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A PUBLICATION OF
THE CANADIAN ASSOCIATION OF
PROVINCIAL COURT JUDGES

THE CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES

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CHARLOTTETOWN: AFTER THE BALL

by Judge D.K. McAdam

It was as fine a fall morning as could have been found in any of those regions whose representatives had come and gone during the past week. Finer perhaps, because it was a quiet Sunday morning and all the tour buses had departed and the hotel was enjoying an unusual period of tranquility. Only a light breeze stirring the fallen leaves reminded one of the season and the winter to come.

A few stragglers were noted – Brian Stevenson, perhaps with no more golf courses to conquer, strolled down for a last looks at the ocean to sustain him through the Calgary winter. Mr. Conroy Senior was explaining to son Bob that the party was over and it was time to point home to Saskatoon; or was it the other way around?

Across in the Confederation Building could be heard the evangelical fervour of the Sunday morning service of the Calvary Temple. And just down the way past the recumbent form of a Saturday night celebrant on the grass, in the beautiful two hundred year old red sandstone church of St. Paul's could be heard the clear cool voices of members of the C.B.C. Hymn Sing Choir.

What more fitting conclusion could there have been than to lunch with our new president and his wife who as true hosts were there to see the very last guests off the premises.

On the plane from Charlottetown to Toronto were two of the principals of the stage shown Eight To The Bar. As the plane touched down at Toronto one was heard to say to the other "Maybe we can do the same thing next year." Maybe we can.

(JUDGES HEAR JUSTICE MINISTER . . . continued from p. 16)

"I believe that the time has come to undertake a fundamental review of the Criminal Code. The Code has become unwieldy, very difficult to follow, and outdated in many of its provisions. It has come to deal with questions which I believe do not belong to criminal law. We must be aware of the limits of the criminal law role in dealing with purely local or temporary problems."

Reform of the Criminal Code would also involve the Law Reform Commission, and the provincial Attorneys General – he was critical that not a single one of the recommendations of the Commission in its nine years of existence had been put into the statutes – and the legal profession.

He noted that a previous Justice Minister had sought to remove the State from the bedrooms of the nation. "I will go a little further; I will push a little harder; I will attempt to get the State out of the house all together. What this country needs is smaller government and bigger people."

(LA PRESENCE . . . continued from p. 18)

Cette attitude reflète la philosophie du nouveau gouvernement. Elle reflète également l'opinion d'un nombre croissant de Canadiens qui estiment que l'appareil gouvernemental devrait être réduit et éconduit de leurs activités quotidiennes.

Un de mes prédécesseurs au ministère de la justice a déjà affirmé que son objectif, en proposant les amendements qui constituent maintenant l'article 158 du Code criminel, était d'exclure l'état des chambres à coucher du pays.

Je ferai encore plus d'efforts afin d'éliminer totalement la présence de l'état dans nos domiciles.

Notre pays a besoin de citoyens plus importants et d'un gouvernement plus modeste.

(IN BRIEF . . . continued from p. 15)

compte l'importance accrue que l'on donne à la formation du personnel afin de le préparer à occuper ses responsabilités, et ce avec une période de probation de 24 mois.

M. Lawrence a ajouté: "Nous devons nous rendre compte que le Service ne peut atteindre ses objectifs sans l'appui total des détenus et de la collectivité qu'il dessert."

"sous cet aspect, je suis particulièrement heureux du succès de la mise en oeuvre de la Recommandation 25 qui demande au Service correctionnel du Canada d'être ouvert et d'être responsable envers le public."

(EDITORIAL . . . continued from p. 3)

Charlottetown.

However, the adoption by the association of the proposal to settle absolute criminal trial jurisdiction on the provincial court may well prove Charlottetown's most important legacy.

avons assisté à une pièce de théatre. Je dois vous souligner que l'hospitalité de l'Isle du Prince Edouard n'a jamais été aussi attrayante ni plus effective.

Les vrais bénéfices provenants des conférences se trouvent en dedans du programme même, dans l'échange d'idées entre les délégues et soit le commencement ou le renouvellement d'amitiés. Toutes ces choses-ci étaient certainement en pleine vue a Charlottetown.

President's Page

by Judge W. Chester S. MacDonald
President, C.A.P.C.S.

I welcome this opportunity to speak to my fellow judges through this medium. This is our journal, and a means of communicating with each other. I sincerely hope each member of our association will feel free to use it to express his opinions or to contribute articles.

May I first express my thanks to you for your expression of confidence in choosing me as your president for this year. I am delighted with the firm foundation already built by my predecessors and by the high calibre of my executive this year. I can assure you we will do our best to carry on the great work of the past, and perhaps break new ground of our own.

Our association has accomplished much during the few years of our existence. However, much is to be done. Whether we are actually proceeding in the right direction is possibly open to question. There are many judges who have not had the privilege of attending our meetings, nor have been seen or heard from in any way. Suggestions of where we should be headed or what priorities we should stake out would be welcomed. If anyone has anything at all to contribute, I would appreciate being informed.

This year we have focused our attention on pursuing the furtherance of a unified court. We have a capable and energetic committee under the chairmanship of Chief Judge Cawsey. This committee will be meeting with the executive in Montreal the latter part of November and then we will be presenting our views to the Minister of Justice, the Honourable Jacques Flynn, at a meeting scheduled for November 26th.

At this point it would appear that a number of persons who will ultimately be making the final decision are favourable to the idea. Since this is a matter which affects the entire association, I will see that all judges are kept informed of the progress.

Another committee which is actively at work is the Salary and Benefit committee. Judge Brian Stevenson is now compiling all relevant information from each province and the committee will be making recommendations for some formula to alleviate the need to bargain yearly for what is justly ours.

Il me fait grand plaisir de profiter de la publication de notre Journal, pour ainsi m'adresser à tous mes collègues relevant des Tribunaux provinciaux. Je pense que nous devons tirer profit de cette publication pour entretenir le dialogue entre nous. Il serait souhaitable que chacun de nos membres puisse trouver une opportunité d'y faire paraître un article experimant son opinion sur une problème particulier.

Mais avant tout autre commentaire, je voudrais exprimer ma reconnaissance pour cette marque de confiance qui m'a valu mon accession à la présidence de l'Association pour l'année en cours. Je me réjouis de ce que celle-ci, grâce au travail accompli par mes prédécesseurs, repose sur des assises bien édifiées, de même que je manifeste ma fierté quant au choix des membres du Comité Exécutif. Je vous donne l'assurance que nous ferons tout en notre pouvoir pour maintenir l'essor imprimé à notre mouvement, tout en apportant une contribution additionnelle.

Notre Association a accompli des travaux remarquables depuis sa courte existence; mais il reste beaucoup à faire. Qu'il nous soit permis d'espérer que nous sommes orientés dans la bonne direction.

Bon nombre de nos membres n'ont pas eu l'occasion d'assister à nos réunions, ou avec lesquels les relations n'ont pas été établies. Il serait également souhaitable de connaître leur point de vue quant à l'orientation générale de notre Association, ou la définition de ses priorités. Je vous invite donc tous cordialement à prendre contact avec moi.

Pour le présent terme de mon mandat, notre objectif principal porte sur le projet d'uniformisation de nos Tribunaux provinciaux. A cette fin, nous avons constitué un comité composé de membres soucieux de mener à bien cette tâche et dont la présidence a été confiée au Juge en chef Allan Cawsey.

Ce comité doit se réunir à Montréal vers la fin de novembre, en même temps que la réunion du Comité Exécutif, alors que par la suit nous présenterons un mémoire à l'Honorable Ministre de la Justice, Jacques Flynn, avec lequel nous escomptons une entrevue pour le 26 novembre prochain. A ce sujet, il nous semble que les autorités qui auront à se prononcer ont déjà manifesté un accueil favorable à cette proposition. Par ailleurs et comme ce projet est d'un intérêt particulier pour tous les juges, je ferai en sorte de vous tenir au courant de tous les développements qui surviendront.

We propose to continue our efforts to have the word "magistrate" stricken from the Criminal Code and further to take whatever steps we can to elevate our Bench in the eyes of the public.

It is my opinion that in order to earn the respect which we ought to have will take more than the mere changing of a word. It will require each of us to look at ourselves and determine to wear our designation with pride and dignity. I am convinced that the behaviour and conduct of each of us reflect on all. I therefore urge that each judge resolve that what he does this year will reflect credit on all judges. I would ask that any task you perform be carried out expeditiously and with honour to yourself and the association.

There are some who are called upon to do commission work and other such outside work and this must be done in such a way to bring credit to our Bench. We have every qualification and ability that other Benches have and we should always be alert to that fact.

It is my intention this year to make the National Association known to the provincial Attorneys-General as well as to the Canadian Bar Association. I have already made progress in this regard.

In closing, I would reiterate that our executive would welcome the views of each of you. I take this opportunity to express my best wishes to you and assure you that both myself and the executive will work hard on your behalf. I look forward to meeting a number of you this year in my travels.

D'autre part, notre Comité sur les traitements des juges est également fort actif. Le responsable du Comité, le juge Brian Stevenson, est en voie de compiler tous les renseignements qui nous parviennent à ce propos de chacune des provinces, dans l'optique de la formulation de recommandations précises, afin de nous soustraire à la pénible obligation de revendiquer sans cesse un traitement équitable.

Nous poursuivons nos démarches dans le but de faire disparaître le terme "magistrat" du Code pénal, dans le but bien précis de revaloriser notre fonction aux yeux du public. Dans cette optique cependant, le seul changement de nom la fonction serait insuffisante. En effet, le but ne sera atteint que lorsque nous serons vraiment en mesure d'exercer cette fonction avec fierté et dignité, la conduite et le comportement de chacun devant refléter sur la collectivité. Je vous invite donc à faire en sorte, au cours de l'année, que nous puissions ajouter à notre prestige. Il suffira alors que tous et chacun de nous accomplissions notre tâche avec diligence et célérité.

Nous ne devons pas perdre de vue que nous possédons l'expérience requise pour assumer des responsabilités s'apparentant à celles qui relévent de d'autres Tribunaux. Sans doute également ceux d'entre nous qui occupent d'autres fonctions relevant de commissions ou organismes para-judiciaires peuvent-ils contribuer à ce rehaussement de notre image.

Je vous fais également part de mon intention de faire valoir notre Association auprés des divers ministères de la Justice du pays en engageant davantage le dialogue. Déjà, des progrès ont été réalisés dans ce sens.

En terminant, je vous réitère l'invitation d'exprimer auprè de notre Exécutif votre point de vue sur divers sujets, vous assurant de tout l'intérêt qui y sera porté. Soyez assurés que les membres de l'Exécutif et moi-même ferons les efforts requis pour la réalisation de tous nos objectifs, de même que j'anticipe le plaisir de vous rencontrer en grand nombre lors des événements qui marqueront le teme de mon mandat.

(CAMERAS . . . continued from p. 22)

May, 1978. There is no offical termination date for the rule change; justices say the rule will be in effect "as long as the media behave".

Texas allows camera coverage of appellate courts, but only for educational purposes. Canon 3A(7) of the Texas Code of Judicial Conduct requires consent of participating parties.

WASHINGTON state has had a permanent rule since 1976 permitting camera coverage of proceedings in trial and appellate courts (amendment to Canon 3A(7) of the Washington Code of Judicial Conduct). Consent of all participating parties is required.

West Virginia authorized an experiment last January through a supreme court order. Trial courts in one county will participate in the program, which does require the consent of the parties.

Wisconsin courts began a one-year experiment in April, 1978 which has been extended to June, 1979 (amendment to Canon 3A(7) of the Wisconsin Code of Judicial Ethics). A special committee appointed by the supreme court has endorsed a permanent change. Trial and appellate courts can be covered by the media, but the judge can restrict access. Consent of parties is not required.

Most states limit photographic equipment to one or two television cameras, one or two still cameras, and microphone already installed in the courtrooms. All require that equipment be noiseless, and that available lighting be used. No flash attachments or other strong lights are tolerated.

In addition, many states limit the types of cases which may be photographed or broadcast. Generally, they forbid coverage of rape, child custody, divorce, matrimonial disputes, trade secrets, or juvenile proceedings.

The federal courts have not given any indication that they will open trials or appeals to cameras in the near future. But last March the Judicial Conference amended Canon 3 of the Code of Judicial Conduct for U.S. Judges to allow braodcasting, televising, recording or photographing of investiture, ceremonial or naturalization proceedings in federal courts.

* * * *

(NEW DIRECTIONS . . . continued from p. 20)

Code will constitute a major challenge. It will require the very best of our efforts both a the federal and provincial level. But criminal justice is not the exclusive preserve of governments. The criminal law affects, in one way or another, all citizens. We will need, therefore, to make very sure that we have the views of as many sectors of the population as possible. I am prepared to take up this challenge and contribute my share to this extremely important undertaking.

In his book "The Dilemma of Democracy", Lord Hailsham, Britain's Lord Chancellor, in that striking way he has of expressing fundamental truths about justice and law, says: "Judicial independence remains one of the few remaining protections of the individual and minority groups against the encroachment of the bureaucracy and the politically motivated hack in office, against the intrusiveness of mass culture and the oppressiveness of Unions and great Corporations".

The role of the judiciary with respect to the law is unique. Judges uphold the laws of Parliament without being subject to direction by it. In their decisions, they reflect the changing needs, beliefs and standards of citizens. Often, their decisions lead Parliament to enact new laws or modernize old ones. As we are reminded in a recent Time magazine article entitled: "Judging the Judges", "The judiciary is supposed to be democracy's hedge on majority rule and executive highhandedness".

Because of my conviction that the role of the judiciary is of central importance to Canada's system of justice, I intend to take steps to ensure that our federally-appointed judges are treated fairly and adequately.

In conclusion, I just wish to emphasize that I am mindful of the word of caution given by the great jurist that he is, Lord Denning, against "caring too much for law and too little for justice". He states that as lawyers, and probably legislators too, we must be men and women of spirit and vision leading the people in the way they should go, making the law fit for the times in which we live, seeking that laws are just and that they are justly administered. I say these words should be our guiding light.

WHY DOES IT HAPPEN TO ME?

by Judge Ron Meyers

Judge Meyers is a judge of the Manitoba Provincial Judges Court (Family Division) in Winnipeg. For some reason he seems to attract more than his share of unusual courtroom situations. The following are a few more modest examples. – Ed. note

A) A lawyer represents a wife/applicant under the Family Maintenance Act. An application for relief is properly filed and served on the respondent/spouse. At the hearing (which is not attended by the respondent) the following exchange takes place:

Lawyer: Your Honour, my client is seeking an order for separation, custody, maintenance of $400 per month and an order of prohibition.

Court: Yes?

Lawyer: Your Honour, my client is seeking an order for separation, custody, maintenance of $400 per month and an order of prohibition.

Court: Yes?

At this point the lawyer sits down.

Court: Do you not think you should call evidence?

Lawyer: Do you require evidence?

Court: It would assist me in determining whether or not an order should be made.

Lawyer: Very well, I wish to call Mrs. L.

Mrs. L. is sworn in.

Lawyer: Mrs. L. what are your monthly expenses for rent, food, clothing and utilities?

Mrs. L.: They total $300.

Lawyer: Thank you. No further evidence.

Court: What about evidence relating to the other relief being sought?

Lawyer: To tell you the truth Your Honour, I'm not prepared.

Court: I wanted you to say that. I couldn't bear to hurt your feelings. Do you want an adjournment?

Lawyer: That would be fine.

Court: Pick any date when I'm not sitting. And Court Reporter, is there any way the record could show that what went on today was really a figment of someone's sick imagination.

B) Lawyer: We are here to seek a variation of the $1.00 per year awarded my client by Judge Maurer, and we are asking for an increase in maintenance from her husband.

Court: What does he do?

Lawyer: He is a pensioner.

Court: How old is he?

Lawyer: 78 years old.

Court: Why is he not here?

Lawyer: I really do not know. The Canadian Institute for the Blind said they would try to get him here and also try to get him a lawyer.

Court: Has there been any material change in his financial fortunes since Judge Maurer made her Order of $1.00 per year?

Lawyer: He got a few extra pension dollars. I tried to reason with him to give some of that increase to his wife. However, he refuses.

Court: If I did make an order how would you enforce it? Would you want me to send him to jail?

Lawyer: Well, if he didn't obey your order . . .

Court: Might I suggest an adjournment. Pick any date when I'm not sitting. And Court Reporter, is there any way the record could show that what went on today is a figment of someone's sick imagination?

C) Today, we scheduled a full day sitting on a matrimonial dispute. Counsel asked for a ten minute delay. After a one hour delay I asked Counsel for their intentions, and this is the exchange that took place:

Counsel: The main problem were matters that it turns out would have to be subject to a Marital Property Act application. Of course, this Court didn't have the jurisdiction to deal with those matters so rather than waste two Court's time, we took the liberty of wasting this Court's time, with respect.

The Court: I don't know whether to feel flattered or insulted.

Counsel: In any event, we tried to put together a settlement which was all encompassing which would not necessitate a further application under the Marital Property Act. I apologize once again for the inconvenience to this Court, but hopefully it is in the interest of the parties and the Court's system.

Editorial

by Judge Rodney Mykle

A WEEK ON THE ISLAND

Provincial Court Judges adopted in principle a proposal which would provide a single trial division criminal court for Canada.

During the Annual Meeting of the association in Charlottetown in September, delegates voted unanimously to accept the report on court structure containing this proposal, presented by Judge Allan Cawsey, Chief Judge of Alberta. (An edited form of his report appears elsewhere in this issue.) The Charlottetown meeting, the sixth in the life of the organization, brought together provincial judges from all parts of Canada for a week of debate, information and social activities.

Judge W. Chester S. MacDonald, the incoming President of the Association, and the other P.E.I. judges and their wives, provided delegates with a convention package that was comprehensive, educational, and enjoyable.

Special guests at the convention, including the Premier of the province, the Hon. J. Angus MacLean, the P.E.I. Minister of Justice, the Hon. Horace Carver, and the Hon. John P. Nicholson, Chief Justice of P.E.I., all recognized the role of provincial judges and their significant contribution to the administration of justice generally. Judges were told that their responsibilities are perhaps the heaviest of any level of court.

During the course of the four-day meeting, panels were presented on "Community Values and the Courts Re Youths", "Consumers of Justice", "Role of the Press to the Courts" and "Relationship between Provincial Associations and the Chief Judge". Lively exchanges occurred between panelists and delegates in some of the more provocative moments of the panels' presentations.

Social activities were many and varied, from lobster and oyster parties to live theatre. The hospitality of Prince Edward Island has never been demonstrated more attractively or effectively.

At most conventions of any group, the real benefits are behind the structured program, in the informal exchange of views among delegates and beginning – or renewing – of friendships. This was certainly present in

Les Juges des Cours Provinciales et de Cour des Sessions de la Paix ont adoptés en principe une proposition qui verrais un simple jugement divisionnaire des cours criminels du Canada.

Les délégues assistant à l'assemblee Annuelle de l'Association tenue à Charlottetown en septembre, ont votés unanimement d'accepter le rapport relatif à la composition des cours tel que contenue dans la proposition, présenté par Monsieur le Juge Allan Cawsey, Juge en Chef de la Province de l'Alberta (son rapport condensé se trouvera ailleurs dans cette édition).

L'Assemblée tenue a Charlottetown, la sixième de l'Association, a attirée des juges provinciaux en travers le Canada pour une semaine de débat, d'échange d'information et d'activités sociales.

Monsieur le Juge Chester S. MacDonald, le nouveau Président de l'Association, aussi bien que les autres juges de la Province et leurs epouses, ont subvenus des activités compréhensives, éducationnelles et très agréable.

Parmi les invités à la Conference se trouvais le Premier Ministre de la Province, l'Honorable J. Angus MacLean, le Ministre de Justice de la Province, l'Honorable Horace Carver, et l'Honorable John P. Nicholson, Juge en Chef de la Province, et ceux-ci ont tous reconnus le rôle que joues les Juges Provinciaux et les Juges de Cour des Sessions de la Paix, et leurs contributions importantes envers l'administration de justice en général. On a apprix que les responsibilités de ces juges sont peut-etre plus lourdes que n'importe quel autre cour.

Au cours de la réunion de quatre jours, des discussions ont été presentées concernant: "Les Valeurs de la Communauté et les Cours à l'égard de la Jeunesse", "Les consommateurs de Justice", "La Presse et les Cours", "Rapport entre les Associations Provinciales et leurs Juge en Chef". Des échanges animées se sont produits entre les membres du tableau et les délégues au cours des discussions les plus provocants tels que presentés par le tableau.

Les activités sociales étaient sûrement nombreuses aussi bien que variés — nous avons gouté de l'homard, des huitres et nous

(continued on p. 28 . . .)

A CANADIAN AT OXFORD

by Judge Douglas E. Rice

I attended the Fifth Commonwealth Magistrates' Conference at Oxford University, Oxford in September as the delegate of the Canadian Association of Provincial Court Judges, along with my wife Joyce.

The conference theme was The Citizen and the Law. Several specific areas were examined, such as police powers, right to bail, right to legal aid, and the role of the layman in criminal justice. In addition, the special problems of court standards were examined.

It was apparent that those who had the responsibility, in all cases, of presentations, had done a great deal of work in preparation. Background papers on each subject were prepared, printed and circulated to those registering to attend well in advance. Some papers were better than others, but all were well done.

In each instance the Chairman was excellent. A brief introduction to the subject was presented and the matter opened to the floor for discussion. A fair method of participation was quickly devised.

It was agreed at the outset that the Canadian delegation should not attempt to use more than its proper share of time. Thus on each subject only one or two Canadians spoke, depending on the subject and the Judge's experience in that field. We attempted to keep our presentations brief and to the point. I believe that we were successful. I know that we were asked many questions outside of the sessions on points raised.

In many respects the Canadian delegates had difficulty relating to many of the problems presented – often from the developing countries, but even in England. To be somewhat specific, while we may, at times, wonder at the authority of our police, I suggest that our citizen's rights are better protected than in most countries. In Canada, our Code provisions as to bail and remand are far more liberal than anywhere else in the Commonwealth. Our legal aid systems in the various provinces, in the criminal law field, are equal or superior in its application to others. Having no, or few, non-legally trained persons in judicial functions in Canada, the problems of Lay magistrates, JPs in judicial functions, assessors, etc., was not of concern to us.

Despite what we feel to be inadequate facilities in some instances, generally our minimum Court standards are well above the minimum discussed at the Conference. By some standards our facilities would appear almost palatial.

I am not trying to paint a picture of Canadian superiority. We have advanced, partly through our own efforts, to a degree of competency and sophistication that has placed us beyond many of the problems that exist in other parts of the Commonwealth. We have been faced with many, if not all, of these problems in our past. Certainly I can recall many of them in my 25 years of practice.

The business sessions dealt largely with matters of changes in representation, financial matters and the election of officers. The constitution was amended to provide for a chairman of the Council, and six vice-presidents, one each for the six regions.

The Magistrate's Association appears to have considerable prestige in England. The Lord Chancellor of the United Kingdom attended two of the functions, and Lord Denning, M.R., was present at several, including working sessions.

The retiring president, Sir Thomas Skyrme, is legally trained. He was for years a member of the Lord Chancellor's staff. The new president, the Honourable Tun Mohammed Suffian, is Lord President of the Federal Court of Malaysia. Three of the council members were in attendance at the Conference: Judge Sandra Oxner of Nova Scotia; L.S. Turnbull, an Australian J.P.; and A.J. Walmsley, a legally-trained magistrate from Northern Ireland. (I was not able to obtain the qualifications of the other Council members.)

Elected vice-president at the meeting (North Atlantic region) was Mr. Justice A. Loizou of the Supreme Court of Cyprus. Sir Bryan Roberts, of the Lord Chancellor's staff, was named Chairman of the Council.

As to finances, to date the CMA has received financing from the Commonwealth Foundation in generous amounts. This grant amounted to &22,500 for the last fiscal year. These grants are about to cease, with the result that the member associations/governments must contribute more. Membership subscriptions amounts to &5,500 in the last fiscal year, and varied from nothing to a maximum of &400. A motion was passed that membership contributions be reviewed and increased where possible and that the maximum contribution be doubled to &800. The Treasurer felt that the Association could

LISTS

In such a system, it is imperative that a check list be kept to ensure that what was set out to happen actually happens. At present, the Court Reporter keeps a card system on every person placed on Community Service. If the work is completed and the case is closed, the Reporter removes the card. If, however, the time runs past the term provided, she checks with the Probation system. There is some question in my mind who should keep the Check List. I am aware that the Court Reporter should not be the person, but that is the best check we have at present.

The benefits of this system which have become apparent are:

(1) It involves the public in the court process;

(2) It relieves the Probation Service of unnecessary work and provides them with much needed time to spend with deserving offenders;

(3) It provides a way for an offender to pay for the damage he has done to society without in any way upsetting his financial standing.

(4) It gives the offender an opportunity to converse and associate with a responsible person in society;

(5) By having to seek his own employment and work in the community, it makes the offender responsible and accountable to the community unit. It may also be the first time that the offender has ever had to seek work by asking for it from someone.

(6) It sometimes provides young offenders with a full or part-time job after the service is performed.

(7) It can act as a reference for the young person applying for a job.

CONCLUSIONS

As of June 21, 1979, after the program has been in effect for approximately three years with only using selected cases, in excess of 17,000 hours have been logged of which a goodly portion have been completed and the accuseds discharged. From the feedback, mainly coming from the letters approving the offenders' work, we can conclude that the program is being well received in the community and that the community members are prepared to support same and act as supervisors. We should have a better understanding of the program, how it is being received in the community and what effect it is having on the offenders, after we have received the report from a committee of students who have been analysing the program under the direction of the Adult Probation Service for our area.

From the probation officer's position, I think it can be said that instead of their work load increasing that it has tended to level off or decrease. I am satisfied that the program has the complete backing of the service in our area. I would hope that as the program moves forward that the probation service will be able to get out into the community more to talk with the supervisors and be available to the probationers. I am a firm believer that there must be a close tie between the supervisor, the community, the offender and the probation officer.

From the offender's position, it appears to be working satisfactorily. It provides a way for the first offender to have a kick-at-the-cat, so to speak, and yet end up with no record to hinder him in life. I think one of its greatest advantages is that it gives a young person a person in the community to whom he can relate. The supervisor, who may be the fire chief, the mechanic at the school, the janitor, or the senior citizen is usually a responsible, concerned citizen. Just maybe it's the first person who ever stopped to chat, listen and try to understand a mixed up lad or lass. Maybe the letter from the community supervisor that is given to the lad to bring back to the court might just be the first nice thing that's been said about this person for some time, which may act as a catlyst.

I am satisfied that the program is working. It must never be thought of as a cure-all program. It is a program that can take its place as part of the overall system. It's a program that must be implemented gradually, with complete co-operation from the Adult Probation Service and with the full support of the community. Also, and very important to note, the program must not be looked upon as a source of cheap labour for any organization within the community. It must always be looked upon as a means whereby the offender can repay the community for the wrong he has done, be able to identify with that community and in so doing come back into the mainstream of that community as a forgiven offender to take his place as a good citizen.

In conclusion, may I say that the fine and the custodial sentence have a real part of play in our system; and will continue to play a real role. However, by using this alternative it makes the sentencing procedure much more flexible and above all it brings the community into the action, which to me is vitally important.

adjourning the matter for some time to have the probation officer do a short assessment of the individual as to whether the person might qualify for the program. At the time that the offender is advised about doing community service he is also advised of the number of hours that he will be expected to complete. The number of hours varies from 25 hours to 200 hours. We have found that orders should not exceed 200 hours as shortly beyond that point you reach the point of diminishing returns. The usual term of the Probation Order is three months. The number of hours is calculated roughly by using a wage scale of $3.00 per hour.

Once it is determined that the offender will do community service and the number of hours are fixed, the case is then adjourned for one week. The offender is advised by the court that he must go back to his community or the community where he did the wrong and there seek out sufficient employment to cover the allotted time. It should be noted that the offender can acquire the work from a number of groups; but if he does that, a letter must come from each group re the work available and what supervision will be provided. It is to be noted that finding the work is no longer on the Probation Officer but directly upon the offending person. He is advised by the court that he has to have a letter from some charitable organization that they have work to be done, the kind of work, and that they will undertake the supervision. He is also advised that at the end of the work period that a letter will be needed from the organization that sets forth comments about the quantity and the quality of the work performed and also about the reliability of the offender appearing on time to do the work. He is then asked by the court to meet with the Adult Probation Officer to further explain what is required. The probation officer coaches him by making suggestions where work might be found. He is also available to the offender for advice during that week. The probation officer generally checks out the work after the offender has acquired what he considers suitable work. It is to be pointed out that the Probation Service must be an integral part of the program. Without it, the program would be destined to failure.

Upon his return to court, the following week when his case is called, he comes forward at which time the letter from the charitable organization is brought forward to the Bench. If everything is satisfactory, I then order that he be discharged upon complying with the terms of a Probation Order. The length of the order is usually three months. The additional terms of the order are that a definite number of hours be given to the charitable organization and that the offender return to the court before the termination of the Probation Order. (It is to be noted here that the offender may return to the court for a discharge before the term of the order expires.) The offender is also advised that if he does the work satisfactorily that the conditional discharge will be made absolute; or if he is on a straight Probation Order, that upon satisfactorily completing the work that he will be discharged from the Probation itself.

The offender is then ordered to meet with the probation officer to have the order read and explained. This keeps the probation officer on top of the situation at all times which in my opinion is absolutely vital. It is to be noted that during the performance of the community service that the Probation Service is relieved of most of its usual work in a case such as this with the exception of making spot checks at the place of employment or phoning or talking to the employer.

When the work is completed, the offender contacts his Adult Probation Officer and arrangements are made for this person to return to court for a discharge. On his return to court, he must have a letter from his employer setting out the matters previously enumerated.

Generally, I take a little time in court to read the highlights of the letter from the employer. It is my contention that if the public hears about the bad side of this person that they should also hear anything good that may be said about him. It's also great to see the light glowing in the face of the individual when something nice is being said about him. The Absolute Discharge is prepared by his lawyer, if represented. If not, it is prepared by the Clerk's Office. It is signed and forwarded to the offender or his counsel by mail within a few days from the last court appearance. It should also be noted that if the offender needs more time to complete the work, he must apply to the court for an extension of time.

If the probationer defaults, (which seldom happens) the probation service is expected to follow the law and proceed to a violation of the Order by way of an Information. If it goes far enough that an Information is laid by the Crown, it is usually delayed for a week or so. Somehow the offender gets a keener understanding from the Probation Officer and his counsel as to what is required and invariably the work gets done. The Crown ends up withdrawing the Information.

survive on such income.

The name of the Association was discussed briefly. It being the view that the matter of name having been fully discussed at the 1975 meeting, and there being nothing further to add, the discussion was terminated.

Ten Canadians were in attendance. It must be noted that most countries sent Chief Magistrates or Senior Magistrates. Other countries sent members of High Courts and District Courts, most of whom had been magistrates on their way up the judicial ladder.

Other persons affiliated or associated with the Courts were also in attendance. As expected, England and Wales had a predominance of lay JPs, (18), compared with seven stipendiary magistrates, eight lecturers/-professors of law and four Crown Court Judges. It must have been legal holidays in Australia, by the number of stipendiary magistrates, JPs and Solicitors attending. Inquiries revealed that many were on leave, holidays and had been attending The International Bar meetings in France just prior. They appear to have State (provincial) organizations as opposed to a national one.

Most of the magistrates, of whatever category, were legally trained, even in the African countries. Many were young, indicating lack of professional depth. Distances and experience indicated a lack of judicial training and education. They had been given the job with few tools with which to work.

On Wednesday afternoon I met with the President, Sir Thomas Skyrme and the Secretary, Mrs. Dorothy Winton, to explain the Canadian position. I asked Chief Judge Allan Cawsey to accompany me. A constitutional change would be required to establish a new or different type of membership for Canada, and this could not be effected until the next assembly due to the required notice of motion to amend.

Following the meeting Chief Judge Cawsey and I visited the Oxford Magistrates' Court. The Court was not in sessions but we did have the opportunity to review the Court forms and procedures with the Court Clerk. The next week, in London, I did take the opportunity of visiting a Magistrates' Court at work and also the Old Bailey, in session. The experiences of the Court Clerk's Office in England might be examined by our Association's Committee on Forms and Rules. The Crown Court in England is the most similar to our Provincial Court in jurisdiction, except that this Court is a trial Court and does not have to deal with matters before that stage. An interesting sidelight, 18 months is now the minimum time (in London) between committal for trial and trial.

JPs in England – and there are some 2,000 to 3,000 of them – are prominent people in England who volunteer their services. They hear pleas, trials and sentence in summary conviction matters and hear bail applications. They sit in threes, are unpaid and are not legally trained. The Magistrates' Court, in my view, is very much a police court, run by a legally-trained Clerk, and not liked by the police.

My conclusion, then, is that the Commonwealth Magistrates' Association is an association of court of first instance judiciary throughout all Commonwealth countries except India, the Bahamas and Singapore. Most of their judiciary is legally trained. Only one of the 47 member associations is a lay association, i.e. England and Wales, and their association has stipendiary magistrates and Crown Court Judges as members. In Australia there are some lay JPs in some states, performing some judicial functions, but this Country, by states, is forming an Australian Stipendiary Magistrates' Association.

The situation in New Zealand is that the Stipendiary Magistrates are loath to join the JPs in an association, because of difference in professional training.

If I interpreted the situation properly, the future should see a legally trained magisterial judiciary, in the Court of first instance, in all Commonwealth countries, excepting England and Wales. JPs will be retained in many areas to perform administrative and other non-judicial functions, (e.g. granting bail, etc.). In many instances this is necessary because of numbers of magistrates and distances involved. Another exception could be the "custom" courts of some African countries.

My opinion, then, is that the Canadian Association should remain within the membership of the C.M.A. Admittedly we have much more to give than to receive, in sophistication, experience and financial support. Unless we propose and support an alternative before the next conference, active membership is the only type of membership available. The reasoning that the C.M.A. is comprised chiefly of non-legally trained persons is not valid. The fact that most others are not as well trained, as well educated in judicial functions or as experienced, is true. Yet, I suggest, our systems are not perfect, and that we can learn a great deal, as I did, from the experiences of others.

May I take this opportunity of expressing, on behalf of Joyce and myself, our most sincere appreciation in permitting us this rewarding experience.

TOWARD A RATIONALIZATION OF CRIMINAL PROCEDURE

by Chief Judge Allan Cawsey

The author is Chief Judge of the Provincial Court of Alberta. This article was prepared in his capacity as chairman of the Committee on Court Structures of the C.A.P.C.J., and was presented at the 1979 annual meeting of the Association.

Provincial Court Judges have a natural interest in the Court structure in Canada because many of them have accepted appointments on the Provincial Court Bench, not because of the financial returns or the status, but from a sense of obligation and a sincere interest in the administration of justice.

The Provincial Court Judges and Magistrates, the so-called inferior Court, are in a better position than academics, lawyers or Superior Court Judges to assess the impact of our present Court system on the citizens of Canada.

Daily we see the frustrations and misunderstandings that arise from our complicated procedures. We see accused persons languishing in gaol pending trial when the trial could have been held at a much earlier date in a unified Court. We see the system misused by Counsel who use every device permitted by the Code to postpone a trial. We see that the present system is not in tune with the needs of Canada in 1979.

When reviewing existing Criminal Court structures and jurisdictions and proposing an alternative, it must be kept in mind that the Courts operate for the citizens of Canada and any proposal for change should operate for their benefit. If such changes should incidentally improve or enhance the role of Judges at any level, or lawyers, such improvements must be merely incidental and not the object of any suggested change.

The first research program of The Law Reform Commission of Canada recognizes the need to examine the existing classification of offences and the jurisdiction of the Courts. The Criminal Code was first enacted in 1892 and since that time there have been many amendments of the Criminal Code and although some have been referred to as sweeping changes most of them have been of a housekeeping nature. The structure of the Criminal Courts, the classification of offences and the procedure for trying and appealing cases has remained virtually unaltered since 1893. The Criminal Code has failed to recognize the changes that have been made to The Supreme Court, The County Court and The Magistrate's Courts in response to the varying demands on both Civil and Criminal justice.

I was invited by The Canadian Institute for the Administration of Justice at their meeting in Edmonton in the Fall of 1978 to participate on a panel on "Improving Criminal Procedure" which was re-printed in an abbreviated form in The Provincial Judges Journal, Volume 3, No. 1, page 18. My paper was picked up by The Canadian Press and was reported across Canada. As a result of this paper I have received a very positive reaction from many lawyers in various Courts in Canada and from many informed citizens but there has been no reaction whatsoever from the Federally appointed Judges.

The Executive of the Association meets annually with the Minister of Justice and Past-President Gary Cioni has now met with Marc LaLonde, the former Minister of Justice and Senator Flynn, the present Minister of Justice. I am advised by Judge Cioni that both Ministers expressed a keen interest in the concept of a unified Criminal Court. The Minister of Justice is anxiously awaiting a decision of the Canadian Association with respect to the concept of a unified Criminal Court so we are no longer dealing with a submission which might be forgotten and lost in a bureaucratic maze. We are now at the request of two Ministers of Justice making a proposal which in all probability will result in positive Government action.

At the outset, consideration must be given to the classification of offences because the structures and jurisdiction of the Criminal Courts have been tied to such classification.

The original Criminal Code adopted the distinction between indictable and summary conviction offences and from that time until the present criminal offences have fallen into one of three categories: indictable offences, summary conviction offences or Crown election offences. Generally speaking, indictable offences are the most serious carrying severe penalties while summary conviction offences are less serious carrying less serious penalties while the Crown election offences derive their character from the decision of the Crown as to its mode of procedure. The legal basis of the classification depends entirely on the Statute. The two major classifications, namely summary/indictable offences, governs the procedure at trial but also governs the method of appeal.

A NOVA SCOTIAN LOOKS AT COMMUNITY SERVICE

by Judge Hiram J. Carver

Judge Carver is a Judge of the Nova Scotia Provincial Magistrates Court. Although much now has been written about various provincial projects in this area, this article may be of particular interest to those judges in areas of the country where there is not a large support staff. Judge Carver's practice of placing the onus of finding work on the offender is worthy of some attention.

Fifteen years ago when I was appointed to the Bench, the traditional methods of sentencing involved the use of fines, imprisonment and to a very limited extent restitution. At that time most of the offenders were over 25 years of age. Today our courts are called upon to sentence an ever increasing number of people under 25 years of age.

With the change in the type of offender and offences, it appeared to me that the traditional methods of sentencing failed to provide the degree of flexibility necessary to make a sentencing program work. I found myself at ease during the trial of an accused but becoming utterly frustrated when I was called upon to impose sentences on certain offenders. I am not saying for a moment that traditional sentencing methods do not work. I am saying that they have their place in a goodly number of cases, but there are cases where other methods would work better.

In our area of Lunenburg, Queen's County, we turned to community service in 1976 as an alternative to traditional methods of sentencing for certain types of offenders.

Our program started at a dinner meeting at which the probation officers of our area and myself discussed the subject. We were in agreement that it was a good concept but there was a great deal of scepticism as to whether it would work. Problem areas were finding work, supervision, liability and public support.

The first case came in Liverpool. I had before me a first year college student who had been convicted of impaired driving. The incident had occurred coming home from a High School Graduation party. Having been in college and knowing how hard it is to come by $300 to pay a fine, I was looking for an alternative, as by no means did I want to see this interfere with the lad's education. I forced the issue. I imposed the minimum fine of $50 and in addition thereto, I ordered that he be bound by a Probation Order with a clause that he give 100 hours of community service. The duty to find the work and provide the supervision was put *squarely on the shoulders* of the Probation Officers. Needless to say, everyone has benefited from some early experiences and many changes have come about until today I believe we have a workable program.

I now propose to set forth for you the program of Community Service as it now exists under the following headings:

WHO QUALIFIED FOR COMMUNITY SERVICE?

In my opinion, anyone can qualify for community service who may be placed under the terms of a Probation Order whether it be as a result of a sentence being suspended, probation in addition to a sentence or under the Conditional Discharge provisions. I am much more concerned with the offender than the offence when I am considering whether I order the offender to do community service.

PLACES WHERE COMMUNITY SERVICE HAS BEEN PERFORMED

Churches; cemeteries; fire halls; film making; community halls; in schools assisting janitors or bus mechanics; Senior Citizen Clubs (I may point out here, that within the Senior Citizen's Groups the President assigns certain of the senior citizens of the club to attend and provide the supervision as well as work along with the offender); arenas; tax-driving to school for underprivileged children; baby-sitting at Liverpool Babysitting Service; ball parks under the Kinsmen Club; Legion Halls; disabled citizens; community campaigns; giving blood (to give blood you get credit for three hours and for each additional *new* donor who actually gives blood a credit of three hours will be allowed); and the latest one added to the list, roadside cleanups.

FINDING THE WORK AND MAKING ORDERS

After a verdict of guilty, if it is decided that an offender could benefit from community service, he is so advised at that time. Before this decision is made, I hear counsel (who may suggest community service) and I ask of the offender certain questions. In the future some consideration may be given to

authorized such coverage in 1956 by Canon 3A(9) and (10) of the Colorado Code of Judicial Conduct. All courts, trial and appellate, may be covered with camera equipment, with the consent of the judge and trial participants.

FLORIDA opened its courts permanently to camera coverage May 1 after evaluating a successful one-year experiment, which had been authorized by a modification of Canon 3A(7) of the Code of Judicial Conduct. It is not necessary to obtain the consent of trial participants.

GEORGIA authorized a permanent ruling in 1977 through modification of Canon 3A(8) of the Georgia Code of Judicial Conduct for approval of camera usage in trial and appellate courts. The consent of the parties is required.

Idaho began an experiment last December, which ends in June, in which the media may cover appellate proceedings with camera equipment. The consent of participants is not necessary.

Indiana has not responded to efforts to televise trials. In 1977, the chief justice ordered disciplinary action for judges involved in allowing three trials to be televised during the year.

Kentucky denied a request for TV coverage last year, although cameras were permitted in the Jefferson County Circuit Court in 1977. Justices there say they are waiting for results of other state experiments.

Louisiana conducted an experiment from February, 1978 to February 1979. Under a supreme court order, the state trial courts allowed the media to cover proceedings with cameras. Consent of all parties was necessary. During the year, no complete trial was televised, however, because parties did not agree to the plan. Judges are awaiting action on a recommendation to continue to permit such coverage.

Minnesota courts initiated a broadcasting experiment in January, 1978 through modification of Canon 3A(7) of the Minnedsota Canons of Judicial Conduct. There is no official termination date for the experiment, and appellate proceedings have been covered by the media occasionally. The consent of participants is not required.

Montana started a two-year experiment in April, 1978 by amending Canon 35 of the Montana Canons of Judicial Conduct. The supreme court approved the move which permits camera coverage of trial and appellate courts. Judges may deny coverage if they state their reasons for doing so.

NEVADA gained a permanent ruling in 1977 allowing all courts in the state to be covered with cameras (amended Canon 3A(7) of the Nevada Code of Judicial Conduct), but a state statute which prohibited such coverage was only recently repealed. Camera coverage is not permitted if court participants object.

NEW HAMPSHIRE rules in Canon 3A(7) of the New Hampshire Code of Judicial Conduct have been modified permanently since 1977 to permit coverage of supreme court and some trial proceedings.

New Jersey extended the camera coverage privilege to two counties in the state, beginning May 1. Canon 3A(7) of the New Jersey Code of Judicial Conduct allows cameras to cover proceedings in six trials, or for one year, whichever comes first. Other courts must request such coverage specifically.

New York has not removed its ban on cameras, but Chief Judge Lawrence H. Cooke of the Court of Appeals (the state's highest court) has indicated that he favors media coverage of judicial proceedings. Last January, however, the New York State Bar Association defeated a resolution to allow electronic media in courtrooms.

North Dakota courts initiated an experimental change in Canon 3A(7) of the North Dakota Code of Judicial Conduct, beginning last February, and continuing for one year. No consent is required for coverage of court proceedings, but cameras are permitted to cover only the supreme court.

Ohio allowed the media to televise one trial in March, 1978. Then last April, the state supreme court amended its code of judicial conduct to try out cameras for one year. The test began June 1.

Oklahoma started an experiment last January, to run through the end of the year. Trial and appellate courts are open to radio, television, and still photography coverage (amended Canon 3A(7) of the Oklahoma Code of Judicial Conduct). The judge in all cases, and the defendant in criminal cases, must consent to camera coverage.

Oregon continues to study proposals. Preliminary drafts of possible rule changes have been presented to the Oregon judicial conference, but no action has taken place since 1977.

Pennsylvania courts do not yet permit camera coverage of proceedings, but the Philadelphia Bar Association Board of Governor's recently endorsed a one-year experimental program. The supreme court is considering the proposal.

South Carolina still prohibits cameras, and it recently threatened to discipline a judge who allowed TV cameras to cover a child abuse case.

Tennessee temporarily changed its Rule 43, Canon 3A(7) of the Tennessee Code of Judicial Conduct to allow televising of trial and appellate proceedings, starting last February. Appellate proceedings have been telecast since

(continued on p. 27 . . .)

Section 426 of the Criminal Code and Section 427 provides that only the Superior Courts of the provinces have jurisdiction to try the indictable offences of treason, alarming Her Majesty, intimidating Parliament, mutiny, sedition, piracy, hijacking, murder or attempted murder, the offence of being an accessory after the fact, an offence under Section 108 by the holder of a judicial office, the offence of attempting to commit any offence listed above other than attempted murder, the offence of conspiring to commit any of the offences above mentioned.

As recently as 1972 Bill C-2 removed the crimes of rape, attempted rape, bribery, criminal negligence causing death, manslaughter and threatening death by a communication from Section 427. This substantially reduced the exclusive jurisdiction of the Superior Courts, and it broadened the elective court jurisdiction exercised under Section 484 of the Criminal Code. This means that the jurisdiction of Superior Courts has been reduced to political offences, hijacking and murder.

Trial in Superior Courts is by a Judge and a jury except in Alberta, where by the consent of the accused the trial may be by a Superior Court Judge sitting alone. The trial, in the normal course of events, will be preceded by a preliminary inquiry which is conducted by a Justice, which usually means that the preliminary inquiry is conducted by a Magistrate or Provincial Court Judge. The purpose of the preliminary inquiry is to determine if "the evidence is sufficient to put the accused on trial or if no sufficient case is made out to discharge him".

An exception to the requirement for a preliminary inquiry is the preferred indictment which may be used even though a preliminary inquiry has not been held or even when held whether the Justice has discharged the accused because the evidence was insufficient. There is also a provision for the accused to waive the preliminary inquiry.

Section 483 provides for the indictable offences where the jurisdiction is absolute because it does not depend upon the consent of the accused.

Section 484 of the Code includes all those offences which do not fall within Section 427 and 483. The accused is given an election as to the mode of trial which may be by Magistrate without a jury, a Judge without a jury or a Court composed of a Judge and a jury. If the accused elects trial by a Magistrate the trial will proceed as if the Magistrate had absolute jurisdiction. If the accused elects trial by a Judge without a jury or a Judge and a jury, the Magistrate proceeds with a preliminary inquiry.

To further complicate matters, there are a variety of re-election procedures contained in Sections 490, 491 and 492. There is also a provision for the Attorney General to overcome the election of an accused and to direct trial by Judge and jury or to proceed by preferring a direct indictment. Authority is also given to a Magistrate to convert a trial into a preliminary inquiry before the accused has entered upon his defence which requires the accused to be prosecuted by indictment before a Judge and a jury.

Magistrates have absolute jurisdiction for all summary conviction offences which include all offences created by Provincial Statutes.

The Crown election offences are either summary conviction or indictable offences according to the option of the prosecution. If the Crown decides to proceed with the prosecution of such an offence as a summary conviction then the trial is the same as all other summary conviction offences. If the decision of the Crown is to proceed by indictment then it is treated like all indictable offences under Section 484 of the Code unless listed in the absolute jurisdiction of a Magistrate under Section 483.

Appeals in our criminal process from indictable offences go to the Court of Appeal while the appeal for summary conviction offences is to the District/County Court. In some provinces the appeal is a *trial de novo* while in other provinces the appeal is on the record.

A further avenue of appeal is by way of stated case to a Judge of a Superior Court or to the Court of Appeal on the grounds that the decision is erroneous in point of law or is in excess of jurisdiction.

The following summary illustrates the complexity caused by our classification of offences and jurisdiction assigned to various courts:

1. The exclusive trial jurisdiction of Superior Courts sitting with juries for indictable offences [s. 427(a)];
2. The consent jurisdiction of Superior Courts sitting with juries for indictable offences [s. 484];
3. The consent jurisdiction of County and District Court Judges sitting with juries, either on General or Quarter Sessions or where jurisdiction therefore has been conferred, for indictable offences including those cases where the accused can elect this very court and those where the selection of the Court is determined by the Attorney General [s. 484 and s. 429.1];
4. The consent jurisdiction of Court and District Court Judges, and in Quebec a Judge of the Sessions of the Peace or a Judge of the Provincial Court, sitting alone for indictable offences [s. 484];

5. The consent trial jurisdiction of a Magistrate or a Judge of the Provincial Court sitting alone for indictable offences [s. 484];
6. The "exclusive" trial jurisdiction of the Provincial and Magistrate Courts, sitting alone, for lesser indictable offences [s. 483];
7. The jurisdiction of Justices of the Peace and of Magistrates and Provincial Court Judges to hold preliminary inquiries for all indictable offences in s. 427(a) of the Code and for all consent indictable offences where the election for trial is to a court composed of a Judge alone or a Judge and jury, i.e. to the courts in 1., 2., 3, and 4. above;
8. The trial jurisdiction of the "summary conviction court" for all summary conviction offences;
9. The trial jurisdiction of the "summary conviction court" or the courts excercising consent jurisdiction under s. 484 for all "Crown election" offences;
10. The appeal jurisdiction of The Provincial Courts of Appeal and of The Supreme Court of Canada for all indictable offences;
11. The appeal jurisdiction of the County or District Court or in Quebec the Court of Queen's Bench (Crown side) for *"trial de novo"* appeals in summary conviction cases;
12. The appeal jurisdiction of Superior Courts for appeals by way of stated case in summary conviction cases;
13. The appeal jurisdiction of The Provincial Courts of Appeal and of The Supreme Court of Canada in summary conviction cases after appeal determination in 11 and 12 above. From the foregoing it is obvious that *all* Courts are used in the criminal process – from Justices of the Peace to The Supreme Court of Canada. The only Court that appears to be excused is The Federal Court of Canada.

Our Criminal Courts and procedures were adopted from England and although they may have served the needs of Canada in 1892 and even for some time thereafter, it is clear that they are not adequately serving the needs of Canada any more.

Proposals in both Ontario and New Brunswick point out some of the inadequacies with the existing system but these should be examined in more detail. There is a basic assumption that the standard mode of determining the guilt or innocence of an accused person is in a Court trial. Trial processes may be altered; there may be some new procedures; but there will still be a Trial Court before which evidence will be called to determine an allegation of crime. What is the best structure to try to guilt or innocence of an accused person in Criminal Law? What is wrong with the existing court structure?

1. INEQUALITY

The various Trial Courts in Canada are not of equal status. They are quite unequal with the Judges of The Provincial Superior Courts having a high status and Magistrates the lowest. Despite the low status of Magistrates, Judges of The Provincial Superior Courts and the Magistrates do the bulk of work of the Criminal Trial system. Hogarth said:

> "The Magistrates' Court in Canada has a broader jurisdiction to try cases, and wider sentencing powers than that given to any other lower Court exercising criminal jurisdiction in the world. Over 94% of indictable cases are dealt with by Magistrates. Sentencing powers given to Magistrates are unusually broad. Wide discretionary powers in sentencing are provided by the Criminal Code. Maximum penalties are very high, leaving more scope in matters of sentence than is actually used. Depending upon the maximum penalty provided by the Code for a particular offence, a Magistrate sitting alone may: sentence to life imprisonment, commit to preventive detention, order forfeiture, fine any amount. In short, he may impose any penalty except death. No lower Court Judge sitting alone in any other country is given this power (Hogarth: Sentencing As A Human Process, 1970, pp. 357-358)."

Magistrate's Courts handle approximately 95% of all Criminal offences *yet they are still classed as inferior Courts.* In his excellent report "The Structures and Jurisdiction of the Courts and Classification of Offences" (unpublished, 1972), Professor Darrell Roberts states:

> "It must be said, I think, that as a matter of principle our whole criminal process is debased by the system of various grades of courts when its most important court is looked upon as inferior and subordinate."

2. CHIEF CRIMINAL COURT AT PROVINCIAL LEVEL

Although the criminal jurisdiction and the authority of Magistrates has steadily increased to deal with 95% of all offences including indictable offences there has been little real improvement in their courtroom and administrative facilities except in some of the more affluent provinces. In most provinces, Magistrates are inadequately renumerated, they are classed as civil servants, they have little if

CAMERAS IN THE COURTS: THE U.S. EXPERIENCE

by David Graves

Reprinted from Judicature.

Only five years ago, American television stations and newspapers in almost every state depended upon courtroom artists to sketch drawings of important trials. But recently many states have decided to open their doors to television, radio, and still photography coverage of trials and appeals.

Alabama and Washington initiated the trend in 1976 when they passed rules allowing cameras in both trial and appellate courts. Altogether, seven states have now adopted permanent rules giving the media the right to photograph courtroom proceedings, and 15 other states have experimented with camera coverage, usually with positive results.

But as cameras become part of the American courtroom, many groups still hesitate to accept the idea, including the American Bar Association. At its mid-year meeting last February in Atlanta, the ABA House of Delegates rejected a proposal to change its Fair Trial and Free Press Standards to read:

> Television, radio and photographic coverage of judicial proceedings is not *per se* inconsistent with the right to a fair trial. Subject to rule established under the supervisory authority of the highest appellate court in the jurisdiction, such coverage may be permitted if it would be unobtrusive and would not distract the attention of trial participants, demean the dignity of the proceedings, or otherwise interfere with the fair administration of justice.

The ABA led the fight against cameras in the 1930s, and the vote last February (165 opposed, 143 in favor) reaffirmed the group's long-standing resistance to camera coverage. "The traditional reluctance of the legal profession to change its ways helped defeat the proposed change," said Randolph Baker, Project Director of the ABA Standing Committee on Association Standards for Criminal Justice.

"The House of Delegates turned down a rather neutral statement. Most younger lawyers are open to camera coverage subject to certain constraints," Baker said. "There was also an emotional response to the room in which the vote took place. Lights and cords were strung everywhere. Some voted on an emotional rather than intellectual plane."

"There was fear of the known and the unknown," said U.S. Court of Appeals Judge Alfred T. Goodwin, chairman of the Fair Trial and Free Press task force in charge of updating the ABA standards. "The attorneys who have not experienced cameras fear the implications of publicity; other attorneys fear what they know of trial publicity in the 1930s."

The issue is far from dead, however. At the annual ABA meeting in Dallas this summer, the media will sponsor an educational program to show the lawyers the way that TV cameras and other equipment now operate in some state courtrooms. The House of Delegates, however, is not expected to vote again this year.

One group which favors cameras, the Conference of Chief Justices, voted last summer to allow courtroom proceedings to be televised. Of the 46 state chief justices who attended the meeting, 44 endorsed camera coverage, one abstained (Maine), and one objected (South Carolina).

In a resolution, the justices said that the news media should keep the public informed of the workings of the judicial system. Their recommendation would give judges the power to limit access to the camera-toting representatives and it would encourage judges to ensure that all coverage is unobtrusive.

The following is a brief listing of states that have considered, experimented with or have permanently instituted rules allowing media coverage of court proceedings in some or all courts. (Capitals indicates that a state has established a permanent rule.)

ALABAMA instituted a permanent rule in 1976 which allows media camera coverage of all courts, trial and appellate (amended Canons 3A(7A) and 3A(7B) of the Alabama Canons of Judicial Ethics.) All parties, witnesses, and jurors must consent to the coverage.

Alaska began a one-year experiment last September. The state supreme court and trial courts in Anchorage may be covered by cameras, with the consent of witnesses, parties, and jurors.

Arizona is allowing camera coverage of appellate proceedings in a one-year experiment, which started May 31. The state temporarily suspended Rule 45 of Canon 3A(7A) of the Arizona Judicial Conduct Code. The consent of court participants is not necessary, but coverage is subject to the judge's discretion.

California courts will open their doors to cameras this summer. Although specifics have not been fully determined, a waiver of Rule 980 of the California Rules of Court will permit selected trial and appellate courts to experiment with camera procedures.

COLORADO, the first state to allow cameras access to proceedings, permanently

various levels of government in Canada spent annually more than $2.5 billion and employed as many as 100,000 persons on criminal justice.

The reform of criminal justice is a controversial and high profile area of government activity. At present, the government is faced with a wide array of questions put forward by Parliament, the Law Reform Commission of Canada, provincial and municipal governments, interest groups, and individuals. All of them require serious attention.

As you well know, beyond the making of the *Criminal Code*, which is a federal responsibility, jurisdiction for the administration of the basic components of the justice system – the courts, the police, and corrections – is divided between the federal and provincial levels of government. It should not be surprising to anyone that this division of responsibilities must be attended by a close co-ordination of efforts and continued co-operation between the two levels of government.

Since assuming the responsibility for the Justice portfolio last June, I have had an opportunity to review with my colleague, the Solicitor General, various issues confronting our system of criminal justice.

I want to draw your attention to a few examples from a long list of outstanding issues – issues with which the two levels of government must come to grips and soon:

- which of the two levels of government should have responsibility for the enforcement and prosecution of drug offences?
- how should we deal with our juvenile offenders?
- what should be the role of the Federal Court?
- which of the two levels of government should have responsibility for corrections?
- and if both levels need be involved, what should each level be doing in the field?

The Solicitor General and I are convinced that the time has come for us federal ministers, with our provincial colleagues, to have a fresh look at the situation.

The outstanding issues need to be looked at, not only in terms of jurisdictional aspects, but in terms of what must be done to improve the overall quality of Canadian justice, consistent with a level of resources that we can afford.

I believe that the principles behind the original sharing of jurisdiction for criminal justice basically still apply. There is a valid national interest in protecting fundamental rights across the country. But this should be balanced by a good degree of flexibility in the administration of criminal justice to reflect regional and local differences and aspirations.

In addition, we must strive towards the reduction of unnecessary duplication. We cannot afford, and the taxpayer will not tolerate, any waste in the use of the resources available for justice services. The Solicitor General and I want to bring to the work that has already been done towards the reduction of unnecessary duplication, a new determination and sense of urgency.

Secondly, I believe that the time has come to undertake a fundamental review of the Criminal Code. The Code has become unwieldly, very difficult to follow, and outdated in many of its provisions. It has come to deal with questions which I believe do not belong to criminal law. We must be aware of the limits of the criminal law role in dealing with purely local or temporary problems.

The Law Reform Commission has, in many of its reports, urged that our criminal laws be modernized, that we stop tinkering with the Code. Provincial Attorneys General have urged that we develop a new Code. I agree. This is one of the key questions that I want to discuss with them when we meet in the Fall.

Indeed the special role they play in the administration of criminal justice suggests to me that they must be closely involved in any work leading to a new *Criminal Code.* Our discussions with the provinces in the Fall should tell how this can best be achieved.

But just as there is need for provincial involvement, there will have to be a place for a special contribution from the Law Reform Commission. It already has done a great deal of work in the criminal justice field. It has made many recommendations. I believe it will be important to start there, build on what we already have, and decide whether the orientation the Commission has indicated to us is the one we want to propose to Canadians.

The Law Reform Commission has been in existence for close to nine years. Not a single of its recommendations has yet found its way into the Statute Books of our country. This does not mean that the Commission has not had a deep and positive influence on the evolution of our justice system. But I think that we can and must do better.

We must find ways to better integrate the contribution of the Commission in the process leading to legislative changes. This is a question that I have asked the Commission and my Department to address in priority. Improved co-ordination and liaison between the Commission and the government, and between federal agencies and provincial authorities, will be essential characteristics of our efforts towards a modernization of our *Criminal Code.*

A fundamental revision of the *Criminal*

(continued on p. 27 . . .)

any security of tenure, and have pension plans which fail to attract leading practitioners to The Provincial Court Bench.

Trial jurisdiction of the Superior Courts has not generally increased. Usually when a new offence has been added by Parliament it has been left to the elective jurisdiction of the accused, Section 484 of the Code and a very high percentage of all elections under that section are made to the Provincial and Magistrates Court. As the jurisdiction of the Magistrates Court increases, there should be less criminal work for the Superior Courts.

There has been a remarkable increase in the Civil Law responsibility of both senior courts. The number of Judges in these courts has vastly increased in recent years and the increase is due almost entirely to the increase in the number of civil trials. The tendency is for the Superior Courts to become more and more civil courts. *The chief criminal court today is the Provincial and Magistrate's Court and not the County Court or the Provincial Superior Courts* and our system of classification of offences and elections fails to acknowledge that fact.

3. JURY TRIALS NOT ALLOWED

Magistrates and Provincial Court Judges are not permitted to take jury cases which is another indication of their inferior status within the system. Professor Roberts states:

> "At one time it may well have been the fact that Magistrates, many of whom were lay people, did not exercise trial jurisdiction in any major way. But, . . . that is no longer the case. Furthermore most Magistrates and Provincial Court Judges are now lawyers and so there is no practical reason why they should not take jury cases."

Professor Friedland states:

> "If he (a Magistrate) is not competent to charge a jury he should not be considered competent to charge himself."

4. A COMPLICATED SYSTEM

It would be difficult to imagine a Criminal Court system more complicated than the one now used in Canada. There are absolute and elective trial jurisdictions; there is a system of preliminary inquiry, applicable as law for some offences, applicable as a result of the accused's election for trial for some other offences, and not applicable at all for yet another group of offences; then there are a variety of re-election provisions some of which require the consent of the Attorney General and some which do not. There is the final authority of the Attorney General to require the trial to be by Judge and jury notwithstanding the election of the accused and imposed upon all of this is the right of the Crown to proceed by a preferred indictment. Lawyers have revealed that they are not familiar with the various methods of trial. While it may be inexecusable for a lawyer to fail to understand a court system it is doubted that the public have any understanding at all of our criminal trial system because of its complexity.

5. INEFFICIENCIES ABOUND

Our multi-court system is inefficient and this inefficiency is not so much a result of there being a number of courts exercising different trial jurisdictions but because of the way in which they are exercised. The present court system could be quite efficient if all of the different courts exercised concurrent jurisdiction and all accused persons were tried by the first available court with all of the courts co-ordinated by some central administrative agency. It is where the courts have to interact that the system breaks down. There is too long a waiting period between a preliminary inquiry, the committal for trial and the date of trial. After the committal for trial the case is out of control of the Provincial Judge or Magistrate, and is subject to scheduling in another court. That other court, which is the Supreme Court or the County Court, is subject to the competing demands for trial dates for civil cases. Frequently the dates for civil trials are set peremptorily whcih means that criminal cases have priority only for open calendar dates.

There is the additional problem of obtaining transcripts of preliminary inquiries. Counsel will not proceed without a transcript. This frequently means that on the trial date there is a further adjournment. Since the Superior Courts generally work on an Assize system if a case is missed at one Assize and is adjourned there is an additional period of waiting.

One of the most inefficient and non-productive steps in our criminal system is the preliminary inquiry. The original purpose of the preliminary inquiry was to review the evidence on a charge so that the Superior Courts would not be bothered with unmeritorious cases so that an accused in such a case might be spared the full application of the criminal process. Preliminary inquiries were instituted in England at a time when Magistrates were not legally trained. There is no doubt that the preliminary inquiry is not fulfilling its original purpose. This is obvious by the very few cases that are being dismissed at preliminary inquiries. Professor Roberts refers to the preliminary inquiry as "a dry run trial" and comments on the substantial extra cost of the preliminary. This cost is not measured in dollars and cents – there is the human cost of

delay to witnesses when police and civilians are required to attend not once but twice. He states:

> "Our system asks that not only must witnesses be doubly generous of their time but in doing so they must not permit any diminution of their memory of the events in question."

A further criticism of the existing system is the *trial de novo* where it still exists in some provinces. It had its roots in a time when Magistrates, as Judges of minor offences, were not legally trained and it was considered reasonable that there should be a full re-hearing of the charge.

A survey conducted in May of 1979 indicates that in Canada there are 31 Magistrates and Provincial Court Judges who have no legal training. The majority of these Magistrates are in Newfoundland where there are 19 Magistrates without legal training. There is a cotinuing program of having non-legally trained Magistrates attend Law school so that eventually all Magistrates in that province will be legally trained. In the other provinces, the non-legally trained Magistrates have been presiding in Court for many years and through previous training, usually with a police force, by personal study and attending educational seminars they have reached a level of capability which permits them to function quite adequately in a Provincial Court to such an extent that the Provincial Court Judges themselves do not recognize the distinction between legally and non-legally trained Magistrates. All provinces now insist on a Law degree before appointment as Magistrate or as a Provincial Court Judge and by the process of attrition it will not be many years before all of the Provincial Court Judges in Canada are legally trained.

PROPOSAL FOR REFORM

The creation of one Criminal Court in which all of the Judges would have jurisdiction to try all criminal cases and in which they would enjoy equal status and equal pay. It is recognized that there are many hurdles that must be overcome to attain this objective. All trial jurisdictions now exercised would be abolished. The complicated scheme of elections and re-elections would be eliminated, and the only trial options that might remain within the one criminal court is the choice of trial by Judge alone or Judge and jury. The Judges of this new court could be called Judges or Justices of The Criminal Court. This Court would be concerned with serious offences and some not so serious so that some of the less serious offences could be excluded and tried by a minor offence tribunal. Unfortunately this would mean the creation of another Court and this Court would be presided over by Justices or Magistrates without formal professional or legal qualifications. Possibly their jurisdiction could be limited by prohibiting them from imposing imprisonment. If the criticisms which are made against the existing system are valid, a proposal of one Criminal Court meets all of those criticisms. This direction is consistent with the new systems of Criminal Courts in England and with the American Report by the President's Crime Commission which concluded that:

> "All criminal cases should be tried by Judges of equal status under generally comparable procedures."

This system is also similar to the recommendations of the Commission which recently reported on the New Zealand court system.

Professor Roberts states:

> ". . . however one looks at the concept of grades of Courts in the trial process whether the approach is from a matter of principle or whether it is from examining our present system it cannot be supported. Even the suggestion of removing very minor offences from the system and having them tried in a separate Court can be regarded in part as a concession to the demands of Administration on the grounds that it would be burdensome to have every offence, even where imprisonment was not sought, tried in the Criminal Court . . . a one court system would make it much easier to reform other parts of the criminal procedure system. For example the present practice or system for criminal discovery and pre-trial disclosure requires reform."

He goes on to say that what we need to do is to devise a disclosure or discovery system integrated with one Criminal Court.

One of the many advantages of the common court is that it would permit a common uniform program of judicial training and education. It would promote a standardization of judicial practice, an equal application of the Law, and all trial judgments would be of equal authority. It is therefore proposed that there be one Court of criminal jurisdiction where all of the Judges would exercise equal jurisdiction, where an accused, although having a choice of trial by Judge alone or by Judge and jury, would not be presented with having to choose between Courts represented by the system itself to have unequal ability and status, and where the Administration of the system would be simplified, would mean a Court system that would be both efficient and rational.

NEW DIRECTIONS IN CRIMINAL LAW

by the Hon. Jacques Flynn, Q.C., P.C.
Minister of Justice for Canada

These are remarks made by the Minister of Justice at the Canadian Bar convention in Calgary.

The rule of law is one of the most remarkable contributions of the western world to modern civilization. Under the rule of law, we accept that the powers exercised by the government and its representatives are based on authority conferred by law; that these powers have a legitimate legislative foundation. Under the rule of law, we accept that the law should conform to certain minimum standards of justice. Under the rule of law, we expect that the law will protect the collectivity, but never at the expense of the rights of the individual.

Indeed, our own Canadian Bill of Rights – one of the Right Honourable John Diefenbaker's most significant legacies – provides important protection for individuals against laws of Parliament which might infringe on fundamental rights and freedoms.

But beyond the concept of the rule of law, as a bastion for the protection of the fudamental rights and freedoms of the individual, stands the law itself as a key force in the shaping of the society we want to live in.

In the pursuit of social, economic or cultural goals, in the ordering of relationships between the state and its citizens, between citizens themselves, or between groups, the law in a free society is an important instrument in the advancement of individual or societal ambitions.

The law is no a static concept. To remain effective, it must adapt to meet the needs of a society which is growing in complexity and transforming itself at an incredible speed. Old laws are becoming inadequate. New ones are often outdated almost before they are passed. And too often, they are unnecessarily difficult to comprehend.

In any event, there is a growing sentiment that there are too many laws anyway, and that society could do, or at least could do better, without this myriad of state interventions through the law in all types of human activities.

Voltaire's comment on the proliferation of laws is worth remembering: "A multitude of laws in a country is, like a great number of physicians, a sign of weakness and malady".

At one time it was thought that laws were necessary to prevent people from injuring or aggressing against their neighbours; to prevent theft and fraud, vandalism and violence.

On the more positive side, laws were considered necessary to lay down rules of action so that others might know what to expect of us and we of them; so that we might anticipate each other's actions, keep out of each other's way, and work and act, so far as possible, in co-operation and harmony.

In other words, the role of laws was to prevent mutual agression and to maintain peace and order.

Not so today. The scope has broadened quite significantly. People want to hand over more and more of their personal responsibilities to various levels of government. That I find worrisome.

Instead of being confined to its primary duty of protecting each individual against others, the state is asked in a hundred ways to protect each individual against himself – against his own idleness, improvidence, rashness, or other defect.

The result is clear – a torrent of laws.

We have them by the thousands. Each one placing a new prohibition or compulsion on each of us.

And no one is excused from not knowing what every one of these new laws commands.

I leave it up to you to picture what all this means in terms of human liberty.

We recently published a consolidation of federal regulations – 15,563 pages of them. Add to that 10,000 pages of Revised Statutes and the eight to 10,000 pages of statutes since the revision, plus the hundreds of thousands of pages of provincial laws and regulations, to say nothing of municipal by-laws, orders, and regulations. Now, you begin to realize that we've come a long way from ten clauses on a slab of stone.

Our criminal justice system constitutes a key element of our social fabric. The criminal law reflects social values. As stated by the Law Reform Commission of Canada in its report "Our Criminal Law", "Our particular brand of criminal law in Canada has three major thrusts: towards humanity, freedom and justice . . . In itself criminal law never brings about the good society, it just removes some of the more obvious impediments to it and helps provide the framework within which that society can create itself".

But our criminal justice system is expensive, complex and fragmented; its costs have risen more rapidly in recent years than those of government as a whole. In 1977, reports of the National Task Force on the Administration of Justice indicated that the

Et nul n'est censé ignorer leurs dispositions.

Inutile de vous expliquer les conséquences de cela sur la liberté.

Les citoyens ne seraient-ils pas plus heureux et plus responsables s'ils avaient davantage l'occasion de juger par eux-mêmes et de vivre sans se heurter constamment au gouvernement?

Nous souffrons de pollution législative. Le nombre croissant de législations complexes — fédérales, provinciales et municipales, est source de frustration pour le simple citoyen. Cela ne peut entraîner que désaffectation pour la loi et pour nos institutions juridiques et que mépris de celles-ci.

Je vous soumets que nous devons nous assurer que la loi occupe la place qui lui revient sans devenir un obstacle à l'initiative et à la responsabilité individuelles.

N'étant pas magicien, j'ai peu de solutions précises à offrir à mes concitoyens canadiens; mais j'estime que la loi ne devrait pas être considérée par le public et utilisée par les gouvernements comme un moyen de régler tous les problèmes et de réglementer tous les aspects de l'activité humaine.

Il faut éviter de prendre lois et règlements pour une panacée. Le gouvernement et ceux qui sont près de la fonction publique ont la responsabilité du bien-être des citoyens. Nous devons nous assurer que les lois soient adéquates, raisonnables, faciles à comprendre et respectées par nos concitoyens.

Comme parlementaire, je dois faire l'impossible pour promulguer des lois que rencontrent ces critères. Comme juges, votre devoir consiste à nous corriger lorsque mes collègues et moi-même faillissons à la tâche.

Je suis d'accord avec l'Association canadienne des juges des cours provinciales qui a voté une résolution à l'effet que le ministre de la Justice devrait attacher de l'importance à la contribution de ses juges. Procéder autrement serait absurde puisque vous disposez de la grande majorité des poursuites criminelles.

J'ai déjà dit que j'estimais le moment venu de procéder à une révision en profondeur du Code criminel. Ce dernier est devenu lourd, difficile à comprendre et, sur plusieurs points, dépassé. Il régit des questions que j'estime ne pas relever du droit pénal. Nous devons être conscients des limites du Code criminel lorsque les problèmes à régler sont d'ordre purement local ou temporaire.

La Commission de réforme du droit a, dans plusieurs de ses rapports, insisté sur l'urgence de moderniser nos mois criminelles et de cesser de tripatouiller le Code. Les procurers généraux provinciaux réclament également avec insistance l'élaboration d'un nouveau Code. Non seulement suis-je de leur avis, mais c'est là un des principaux sujets que j'entends aborder avec eux lorsque nous nous rencontrerons.

Le rôle primordial qu'ils jouent dans l'administration de la justice m'incite à penser qu'ils devraient être associés de près à la préparation d'un nouveau Code criminel. Les discussions que nous aurons le meins prochain avec les provinces permettront de définir les modalités de cette participation.

Mais si le concours des provinces est indispensable, celui de la Commission de réforme du droit ne l'est pas moins. Celle-ci a déjà, en droit pénal, accompli un travail considérable et soumis de nombreuses propositions. Je crois qu'il faut partir de là, construire sur ces fondements, et décider si les voies que nous a suggérées la Commission sont celles que nous proposerons aux Canadiens.

La Commission de réforme du droit existe depuis bientôt 9 ans. Aucune de ses propositions n'est cependant jamais devenue loi. La Commission n'en a pas moins exercé une influence considérable et positive sur l'évolution de notre justice. Mais je crois que nous pouvons et devons faire mieux.

Nous devons en arriver à mieux intégrer les travaux de la Commission au processus de modification des lois. C'est là une question que j'ai demandé à la Commission et à mon ministère d'examiner en priorité. Une meilleure co-ordination et une concertation accrue caractériseront, tant dans les rapports entre la Commission et le gouvernement qu'entre les organismes fédéraux et les autorités provinciales, nos efforts pour moderniser le Code criminel.

La révision en profondeur du Code criminel est une immense défi. Elle exigera énormément d'application du fédéral et des provinces. Mais la justice pénale n'est pas un domaine réservé uniquement aux gouvernements. Le droit pénal touche, d'une manière ou d'une autre, tous les citoyens. Nous devrons réussir à connaître les vues d'autant de secteurs de la population que possible. Je suis prêt à relever ce défi et à contribuer au cours des prochains mois à cette entreprise.

De plus, les lois doivent être l'objet d'une révision continuelle. Ce dont nous avons besoin, c'est d'un programme qui vise à déblayer les recueils de lois plutôt qu'à les encombrer; d'un programme qui réduise plutôt que d'accroître le nombre des lois qui nous gouvernement et simplifie ces dernières plutôt que de les compliquer.

L'élaboration, dans la poursuite d'objectifs collectifs, des lois qui réflètent un minimum de moralité, satisfont aux exigences de la majorité de la population et respectent et protègent cependant les libertés individuelles, exige la participation de plus que des seuls fonctionnaires, et j'oserais même dire de plus que des seuls représentants élus ou nommés. Dans une société libre et démocratique, la profession juridique elle'même a une responsabilité particulière lorsqu'il s'agit de réformer le droit et d'éviter qu'on en abuse.

(continued on p. 28 . . .)

In Brief

Lawyers Asked to Assist Court

Gordon F. Henderson, the new president of the Canadian Bar Association wants the legal profession to help the judiciary overcome delays in the courts.

Outlining his priorities in his address to the Young Lawyers section at the Calgary Annual Meeting, Mr. Henderson urged his audience to co-operate with the judiciary to ensure that management of the courts is efficient and rapid, without sacrificing quality.

"We must be prepared to accept reforms that reduce the cost of legal service, without reducing the quality of those services," said Mr. Henderson. "Innovative methods, such as arbitration and mediation must be examined to overcome court delays. We must be prepared to consider non-legal solutions to problems."

Mr. Henderson told reporters he would ask his executive to study the problem, and the experience of the United States. The idea was one of several innovations that the new President would see resolved during his one year term. Another new idea that he wants action on involves the role of cameras in the courts. Although Mr. Henderson would personally prefer to see cameras restricted to the Appeal Court, he challenged the Association's Communication Committee to study the suggestion.

"Technological improvements have made it possible to permit cameras in the courtroom without disruption," he said. "The American Bar has rejected the idea, but is presently in a prolonged debate on the issue. The right of the public to know has come into direct conflict with the right of the accused to a fair trial in a calm and solemn atmosphere of a courtroom. What must now be decided is whether the developments in TV on one hand, and the psychological effects on the other permit the accused to have a fair trial."

M. Gordon F. Henderson, le nouveau Président de l'ABC au cours d'une allocution prononcée au déjeuner des jeunes avocats a particulièrement insisté sur la collaboration avec la magistrature, sur de nouvelles méthodes pour réduire les délais dans les cours permettant la réduction des coûts des services juridiques tout en maintenant une grande qualité. M. Henderson est un jeune avocat d'esprit prêt à étudier toute innovation permettant de faire avancer le droit et la justice.

* * * *

Native Courtworker Programs To Receive Federal Contributions

Justice Minister Jacques Flynn has indicated that during the current fiscal year his Department would contribute a total of $1,947,300 towards the cost of operating Native courtworker programs across the country. This represents the amount that is cost-shareable under the federal-provincial and federal-territorial agreements for the provision of Native courtworker services in Canada.

The Native Courtworker Programme is currently operating in seven provinces and both Territories. It is expected that the program will expand into two more provinces within the next 18 months.

The Native Courtworker Programme has been of considerable assistance to Native people in conflict with the law. The Native courtworkers in the field assist Native people through the court process and provide information about the legal system to Native people in the communities. Additionally, provincial and territorial governments view the program as an essential element in the delivery of legal services for Native people.

The Minister of Justice is committed to this program under which the federal government is responsible for up to 50% of the costs of providing courtworker services in areas where there are concentrations of Native people who come in conflict with the law. The program has expanded each year since its inception in 1972 and is considered to be one of the most effective methods of assisting Canada's Native people.

* * * *

JUVENILE JUSTICE REPORT ISSUED

Manitoba Attorney General Gerry Mercier has released the 111-page report of the Juvenile Justice Committee – the first in-depth study ever undertaken into the juvenile justice system in Manitoba.

The 10-member committee, chaired by Chief Provincial Judge Harold Gyles, was established by the Attorney General in September, 1978 to review and assess the various components of the juvenile justice system.

Mr. Mercier said that before a final decision is made respecting the recommendations, he will be consulting with his cabinet colleagues, particularly Health and Community Services Minister Bud Sherman, responsible for juvenile corrections and probation services and Education Minister Keith Cosens, responsible for the public school system.

The government will also be consulting with groups likely to be affected by implementation of the report such as the police, Ombudsman, the Manitoba Law School, among others. Appropriate legislative amendments may be introduced at the next session of the Manitoba Legislature.

Nevertheless, he said, many of the recommendations have already been accepted by the government. For example, the province is in full agreement with the committee's first proposal – "that a juvenile court be suitably located in a central location in the City of Winnipeg".

"When we construct a separate provincial judges' building in Winnipeg to house all of the court rooms required by the Provincial Judges Court (Criminal Division), the former I.B.M. Building at 373 Broadway, will be used as the Winnipeg Juvenile and Family Court Building."

Mr. Mercier advised that the committee review had identified a number of areas where services could be improved.

As an example, he noted, the recommendations that children who have had multiple foster home placements be identified and brought back to court after the third foster home placement. In these cases, the committee recommends that there should be a complete investigation with a full psychological-psychiatric examination of the child with a view to stabilizing the child's living situation.

Apart from identifying high risk children, a court hearing would not only prevent the over utilization and subsequent burn-out of good foster parents by giving them children with severe psychiatric problems, but would also screen out bad foster parents.

Mr. Mercier also expressed support for the recommendation that a strong liason be established between the Alcoholism Foundation of Manitoba and the correctional system so that greater advantage could be taken of the various educational treatment and rehabilitative programs available through the foundation.

Mr. Mercier noted that the committee had considered numerous public presentations and submissions. Public hearings were held by the committee in Brandon, Dauphin, The Pas, Thompson and Winnipeg.

* * * *

EXPANSION OF FRENCH LANGUAGE COURSE SERVICES

Effective December 31, any accused charged in Ontario under the Criminal Code of Canada will have the right to be heard by a bilingual judge, and bilingual jurors in trials with a jury. It will also permit the courts to transfer criminal cases to an area of Ontario where bilingual jurors are available.

The expanded services have been made possible by amendments to the Criminal Code of Canada (Bill C-42), which the Federal Government introduced in April, 1978, at the request of Ontario Attorney General Roy McMurtry.

"This expansion of service is one of the most significant developments in the administration of justice in Ontario in recent times," Mr. McMurtry said. "My Ministry has been preparing for the earliest possible implementation date, consistent with the necessity of organizing and developing resources. It has been my wish that we could adequately meet this development, because we want it to work well from the beginning and we wish it to endure."

The proclamation of Bill C-42 in Ontario highlights a four-year effort to develop French-language court services in the province.

In the fall of 1975, Mr. McMurtry committed his Ministry to developing these services. They were launched in Sudbury in the summer of 1976 in the Provincial Court (Criminal Division). After a period of testing, the services were extended to Ottawa and L'Orignal and to five communities in northeastern Ontario. Late in 1977, French language services were also introduced in the Provincial Court (Family Division) in Sudbury and in 1978 in Ottawa.

In May of 1978, the Ontario Legislature passed amendments to the Judicature Act and the Juries Act, making possible the selection of bilingual jurors and designating eight areas of Ontario for the full range of French language court services. These are Ottawa-Carleton, the United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and

LA PRESENCE DE L'ETAT DANS NOS DOMICILES

par l'honorable Jacques Flynn

Aujourd'hui, les programmes gouvernementaux à l'échelon fédéral empiètent les uns sur les autres et chevauchent les projets provinciaux. Plus d'individus que jamais sont payés à même les fonds publics et les effectifs ont fait un bond phénoménal depuis 1962. Les retenues fiscales n'ont jamais été si importantes, ni si douloureuses.

Cet accroissement vertigineux de la taille du gouvernement ne s'explique pas facilement; il s'agit d'un phénomène complexe. Mes 20 années de parlementarisme m'indiquent cependant qu'une catégorie de citoyens plus averti a su tirer profit du gouvernement afin de protéger ses intérêts aussi spéciaux que variés.

La protection des divers intérêts qui existent au Canada — la préparation de soumissions et de représentations au gouvernement étaient jadis laissées aux membres du sénat et de la chambre des communes. Depuis quelques années, notre société, riche et sophistiquées, a engendré les groupes de pression, les coalitions de citoyens unis pour une même cause. Ces derniers, par leurs efforts, tentent de convaincre le gouvernement de promulguer des lois et d'instituer des mesures visant à protéger leurs intérêts particuliers. Pendant que l'on s'occupe des intétêts de certains groupes, d'autres mouvements qui sont également touchés par ces mesures courrent le risque d'être ignorés ou de ne pas être défendus avec la même vigueur — c'est un cercle vicieux.

Les citoyens et leurs groupes de pression ont réalisé que la loi est une clef maîtresse dans le développement de notre société. Ils savent comment fonctionnent la politique et l'administration et ils se divisent le temps, l'attention et la considération de la fonction publique et des autorités.

Leur impact sur le processus politique et administratif est significatif et continuera de l'être. Mais tout en écoutant les représentations de ces divers groupes, il faudra dorénavant les évaluer et vérifier si ellles satisfont au critère de l'intérêt public.

Deux aspects de ce phénomène d'après-guerre me troublent particulièrement.

Tout mouvement qui désire changer l'état actuel des choses doit influencer l'appareil politique. Mais il est inquiétant de voir que l'influence relative de ces groupes est si disparate.

Qu'arrive-t-il à l'individu dans tout ceci? Je veux m'assurer que le citoyen ordinaire, dont l'influence est plutôt limitée, qui n'est ni riche ni organisé, soit bien représenté dans tout cabinet dont je ferai partie.

L'autre important problème qui me préoccupe est le suivant: ces groupes de pression se sont débattus pour recevoir un traitement de faveur qui peut être justifié si on le considère isolément. Mais le résultat fut une avalanche de lois, de règlements, de directives, de règles de conduite, etc. auxquelles nous risquons de ne pas pouvoir échapper.

Il y a quelques semaines à peine, nous avons publié une élégante condification des règlements fédéraux de 15,563 pages. On peut y ajouter les quelques 10,000 pages de statuts révisés du Canada, un nombre tout aussi important de statuts adoptés depuis la révision, les milliers de lois et règlements provinciaux sans compter la règlementation municipale. Vous vous rendez compte que nous sommes loin des 10 commandements gravés sur la pierre.

Le sentiment se répand qu'il y a trop de lois et que la société se proterait mieux sans cet envahissement par l'Etat, au moyen de mesures législatives, de tous les secteurs de l'activité humaine.

Il est bon de se rappeler ce que Voltaire disait de la prolifération des lois: "La multitude des lois est dans un Etat ce qu'est le grand nombre de médecins, signe de maladie et de faiblesse."

L'on a longtemps vu les lois comme étant destinées à empêcher l'homme d'attaquer ou de blesser son semblable, a prévenir vol, fraude, vandalisme et violence.

D'une manière plus constructive, l'on concevait les lois comme des règles de conduite permettant à tous de savoir à quoi s'attendre des autres, d'éviter de nuire aux autres, de vivre en harmonie et dans un climat de collaboration.

En d'autres termes, les lois avaient pour but de prévenir les agressions et de maintenir la paix et l'ordre.

Mais les choses ont changées. Les perspectives se sont sensiblement élargies. Les gens veulent de plus en plus se décharger de leurs responsabilités personnelles sur les différents gouvernements. Je trouve cela inquiétant.

L'on n'attend plus seulement de l'Etat qu'il s'en tienne à son rôle premier de protection de l'individu contre ses semblables. L'on veut en outre que, des façons les plus diverses, il protège chaque individu contre lui même — contre ses propres paresses, imprévoyance, imprudence ou autres défauts.

Les résultats sont évidents — nous sommes submergés de lois.

Elles surgissent par milliers, chacune imposant une interdiction ou une obligation nouvelle.

JUDGES HEAR JUSTICE MINISTER

by Judge Robert McCleave

INGONISH – Canada's new Minister of Justice expects there will be many important changes to the Criminal Code and wants the judges of the provincial courts to make a significant input into such. Senator Jacques Flynn made this point clearly in his speech to the annual meeting of the Provincial Judges of Nova Scotia and in his informal discussions with the judges.

The annual meeting was held at Keltic Lodge, a noted resort operated by the Province of Nova Scotia on the edge of the federal Cape Breton Highlands National Park. About 20 of the two dozen provincial court and several family court judges attended together with Judge Chester MacDonald of Prince Edward Island, president of the Canadian Provincial Judges Association, and Judge Percy Brine of New Brunswick.

Highlights of the meeting:

The long-debated issue of membership of the family court judges was resolved. A motion originally proposed by Judge Sandra Oxner, former president of the Canadian Association, was accepted that the family court judges become members.

Outgoing president Judge Leo MacIntyre called for the appointment of a Chief Judge in Nova Scotia which, with Prince Edward Island, is an exception to the practice in other provinces. The Attorney General for Nova Scotia, Hon. Harry How, Q.C., said the government would have no difficulty buying the idea.

Judge Hughes Randall of Halifax was chosen to succeed Judge MacIntyre. Others on the executive are: Judges George LeVatte (vice president), R.E. Kimball (secretary-treasurer) and Robert McCleave and Kenneth Crowell (directors).

Notice was given that the next annual meeting would be asked to amend the constitution to provide for representation on the executive of one of the nine retired judges of the association.

Judge Randall indicated that a new provincial judges' act for Nova Scotia, and continuing efforts to improve the salaries of the Nova Scotia judges – now the lowest in Canada – would be priority for his term.

For Senator Jacques Flynn, the meeting was an opportunity to renew acquaintances with former colleagues in the House of Commons from the Diefenbaker years – Judges H. Russell MacEwan and Robert McCleave. It was his second major speech since his appointment, the other being to the Canadian Bar Association. He used the occasion to expand on his thoughts about law reform presented to the Bar meeting.

He said that the Clark government "has a different philosophy of government and this philosophy is going to be reflected in the approach that we bring to the business of government: the laws that we introduce for passage, the regulations that will be passed by Order in Council, the methodology and approach of each Minister towards the business of his Department and its relationship to Canadian society".

Senator Flynn considered that one of the most serious problems facing society, the Government and Parliamentarians today was the size of government. He could state this from the experience of being a Minister in 1961-62 and then, as he jokingly said, a retread in a new government. Why the growth? – "a highly affluent society with a very sophisticated citizenry has taken advantage of government to protect its varied and special interests."

Growth in government has meant growth in laws. Or, as he put it:

"We recently published, in very elegant fashion, a consolidation of federal regulations – fifteen thousand five hundred and sixty three pages of them. Add to that ten thousand pages of revised statutes, eight to ten thousand pages of statutes since the revision, plus hundreds of thousands of pages of provincial laws and regulations, to say nothing of municipal by-laws, orders, and requirements. Now you see that we've come a long way from ten clauses on a slab of stone."

Terming this "legislative pollution" he said "it is very clear to me that the law should not be looked upon by the public and used by governments as an instrument designed to solve all problems and to regulate every aspect of human activity."

Then the Minister of Justice turned in his speech to the question of dealing with the Criminal Code, and these are the main points made in his text:

"I have to agree with the spirit of the resolution of the Canadian Association of Provincial Court Judges to the effect that the Minister of Justice of Canada should accept input from provincial court judges. I think to do otherwise would be most unwise, since you have to handle the great majority of criminal cases.

(continued on p. 28 . . .)

Glengarry, and the Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming. The legislation provides for the designation of additional areas as the service is warranted.

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JUDGES DEMAND 'INDEPENDENCE'

The fledgling Canadian Judges' Conference has recommended that guarantees of judicial independence be included in the Canadian constitution.

The call for constitutional safequards came in Calgary as some 120 federally appointed judges debated the independence of the judiciary and the Superior Court's powers of supervision and control.

The conference, which was formed last April to represent all federally-appointed judges, was worried by the growing power of the Executive in recent years.

"Judges must realize that their independence from the executive and the legislature is the only buffer between the citizen and the state," said University of Alberta law professor Bruce Elman.

"Today Canadians face more government regulation than ever. When there is a conflict between the individual and the state, the recourse is to the courts. It is essential that the judiciary be independent: first, so the individual will feel he's had his day in court even if he loses, and second, to prevent the abuse of power."

The resolution which urged Ottawa to safeguard the continuing independence of the judiciary in the constitution was prepared jointly by Mr. Justice Charles Gonthier and Mr. Justice Roy Matas.

The growth of the executive and "present economic conditions" call for a reappraisal of the means of ensuring the independence of the judiciary, with particular regard to the administration of the courts and judicial security, it read in part.

"Only by an impartial and efficient administration of the rule of law can the ordinary citizen be protected and obtain redress as of right against the arbitrary exercise of executive power," it said.

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MCMURTRY ANNONCE L'EXTENSION DES SERVICES EN FRANCAIS DEVANT LES TRIBUNAUX

L'honorable R. Roy McMurtry, Procureur général de l'Ontario, a annoncé une importante extension des services de langue française devant les tribunaux en Ontario.

A compter du 31 décembre, toute personne accusée aux termes du Code criminel du Canada aura le droit d'être jugée par un juge bilingue et par des jurés bilingues lors des procè par jury. Les tribunaux auront également le pouvoir de transférer des causes criminelles dans une région de l'Ontario où des jurés bilingues sont disponibles.

Ce sont les amendements apportés au Code criminel du Canada (Bill C-42), introduits par le gouvernement fédéral au mois d'avril 1978 à la demande de M. McMurtry, qui ont permis cette extension des services.

M. McMurtry a déclaré: "Cette extension des services est le plus important développement dans l'administration de la justice en Ontario, ces dernières années. Mon ministère a oeuvré en vue d'implanter ces services le plus tôt possible, compte tenu de la nécessité d'organiser et de développer les ressources. Je souhaitais que nous puissions satisfaire à nos objectifs de façon adéquate parce que nous désirons que la programme fonctionne bien dès le début et qu'il dure".

La proclamation du Bill C-42 en Ontario met en lumière les efforts des quatre dernières années pour développer des services en français devant les tribunaux de la province.

En automne 1975, M. McMurtry engageait son ministère à élaborer ces services. Ils débutèrent à Sudbury, à la Cour provinciale (Division criminelle), en été 1976. Après une période d'essais, les services furent étendus à Ottawa et à l'Orignal et à cinq communautés dans le nord-est de l'Ontario. Vers la fin de 1977, on introduisit également les services en langue française à la Cour provinciale (Division familiale) à Sudbury et, en 1978, à Ottawa.

Au mois de mai 1978, la législature de l'Ontario adoptait les lois modifiant la Loi sur l'organisation judiciaire et la Loi sur les jurys, permettant ainsi la sélection de jurés bilingues et la désignation de huit régions sont: Ottawa-Carleton, les comtés unis de Prescott et Russell, les comtés unis de Stormont, Dundas et Glengarry, et les districts d'Algoma, Cochrane, Nipissing, Sudbury et Timiskaming. La législation prévoit également la désignation d'autres régions à mesure que les services y seront justifiés.

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CONSTITUTIONAL CHANGES NECESSARY

B.C. Attorney-General Garde Gardom said that people who use Provincial Family Courts across the nation are facing major roadblocks if it is found that only Superior Courts can deal with Family Relations matters.

The cause of the problem is the inability of certain provisions in Canada's Constitution – the 112-year-old British North America Act – to cope effectively with the complexities of contemporary Canadian society, he told the Federal-Provincial Conference in Ottawa of Ministers responsible for criminal justice.

"The Supreme Court of B.C. recently struck down Provincial jurisdiction to provide custody and access orders for children, to provide for possession of the matrimonial home and for restraining orders to prevent spouses coming to the home," Gardom said, adding that the argument turned on an interpretation of the powers of judges as stated in the B.N.A. Act.

"There have never been questions about the propriety of the maintenance jurisdiction which has long been used in Provincial Courts by judges. In the interest of providing a wide-range of relief for families in distress, British Columbia logically tried to broaden Provincial Court functions to include temporary access to children and temporary possession of the matrimonial home.

"The reasons for this were that Provincial Courts are available in all centres of the Province, access to them is less expensive, and the process is more expeditious.

"Many of the functions I have just described are daily routines of the Provincial Courts in Alberta, Ontario and Manitoba."

Gardom said the move to broaden jurisdiction in B.C. was the result of law reform across the country and careful legal preparation by three successive B.C. governments.

"Now after a decade of law reform, of reports and commissions, of studies and discussions, of pilot projects, of meetings in church basements, films and presentations, debates and even public demonstrations, this issue has now been put into question across the nation," Gardom said.

The B.C. Supreme Court decision, if it is not reversed on Appeal, could mean that the Canadian public will have to await the amendment of the Constitution, and/or make do with the appointment of new Federal County Court judges with specialized jurisdiction to handle this area of the law, he said. "The latter will mean additional expense and delay for the public."

"It boils down to the fact that in this area the Constitution of Canada of 1867 is just limping along, for where else in the world is it necessary to have to ask for a Constitutional amendment in a country other than one's own to allow a woman to go to a local court in her home town to ensure that she can keep her children, and to ensure that they are fed?

"There is no way that the Constitution is dealing with the realities of today, nor can it on the basis of the present interpretation.

"The challenge is not unique to B.C. and sooner or later will most likely have to be faced by other jurisdiction across the country.

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ALCOHOL AND TRAFFIC ACCIDENTS

B.C. Attorney-General Garde Gardom has announced that a six month study at a Lower Mainland hospital emergency ward has disclosed that about a quarter of the drivers involved in traffic accidents had blood-alcohol concentrations above the legal limit of .08%.

But the study showed that of the 106 drivers who were above the legal limit, only 18 were subsequently charged with impaired driving.

The remaining 88 could not be charged because their time in hospital continued for more than two hours, the time limit for administering the breathalyzer test after driving.

"The report on the study has recommended that provincial laws be changed to avoid this problem," Gardom said. "An injury in a traffic accident, especially in minor injury, should not be a reason for a drinking driver to escape criminal charges."

The report, written by Dr. Russ Rockerbie, CounterAttack Director of Research, recommended that blood-testing be mandatory for all persons injured in traffic accidents where the testing would not interfere with medical treatment.

Gardom said the Motor Vehicle Task Force, after recently reviewing the findings of the report, is also in favour of the idea of mandatory blood-testing, but only for drivers injured in traffic accidents.

"A proposal for provincial legislation requiring mandatory blood-testing of injured drivers and the legal ramifications of such a program will be considered by officials of my ministry," Gardom said.

The comprehensive blood-alcohol study at the Royal Columbian hospital from November, 1978 to May, 1979, was the first of its type done in North America. It was conducted as part of the Attorney-General's drinking-driving CounterAttack program and was conducted by the hospital's emergency ward medical staff led by Dr. H.E. Parkin and by Dr. Russ Rockerbie.

During the study, blood samples of traffic victims were collected and analyzed for alcohol content. In every case, consent was given voluntarily to collect and analyze a blood sample on agreement that the result would not be made available for any civil or criminal action, or action under the *Automobile Insurance Act*.

The study was designed to provide information regarding the proportion of injury accidents in which alcohol was a factor, the relationship between the severity of injury and blood-alcohol concentrations, and the problems surrounding enforcement of drinking and driving laws.

RAPPORT D'ETAPE SUR LES INSTITUTIONS RENITENTIAIRES

Le Solliciteur général du Canada, l'honorable Allan Lawrence, a déposé aujourd'hui à Ottawa un rapport d'étape qui énonce comment le Service correctionnel du Canada a mis en oeuvre des programmes pour améliorer la qualité de vie et les pratiques administratives dans le régime pénitentiaire.

Des 65 recommandations faites il y a deux ans par le Sous-comité parlementaire sur le régime d'institutions pénitentiaires au Canada, 51 ont été entièrement mises en application ou sont sur le point de l'être.

M. Lawrence a déclaré aux membres du Comité sur la justice et les questions juridiques qu'il estime "que les progrès sont très nets" dans le programme du Service correctionnel relatif à la mise en application des recommandations du Sous-comité parlementaire.

"Mes prédécesseurs n'ont rejeté que cinq recommandations précises", a indiqué M. Lawrence, le troisième Solliciteur général à faire un tel rapport d'étape.

"Les neuf autres recommandations ont été acceptées.

"Cependant, leur mise en application intégrale implique un processus complexe qui exige à la fois l'appui et l'aaprobation d'organismes extérieurs", a expliqué le ministre.

Les recommandations du Sous-comité parlementaire traitaient de la plupart des aspects du régime pénitentiaire.

"Le Service a réalisé un travail remarquable pour mettre en application les recommandations du rapport, surtout si l'on considère qu'il a des responsiblités quotidiennes d'exploitation vis-à-vis de 15,000 délinquants, et que les modifications de politiques touchent ces délinquants et 10,000 employés. Pendant la même période, les anciens services des libérations conditionnelles et des pénitenciers ont été fusionnés pour donner le nouveau Service correctionnel du Canada.

"Il est inexact de dire que le Service n'a rien fait ou a fait peu de chose pour mettre le rapport en application", a dit M. Lawrence au Comité.

Dans son rapport d'étape, le Solliciteur général a mis l'accent sur certaines recommandations qui avaient eu le plus d'impact direct sur la vie des détenus et sur celle du personnel.

Il a signalé, par exemple, les recommandations sur l'emploi des détenus. Suite à leur mise en application au cours des deux dernières années, 84% de tous les détenus ont maintenant un emploi.

De plus, une procédure de griefs des détenus a été mise en oeuvre tel que proposée dans le rapport du Sous-comité (Recommandation 36).

Suite à cette recommandation, chaque établissement fédéral a maintenant un comité chargé d'étudier les griefs légitimes des détenus, comité qui inclut les représentants des détenus.

Le Sous-comité parlementaire a de plus recommandé une "interaction sociale" plus grande dans les pénitenciers.

Suite à la mise en application de la recommandation 47, des vistes contact sont maintenant permises dans tous le régime pénitentiaire sauf à Laval, mais des plans sont élaborés pour que ce programme soit également mis en oeuvre à cet endroit.

Au sujet des améliorations des conditions de travail du personnel pénitentiaire, M. Lawrence a signalé les politiques récemment élaborées comme celle relative aux prises d'otages.

Les autorités carcérales adoptent maintenant une attitude intransigeante lorsqu'elles font face à des détenus détenants des otages. En outre, des équipes formées pour intervenir en cas d'urgence ont été créé afin de prêter main-forte pendant de tels incidents. Ces efforts se sont déjà avérés profitables.

Une autre initiative tend à développer un service de planification de carrière pour les employés des établissements, tel que proposé par le Sous-comité.

Parmi les exemples le plus frappants du succès remporté par le programme, on

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