natural justice" and "fairness", or a reviewing court may "quash" the administrative action.

If Canadian courts have to some extent always balanced the fundamental rights of the individual against the exercise of governmental powers, that involvement has expanded greatly in the twenty odd years since Mr. Diefenbaker's *Bill of Rights* was enacted. So the path ahead is not altogether unfamiliar.

Certainly the *Charter of Rlights* guarantees rights and freedoms not previously recognized in Canada. For practical purposes, the most important of these are probably language rights (S.16-24), the right against unreasonable search and seizure (S.8), the right to be informed of the right to a trial within a "reasonable time" (S.11) and perhaps the right to earn a living in any province, subject to the limits specified in section 6.

So far I have ovserved that given the *"Non-obstante"* clause in S.33, the *Charter* does not provide for judicial supremacy over the legislature, or at least not in the American tradition; and secondly, that Canadian courts have to a significant exent always been involved in the protection of fundamental rights and freedoms.

However, even if the break from our constitutional traditions is not as radical as first appears, it is nevertheless clear that the *Charter* gives the judiciary a much expanded and much more direct role in protecting the civil liberties of Canadians. The significance of the fact that the fundamental rights and freedoms are now constitutionally entrenched cannot be overestimated. The *Drybones* mandate was

(Continued on page 22)

In Brief

SUCCESS IN SASKATCHEWAN

One hundred and eleven provincially-appointed judges and fifty-five spouses attended the Annual Meeting of the C.A.P.C.J. in Saskatoon in September.

Ably chaired by Judge Richard Kucey of Saskatoon, with assistance from Education Chairman Judge Ernest Bobowski of Yorkton and the Saskatchewan provincial bench, the meeting offered information, debate and an opportunity to socialize with judges across the country.

Among the guest speakers at the convention were Mr. Justice R. G. B. Dickson of the Supreme Court of Canada, Mr. Justice E. D. Bayda, Chief Justice of Saskatchewan, Saskchewan Attorney-General Gordon Lane, Q.C., and Minister of Finance Robert Andrew.

One day was devoted to an in-depth examination of the Charter of Rights, chaired by Mr. Justice R. A. Matas of the Manitoba Court of Appeal. Speakers included Prof. W. S. Tarnopolsky, Prof. G. L. Gall, Prof. Chris Levy and Prof. D. A. Schmeiser, dealing with a range of topics from the constitutional overview to remedies, evidentiary considerations and legal rights.

A presentation on hostage taking was made by Bruce Northop, formerly of the R.C.M.P. in which was discussed the elements of a hostage incident, "classics" of hostage takings, and police management of such incidents.

A panel on "The Judge, the Bar and the Press" was a popular feature of the program, with discussion by Mr. Justice G. E. Noble, of the Saskatchewan Court of Queen's Bench, Gerald Allbright, President of the Saskatchewan Law Society and Wilf Popoff, Associate Editor of the Saskatoon Star-Phoenix.

A panel on "Drug Use and Distribution" included presentations by Inspector D. Farrell and Cpl. Ken Azzopardi of the R.C.M.P., Dr. S. Cohen, Chairman of the Saskatchewan Alcoholism Commission, and Bruce MacFarlane, author of "Drug Offences in Canada".

Banquets were hosted by the Attorney-General and the City of Saskatoon, including an enjoyable western evening at the Western Development Museum. Receptions were hosted by the Lieutenant-Governor of Saskatchewan, the Hon. Cameron McIntosh, and by the outgoing president of the C.A.P.C.J., Senior Judge Robert Hutton of Ottawa.

Another evening featured an ethnic dinner, followed by an impressive display of talent by a group of youthful Ukrainian dancers.

Optional activities included river cruises and excursions to the Army and Navy store, where judges and spouses picked up bargains in cowboy wear in preparation for Western Night.

All in all, Saskatchewan hospitality lived up to its reputation, and the Saskatchewan judges and their wives are to be congratulated for a program that was entertaining and full of substance as well.

LESSARD NAMED LIFE MEMBER

One of the highlights of the Saskatoon Annual Meeting was a unanimous vote of the Association to name Judge Jacques Lessard an honorary life menber of the Association.

It was fitting that the ever-popular Judge Lessard was given this honour after his years of contribution to the Association, as a member of the Executive Committee and as President of the Association.

For this last year he has served in the dual capacity as Past President and Chairman of the Education Committee.

His committment to a national organization of provincially-appointed judges as been firm and unwavering, and his efforts towards strengthening the body, both in the Province of Quebec and elsewhere, and his assistance to the Journal and to all forms of continuing education for judges, makes this honour one that is totally well-deserved.

The C.A.P.C.J. looks forward to Judge Lessard's continuing contribution to the Association in the years to come, and

thanks him for his monumental work in the years past.

RICE HAD BY KUCEY

The Executive Director was had!

Upon his arival in Saskatoom, with Joyce, our Executive Director was graciously met by Judges Conroy and Kucey, complete with a chauffeur-driven limo, to transport the guests to the Bessborough Hotel. It was explained that for security reasons the Government of Saskatchewan provided local judges with such transportation for their personal safety, and this courtesy was being extended to guests on this occasion.

All was not true. The Lincoln Continental was the personal vehicle of Judge Kucey. The uniformed chauffeur was one of the senior members of the Saskatoon bar. Only at the last moment was the Ex. Dir. dissuaded from giving the driver a tip! Only on the last night of the Conference did the truth surface. Mark one up for the new President and the Conference Chairman. Shades of things to come?

SUPPORT FOR CHARTER PRINCIPLES STRESSED

Manitoba Attorney General Roland Penner has emphasized the Manitoba government's support for the principles of the Charter of Rights by re-iterating its intention to amend statutory provisions which conflict with it.

In an address to the first year class of the Faculty of Law at the University of Manitoba on "Law and Politics in the Era of the Charter," Mr. Penner said it was not his department's policy to adopt legal arguments tending to restrict the effects of the charter. He specifically disavowed support for the so-called "Black Book" -- which has recently come under criticism for its restrictive view of the charter.

"The Black Book is nothing more than an assembly of legal arguments prepared by senior crown attorneys in various provinces and reflecting only the outlook or bias of the individual authors," Mr. Penner said. "It has no editorial point of view, it has no official status and in this province it has no sanction."

Crown attorneys, as professional employees, are free to use any legal source when briefing a case, he added. He went on to point out that whether the provisions of the charter receive a narrow or a wide interpretation will be decided not by crown attorneys or defence counsel, but by the judiciary. "My reading of the cases decided to this date leads me to believe that judges in Canada are approaching the charter with an open and innovative attitude."

Mr. Penner reminded the students that a law school task force headed by Professor Dale Gibson of the Faculty of Law had been commissioned by him to analyze some of the principal public statutes in the Province of Manitoba with a view to identifying any conflict between statutory provisions and the charter. The task force is expected to report before the end of September. "The Government of Manitoba will fulfill its declared intention of supporting the principles of the charter by moving to amend statutory provisions which clearly conflict with it."

Mr. Penner pointed out to the students that they were the first class of law students to begin their legal education in what he called "The Era of the Charter."

"If your legal education does not strongly reflect that fact," Mr. Penner stated, "it will have failed you."

NEW CHILD ABDUCTION LAW

Ontario will establish itself as a world leader in the campaign to stop child abduction with the proclamation (October 1) of the Children's Law Reform Amendment Act, Attorney General Roy McMurtry announced.

Mr. McMurtry, who introduced the original bill in 1979, said today that major new benefits will fall to an Ontario parent whose child is in danger of being kidnapped by the other parent.

To enforce access and custody rights and to prevent one parent from abducting the child from the other parent, a court is permitted to:

a) Order supervision of custody and access rights by an impartial third party,
b) Appoint a person to mediate custody and access provisions,
c) Order one party not to harass the child or another party,
d) Punish contempt of court orders,
e) Direct a peace officer to assist in securing custody of a child being withheld unlawfully from the person entitled to custody or access,
f) Order public agencies to disclose the address of a person in breach of an order,

parliamentary sovereignty. Indeed, in many cases since *Drybones*, the chief justice and other members of the court have said that the *Canadian Bill of Rights* has a "quasi constitutional" status in Canada.

Since *Drybones*, however, our court has been circumspect in exercising this controversial power. Very seldom has federal legislation been invalidated. No doubt this is in part because *Drybones* was a radical departure form our constitutional tradition.

But *Drybones* is academic now. The *Charter of Rights and Freedoms* leaves no room for debate: Canadian courts must now deny effect to a federal or provincial stature that offends against the rights and freedoms guaranteed by the *Charter.*

Section 1 of the *Charter*, however, says that these rights and freedoms are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". That phrase, it seems to me, tells us much about the judge's new role. The rights guaranteed by the *Charter* are not absolute and must be weighted in the balance with other values. Each time an applicant makes a *Prima Facie* showing that some act of "the Parliament of Government of Canada", or of "the Legislature or Government" of a province (s.33) infringes a right protected by the *Charter,* then the court must ask whether the infringement is "reasonable" and "justified" in the circumstances. The court must look for the pith and substance of the impugned legislation; it must examine the purposes and motives of the enacting legislature; it must balance the particular public good sought to be achieved by the offending legislation against the fundamental right protected by the constitution. In each case the court must decide which of the two values is to prevail.

To some judges this balancing of values is likely to be an anathema; to all judges it will at least give pause. The question becomes: "What remains of Parliamentary Sovereignty?" and more, what of the principle that elected legislators should be superior to appointed judges?

I must say immediately that I do not believe that democracy is dead in Canada; nor do I think that parliamentary sovereignty has been dealt a fatal blow. A blow perhaps, but not a fatal one. I say this for several reasons.

First, although it is undeniable that the entrenchment of a bill of rights gives the Canadian constitution a distinctly American flavour, there is one great difference between the United States and the Canadian constitutions. Section 33 of the *Charter* provides that either parliament of a provincial legislature can declare that a particular statute shall operate "notwithstanding" the *Charter of Rights and Freedoms,* in which case the statute shall have "such operation as it would have but for . . . this charter". Now, this power is circumscribed in several ways, and the limits are more or less clear from the wording of Section 33. But there is no such provision in the United States constitution.

The power reserved to parliament and to the provincial legislatures by S.33 is obviously significant to an assessment of the extent to which the *Charter* has altered our constitutional traditions, and abrogated the principle of parliamentary sovereignty. Since parliament can circumvent the *Charter* by no greater effort than an ordinary statutory declaration, it seems necessary to observe that the Canadian judiciary is simply not superior to the legislature, at least not in the tradition of the American constitution.

It is said that for political reasons parliament and the provincial legislatures will be very unlikely to use their S.33 powers, and our experience under the *Canadian Bill of Rights* would seem to support this opinion. Only once since the *Bill of Rights* was enacted in 1960 did parliament pass a statute that was to operate notwithstanding the *Canadian Bill of Rights.* That statute was the *War Measures Act* in 1970.

My point about the *"Non-obstante"* power in S.33 is this: In Canada Parliament and the provincial legislatures can abrogate constitutionally entrenched rights and freedoms. If it is true that our political traditions serve as an effective safeguard against such legislative action, then the rights and freedoms of Canadians are protected in exactly the same way they have always been protected; that is, by political constraints on an otherwise sovereign legislature.

A second observation I would make about the impact of the *Charter* on judging in the '80's is that many of the rights and freedoms guaranteed by the *Charter* have existed in Canada in one form or another for a long time. For example, the right not to be arbitrarily detained or imprisoned *(Charter, S.9)* dates back to the *Magna Carta.* The words of the *Magna Carta* are

Judging in the 1980's

by Mr. Justice Brian Dickson

The author is a Justice of the Supreme Court of Canada. This address was first delivered at the 1982 Annual Meeting of the C.A.P.C.J.

Mr Chairman, Colleagues, and Friends, I would like to thank Wynn Norton for his generous, indeed over-generous introduction. It is for me a great pleasure to return to the province of my birth and to be associated here with the judges who are in the front lines of judging.

For a few minutes I would like to speak about the *Charter of Rights and Freedoms* as affecting the role of the judge in the '80's. That the *Charter* will have a profound effect on the role of judges in the '80's is, in my view, obvious. The process of change has already begun. Important issues have already arisen. Minority language educational rights, the introduction of inproperly obtained evidence, the right to be tried within a reasonable time, the whole area of impaired driving and the use of the breathalyzer, media access to hearings of juveniles, the reverse onus sections of the *Criminal Code*. The resolution of these issues and indeed the fate of the new *Charter* rests squarely upon the judges who will be called upon to interpret it. As Professor Wayne MacKay has noted, the Canadian judiciary and in particular the Supreme Court of Canada, will either breathe life into the *Charter* or reduce it to a hollow promise of things that may have been.

I would say that my task here is not to interpret the *Charter*. For today, at least, that challenge belongs to your other guests, to whom I have listened with interest this morning and will listen with interest this afternoon. My turn to interpret will come at a later date. For the moment I merely note that interpretative guidance in respect of the *Charter* may come from many sources. Apart from Canadian jurisprudence and scholarly writings the United States has a body or jurisprudence accumulated over some 200 years from which we can learn not only positive points but also of the errors which have been made. We must be alert, however, in selecting from that jurisprudence, to bear in mind that the American Constitution differs in many fundamental respects from our own and American values are not always our values.

In addition to Canadian and American jurisprudence resort may also be had to the International Covenant on Civil and Political Rights, and to decisions rendered by the European Human Rights Commission and Court.

Our work is cut out for us, but the question is this: Does the entrenchment of fundamental rights and freedons in the constitution mean that Canada now has a Constitution more similar to the American than the British? Has Parliamentary Sovereignty now been replaced by judicial supremacy?

The principle of parliamentary supremacy needs no explanation here. The British parliament can pass any law it wishes; no British court has jurisdiction to deny the force of law to any British stature. In Canada this was always subject to the jurisdiction of Canadian courts to invalidate federal or provincial statures that are *ultra vires* the enacting legislature by virtue of sections 91 and 92 or the *British North America Act.* This was never seen as a significant limit on the parliamentary supremacy rule, however, because it has always been assumed that (subject to certain exceptions not relevant here), legislative power in Canada is as ample as it is in Great Britain, except that here it is divided between two levels of government. Save where distribution of powers issues arise Canadian courts have always regarding the legislative power in Canada as being superior to the judicial in exactly the same sense that it is in Great Britain. If we as judges need no reminder that this is our constitutional tradition, it might nevertheless be opportune to recall that we have adopted this traditon in Canada because we have thought that the supremacy of elected officials over appointed ones is fundamental to democracy.

As you all know, in 1970, the *Drybones* case muddied the constitutional waters. In *Drybones*, by a majority of 6 to 3, the Supreme Court of Canada decided that the *Canadian Bill of Rights* gave Canadian courts jurisdiction to invalidate federal legislation that infringed one of the fundamental rights enumerated in the *Bill.*

The significance of the *Drybones* decision cannot be denied. It was a radical departure from the principle of

g) Order a person to surrender his or her passport while exercising custody or access rights, and
h) Order that a person provide security when he or she proposes to remove the child temporarily from Ontario.

Ontario is also leading the way in eliminating kidnapping "havens" in Canada. The legislation will discourage parents from bringing an abducted child into Ontario in the hope of obtaining a custody order here. If the child is resident outside Ontario the court will be able to order the child returned to his home province or country. And, if a custody order has already been made outside Ontario, the courts will enforce the order in Ontario, unless the child is in danger of serious harm.

These provisions of the Ontario legislation have been recommended by the Uniform Law Conference of Canada as model legislation for all Canadian jurisdictions.

As a result of provisions of the legislation proclaimed earlier this year, Ontario will also become a party -- perhaps the first -- to the Hague Convention on the Civil Aspects of International Child Abduction. Parties to the Convention would undertake to return a child wrongfully removed from Ontario. The Convention will come into operation when two other countries ratify it, probably some time next year.

As well as the important changes in child kidnap law, Mr. McMurtry said, the legislation ensures a child's best interests are paramount in all legal proceedings -- custody, property, etc. -- relating to that child.

He said the new amendments help set guidelines to determine those interests and to ensure that the child's desired are taken into consideration.

The guidelines include: parenting ability; love, affection and emotional ties; stability of the home environment; views and preferences of the child; natural parentage and the child's relationship to other "family" members.

'PARENTAL KIDNAPPING' MEASURE IS PROCLAIMED

The Manitoba Child Custody Enforcement Act, designed to deter the "civil kidnapping" of a child by one parent from the custody of the other parent, came into force September 20, Attorney General Roland Penner announced.

The Act, introduced in the Legislature by Mr. Penner and passed in June of this year, expands the powers of the courts to enforce custody orders to meet what the attorney general described as an escalating problem

"By increasing the powers of the courts when dealing with 'civil kidnapping' cases," Mr. Penner said, "the Act provides a powerful deterrent to parental kidnappers within Manitoba, and will also deter parental kidnappers from bringing their children into Manitoba."

The Act contains specific provisions allowing a court to order that the police provide assistance where there are reasonable grounds to be believed that a child is being unlawfully withheld from a person entitled to custody or access, or that a person is intending to remove a child from Manitoba contrary to a court order or a separation agreement.

The Act also provides that a court may order disclosure of information of the whereabouts of a person subject to a custody order where this information is necessary to enforce the order. Such an order can be made against any person or public body having particulars of the address needed.

Further assistance is procided to the custodial parent in a provision which permits the court to order that the "abducting" parent pay the reasonable travel and other expenses involved in obtaining the return of the child.

To deter the removal of a child from Manitoba in contravention of a court order or separation agreement, a court may order the transfer of property or support payments to be held in trust, the posting of a bond, or the delivery of passport or travel documents.

Any act of contempt or resistance to the orders of a court under this Act may be punished by a fine of not more that $500 or imprisonment of not more that 30 days, or both.

The Act also contains a section which implements the 1980 Hague Convention on the civil aspects of International Child Abduction in the Province of Manitoba.

ONTARIO TO APPEAL 'OPEN COURT' RULING

Ontario is seeking to protect the rights of children by launching an appeal of a

recent Ontario Supreme Court decision dealing with total access by the press and public to cases before the juvenile and family courts, Attorney General Roy McMurtry said.

"I support fully the general principle of open proceedings in these courts," the Attorney General said. "I know that justice functions most effectively when it is scrutinized by the public. This principle is essential in the maintenance of public confidence," the Attorney General said.

"However, we have to recognize that there may be occasions when it is clearly not in the public interest to risk unnecessary harm to children, and their families, by having intensely personal information discussed before the public and in the media," Mr. McMurtry said.

"I have heard expressions of concern from members of the defence bar who are active in juvenile and family maters that as a result of the ruling some intimate personal details may be disclosed in public," Mr. McMurtry said. "We must not lose sight of the duty to protect the needs of the family and children in such matters.

"There are incidents, although very few in number, where the need for protection of the privacy of children and families must take priority over the need for publicity of the issues involved," Mr. McMurtry added.

Finally, the appeal is being taken wih respect to important procedural aspects respecting constitutional issues.

WITH A FEELING OF LOSS . . .

It is with great sadness that the Journal records the death of the Chief Judge of Nova Scotia, Judge Nathan Green, who died in Halifax on October 13, 1982.

Chief Judge Green, known for his diligence and his active participation in judges' associations, had been a strong supporter of the C.A.P.C.J. and all its programs.

From those who knew him as a friend, and as a colleague, we extend sincere sympathy to his wife Pinnie and his family at this time.

NEW APPOINTMENTS

Recent appointmemts to provincial courts of which the Journal has been informed are as follows:

Quebec

Judge Jean B. Falardeau, Montreal (August 18, 1982)

Judge Guy Fortier, Longueuil (August 18, 1982)

Judge Claude Martin, Longueuil (August 18, 1982)

Judge Gerard Rouleau, Longueuil (August 18, 1982)

Alberta

Judge William C. Kerr, Calgary (September 6, 1982)

Judge Robert Broda, Edmonton (September 6, 1982)

Judge Jack Allford, Edmonton (September 15, 1982)

Judge Dolores Hansen, Edmonton (September 6, 1982)

Ontario

Judge Douglas H. Gowan, Niagara South (October 25, 1982)

Judge Louis Eddy, Lambton (November 1, 1982)

Judge John D. Smith, Peel (October 18, 1982)

QUEBEC ELECTS NEW EXECUTIVE

Le Congres-Colloque de la Conférence des Juges du Quebec et du Conseil de la Magistrature s'est tenu au Château Frontenac à Québec, les 4, 5 et 6 novembre 1982.

Le nouvel exécutif de La Conférence se compose comme suit:

President:	Juge Claude Joncas Cour des sessions de la paix
Vice-President:	Juge André Desjardins Cour provinciale
Secretaire:	Juge Gilles Trudel Cour provinciale
Tresorier:	Juge Denys Aubé Cour provinciale
Conseillers:	Juge Bertrand Laforest Tribunal de la Jeunesse
	Juge Louis-Jacques Léger Cour Municipale
	Juge Bernard Lesage Tribunal du Travail
	Juge Yvon Mercier Cour provinciale
President Sortant et Conseiller:	Juge Gilles La Haye Cour des sessions de la paix

Il s'agissait du 20ième Congrès de la Conférence des Juges du Québec qui a vu le jour en 1962.

NEW JUDGES COURSE HELD IN OTTAWA

Newly-appointed judges from across Canada gathered in Ottawa from October 24 to November 2, 1982 for the annual training course for new judges sponsored by the C.A.P.C.J.

Forty-one judges attended the course, ten in the family and juvenile court section, and thirty-one in the criminal court section.

The Constitution and Charter of Rights was a prime topic for discussion at the seminar, with discussion led by Chief Judge Fred Hayes of Ontario, E. G. Ewaschuk, Q. B., General Counsel for the federal Deparment of Justice, and Professor G. Beaudoin of the University of Ottawa.

Several Chief Judges of the provincial courts gave lectures to the group, among them Chief Judge Larry Goulet of British Columbia on Jurisdiction, Chief Judge C. Kosowan of Alberta on Search Warrants, Chief Judge C. Scott of Newfoundland, together with Judge Stephen Cuddihy of Quebec on Judicial Interim Release, Associate Chief Judge E. Boychuck of Saskatchewan on Included Offences, Chief Judge Harold Gyles of Manitoba on Contempt and Compensation and Restitution, and Chief Judge Hayes on Conduct of a Trial.

Papers were also given on Statements and Confessions by Mr. Justice Kaufman of the Quebec Court of Appeal, Election and Re-election by Judge Fred Coward of Ottawa, Presumptions and Reverse Onus by Judge Denis Lanctot of Montreal, Hearsay Evidence by Professor E. Ratushny of the University of Ottawa, Conduct of a Preliminary Inquiry by Judge Cy Perkins of Ontario, Special Pleas and Res Judicata by Judge R. Halifax, of the Northwest Territories, and Sentencing Hearing by Judge Rodney Mykle of Manitoba.

Group discussions were held on Sentencing Problems and Probation and the Role of a Judge.

Sessions for the Family Division judges, organized by Judge Andre St. Cyr of Quebec, Judge Guy Goulard of Ottawa and Judge Peter Nasmith of Toronto, included discussions on Transfer Hearings, and an overview of the new Young Offenders Legislation.

Seminar participants also attended the Supreme Court for a visit with Mr. Justice McIntyre and a tour of the building, and enjoyed a wine-tasting party at the Maison des Vins in Hull, as well as a concluding banquet at Le Cercle Universitaire in Ottawa.

The hard-working and ever-cheerful Venue Chairman for the seminar was Judge Jean-Marie Bordeleau of Ottawa, assisted by Judge Cuddihy, Judge St. Cyr and Judge Goulard. Chairmen for the seminar were out-going Education Chairman Judge Jacques Lessard of Montreal and in-coming Chairman Judge Perkins.

NEW CHIEF JUDGE OF SASKATCHEWAN SWORN IN

Cornelius H. Toews was sworn in as Chief Judge of the Provincial Court of Saksatchewan on October 7, in Regina. The swearing-in ceremony took place in the Provincial Court Room in the Regina Court House on Victoria Avenue.

Outgoing Chief Judge E. C. Boychuk administered the oaths of office to the new chief judge. Present at the ceremony were the attorney general, representatives of the Saskatchewan Court of Appeal and Court of Queen's Bench, and most of the provincial court judges from across the province. Also present were members of Saskatchewan and Regina bars and representatives of the military, police, and Attorney General's Department.

Attorney General Lane hosted a government luncheon after the ceremony in honor of the new and outgoing chief judges.

Mr. Justice Woods of the Saskatchewan Court of Appeal welcomed Chief Judge Toews to his new appointment, and said, "With the new organization of the Court, and the (previous) appointment of Chief Judge Boychuk, the Provincial Court has rounded into shape and our new Chief Judge, the man we are honouring here today, takes over, as it were, a going concern.

"There are no doubt a number of prolems extant that will challenge his ingenuity. Without doubt, others will arise very quickly. I, personally, have no fear for the ability of Chief Judge Toews to make good decisions and to give leadership where it is needed in his new responsibility, for he is a person who has never shirked or never seeked to avoid that which had to be done.

"Chief Justice Bayda, Chief Justice Johnson, Chief Judge Boychuck and Chief Judge Toews were all at one time or another numbered among my students. Those of us who knew our new Chief Judge at Law School had nothing but admiration for his qualities."