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EDITOR-IN-CHIEF
Judge Rodney Mykle

The Journal records with regret
the sudden death of
Senior Judge Calvin Duthie
of Thunder Bay, Ontario
on November 3, 1980

were under the age of 25, with almost half of this number being 19 years old or younger.

Obviously our whole Criminal Justice system is going to have to adapt to the unique problems associated with a higher incidence of crime among the young people in this province.

The magnitude of the problem makes it imperative that we, as members of the larger community, seek to understand the fundamental causes of these trends and to take preventive and corrective action.

We hear a great deal today about such issues as alienation from society, the breakdown of the family unit, the diminishing influence of the school and the church, the loss of role models and pressure of peer groups.

I would suggest that these, however, are not the fundamental causes of conflict with the law. Rather, they are symptomatic of more basic conditions.

We need to attack the causes – not the symptoms. We know that in this province, over the past several years, there has been a trend to greater urbanization as more and more young people leave the familiar setting of the family farm or the small village in rural Saskatchewan to move into the cities.

We also know that more and more of our native people, both Indian and Metis, are migrating to the larger cities and that this presents problems in dislocation as they adjust to new and different lifestyles.

We know that there is an increasing dependency upon alcohol and drugs as an escape mechanism – and this dependency is certainly not confined to our young people.

What we ought to be asking ourselves is this: Is there a correlation between social and economic conditions and interaction with the components of the Criminal Justice System?

Is there a correlation between poverty and crime?

A number of years ago, one of our provincial officials undertook a brief analysis of some relevant statistics from one of the American states. The results were somewhat surprising.

He discovered that by comparison with other States

– Saskatchewan's net rate of growth in population was one of the highest;

– Its per capita income was one of the highest;

– Its unemployment rate was one of the lowest;

– Its violent crime rate (murder, armed robbery, assault, rape) was one of the *highest.*

Recent news reports out of Calgary, which is experiencing an economic boom, seem to indicate an increase in the crime rate.

What this seems to suggest is that there is no simple correlation between economic conditions and the incidence of crime. But it also points up the need to identify the social and economic conditions which result in an increase in the crime rate and to take positive measures to alleviate or to change those conditions.

Many persons who come in conflict with the law are early dropouts from school; many have never held a steady job or learned regular work habits; many are totally inexperienced in filling out the forms that are an accepted part of our way of life; many have never experienced the discipline of living in a group setting, of subordinating individual wishes to the wishes of the majority.

These are some of the practical lessons that offenders have an opportunity to learn in a community-based facility as opposed to the rigorous planned schedule that one normally finds in a large institutional centre.

However I am not so naive as to think that we have found all of the answers, nor have we gone as far in this direction as we might go.

Through discussions with interested individuals and organizations, it is my hope that we can make even greater progress in the future than we have accomplished in the past.

President's Page

by Juge Jacques Lessard

In accordance with a tradition set by my predecessors, and as I begin my term as president of the Association, it is a special pleasure for me to turn to the columns of our Journal to send a personal message to all my colleagues whose functions come under provincial authority, and who carry out their responsibilities in all the courts established throughout the country.

For some of you this only means renewing existing acquaintanceship and recalling fraternal ties already formed; for others, it will be a first opportunity to enter into a dialogue that will be both frank and cordial.

Before coming to the subjects I would like to take up with you in a general way, I am sure you will bear with me if I testify to the deep esteem I have for those of my colleagues with whom it has been my privilege to work in our Association.

I should like to give voice to the respect and sincere friendship I have for our outgoing president, Judge Chester MacDonald who, during his term of office, was ever mindful to initiate me into the duties of the position I now hold, all the while giving me the benefit of his personal experience.

The memory of it certainly is still fresh enough in your minds so that I need only allude to the success of our last annual conference held at the Chateau Frontenac in Quebec this past September 23-26. The careful preparation of the programme, the admirable choice of subjects, the superior quality of the speakers – and not to overlook the attractive social events – were all the results of a dynamic team of Quebec City judges. May I express to the chairman of the organizing committee, Judge Marc Choquette, and to his stalwart comrades-in-arms, Judges Louis Carrier, Gilles La Haye, Yvon Mercier and Jean Dutil, the deep appreciation of all the members of the Association, and for my part, the feelings of genuine friendship.

I am also gratified and reassured by the membership on our executive committee, and the chairmen and members of the various committees, whose names no doubt are well known to you, without of course forgetting to mention our legendary

Selon que le veut une tradition établie par mes prédécesseurs, et alors que vient de débuter mon mandat comme président de l'Association, il m'est particulièrement agréable, en mettant à profit notre Journal, d'adresser mon message personnel à l'égard de tous mes collègues dont la fonction relève de l'autorité provinciale, et qui exercent leur juridiction respective à l'intérieur de tous les tribunaux institués à travers notre pays tout entier.

Pour un certain nombre d'entre vous, il s'agit là uniquement d'une occasion pour renouer connaissance, en nous rappelant les propos fraternels que nous avons échangés, et pour les autres, d'une première opportunité d'engager avec eux un dialogue empreient de la plus franche cordialité.

Avant de formuler les propos dont je désire généralement vous entretenir, l'on acceptera sans doute que je veuille au prélable exprimer mes plus nobles sentiments à l'endroit de certains collèges et avec lesquels j'ai eu l'avantage d'oeuvrer au sein de notre Association.

Je voudrais à la fois rendre hommage, et témoigner de ma plus sincère amitié à l'égard de notre président sortant de charge, le Juge Chester MacDonald, et qui, durant son terme d'office, s'est employé à m'initier aux tâches qui se rattachement à la fonction que l'occupe, tout en m'avantageant des fruits de son expérience personnelle.

L'événement est suffisamment récent pour que je puisse vous rappeler tout le succès qu'a remporté notre dernière convention annuelle tenue au Chateau Frontenac, à Québec, du 23 au 26 septembre dernier. L'élaboration minutieuse du programme, le choix attrayant des sujets, la qualité des conférenciers et sans excepter les activités sociales qui s'y inscrivaient, furent l'ouevre d'une équipe dynamique de juges de la ville de Québec. Au président du comité d'organisation, le Juge Marc Choquette, à ses valeureux compagnons d'arme, les Juges Louis Carrier, Gilles La Haye, Yvon Mercier et Jean Dutil, qu'il me soit permis de leur exprimer au nom de tous les membres de l'Association notre plus vive reconnaissance, et en mon nom personnel, la marque de ma plus profonde amitié.

executive director. While we all know that evidence of their devotion has long been recognized, I nevertheless think it fitting at this time once again to acknowledge our indebtedness to them.

Our Association has clearly defined structures, and has at its disposal the means for realizing its ultimate objectives, as well as for coping with our specific matters of concern. The generous participation of so many judges who, over the past few years, have filled the roles created by our constitution, has in large measure contributed to the authority and high standing that our Association now enjoys.

So it is with a sense of pride that I take charge of the destinies of our Association for this term, confident that my own efforts will be supported and reinforced by the experience, wise counselling and dedication of all the members of our executive committee.

At the closing dinner of our recent annual convention, I touched on the philosophy that would be the basis of my mandate, and which I might characterize as being governed by the overall principle that we can contribute to our achievements if we approach our work in a spirit of creativity. I do not believe that we should confine ourselves to the search for solutions to the immediate problems confronting us. I believe that our knowledge of the real needs of our society should stimulate us to undertake together certain initiatives that will later guide us in making recommendations that can help to overcome shortcomings in our judicial system.

Are we not seizing on a convincing means of giving substance to the real authority of the judicial power when we ensure that it reaches beyond the limits of the system itself, and that its influence is felt by the other two parallel authorities?

In the next issue of our Journal, I shall reprint, in both languages, the few remarks I made at the closing banquet of our convention.

I cannot close without warm thanks to the editor of the Journal, our colleague, Judge Rodney Mykle, for his unsparing work in preparing this publication and for his continuing efforts to maintain its existence. I cordially invite, as he himself has done, all members of our Association to take advantage of this vehicle of communication in order to further the contacts and relations already existing between us. For my part, I can say that I have been greatly rewarded and enriched by this sharing of personal view and matters of concern with other

Je me réjouis également de la composition des membres de notre comité exécutif, présidents et membres des divers comités, et dont les noms vous sont sans doute familiers, sans oublier, bien sûr, notre légendaire directeur-exécutif. Nous savons tous que la preuve du dévouement de toutes ces personnes est depuis longtemps reconnue, bien qu'il soit opportun de leur renouveler notre gratitude.

Notre Association possède donc des structures fortement établies, de même qu'elle est dotée de mécanismes qui puissent nous permettre de rencontrer nos plus ultimes objectifs, ainsi que de satisfaire à tous nos sujets de préoccupation. La généreuse participation d'autant de juges qui, au cours des dernières années, se sont succèdés aux diverses fonctions déterminées par notre constitution a largement contribué à assurer l'authorité et le prestige dont notre organisme jouit actuellement.

C'est donc avec fierté que je vieux bien présider à la destinée de notre Association pour le terme en cours, étant rassuré de ce que l'expérience, la sagesse et le dévouement de tous les membres de notre comité exécutif viendront compléter le déploiement de mes efforts personnels.

Lors du diner qui clôturait notre récente convention annuelle, j'avais quelque peu abordé la philosophie dont d'entendais m'inspirer au cours de mon mandat et que je pourrai ramener à cette idée maîtresse à l'effet que nous pourrions ajouter à nos réalisations en adoptant pour nous-mêmes un esprit de créativité. Je pense que nous ne devons pas nous limiter dans la seule recherche de solutions à l'égard des seuls problèmes auxquels nous sommes confrontés. J'ajoute que nos connaissances des besoins réels de notre société devraient nous inciter à faire preuve collectivement de certaines initiatives, et à l'égard desquelles nous pourrions par la suite nous orienter vers des recommantations susceptibles de répondre aux carences de notre système de justice.

N'est-ce pas là un moyen valable de donner un véritable sens à l'autorité réelle du pouvoir judiciaire en lui assurant un certain rayonnement à l'extérieur et en favorisant son influence à l'égard des deux autres pouvoirs parallèles.

J'aurai peut-être l'occasion dans le prochain numéro du Journal, de reproduire dans les deux langues le court exposé que le présentais au banquet de clôture de notre convention.

Ne ne saurais terminer sans remercier chaleureusement l'éditeur du Journal, notre collègue, le Juge Rodney Mykle, pour son dévouement dans la mise sur pied de

(Continued on page 14)

The Social Patterns of Crime

by the Hon. Herman Rolfes

The author is a member of the cabinet of the Government of Saskatchewan. These remarks were made originally at a workshop of the Saskatchewan Criminology and Corrections Association.

I have a deep and continuing interest in the field of Criminal Justice. As Minister of Social Services prior to my appointment to my present portfolio, I was responsible for the administration of Corrections programs in the Province. Naturally I am somewhat more familiar with Corrections than with some other facets of the Criminal Justice system. But I would suggest to you that the various elements in Criminal Justice cannot be viewed in isolation.

There is a logical connection between the enactment of laws, the work of various law enforcement agencies, the operation of the Courts and the administration of Corrections.

In Corrections we have traditionally dealt with the end product of the rest of the system.

After an individual has been charged with an offence, after the case has been dealt with by the courts, the Corrections Division has a responsibility to carry out the orders of the Court – to incarcerate the individual in an institution or to supervise the terms and conditions of a probation order.

To suggest that Corrections programming can exist without an awareness of other elements in the system – or vice versa – is simply not realistic.

But there is another element in Criminal Justice which is frequently overlooked – and that is the role of the community.

It is true that governments, that lawmakers, have a responsibility to provide leadership and to seek to direct and guide public opinion. It is equally true that governments that are too far in advance of public opinion, or that lag too far behind public opinion, have a habit of being defeated. Therefore if we are really serious in addressing the problems that are confronting society today we must create in the community an awareness of these problems.

We must create an awareness of the fundamental causes that bring individuals into conflict with the law. We must actively seek to alleviate those conditions, and we must pursue alternatives to incarceration for persons who have broken the law.

We must develop new and better ways to rehabilitate offenders so that they can become responsible members of the community, making an effective contribution to society.

But we have to start here in the community – all of the efforts of criminologists, of law enforcement officers, of court officials, or corrections personnel will come to naught if there is not a solid base of community support.

The first step is to create within the community an awareness of the problem – and some idea of the magnitude of the problem.

An examination of corrections admissions (which are a fairly reliable indicator of activity in criminal justice systems) reveals that there has been a substantial increase in the past ten years – from 4,300 in 1970 to 6,400 in 1979. There has been a corresponding increase in the number of probation cases – from 1,900 to 2,600.

It is also true that Saskatchewan has the highest per capita rate of all provinces for incarceration in provincial institutions. I am sure that there are rational explanations for this phenomenon:

– differing age limits for juvenile offenders;
– differences in treatment of drinking/driver offenders;
– higher percentages of Indian and Metis persons in the population group.

I do not accept the premise that somehow Saskatchewan residents are less law-abiding than those in other provinces or that administration of justice in this province is more severe than in other provinces. I merely point out that this is one of the problems with which we, as a government and as concerned citizens, must be prepared to deal.

Another problem that we should be aware of is the steadily declining age at which individuals are becoming involved with the law. Again, a look at Corrections admissions will prove useful although it is not the only measurement that could be used.

In 1979, more than 56% of all admissions to provincial correctional centres

prints, from which to compare crime scene evidence.

The system has been fully automated but is still in the initial implementation stage. Yet, it has inside the first six months produced 60 identifications. Last year without the benefits of this technology, the bureau registered 40 identifications. I consider this to be quite a demonstration of increased efficiency.

Confidence in the central repository as an efficient and reliable resource is growing and soon, I hope, all the police forces across the country will come to realize and appreciate what the addition of modern technology to the Identification Bureau has accomplished and rely on us.

The 1980's will, I am sure, bring further advances in your fields. The RCMP believes that handwriting comparisons and analyses could possibly benefit from the same sort of technology as has fingerprinting. My Ministry will explore this possibility and support research efforts into this area.

The use of satellites for the transmitting of facsimiles should be explored. The cost is presently prohibitive, but with advanced technology, it will no doubt replace the mail. The 1980's will surely see advances in the area of voice identification, a relatively new aspect of your profession that will quickly make its mark.

Through our centralized services and by the Canadian Government's commitment to keep police forces as efficient as possible, what will be offered, through the Federal Police Force, the RCMP, will eventually amount to one stop shopping. This will prove to be most practical, economical and most importantly highly efficient.

As a government, we are committed to continue improving resources that will enhance police effectiveness, and as a further example of this commitment, we are presently negotiating in cooperation with our Ministry of Health and Welfare, the purchase of equipment that will give the RCMP the capacity of plotting the distribution of illegal drugs from the point of origin to the point of distribution. This again will be another centralized service designed to benefit all Canadian police forces.

(Court Structure . . .

Continued from page 15)

Because of this I have consulted with Chief Judge Fred Hayes, under whose Chairmanship The Committe on the Law has been revived, to provide input to the task force on the revision of the Code and we have concluded that our Committees have so much in common that we must work very closely together so that we present a common front and avoid any possibility of working at cross purposes.

To this end we had hoped to meet with the Minister of Justice during this Conference to request that there be included in the Omnibus Bill of amendments to the Code, which we understand will be considered by the next session of Parliament, an amendment to include the Provincial Court in the definition of a court of criminal jurisdiction. It seems incongruous that the court that tries in excess of 97% of all criminal matters should not be a court of criminal jurisdiction in the definition contained in the Code.

This amendment would be a giant step toward our objective and at the same time would entitle the Provincial Court in each Province to constitute a Rules Committee so that we might be masters in our own house and more efficiently deal with our ever-increasing case load.

It now appears that we will not be able to meet with the Minister here, but that meeting should be next on the agenda of this Committee.

The Future of a Unified Criminal Court

By the Hon. Marc Lalonde

The author is Minister of Energy, Mines and Resources for the Government of Canada, and former Minister of Justice. These remarks were made at the Annual Meeting of the C.A.P.C.J. in Quebec City. The French version of his remarks follows the English version.

I would like to take the opportunity which your invitation to address this luncheon affords me to add my own words of welcome to those of you who are attending this meeting from outside the Province of Quebec. I hope that your sessions have not unduly hindered you from a little sightseeing around this beautiful city. Even judges should be allowed the occasional respite from their duties.

For my own part, I must admit that when my colleague, the Honourable Jean Chretien, found he would be unable to attend this meeting and asked me to substitute for him, I accepted the invitation without hesitancy. Since lately I was a Minister of Justice myself, I have retained some knowledge, and certainly considerable interest, in the course of the administration of justice in this country. I congratulate you on the scope of the programme which you have set yourselves to discuss. There are few areas of modern life which affect the private citizen more profoundly than how our laws are administered. This is particularly so when the criminal law is invoked.

I think that everyone here recognizes that the administration of criminal justice in Canada, as in every other country in the western world, is confronting problems of delay and severely limited resources. We must add to this an attitudinal bias in this country which, while it has demanded significant changes in the laws which the courts administer, has permitted the structure and the procedure of the courts themselves to fall behind the times. The Canadian Association of Provincial Court Judges itself has been in the forefront of those who have attempted to bring to the attention of legislators the problems which the criminal courts now face, and the possible solutions for those problems. I am therefore going to take this opportunity to address to you a few remarks on the concept of a unified criminal court for Canada.

Many of you will be familiar with the chronology of events which have brought forward this proposal. I will not attempt to review its history in any detail. However, I should mention that in the last two years, specific proposals have been brought forward for a unified court of criminal jurisdiction. At the last meeting of this body in Edmonton, your Association recommended that a system of unified criminal courts be implemented. This issue was also raised in this city in the Autumn of 1979 at a meeting of provincial Attorneys-General and Ministers of Justice. Most recently, in February of this year, it was considered at the meeting of the Steering Committee of Deputy Ministers on Duplication and Overlap in the Administration of Justice. In the context of this constitutional review year, it is appropriate to examine the concept closely, inasmuch as this may be one area where federal-provincial cooperation may bring about positive results.

Your Association in a submission to the federal government last year advocated the implementation of a unified criminal court on the model of the unified family courts now in operation in some parts of the country. As I understand it, under this proposal complete criminal trial jurisdiction would be conferred upon the criminal divisions of the Provincial Courts. Conferral of jurisdiction would gradually be phased in, so that the resources of the Provincial Courts could be built up to meet the new demands which an increasing jurisdiction would impose upon them. At the same time, certain steps in the criminal process would be abolished or revised to meet the requirements of the court. In particular, this would mean that a preliminary inquiry for indictable offences might well no longer be required. Also, certain procedures which have lost most of their raison d'etre with the passage of time could likely be dispensed with, for instance, trial de novo and appeal by way of stated case.

Since your Association made these proposals to the Minister of Justice, officials of the federal Department of Justice have

been considering the possibilities for implementing the concept, with or without variation, not only in the context of the constitutional implications which they present, but also in the context of a review of the criminal law. On the whole, I might say that these proposals have much to commend them. Certainly they are being closely examined by federal officials, for while the administration of the courts is a matter of provincial responsibility, the administration of criminal justice is so interconnected between federal and provincial responsibility that the federal government not only may, but must, show an active interest in its operation and in any proposals for change.

The main outline of the concept I have already alluded to. Instead of a two or three-tier system of criminal justice, the trial of all criminal matters, whether with or without a jury, would be held before the provincial court. The difficulty here is to determine whether to accept the proposal in its entirety, which would have the effect of divesting the County, District and Superior Courts of their criminal trial jurisdiction, or to consider a modified version, under which the latter courts would retain some of their present jurisdiction, either exclusively, or concurrently with the Provincial Courts. This is a matter for close study, and I shall not attempt to pass judgement on the merits of the one course or the other today. I might observe, however, that much of the criminal jurisdiction of the County, District and Superior Courts has already been conferred in recent years upon the Provincial Courts. This may be evidence of a trend towards ultimately conferring complete trial jurisdiction upon these courts.

What, if anything, is there to prevent ultimate recognition of the Provincial Court as a court of unified criminal trial jurisdiction? Once a review of the Criminal Code, which should commence soon, is completed, we should have an answer. Much will depend upon the results of the Criminal Code review work, and much more will depend upon what legislation Parliament will be prepared to consider. It will also be necessary to obtain the closest cooperation of the provinces in determining their particular perspectives on the issue and how they feel it might benefit, or hinder, the administration of justice in their province.

Preliminary indications have been that not all of the provinces would be prepared to accept the concept of a unified criminal court. This should not discourage the proponents of such a court. If the proposal is seen to have merit, one or more of the provinces might well initiate a trial programme to develop the idea more fully. It has been our experience that once a pilot project is established in one jurisdiction, interest is sparked in other jurisdictions and the likelihood of the spread of such projects is commensurately increased. Some of the provinces may prefer to await the results of pilot projects, should it be decided to implement them, rather than undertake the experiment themselves. Certainly, considerable variation may be expected from province to province in how the court should be organized and administered.

In the spirit of cooperation, the federal government must accommodate itself as far as possible to the wishes of the provinces in the interests of obtaining greater equity in our system of criminal justice. The process will assuredly be a tentative one. Your Association, and other organizations in this country with an interest in law reform, will have a considerable role to play in initiating activity in this field, and seeing to its continuance.

So far, I have spoken to you as one who is basically attracted by the concept of a unified court of criminal trial jurisdiction. I cannot guarantee, however, that the proposals put forward by your Association will be accepted. Various other options for the reform of our criminal justice system must also be considered before a final decision is made. The chief merit of your proposal is, of course, that it employs the resources of an existing system of courts, without the necessity for instituting a new court and administrative system. This means that there would be the minimum of disruption in the present system. I believe it would also facilitate the proposed phasing in of the programme until such time as a completely unified jurisdiction may be achieved. In all likelihood, should the proposals for unifying criminal jurisdiction be proceeded upon, the plan decided upon will be a combination of elements from this and the several other proposals which have been mooted, at least in its initial stages.

Accordingly, one could forsee the jurisdiction of the Provincial Court being further increased, by giving it a concurrent jurisdiction over all of the matters presently retained by the County, District and Superior Courts. It should not surprise anyone if this is the result, since no matter how farsighted a legislative scheme may be, inevitably it must depend upon trial and error to determine its ultimate efficacy. I can assure you that the Government of Canada has no wish to impose another level

convicted of simple possession, and as a consequence of their arrest, they have been fingerprinted and photographed by the police. In many instances, this is their only contact with the criminal process. Most Canadians believe, I think, that such criminal records should be effectively extinguished. Certainly, for offences of this kind, there should be a way to either automatically erase or seal such records after a certain passage of time. But this is not currently the case in Canada. Similar concerns for juveniles have been voiced in the work of my Ministry. I'm not sure what I can do, or what Parliament can do about all of this, but I intend to do what I can in this field.

Even the process presents problems.

I recently received a letter from an M.P. complaining about how the Criminal Records Act had affected one of his constituents. The person in question had been convicted for theft in his youth, had paid his penalty and put the matter behind him. In later life he had achieved a position of trust in a financial institution. To ensure that his background was clear he applied for a pardon for his youthful folly. As part of the inquiry into the granting of the pardon, his employer was contacted and asked a series of questions which made it obvious that he was seeking a pardon for some criminal offence. This caused him much embarrassment and may have adversely affected his employment. Hardly the consequence he expected to flow from such an application. By the way, he did receive the pardon. I don't know about promotion.

Canada can claim a pioneering contribution in the field of identification. Credit must be attributed to the Dominion Association of Chiefs of Police who, in 1908, had the foresight to recommend to the Government of Canada, the creation of a centralized Crime Identification Bureau. This Bureau was to serve as a central repository of information, and was to be staffed by identification experts who would be available to assist all accredited police forces in Canada. As a result of this recommendation, the Government of Canada passed the necessary Order-in-Council creating the first Canadian Identification Bureau under the responsibility of the Royal Canadian Mounted Police. As the Bureau was being established, a member of the Royal Canadian Mounted Police, Inspector Foster visited the World's Fair in St. Louis and had the opportunity of meeting with fingerprint experts from Scotland Yard.

Upon his return to Canada he began promulgating the idea of a centralized fingerprinting documentation center. He argued that the fragmentation in this field, was largely due to the fact that fingerprint records were kept in various cities throughout the country. This practice rendered impossible the timely comparison of prints on file to those found at crime scenes and he suggested that this situation could be corrected by creating a centralized repository of fingerprints. The RCMP, with the cooperation of other Canadian police forces, pooled their records and the Canadian Identification Bureau gained the added dimension of a centralized fingerprint section.

From 1911 when the central fingerprint bureau was established, until 1968, the task of filing prints and that of identifying possible suspects was carried out manually. As the number of files increased, so did personnel and space requirements. By 1960, our central repository contained over one million sets of prints and a bank of some 50,000 latent prints. The manual process for comparing crime scene prints to those on file, had become a complex, time consuming and expensive process. In order to increase efficiency and to restrain costs, the RCMP was assigned the task of finding a suitable alternative.

In keeping with their tradition of always getting their man, the RCMP in this case, got their computer. The Force was in the course of their research exposed to a video filing storage system that had been used successfully by several large American insurance companies. The designers of this system were able to modify it to their specifications so that the storage of fingerprint records became possible. In 1973 the RCMP had completed the transfer of their fingerprint files to video. By then, the technology for classifying and scanning fingerprint video files was available.

Consistent with its policy of providing the most efficient police services available, the Government of Canada authorized the purchase of necessary equipment. Late in 1979, Canada could boast of having at the disposal of all Canadian police forces, a fully automated and highly efficient fingerprint service.

The application of modern technology in the area of fingerprinting permitted the RCMP to increase its file of latent prints from 50,000 to 60,000 in less than eight months. The next phase proposes to increase this bank of latents to 250,000. In a few years when total implementation is achieved, some 500,000 sets of latent prints will be stored for comparison and as a result, Canadian police forces will have at their disposition virtually every active criminal's

Problems and Progress:

Identification of Criminals

by the Hon. Bob Kaplan

The author is Solicitor-General of Canada. These remarks are excerpted from a speech made to the International Association for Identification in Ottawa.

I admit frankly that I have no experience in the complex science of identification, which is so familiar to you. The only advantage this gives me is that I can veiw the work of identification experts with the clear eye of the uninitiated.

I have been fascinated, as any lay-person would be, with the scientific advances allowing the identification of individuals through fingerprints, voice prints and tissue samples. As amazing as the uniqueness of fingerprints, is our ability to now catalogue this information in a way which makes it instantaneously available.

I am also fascinated with the technical ability we now have to make instantly available a great variety of information to police agencies. Perhaps the single most important advancement in policing in Canada has been the introduction of CPIC, the Canadian Police Information Center, which makes information on vehicles, individuals, and incidents accessible to police officers in their police cars! I am sure that such advances were not even thought of 15 years ago, and now they are changing the very nature of police work.

My fascination led directly to my second reaction – encouragement. For a person with political responsibility to Parliament for Canada's largest police force, these developments are extremely encouraging. Better and more sophisticated identification techniques make police work more efficient and effective. Investigations can be shortened and are more likely to be successful. The use of the new technology has also made police work safer. If, as the saying goes, to be forewarned is to be forearmed, the use of police information services ensure that officers have a maximum amount of information when responding to an incident.

But such developments also give rise to my last reaction – one of concern. The collection and maintenance of records on individuals and institutions has always been problematic in liberal democracies, particularly when this information is being used as part of the criminal justice process. Micro-circuitry and silicone chips have so enhanced our ability to store cheaply, to retrieve and analyze data that we are experiencing an information explosion of which advances in this particular area are only part. This explosion brings with it great promise and great responsibilities.

In our increasingly complex society, freedom has increasingly come to mean, at least for some, to be free from the many demands and intrusions of the modern state. Recent concerns in Canada with the use of Social Insurance numbers and with medical information collected as part of Medicare are examples of public concern with the official use of information. The Government is presently studying effective limits to the use of S.I.N.

The maintenance and use of Criminal Records has come under increasing scrutiny with demands for greater protection of individuals. A source of many complaints is the simple fact that once created, records are extremely difficult to erase.

I confront this problem regularly in connection with a responsibility which I have under the Criminal Records Act. This is the federal statute under which pardons are sought for Federal criminal records. I suppose the average Canadian approves of pardons and assumes, that when granted, the individual is put in the state he would be in if he had not been convicted. In fact, its effect is much more limited, and I am now considering going to Cabinet and Parliament to try to make the forgiveness embodied in a pardon somewhat more effective and meaningful once pardoned.

If you're asked whether you have a record, you can say no, but if you're asked whether you've ever been convicted, the answer is yes. And all the records adverse to you in police files and in courts across the country remain more or less accessible. So do newspaper morgues which are, of course, private property.

The limits of pardons have been raised in the discussions on the decriminalization of marijuana. There is concern that as many as 200,000 young Canadians now have criminal records as a result of being

of court upon the criminal justice system, be it a federally constituted or a provincially constituted court, but rather would prefer the reduction of levels of courts and the simplification of the procedures involved.

Apart from these considerations, what the federal government and theprovinces can do is largely dictated by the constitutional division of powers. Under this division, the provinces may create the courts of criminal jurisdiction, while the federal Parliament determines the extent of their jurisdiction under the criminal law and the manner of their procedure. It should be immediately apparent that this simple statement of the respective legislative responsibility of the two levels of government does not mean that the implementation of this or any other proposal for a unified court system is immediately accessible.

There is also the question, still unresolved, as to whether the Superior, County or District Courts may be completely divested of their criminal trial jurisdiction, inasmuch as these courts are constitutionally guaranteed a certain broad jurisdiction similar to that which they exercised at the time of Confederation. This may not apply, however, to the conferral of jurisdiction over jury trials in respect of most offences, excepting perhaps murder.

The provinces, and in many cases the courts themselves, have introduced many innovations in recent years to attempt to overcome the problems created by crowded court calendars, lack of courtroom facilities and insufficient manpower. Much remains to be done. It is for this reason that the proposals for a unified criminal court system should be seriously considered as a possible solution to a longstanding problem. This may not be the only way in which these problems may be overcome. It may not even be the best way. It is a concrete proposal with the prospect of being workable. As such, it is a model from which the federal government and the provinces may be able to negotiate a more efficient criminal court structure and a more equitable criminal justice system for all Canadians.

* * *

Mesdames et Messieurs, je m'en voudrais de ne pas profiter de l'occasion qui m'est offerte aujourd'hui de souhaiter la plus cordiale des bienvenues à vous tous ici présents, et en particulier à ceux et à celles venant de l'extérieur du Québec. J'espère que vos travaux sessionnels ne vous ont pas empêchés de visiter cette belle ville. Même les juges devraient avoir la chance à l'occasion de prendre une pause.

Quant à moi, je dois admettre que lorsque mon collègue, l'honorable Jean Chrétien, s'est rendu compte qu'il serait incapable de participer à votre réunion, et qu'il m'a demandé d'agir en son nom, il va sans dire que je n'ai pas hésité une seule seconde à accepter. Comme j'ai été jusqu'à récemment ministre de la Justice, je continue d'être au fait des questions juridiques, et mon intérêt pour l'administration de la justice dans notre pays demeure vif.

Je tiens à vous féliciter pour l'envergure du programme de vos délibérations. Dans notre société contemporaine, il existe peu de domaines qui touchent plus le citoyen que l'administration de la justice. Ceci est particulièrement vrai lorsqu'il s'agit du droit criminel.

Je pense que nous sommes tous d'accord pour reconnaître que l'administration de la justice criminelle au Canada, comme c'est le cas d'ailleurs dans touts les pays de l'hémosphère occidental, souffre de lenteurs et d'un manque de ressources. Nous devons ajouter qu'il existe une certaine ambivalence dans l'administration de la justice de notre pays. Bien qu'on ait des modifications importantes aux lois que les tribunaux sont appelés à appliquer, nous avons permis que la structure et la procédure des tribunaux eux-mêmes ne s'ajustent pas à ces changements. L'association canadienne des juges des cours provinciales, n'a cessé, pour sa part, de sensibiliser les législateurs aux problèmes auxquels sont confrontés actuellement les cours de justice, et de formuler des recommendatons pour y pallier. Je voudrais donc saisir cette occasion pour vous entretenir brièvement du concept d'une cour criminelle unifiée au Canada.

Un grand nombre d'entre vous connaissez fort bien la suite des événements qui ont abouti à cette proposition. Je ne tenterais pas de les évoquer à nouveau en détail. Je dois cependant souligner qu'au cours des deux dernières années, des propositions bien précises ont été formulées visant l'unification de la juridication des cours criminelles. Au cours de la dernière réunion de votre organismes à Edmonton, vous avez recommandé l'instauration d'un système de cours criminelles unifiées. Cette question a d'ailleurs été soulevée ici même à l'automne de 1979, au cours d'une réunion des procureurs généraux et des ministres de la Justice des provinces. Plus récemment, en février de cette année, cette question a été étudiée par le comité d'orientation des sous-ministres sur les chevauchements et le double-emploi dans le domaine de l'administratation de la justice. Dans le contexte de l'actuelle révision constitutionnelle, il est

approprié d'étudier attentivement ce concept, puisqu'il s'agit d'un domaine dans lequel la coopération fédérale provinciale pourrait aboutir à des résultats concrets.

Votre association a plaidé auprès du gouvernement fédéral l'année dernière en faveur de la création d'une cour criminelle unifiée, sur le modèle des tribunaux unifiés de la famille qui existent actuellement dans certaines régions du pays. Si je comprends bien, cette proposition vise à accorder la juridiction pleine et entière sur les causes criminelles aux divisions criminelles des cours provinciales, laquelle juridiction serait accordée de manière graduelle, afin de permettre aux cours provinciales d'ajuster leurs ressources à cet élargissement de leurs champs de juridiction. En outre, certaines étapes dans l'examen des causes criminelles devraient être abolies ou modifiées afin de mieux correspondre aux nouvelles structures. En particulier, cela voudrait dire que l'enquête préliminaire pour un acte criminel pourrait dorénavant ne plus être requise. On pourrait également se dispenser de certaines procédures devenues désuètes; je pense par exemple aux procès "de novo" et aux appels sous forme d'exposé de cause.

Comme votre association a formulé ces propositions au Ministre de la Justice, des hauts fonctionnaires du ministère fédéral de la Justice étudient la possibilité de mettre en application ce concept, tel quel ou avec des modifications; cette étude se déroule avec, comme toile de fond, les implications constitutionnelles qu'un tel changement entraînerait, et également dans le contexte de la révision du droit criminel. Je dois reconnaître que, dans l'ensemble, ces propositions sont fort louables. Il va sans dire qu'elles sont attentivement étudiées par les hauts fonctionnaires fédéraux, car, même si l'administraiton des cours relève de la compétence des autorités provinciales, l'administration de la justice criminelle dépend tellement de responsabilités fédérales et provinciales imbriquées l'une dans l'autre que le gouvernement fédéral, non seulement peut, mais doit s'intéresser de près à son fonctionnement et à tout processus qui tend à la modifier.

J'ai déjà évoqué les grandes lignes de ce concept. Au lieu d'avoir un système de justice criminelle à deux ou trois volets, l'audition de toutes les causes criminelles, en présence ou en l'absence d'un jury, se déroulerait devant la cour provinciale. Il est difficile dans cette matière de déterminer si la proposition devrait être acceptée dans son intégralité, ce qui aurait pour effet d'ôter aux cours de comté, de district ou au cours supérieures leurs juridiction en matière criminelle, ou s'il ne serait pas préférable d'en adopter une version modifée, en vertu de laquelle ces derniers tribunaux conserveraient une partie de leurs juridictions actuelles, soit de manière exclusive ou conjointement avec les cours provinciales. Il, s'agit là d'une question qui mérite un examen scrupuleux; je ne tenterais donc pas d'étudier aujourd'hui les mérites de l'une ou de l'autre de ces deux options. Je pourrai cependant faire remarquer qu'au cours des dernières années une bonne partie de la juridiction criminelle des cours de comté, de district et des cours supérieures a déjà été transférée aux cours provinciales. Nous assistons peut-être là à une tendance qui aboutirait finalement à accorder une juridiction pleine et entière aux cours provinciales en matière criminelle.

Qu'est-ce qui pourrait bien nous empêcher d'accorder aux cours provinciales, le statut de cours criminelles unifiée? Lorsque la révision du code criminel, qui doit commencer sous peu, aura été menée à bien, nous devrions avoir une réponse à cette question. Beaucoup de choses dépendront de la révision du code criminel, et encore davantage de la législation que le Parlement sera disposé à étudier. Il sera en outre nécessaire de pouvoir compter sur la collaboration pleine et entière des provinces afin d'avoir une connaissance précise de leurs vues sur cette question; il faudrait en particulier savoir si un tel changement serait, à leurs yeux, bénéfiques ou au contraire nuisible à l'administration de la justice chez elles.

Selon certains indices, il ne semble pas que toutes les provinces soient disposées, pour le moment, à accepter le principe d'une cour criminelle unifiée. Ceci ne devrait pas décourage les partisans d'un tel tribunal. Si l'on estime que la proposition a quelque mérite, une ou quelques provinces pourraient fort bien la mettre à l'épreuve afin d'en découvrir les lacunes. L'expérience nous a ensigné que lorsqu'un projet pilote est lancé dans un secteur de juridiction donné, il suscite un très grand intérêt partout dans le pays augmentant ainsi chances de le voir se répandre. Certaines provinces préferaient peut-être attendre de connaître les résultats de tels projets pilotes, si jamais nous décidions de les mettre en oeuvre, plutôt que de s'y lancer elles-mêmes. Il est certain qu'on devrait attendre à des différences très marquées entre les provinces quant au mode d'organisation et d'administration de ces cours. Animé d'un esprit de collaboration, le gouvernement fédéral doit tenir compte dans la mesure du possible des souhaits des provinces, afin de promouvoir une plus grande équité dans le système de la justice criminelle. Ce processus serait,

of thing certainly exists in Old Crow."

The sentences which were given in July of 1980 were virtually uniform for eleven people. The eleven were sentenced to jail for a fourteen day sentence and put on probation until the new year. The jail sentence was put off (to start on August 25th) in order to allow the Correctional, Probation, and Alcohol & Drug Services time to adequately plan for a program for the eleven Old Crow residents who would be going to jail in three weeks time. (With "good time" they would actually serve nine days in jail.) A term of the probation order for each of the individuals was to attend such group counselling as was recommended by the Probation Officer after the incarceration was over.

All branches of the system responded with enthusiasm and an excellent week long group training program was carried out. It is too early to assess the effect of this effort. One of the relationships between Old Crow crime and Old Crow alcohol abuse appears to be that both alcohol abuse and criminal activity are destructive – either self-destructive or abuseive to others – property damage and assault are the predominant crimes. The inability of the Old Crow Indians to resist alcohol, even though they are aware of its destructive effect seems to be part of the general cultural decline. The decline in culture – the spirit of Old Crow – is coupled with alcohol abuse, and the two factors seem to be both cause and effect of each other.

What the Territorial Court is doing is merely presiding over the disintegration – the appearance of order is there, the external trappings are there, but the proper effect on the community is not there. Courts can express community values by giving effect to them by identifying and taking care of the few rascals that exist. When the community values are breaking down or are changing so fast that the law does not keep up with them, the system doesn't work. Courts depend on the support of the general community and help to express the values of that community by punishing for acts which are deviant. In Old Crow, the typical criminal act of an individual is, in my opinion, not deviant. Rather, these acts are symptoms of a social situation. In Old Crow those who are convicted in the criminal courts are not viewed by the larger society as rascals. They are thought of as persons who made a mistake while they were drunk. It is entirely possible, and indeed probable, that almost any member of the community, even the most respected, might find himself in Court.

In the Yukon, the criminal justice system is small enough that the various individuals involved in it can speak with each often and most often frankly. These individuals, in my opinion, are honest and remarkably well-meaning people – most are also frustrated. It is our job to make society work by removing the disruptive elements. All we are doing is furthering the disintegration of Old Crow society by taking away from the community the need to police itself.

I wish that I could propose a concrete solution to this whole problem. I cannot. What I can do is report on what is happening and try to bring attention to the problems which the criminal justice system is attempting to deal with, and is causing. My opinion is that Indian-controlled social programs must be developed by the local leadership to address to basic causes of the problems with which the Courts must deal.

Judicial Independence

. . . Continued from page 20

a guarantee of impartial administration of justice and equlaity under the law can best fulfill its promise if the political authorities which control the legislative and executive machinery of the state understand its rationale and give it scope for operation.

'I say, let's go all the way, Slugg . let's fight this thing 'til your money runs out!'

elders in the last few days and on my previous trips, and they have commented on the use of alcohol by young people. I should say that I have also talked to young people, and they say that it is the older people who are drinking more than the younger people. I may say that I have also talked to the children, some of them of a very young age; and the children say the adults drink. It is my judgement that the children start drinking or start getting drunk at approximately age ten; and I wish to say that to be absolutely clear, that eleven and twelve and thirteen year old children are drinking fairly regularly in Old Crow. I make that as a description of the social condition.

The way people drink in Old Crow is that there is home brew made here, but not regularly, although it is fairly consistently available if storebought alcohol is not available. There is no government alcohol outlet in Old Crow. The liquor is flown in on the plane, generally by the case, and it is generally consumed in a more or less communal way, at least at the beginning. After the liquor comes in on the plane and the entire town, or the adult population of the entire town virtually gets drunk and the liquor is consumed steadily until it is all gone there is a thriving bootlegging operation going on on a more or less informal basis, in that at the end, or when going into a town drunk, when bottles get scarce, they are often sold; and they are sold for exorbitant prices, an average price being somewhere in the range of sixty to eighty dollars for a bottle of liquor. There is a tremendous amount of money being spent on liquor in Old Crow.

There is also a concern, which was voiced to me by several people that as the Cooperative Store here operates basically on credit, they are suffering considerably; because alcohol is purchased with cash, and the cash goes for alcohol first and groceries second."

At that time several people were sent to jail for a short period and most of the eleven who were sentenced received probation terms.

The next criminal sentencing in Old Crow occurred on November 27, 1979. At that time two elder teenaged boys were sentenced for, among other things, assault charges. The sentence of the Court could accurately be called "banishment" (the legality was that a probation order was entered into requiring the boys to be trapping at a site outside of the Old Crow townsite.) This sentence was arrived at after discussions with the Chief of the Old Crow band and the other members of the Band Council. It was suggested by the Defence Counsel in Court, and agreed to by Crown Counsel. It was clear that the probation period, from November to June, was an alternative to imprisonment for the two boys. The Chief and Bank Council spoke very forcefully in favour of not jailing two members of their community.

On July 29, 1980, the Court put on record the significant events which had occurred since July 1979. The transcript of that is as follows:

> "Since that time, a number of events have occurred. One of them is that there was a plebiscite in Old Crow as to the allowing of liquor into the community. The liquor ban, as it might be called, did not pass. I have heard a number of comments about that but it is inappropriate for me as a Judge to make comments about that plebiscite as it is essentially a political matter.
>
> Last year I made a number of comments about a Justice of the Peace Court for Old Crow. Three people attended a week long training session in Whitehorse last February. Two other people are interested in becoming Justices of the Peace and that, although it is a very small step, at least it is a step.
>
> On the last Court Circuit in November of 1979, there was a public education theatre called the 'Bad Old Booze Blues Show' and it was my impression that the people of Old Crow enjoyed the show. Looking at the particular charges that are before me now a number of those exact incidents were described by way of theatre in a short play which was specifically written for Old Crow.
>
> I have received comments from a number of people, most of them old people, that there are elders in this community who are afraid to go out at night and who lock their doors. Some people have told me about their plan of moving away from the townsite of Old Crow because of fear of, especially, young boys who go around drunk in groups. There is no evidence of that on the particular charges before me, but I would like to make the comment that the fear of that kind

assurément, mis à l'épreuve. Votre association, ainsi que d'autres organismes au pays intéressés à l'épreuve. Votre association, ainsi que d'autres organismes au pays intéressés à la réforme du droit, auront u rôle considérable à jouer pour mettre en branle un tel processus et faire en sorte qu'il perdure.

Comme vous avec pu le constater, je me suir adressé jusqu'à maintenant à vous comme quelqu'un qui est séduit, fondamentalement, par le concept d'une cour unifiée pour l'audition des causes criminelles. Je ne puis garantir cependant que les propositions de votre association seront acceptées. Avant qu'une décision finale soit prise, plusieurs autres options visant la réforme de notre système de justice criminelle doivent, en outre, être envisagées. Le principal avantage de votre proposition, est le suivant: nous pourrions avoir recours aux ressources du présent système. Il ne serait donc pas nécessaire de créer une nouvelle cour et un nouveau système administratif. C'est donc dire que le système actuel ne subirait que très peu de perturbations. Votre proposition aurait également l'avantage d'intégrer graduellement les changements à opérer dans le système, et ce jusqu'à l'instauration totale d'une juridiction unifiée. Selon toutes vraisemblance, si les propositions d'unifications criminelles sont retenues, le plan qui serait adopté combinerait des éléments de votre proposition avec ceux de plusieurs autres propositions soumies, et ce au moins dans les étapes initiales de ce plan. On pourrait, par exemple, entrevoir une extension de la juridiction des cours provinciales, qui se veraient accorder une juridiction concomitante sur toutes les questions relevant actuellement des cours de comté, de district et des cours supérieures. Nul ne devrait être surpris par l'adoption d'une telle mesure; toute structure législative, quelle que soit l'étendue des études qui ont mené à son adoption, ne peut être jugée, en dernière analyse, que si elle est mise à l'épreuve. Je peux vous assurer que le gouvernemnet du Canada n'a nullement l'intention de surimposer au système de justice criminelle un autre niveau de tribunal, que ce soit une cour fédérale ou une cour provinciale; le gouvernement, au contraire, préférerait la réduction du nombre de niveau de cour et la simplification des procédures.

Outre ces considérations, ce que le gouvernement fédéral et les provinces peuvent entreprendre est dicté en grande partie par la division des pouvoirs constitutionnels. Selon cette division, les provinces peuvent créer des cours de juridiction criminelle, tandis que le parlement fédéral détermine l'étendue de leur juridiction dans le domaine criminel, ainsi que leur procédure. Il est évident que le simple rappel des responsabilités législatives respectives des deux niveaux de gouvernement signifie que l'application de cette proposition, ou de toute autre proposition relative à un système de cours unifiées, ne sera pas immédiatement possible.

Une question, qui n'a pas encore été résolue, se pose également: peut-on ôter complètement aux cours de comté, de district et aux cours supérieures toute juridiction sur les causes criminelles? Ces cours ont en effet une garantie constitutionnelle de se voir maintenir un certain pouvoir juridictionnel semblable à celui qu'elles exerCaient au moment où la Confédération est née. Cette disposition ne s'applique peut-être pas à l'octroi d'une juridiction sur les procès avec jurys dans le cas de la plupart des infractions, exception faite peut-être dans le cas de meurtre.

Les provinces, et dans plusieurs cas les tribunaux eux-mêmes ont innové au cours des dernières années, afin de surmonter les problèmes que causent l'encombrement des rôles, la carence des installations physiques et l'insuffisance es ressources humaines. Il reste beaucoup à faire. C'est pour cela que les propositions visant à unifier le système des cours criminelles devraient être sérieusement envisagées comme solution possible à un vieux problème. Il ne s'agit peut-être pas là de la seule solution à ces difficultés. Il ne s'agit peut-être même pas de la meilleure formule possible. Elle n'en demeure pas moins une proposition concrète et susceptible d'être fonctionnelle. En tant que telle, elle constitue un modèle à partir duquel le gouvernement fédéral et les provinces pourraient négocier une structure de cours criminelles plus efficace et un système de justice criminelle plus équitable pour tous les Canadiens.

Pour les juges l'indépendance est inégale

par Marcel Collard
du Soleil

Le juge Guy Guérin, de la Cour des sessions de la paix, de Montréal, a incité ses collègues à rester imbus de leur indépendance face aux pouvoirs publics et à revendiquer une plus grande autonomie.

De l'avis du magistrat, l'indépendance des tribunaux de première instance au Canada est fragile et toute nouvelle constitution devrait remédier à cette situation.

S'adressant à quelque 200 délégués de l'Assocation canadienne des juges de cours provinciales, le conférencier a déclaré que les juges des cours supérieures jouissaient de certaines garanties constitutionnelles, alors que ceux des cours inférieures n'ont qu'une immunité relative.

Le juge Guérin a souhaité autant d'indépendance que les corporation publiques, telles Radio-Canada, Air Canada, le protecteur du citoyen et même la Commission des libertées de la personne qui assument la gestion de leurs affairs et qui administrent elles-mêmes leurs budgets, même si, en dernier ressort, les dépenses doivent être approuvées par le gouvernement.

L'administration de la justice, a expliqué M. Guérin, est soumise à une trilogie provinciale, composée des ministrères de la Justice, des Travaux publics et de la Fonction publique, intervenant dans les prises de décisions influant directement sur le pouvoir judiciaire. "Notre seul combat, a't'il conclu, est celui de notre autonomie."

Parlant également sur le thème du juge et les pouvoirs publics, le juge Denis Lanctôt, de Montréal, a proposé une réforme de la Cour supérieure pour y inclure des divisions spécialisées, comme par exemple, une cour de compétence pénale, une cour de compétence civile et une de compétence du droit de la famille. Ainsi, l'actuelle Cour des sessions de la paix, sous la surveillance de la Cour supérieure, deviendrait sur un pied d'égalité, avec juridiction sur toutes les causes pénales, y compris les procès devant jury.

C'est une réforme globale qui est nécessaire, selon le juge Lanctôt, nécessitant la mise à contribution de toutes les resources, comme les magistrats, les gouvernements provinciaux et canadien et même les universités.

Evoquant la difficulté de parcevoir l'image de la justice, la juge Marcel Crête, juge en chef du Québec, a rappelé que le juge et un être humain comme tout autre homme devant comparaître devant lui, malgré les notions de dignité, l'importance de ses fonctions, son autorité et le prestige qu'on lui reconnaît.

Après avoir cité des extraits de diverses sources relativement à la mystique des jugements, le juge Crête a demandé à ses collègues: "Peut-on reprocher au gran public d'interpréter littéralement l'outrage au tribunal comme signifiant qu'en cette matière, le juge se sent personnellement offensé — ce qui peut arriver dans des cas d'exception, par des gestes, des paroles ou des écrits alors que dans le plupart des cas il s'agit d'entrave à la justice, c'est-à-dire d'une atteinte aux droits fonamentaux des gens de toute classe d'obtenir justice? Vu sous cet éclairage, a't'il poursuivi, l'outrage au tribunal devrait projeter une toute autre image que celle que nous connaissons vulgairement."

Le ministre de la Justice, Me Marc-André Bédard, a parlé de l'installation d'un droit nouveau à la faveur d'un éventail important d'actes législatifs que les juges doivent ensuite interpréter.

Enumérant certaines mesures prises par son ministrère pour renforcer l'indépendance des juges, le ministre Bédard a poursuivi: il est devenu de plus en plus difficile de démarquer clairement les frontières entre les pouvoirs traditionneles mêmes, et celui suprême, commun aux trois ordres reconnus, celui des citoyens.

Sentencing in Old Crow — A Special Case

by Judge Roger S. Kimmerly

The author is a judge of the Territorial Court of Yukon.

Old Crow is the Yukon's most northerly community, located just above the Arctic Circle on the Porcupine River. It has sixty-odd log cabins and a few government or communal buildings. The population varies seasonally and can be estimated at just under four hundred. The people are Loucheux Indian.

It appears to me that the incredibly fast social change which was feared would accompany a pipeline development is occurring anyway – without the development. The way of life is changing so fast that young and old do not understand each other; male and female roles are uncomfortably confused. Survival of pride and dignity is threatened by virtually universal alcohol abuse.

Sentencing convicted people is somewhat different in Old Crow than what traditionally happens elsewhere. What I will do is describe what has actually happened in the last year or so, then describe what I think the implications are for the criminal justice system in Old Crow.

Starting in July 1979, the Court adopted the practice of doing all of the trials and other matters, and adjourning all sentencing matters to the last day of the Circuit – then dealing with all sentencing matters, both communally and separately but all at one session. I also invited the community (the Courtroom has always been packed with citizens) to make any general comments that they may wish to make. These are some selections of comments made on July 11, 1979:

Stephen Frost:

> ". . . there's a lot of people are getting concerned about the problems we're having. Lately, instead of getting better, I think it's getting worse . . . They're given a real good chance . . . It's only ourselves that could help some of these problems . . ."

Charlie Peter Charlie:

> ". . . so in our day, young people never mixed up with anything like this. In those days, no drink but lots – if you could make lots of mistakes at that time. So, I want to tell the young people about this and there's a big chance today and young people does not respect old people and parents, not much – not very much, not same as used to be . . ."

Abraham Peter:

> "You know all that is in alcohol problem."

John Kendi:

> "I, myself . . . when I drink, I go home. I stay home and go to bed. I wish you young people do that too."

Charlie Abel:

> ". . . I don't think it's right for another person to force us to stop drinking; but it's got to come from the people itself. That's the only way."

I gave a communal judgement for eleven people and specific sentences for each one. In part, I said this:

> I wish to make a general description of alcohol use in Old Crow and I'm doing that for several reasons. Often, Appeal Courts or other Courts mention that the trial Judge or the sentencing Judge or the Magistrate knows the local conditions and local situations; it is my judgement that it is only proper that I put my conception of the local conditions on the record so that if it is incorrect, it may be challenged and also so that it is absolutely clear and it is stated. It is also important, I think, as a social statement or as a description of Old Crow society as it exists in July of 1979 . . .
>
> In Old Crow there is an extensive alcohol abuse; and in Old Crow, the general community is different from other communities in the Yukon, especially white communities, in that people in Old Crow act as a community in a very real sense. The alcohol problem in Old Crow is not only the problem of each person. It is the problem of the community, in that if there are alcoholic people, there is in Old Crow an alcoholic community. In my judgement, I can say with conviction and certainty that the community of Old Crow has an alcohol problem. Alcohol abuse is rampant. There are over one hundred adults; very, very few adults do not drink. I have talked to many of the

independence of the judiciary. England evolved the joint address of its two Houses of Parliament as the means of certifying dismissal for misbehaviour, removing the question from executive control. In Canada, the Canadian Judicial Council is empowered to investigate complaints against judicial conduct or rather misconduct, and to carry out formal inquiries which may lead to a recommendation for dismissal. In the case of County Court Judges, the recommendation can be acted on by the government alone, but in the case of Superior Court Judges it is for the Houses of Parliament to act in the matter. There is thus a blend of responsibility, but the major role in determining whether discipline or removal is warranted is left to the Canadian Judicial Council, a statutory body consisting of all the Chief Justices of all the Superior Courts in Canada.

One matter which has recurrently been to the fore over the past two decades and, particularly, in the past few years, has been the attempt of the political and executive authorities to put Judges in full-time administrative posts while allowing them to keep their judicial status. I do not speak of appointments to *ad hoc* inquiries for which there is provision in the federal *Judges Act*. The most recent example of what I refer to was the attempt of the Government of Ontario to appoint a Supreme Court Judge to the full-time post of Chairman of a provincial administrative agency. Why the Judge in question even considered the appointment is not something I can fathom nor, even more importantly, why he felt he could remain a Judge while heading an administrative agency. Justification was sought in a provision of the *Judges Act* providing for leave of absence to a federally appointed Judge. I have always regarded this provision, in the context of the *Act* as a whole and especially because it provides for a Judge taking on *ad hoc* duties as commissioner or inquiry chairman, as referable to a situation where the Judge or a member of his immediate family was ill or for other personal reasons he required temporary relief from his judicial duties.

It horrified me to learn that government officials in Ontario felt that they could use this leave provision to put a Judge in an administrative post without obliging him to relinquish his judicial office. I may say that I fought this and fought it successfully and will fight it again if such a matter should recur.

In the late nineteen fifties Mr. Justice Hughes of the Ontario Supreme Court was persuaded by the then Prime Minister John Diefenbaker to head the federal Civil Service Commission. He did the honorable and normal thing in resigning his judicial office while serving as Chairman of the Commission. Upon his retirement from that post he was, fortunately, re-appointed to the Bench. Mr. Justice Morand resigned from the Ontario Supreme Court when he accepted the position of Ontario Ombudsman. A few years ago the federal government wished to appoint a County Court Judge for a two-year term as deputy solicitor general. On learning of this I objected, with full support of the Executive Committee of the Canadian Judicial Council, that he could not be appointed and still remain a Judge. Sanity prevailed and the matter was dropped.

I have no jurisdiction or authority to meddle in the affairs of provincial courts or intercede on any issue affecting the position of provincial Judges. It grieves me to know, however, and I think it grieves Chief Justice Howland and Chief Justice Evans that the provincial government of this Province has appointed a provincial Judge as a deputy minister while permitting him to retain his status as Judge. I regard this as a blot on judicial independence which should not be tolerated, and it speaks loudly of the misconception that the governmental authorities, who are responsible in this matter, have of the meaning of judicial independence.

There is, finally, one further point I would make, and it is an important one. Judges, however independent in their tenure and in their discharge of their duties, are bound to obey the law and to administer it, if it is statute law, in accordance with its terms. They can protect human rights and individual freedom under the law if there are constitutional imperatives that enable them to do so. If there are no constitutional limitations on legislative or legislatively-authorized executive action, there may still be a judicial check on arbitrariness through the judicial power to interpret and apply the law. If repressive or discriminatory legislation which is validly enacted leaves little or no room for protection of the individual, Judges may express their dismay but will nonetheless be bound to give effect to it. Judges cannot enter the lists and engage in social or political controversy, whatever be their private feelings. They can only guard their judicial independence if they remain aloof from such controversy. At bottom, therefore, judicial independence as

(Continued on page 23)

The Quebec City Resolutions

The following are the resolutions passed at the Annual General Meeting of the Canadian Association of Provincial Court Judges at Quebec City on September 26, 1980.

INTER-PROVINCIAL EXCHANGE

NO. 1 — Be it resolved that the Canadian Association of Provincial Court Judges does hereby approve, in principle, the establishment of an Inter-Provincial exchange program providing for the exchange of judges of Provincial Courts with one another after approval by Provincial Chief Judges and the participating governments.

INDEPENDENCE COURT ADMINISTRATION

NO. 2 — Whereas, by resolution passed by the Canadian Judges Conference August 29, 1979, it was noted that developments in our society have increased the involvement of the Executive branch of Government and this activity has been shown by an increasing encroachment of the Executive Branch with Court Administration, thus causing possible interference with true Judicial independance.

And whereas this activity has caused Court Administration to be controlled in the Executive branch, depriving our Courts of direction over their administration, and, while assignment of cases has not been questioned, there is a growing tendency to exlcude judges from other important areas of Court administration,

And whereas Court officers are being called upon more often to perform Court-related tasks and to assist judges with their judicial functions and this dependence on the executive branch, for such services, should be part of the truly independent exercise of the judicial function, and, without it, the public image of an independent and impartial judiciary is being eroded, and further, such dependence is not conducive to a more efficient use of available resources when financial control is taken from those who administer justice,

And whereas these realities have been publicly addressed, in recent years, by several chief justices and judges.

And whereas the Parliament of Canada recognized this problem in 1977, by amending the Judges' Act to provide for the appointment, by the Minister of Justice after consultation with the Canadian Judicial Council, of a commissioner of judicial affairs to have the status of a deputy minister. Such commissioner to be responsible for budget preparation and Court administration within the federal jurisdiction,

But whereas several provincial governments while being aware of the problem have taken no action to effect reform, and the judiciary, if given proper and direct administrative support under its own control, is in a better position to carry out the true function of the court,

And whereas it is possible to provide for self-administration of the courts while maintaining the principle of accountability to Parliament in accordance with the true concept of democracy,

THAT this conference affirm the principle of autonomy in the administration of the courts under the direction of the judiciary as a foundation for the independence of the judiciary and as a safeguard for the maintenance of that independence;

THAT the authority of the judiciary over the administration of the courts be recognized and that appropriate measures be taken to ensure its exercise;

THAT the Board of Directors continue the studies undertaken by the Conference in pursuit of the foregoing and promote and pursue implementation thereof in cooperation with other interested bodies.

CONFERENCE ACKNOWLEDGEMENTS

NO. 3 — Whereas, the Seventh annual Conference of the Canadian Association of Provincial Judges has been an outstanding success.

AND WHEREAS, this success has been demonstrated by the fine hospitality of our Quebec hosts, the outstanding and timely addresses by the Honourable Marc Lalonde and Mr. Justice Julien Chouinard of the Supreme Court of Canada, the superior quality of the speakers and panelists, all of whom have helped contribute to the success of our meeting, and the management and staff of the Chateau Frontenac Hotel and the leadership of our president Judge W.C.S. MacDonald and his executive.

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Continuing Judicial Educational Programs

by Judge R.B. Wong

Judge Wong is the Education Chairman for the C.A.P.C.J. The following article is excerpted from his annual report on behalf of the committee to the Annual Meeting of the Association.

The Education Committee this term consisted of seven persons. The other members are Judges Fred Coward, Lethbridge, Raymond Bernier, Montreal, John Trahey, St. John's, Newfoundland, Joseph Tarasofsky, Montreal, Jean-Marie Bordeleau, Ottawa, and Peter Nasmith, Toronto.

The interim report of this committee was submitted and published in the March edition of our Journal.

This committee has been involved in the folowing programs for 1980:

1. Conduct of Bilingual Trials Conference, Montreal, Quebec, March 9 - 14 (25)
2. Western Regional Conference, Banff, Alberta, April 27 - May 1, (75)
3. Atlantic Regional Conference, St. John's Newfoundland, May 26 - 30 (25)
4. New Judges Conference, Ottawa, Ontario, October 31 - November 8 (60)

I would like to express my personal thanks to the members of the Education Committee for their valuable contribution of time, effort, and skills, especially under the restraints of budget and pressure either from me or from our treasurer, Judge Doug Rice. Doug, in his usual efficient manner, has been most helpful in arranging the necessary finances for the projects.

With regard to future conduct of Bilingual Trials Conferences, we recommend that such a course be held every other year and that the next such course might be held in 1982 in the Province of Ontario.

The program is now complete and in place for the New Judges Conference to be held this Fall in Ottawa. Judge Jean-Marie Bordeleau of Ottawa has again accepted the responsibility of being Venue Chairman. Judge Peter Nasmith of Toronto is responsible for the Family Court program content and I have assumed the task for the content of the Criminal Court program. We expect a total number of 60 new judges, of which 35 will be in the Criminal Court section and 25 in the Family Court section. This will be the largest group of new judges in attendance since the formation of this program five years ago.

This year will be the first time that we have sent out pre-reading material for the New Judges Course, as the format will emphasize group discussion rather than lectures. Our faculty this year will be primarily Chief Judges from the various Provincial Courts across Canada, and other experienced Provincial Court Judges. We are also fortunate this year in enlisting some Superior Court Judges as faculty, such as Mr. Justice John Arnup of the Ontario Court of Appeal and Mr. Justice Orville Frenette of the Quebec Superior Court. The Right Honourable Bora Laskin, Chief Justice of Canada, has agreed to be our keynote speaker.

Our committee this year has also been actively encouraging Provincial Education Committees to consider judicial education exchanges and also to hold joint educational conferences. Last summer, representatives from British Columbia, Newfoundland and Quebec attended the Annual Ontario Provincial Court Judges Refresher Course at the University of Western Ontario, chaired by the well known Dean of Ontario Judicial Education, Judge Cy Perkins of Chatham.

This year we were also able to persuade Chief Judge Larry Goulet of British Columbia and Chief Judge Con Kosowan of Alberta that there is benefit to both Provincial Benches in combining resources and holding some joint Provincial Education Conferences. As a result, British Columbia and Alberta will be holding a joint Education Conference this November and December for two consecutive weekends, with approximately half of each Bench attending each weekend. This will be held at the Fairmont Hot Springs Resort in British Columbia near the Alberta/British Columbia border.

I am pleased to say that these new joint ventures were able to be implemented without cost to our Association. It was simply a matter of our Committee providing national suasion.

Francine Altman of our Education Secretariat in Ottawa was instructed to

Association acts as an assessor for the government but without having any responsibility beyond making assessments of persons under consideration for judicial office.

The normal source for appointees is the practising Bar or members of a Bench lower in the hierarchy. I understand that in some Commonwealth countries it is not unusual to appoint from the public service, but it seems to me there should be special reasons for so doing, consistent with the maintenance of the principle of judicial independence vis-a-vis the executive or the administration. An independent bar is no less desirable than an independent Bench and, indeed, the one should be considered the concomitant of the other. That or the Bench should be the primary resort for finding new Judges. I say nothing here of the practice in some European countries of preparing persons for the magistracy through a special stream of education, another stream leading to legal practice. It is beyond my experience and beyond any studied appreciation on my part to make any assessment of the relation of such a practice to judicial independence.

Salaries and associated pensions should reflect the stature of the judiciary in the scheme of government of a country. Ideally, they should have their own rationale and their own administration, entirely apart from that of the public service. Judges are appointed at an age and retire at an age that makes it not always possible for them to serve the period necessary for full pension entitlement as fixed for the public service. This, I believe, is generally recognized in special provisions made for judicial pensions.

One problem relating to salaries, apart from the perennial problem of their adequacy (which I leave aside here), concerns their possible reduction in times of extreme economic emergency, a situation that the Judges in England faced in 1931 and against which they protested. Subject to constitutional prescription against the reduction of judicial salaries, such as exists in the United States Constitution, the matter is one of principle for the legislature and government which, absent any discrimination against or the singling out of Judges, may well feel that Judges as members of the society should bear their share of sacrifices which the general public service and the government and legislature are required to make in an economic emergency. Canada, in the same depression period of the 1930's appeared to take a high view of the principle of judicial independence by excluding Judges from a general ten per cent reduction in public service salaries; but it then made a turnabout and imposed upon them a special ten per cent tax on income to achieve indirectly what it was unwilling, on principle to do directly. I hardly think that any principle was served by this manoeuvre.

The principle of judicial independence has not, I believe, been carried so far as to justify exemption of Judges from paying income taxes. The matter was litigated in Canada with reference to the liability of federally appointed Judges to provincial income tax and it was held by the Courts, the case going to the Privy Council in 1937, that judicial independence was not qualified by imposing upon the Judges a tax liability resting upon all other citizens. The situation is the same in the United States despite its constitutional provision against reduction of salaries, although originally in a case in 1920, later overruled, the Supreme Court held over the dissent of Mr. Justice Holmes who claimed a citizen's "right" to pay taxes, that federal Judges were not liable to income tax since it would reduce their salaries.

Coming now to other elements which I regard as desirable supports for judicial independence, I count among them independence in budgeting and in expenditure of an approved budget, and independence in administration, covering not only the operation of the Courts but also the appointment and supervision of the supporting staff. Budget independence does not mean that Judges should be allowed to fix their own salaries; it means simply that the budget should not be part of any departmental budget but should be separately presented and dealt with. I do not, of course, preclude its presentation by a responsible Minister, but he should do this as a conduit, and yet as one able to support the budget after its preparation under the direction of the Chief Justice or Chief Judge and the chief administrative officer of the Court. So, too, should the Court, through its Chief Justice or Chief Judge and chief administrative officer, have supervision and direction of the staff of the Court and of the various supporting services such as the library and the Court's law reports. You will appreciate with what feeling I speak of this because, with the cooperation of the then Minister of Justice, the Supreme Court of Canada achieved this kind of budgeting and administrative independence under legislation which received Royal Assent in June of 1978.

I shall not take the time to deal at any length with discipline and removal procedures, but they are also relevant to

Another substantive consideration is the orderly development of adjudicative law which cannot be pursued by Judges if they are not free of external influence, not able to develop institutional traditions through which orderly development can be promoted. This is all the more evident in constitutional adjudication because a court can only function properly as constitutional umpire if it is in an independent position. If it is obliged to uphold the policies of government, either on the basis of a constitutional prescription to that end or regardless of constitutional text, the court is simply a branch, a specialized branch of the executive, and it is unreal to look upon it as an independent tribunal.

We as Judges know well enough that form may be empty of substance, and hence even so cherished a principle as judicial independence needs more than declaratory words to give it reality. What then are the institutional arrangements which must be made to provide adequate protection for the independence of the Judge? Among those that history has emphasized are security of tenure, a fixed salary charged on the consolidated revenue and not subject to annual appropriation, and utmost freedom of speech in the discharge of judicial duties, involving immunity from prosecution or from civil suit for anything said in the course of such duties; in a word, absolute privilege. There are, in my opinion, other elements of judicial office which are important to the protection of the Judge's independence and I shall come to them shortly. First, I would like to speak briefly about security of tenure and then about salaries.

Security of tenure, long associated with the Act of Settlement prescription of tenure during good behaviour, that is, without a fixed age limit, has a connection with the method of judicial selection and with the source of members of the judiciary. In England since 1959, tenure is no longer during good behaviour *simpliciter* but during good behaviour until age 75; the same is true in Canada where the Supreme Court was reduced in tenure protection in 1927 from the unqualified provision for tenure during good behaviour to a provision for retirement at age 75. An amendment to the *British North America Act* in 1960 turned the previously guaranteed tenure of provincial Superior Court Judges during good behaviour to tenure to age 75. County and District Court Judges never had a constitutionally guaranteed tenure and their retirement age is also fixed at age 75. In your case, retirement is prescribed now on attainment of age 65. In Australia, a recent constitutional amendment has fixed the retirement age of federal Judges at age 70; and in Singapore, it is age 65 and so too in Malaysia, and in Tanzania, if my information is correct, the retirement age of High Court Judges is age 62.

What these provisions show is that it is not regarded as an inroad on security of tenure to fix a reasonable retirement age for Judges. Fixing a reasonable retirement age is different from having a Judge serve for a fixed term. It is here that we face the issue of method of selection; it may be by appointment or by election, as in many states of the United States. Election is foreign to Canadian and, indeed, to general Commonwealth experience, and I cannot be persuaded that election of Judges by popular vote and, as is the case, for a fixed term is as likely to produce a competent Bench as would be produced by appointment. Of course, the election system has produced some great Judges; for example, Cardozo in New York where election for a fourteen-year term, once achieved, meant in practice that re-election would follow until retirement age was reached. This is perhaps the half-way house between periodic election and outright appointment. Supporters of election may urge that it protects against a country being saddled with an incompetent appointee until retirement age but, given a reasonable appointing procedure, the results are likely to be better than those reached by the uncertainties of an election campaign.

If appointment, how and by whom and from what source? The method must surely be considered from the standpoint of attitude to the judiciary and the qualities sought in a prospective Judge. Given that judicial independence is the touchstone and that professional competence and good character are the sought-after qualities, the guidance or recommendation of a qualified commission would certainly be an appropriate mechanism. This is not the time to examine such a mechanism in any detail. Some countries of the Commonwealth use it, and its effectiveness must depend on its membership and on the scope of authority entrusted to it. In Canada, appointment to the Supreme Court of Canada and to the superior and county courts of the Provinces is in the hands of the government, which appoints by order-in-council without any requirement of such confirmatory hearings as are prescribed under the American Constitution with respect to appointments to the federal Bench in that country. An informal committee of the Canadian Bar prepare a survey about the various Provincial Judicial Education programs. This survey has now been prepared and will be useful to our Committee in the preparation of future program content so as to ensure that our programs will supplement and not merely duplicate existing Provincial programs.

Our catalogue of seminar papers at the Secretariat has been expanded to include not only papers presented at National Association Conferences, but also papers presented at the various Provincial Education Conferences. A copy of the updated catalogue and copies of any seminar papers on file may be obtained by writing to Mrs. Altman at the Education Secretariat, c/o Canadian Judicial Council, 130 Albert Street, Suite 717, Ottawa, Ontario, K1P 5G4.

The Canadian Institute for the Administration of Justice has again expressed interest in providing administrative services for our education programs. You may recall that we did utilize the Institute's assistance during our formative years but have not done so for the past few years. I recommend that we reexamine the viability of resuming some relationship with them because of their academic resources and the liaison they can provide if we consider in the future some collaboration in judicial education with the other Benches. However, the policy-making directives for continuing judicial education of Provincial Court Judges must remain with our Association.

In summary, we make the following recommendations:

1. The annual course for newly appointed judges should continue to receive our highest priority.
2. Regional seminars should continue on an annual basis. Planning for such conferences should be instituted, perhaps, a year in advance. Program format should emphasize small group discussion rather than lectures and the program content for the three or four days should be restricted to a few topics and dealt with on an intensive basis.
3. The bilingual court course should be continued but held every other year in a different Province.
4. Judicial education exchanges and joint educational conferences amongst the Provinces should be encouraged. Some administrative cost for joint conferences and expenses for keynote speakers could, perhaps, be provided by our Association.
5. Utilization of some services provided by the Canadian Institute for the Administration of Justice should be explored, with policy direction to remain with our Association.

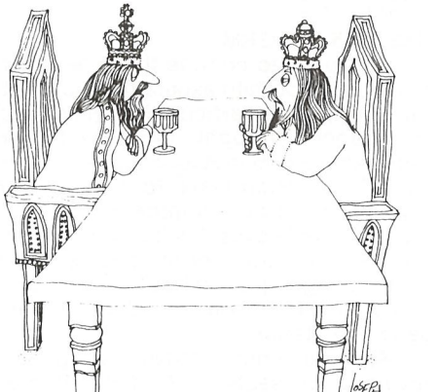
Finally, I would like to thank our President, Chester MacDonald for his enthusiastic support of all our projects throughout the year. I would like to especially thank the Chief Judge of my Province, Larry Goulet, for granting me the necessary time away from my court duties in order to fulfill the job as Chairman.

Resolutions

• • • **Continued from page 9)**

BE IT THEREFORE RESOLVED

That this convention express its thanks and appreciation to the Quebec Conference of Judges, the convention committee, the Honourable Marc Lalonde, Mr. Justice Julien Chouinard, the Mayor of Quebec City, the Lieutenant-Governor of Quebec, all speakers and panelists, the management and staff of the Chateau Frontenac, and to our retiring President Judge W.C.S. MacDonald and his executive.



"I'll worry about human rights when they start worrying about* divine *rights."

Words from the Supreme Court

by Mr. Justice Julien Chouinard

(Mr. Justice Chouinard is a member of the Supreme Court of Canada. The following is his address to the delegates at the Annual Meeting of the C.A.P.C.J.)

Ce n'est qu'après avoir accepté, avec empressement et un grand plaisir, l'aimable invitation que m'a transmise le juge Marc Choquette au nom de votre Association, de vous adresser la parole aujourd'hui que le me suis rendu compte de la témérité de mon geste. Ce n'est pas après un an et deux jours comme juge d'un tribunal qu'on peut se permettre la prétention d'en parler avec authorité.

Même si le juge Gilles Lahaie s'est montré si généreux dans sa présentation, car il ne vous a exposé que mes bons côtes. Je l'en remercie très sincèrement et ce que je voudrais être ma modestie cède ici le pas à ce que je ne voudrais pas être ma vanité car ce n'est pas une afaire quotidienne de s'entendre décrire d'aussi belle façon.

Je me bournerai donc aujourd'hui à traiter des effets qu'a eus le réforme très importante de 1975 alors que la Cour Suprême s'est vu conférer par le biais de la requête pour autorisation d'appel, le pouvoir de déterminer quels appels seront entendus. J'ajouterai par ailleurs quelques commentaires sur certains effets qu'a eus la loi sur les langues officielles sur le travail de la Cour et sur l'interprétation des lois canadiennes.

THE 1975 REFORM

I propose to confine these remarks to highlighting certain aspects of the work of the Court. More particularly I will describe the changes brought about by the very important reform that took place in 1975 as a result of which leave to appeal is now required in all non-criminal cases and in most criminal cases. I will also make a few comments on some of the effects that the official Languages Act has had on the work of the Court and on the interpretation of Canadian statutes.

As you know, leave to appeal is governed by section 41 of the *Supreme Court Act*. The case for leave must be one with respect to which "the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in such question, one that ought to be decided by the Surpeme Court or is, for any other reason, of such a nature or significance as to warrant decision by it."

Following the enactment of this section, Chief Justice Laskin explained its significance in an address delivered at the Supreme Court Centennial Symposium in September 1975 where he said:

"The discretion given to the court under the foregoing formula is obvious, but it is a necessary control over the flow of cases that have already been before two courts. Now, even more in its supervisory role than in its heretofore more traditional appellate role, the Supreme Court's main function is to oversee the development of the law in the courts of Canada, to give guidance in articulate reasons and, indeed, direction to the provincial courts and to the Federal Court of Canada on issues of national concern or of common concern to several provinces, issues that may obtrude even though arising under different legislative regimes in different provinces. This is surely the paramount obligation of an ultimate appellate court with national authority. It is only under this umbrella that it can, in general, be expected to be sensitive to the correctness of the decisions in particular cases, whether they be between private litigants only or involve some government as a party."

Avant cet amendement il y avait par exemple un appel de plein droit dans toute cause où la valeur en litige excédait $10,000.00 sans égard à la frivolité du recours, au peu d'intérêt sur le plan juridique de la question en cause, non plus qu'au fait que l'affaire ait déjà fait l'objet de deux décisions judiciares.

Les appels à la Cour Suprême donc ne dépendent plus du montant en jeu qui ne constitue pas un facteur pour déterminer l'importance d'une affaire. Ce n'est pourtant que depuis 1975 que grâce à la procédure de la requête pour autorisation d'appel la Cour a le pouvoir de n'entendre que les causes portant sur une question d'importance pour le public ou les causes dont la nature ou l'importance à la tout autre égard justifie que la Cour en soit saisie.

Sauf dans de rares exceptions, aucun motif n'est donné à l'appui du jugement qui

Some Observations on Judicial Independence

by Mr. Justice Bora Laskin

Mr. Justice Laskin is Chief Justice of Canada. The following remarks were made at the opening of the New Judges Training Program, sponsored by the C.A.P.C.J., in Ottawa in November.

There is no doubt that we have a community of interest with political and executive authorities in the quality of our law and about the way it is administered by the Courts but we all appreciate that Judges play no direct part in the political and executive processes that lead to its enactment, and that law ministers and their departments do not participate in or influence the course of adjudication. This is the credo not only of the parliamentary democracy but equally of states, some being members of the Commonwealth, with authoritarian forms of government.

This mutual deference depends not on the Judges but on the political authorities of a country, and on their subscription to an application of principles which secure the separation of the judicial from the political, from the legislative and the executive branches of government. The extent of the separation will reflect the significance which the political authorities attach to adjudication and to the role of Judges in the interpretation and application of law. It is in this context that we are wont to speak of the independence of the judiciary and its association with the rule of law as embracing impartial adjudication and a consequent public confidence that the law will be administered by the Courts without fear or favour, whoever be the parties before them.

It should not be necessary at this late date in world history to question the rationale for an independent judiciary, but I think it useful to remind ourselves of what that rationale is. An independent judiciary may be seen as an aspect of an ordered society which feels secure enough in its political organization to provide for the settlement of disputes between its citizens and between it and its citizens on a basis other than their political conformity; an aspect of a society which sees its legal order as a norm for all its members so that they will feel secure against arbitrary bureaucratic control of their lives and their liberty by random unprincipled decisions of political office holders; an aspect of a society where the law which governs that society's organization and the law to which its citizens are subject is a public and not a private manifestation, a law administered as a public and not as a private service.

There is a moral as well as a political basis for an independent judiciary in recognition of the need to assure the citizens of equal treatment under the law and of their equality before the law. Relevant to the assurance of equal treatment and of equality is impartiality of the tribunal called upon to determine the civil rights and obligations of citizens or called upon to hear criminal charges against them. Relevant also to equal treatment and to equality as moral factors is the conception of law as an existing system and not as an *ad hoc* improvisation suited to the occasion and to the individual.

There are interlocking substantive and institutional considerations which face any political authority that comes to consider how judicial independence should be secured to enable the Judges to administer the law fearlessly as well as impartially. Canada has had the example of the British tradition as it evolved over several centuries. What is significant in this tradition, as it matured through the events of 1688-1689, through the Bill of Rights, and through the Act of Settlement of 1701, is the association of political freedom and a nascent concern for human rights with the culminating recognition of the need to secure the independence of the judiciary. My reading of history persuades me that there is an interrelation between governmental concern for individual freedom and protection of human rights, and the independence of the country's judiciary. One aspect of that relationship that is as much substantive as institutional is the openness of the Courts, the prohibition of *in camera* hearings, save in exceptional circumstances the existence of which is to be determined by the Court itself.

Convention 1981

The Planning Has Begun

by Judge Clare Lewis

Judge Lewis, a Provincial Court Judge in Toronto, is chairman of the 1981 Convention Planning Committee.

Through the considerable efforts of Judge Marc Choquette and his talented Committee, the Seventh Annual Meeting of the Association in Quebec City held from September 13th to 26th, was a joy. As Chairman of the Eighth Annual Meeting to be held in Toronto from September 15th to 19th, 1981, I must with my Committee, meet the problem of raised expectations arising from the Quebec Conference.

I am grateful for the foresight of the Executive Committee in reserving the Royal York Hotel as our Conference Centre. We have now reserved 250 rooms at that excellent facility, which is located at a focal point of our city. This newly renovated hotel which itself, offers excellent accomodation, meeting rooms, restaurants and entertainment, borders on or is connected to through a series of underground malls, the finest restaurants, shopping and theatres available in the city. Indeed, the hotel sits on top of our extensive subway system.

As you are aware, the Eighth Annual Meeting will be hosted by the Ontario Association of Provincial Court Judges (Criminal Division), which will hold its Annual Meeting concurrently. As a result, we expect a large Conference with approximately 400 Judges and spouses in attendance. As a member of the Executive Committee of the Ontario Association, I know that the Ontario Judges are eager to welcome and provide hospitality to their colleagues from across the country. To that end, we are developing the program in a manner such that the Ontario meeting will be restricted entirely to those matters required by the Ontario Constitution, and will be subordinate to the needs of the Canadian Association.

Judge Charles Scullion of Toronto has accepted responsibility for the Educational Program and in that regard, has met in early November in Ottawa with Judge R. (Bud) Wong, the Education Committee Chairman, to discuss and refine that program, which it is at this stage, anticipated will deal with the concept of professionalism as it relates to our Bench and to those practictioners who come before us.

A tentative schedule of events has been drafted for the Conference which will commence on Tuesday, September 15th with the Executive Committee meeting and the registration of Judges and spouses, and will end on Saturday, September 19th with the second of two buffet breakfasts held for Judges and spouses.

The opening evening of September 15th will be devoted to a reception hosted by the President of the Ontario Association, His Honour, Judge Gerald Michel.

A reception to be held by the Lieutenant-Governor of Ontario is being arranged at this time.

It is expected that Judges and their spouses will have the opportunity to attend at the McMichael Collection of Canadian Art in Kleinburg, Ontario or alternatively, at another place of interest yet to be determined. The McMichael Gallery, which is in itself a work of art, houses the finest collection of Canadian paintings in the country and is entirely appropriate to the national character of our Conference.

On Friday, September 18th, the Attorney-General of the province of Ontario, the Honourable Roy McMurtry, will host a banquet for participants and will address the meeting.

In conjunction with the Conference Committee, Mrs. Jeanine Michel, Chairperson of the Spouses Committee, is arranging and will host a spouses program of considerable interest.

I wish to thank their Honours, Judges Jacques Lessard, Robert Hutton, Gerald Michel, Marc Choquette and Louis Carrier, together with the other members of my Committee for their valued experience and continued assistance in this most interesting project. I will keep you informed as to the continued progress of our plans and wish to extend to my colleagues throughout the nation both an invitation and a welcome to the Eighth Annual meeting in Toronto.

accueille ou qui rejette la requête pour autorisation d'appel mais il convient de souligner que le rejet ne signifie pas nécessairement que la Cour est d'accord avec le jugement attaqué.

Il n'en demeure pas moins que le rôle des cours d'appel des provinces et de la cour d'appel fédérale s'en est trouvé accru en ce sens qu'elles se trouvent être les tribunaux de dernière instance dans le grande majorité des cas. Ainsi en 1979, 111 autorisations d'appel ont été accordées ce qui signifie que tous les autres jugements des onze cours d'appel se sont trouvés être des jugements finaux. Pour qui aime les statistiques, en cette même année 1979, 290 requêtes pour autorisation ont été rejetées fixant à 27% des demandes le pourcentage des autorisations accordées. Ce pourcentage d'autorisations accordées est constant depuis la réforme et il se maintient encore cette année, du moins jusqu'au mois de juin dernier.

Il n'y a pas de règles précises pour le choix des causes. Il n'y a que les normes énoncées à l'article 41.

L'on peut affirmer néanmoins que la personnalités des parties ne constitue pas en facteur, pas plus que le montant en jeu.

Ce qui est déterminant c'est la question en litige: question constitutionnelle, question de droits des autouchtones ou de droits fondamentaux, principe de droit criminel, de droit du travail, de droit administratif, ou une question sur laquelle les diverse cours d'appel provinciales ont rendu des décisions contradictoires. J'ajouterai les questions découlant de législations nouvelles.

C'est ainsi par exemple que la Cour a accordé quelques autorisations d'appel dans des affaires qui se rapportent au recours collectif qui est de droit nouveau au Québec. Il faut bien préciser que l'importance d'une question ne requiert pas nécessairement qu'elle s'applique à toutes les provinces et les questions de droit civil et de procédure civile sont tout aussi sujettes à appel. Et peut-être est-il pertinent de signaler que les appels en provenance du Québec, en toutes matières, représentent ces temps-ci environ 30% des appels entendus par la Cour. Ceux en provenance de l'Ontario représent le même pourcentage, ceux des provinces de l'Ouest environ 31%, les autres 9% provenant des provinces maritimes.

As a result of this reform the number of cases heard in one year, 173 for instance in 1973, has decreased steadily to 107 in 1979.

One would tend to conclude that it is indeed an enviable situation where the Court itself controls its caseload. But it does not necessarily follow that this has reduced its workload.

This is due largely to the fact that unlike our American counterpart, the Court hears all motions for leave to appeal. They are heard on motion days, the first and third Monday of every month, the Court sitting in three panels of three. The number of applications has been steadily increasing since 1975 and reached 401 last year.

A noticeable effect of the change is that appeals can be heard on the merits much more rapidly. This year, for example, the Court was able to heard in May and June appeals for which leave had been granted in January and February. But this is not to say that all appeals proceed with due diligence. In this connection I wish to seize this opportunity to draw attention to rule 59 of the Rules of the Supreme Court which reads as follows:

> RULE 59. — Unless the appeal is brought on for hearing by the appellant within one year next after the service or filing of the notice of appeal, whichever happens first, it shall be held to have been abandoned without any order to dismiss being required, unless the Court or a Judge shall otherwise order, and the Registrar may upon application by the respondent tax costs and issue a certificate of dismissal.

In my short life on the Bench I have seen this rule applied twice after four years from the notice of appeal. One was a murder case in which a new trial was ordered by the Court of Appeal. The other was an appeal from a deportation order by a foreigner.

Finally, as you have noticed, since shortly after the 1975 amendment, all judgments of the Court are published. There are no longer a privileged few who knew of some judgment or other of which their opponents were totally ignorant. The list of all motions for leave is also published together with the information as to whether they were granted or dismissed.

I have attempted to outline how this reform of 1975 has altered the approach of the Court to matters brought before it and the work of the Court itself. You would no doubt find for yourselves that it is somewhat different from what you knew in your practice.

LA LOI SUR LES LANGUES OFFICIELLES

Je commenterai maintenant deux aspects de la *Loi sur les langues officielles* qui ont marqué les travaux de la Cour Suprême de même que des autres tribunaux et de la profession en général.

Il va de soi que depuis l'adoption de cette loi tous les jugements de la Cour sont publiés dans les deux langues ce qui les

rend accessibles à tous dans leur meilleur intérêt. l'illustrerai l'importance de cette mesure par l'exemple suivant. Au printemps la Cour a entendu une cause portant exclusivement sur le quantum des dommages que la Cour d'appel d'une province avait réduit de façon considérable. A l'étude il m'est vite apparu qu'il s'agissait d'un cas d'application des principes de *Watt c. Smith*, un arrêt de la Cour Suprême. A la lecture des factums j'ai constaté qu'aucun des deux avocats n'avait cité cet arrêt. Aucun des deux ne l'a cité non plus à l'audience. Ils ont, bien entendu, cité d'autres arrêts au même effet qu'une Cour d'appel ne doit intervenir en ce qui touche le montant des dommages que s'il apparaît que "le montant accordé est tellement excessif ou tellement insuffisant qu'il constitue une estimation entièrement erronée." La raison pour laquelle cet arrêt ne fut pas cité est bien simple: *Watt c. Smith* est publié en 1968, donc avant l'entrée en vigueur de la *Loi sur les langues officielles* en 1969 et il ne fut publié qu'en français, langue dans laquelle il a été tédigé. Il ne faisait donc pas partie de la jurisprudence connue des avocats au dossier. Il y avait là un risque que se créent, pour ainsi dire, deux jurisprudences parallèles, l'une à l'usage des procureurs bilingues, l'autre à l'usage des proceureurs unilingues.

The second point I wish to make in relation to the *Official Languages Act* refers to section 8 thereof of which paragraph (1) reads:

Art. 8 (1)

> In construing an enactment, both its versions in the official languages are equally authentic.

This appears to me to be of great importance and I have found that many do not seem to be aware of it or have simply forgotten about it. Yet as will appear with time, there are instances where a doubt raised in the interpretation of an enactment in one language will be instantly resolved by reading the other version which leaves no doubt. It also means that one can never be sure of his interpretation of an enactment in federal legislation unless he is satisfied that it is supported by both versions.

These then are the remarks that came to my mind as a one-year-old and in which I hope you will have found some interest.

Je regrette, mesdames les épouses des juges, si je vous ai paru trop technique. mais votre mari ne l'est-il pas lui aussi à ses heures? C'est la déformation commune à tous les membres de la profession juridique. Vous avez été néanmoins très patientes et très indulgentes et je vous en remercie.

(President's Message

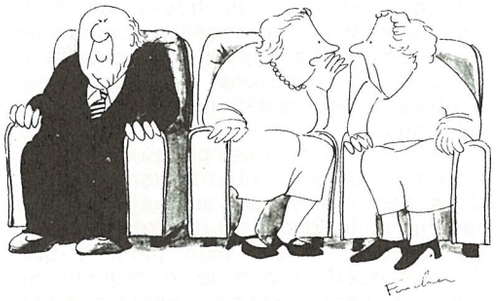
. . . Continued from page 2)

colleagues:

To you all then, I say "au revoir".

cette publication ainsi que pour les efforts soutenus qu'il doit déployer pour en assurer son existence. Tout comme il l'a déjà fait lui-même, j'invite cordialement tous les membres de notre Association à profiter de ce mode de communication pour ajouter aux relations qui existence déjà entre eux. Je sais que pour ma part, je me suir grandement enrichi en partageant avec d'autres collègues nos vues personneles et nos sujets de préoccupation.

A tous donc, je dis "au revoir".



"He was a remarkably talented jurist, blessed with a judicial temperament and longevity of profession—Then one day in the midst of a trial, he up and shouted, 'Damn the errors—full speed ahead!' "

Court Structure Committee

The Year in Review

by Judge C. Emerson Perkins

Judge Perkins, a Provincial Court Judge in Chatham, Ontario, is chairman of the Committee on Court Structure.

I have the honour to present the report of the Committee on Court Structure.

As you are aware it is the objective of this Committee to cause the Parliament of Canada to amend the Criminal Code to define the Provincial Court Criminal Division as a Court of criminal jurisdiction and to make the other minor amendments necessary to enable the Provincial Court to conduct the less than three percent of the criminal trials that are not now within its jurisdiction and eventually create a unified criminal trial court. The potential saving of time and money is self-evident.

To this end the Committee, consisting of Judges James Harper, Jacques Lessard and myself, under the chairmanship of His Honour, Judge Allan Cawsey as he then was, met in conjunction with an executive meeting of this Association in Montreal on November 26th, 1979 and developed a substantial brief to The Hon. Jacques Flynn, the then Minister of Justice. The Committee went directly from the executive meeting to Ottawa where we met the Minister and presented to him the brief and supporting material.

It was the view of your Committee that the brief was well-received and the Minister promised that his department would give careful consideration to its proposals.

It was at that meeting with the Minister that we first heard of the project, within the Ministry of Justice, to completely review the Criminal Code of Canada with the objective of making substantial revisions thereto. Senator Flynn undertook that our Association would be consulted in a substantial way with respect to this project and indeed we were consulted with respect to the appointment of a chairman for the task force to undertake this responsibility.

Shortly after the presentation of the brief to the Minister, our Committee Chairman was elevated to the Alberta Court of Queens Bench and our President asked me to assume the chairmanship of the Committee and Judge Fred Coward was appointed to return the Committee to full complement.

I advised Senator Flynn of the change in personnel of the Committee and he advised me that he would be consulting with us as the matter progressed.

Shortly after this The Hon. Jean Chretien replaced Senator Flynn as Minister of Justice. Since his appointment his chief concern has been with constitutional matters and our communication with the Ministry of Justice has been with the Deputy Minister, Mr. Roger Tasse.

It came to my attention that our proposal would be on the agenda of the Uniformity of Law Conference to meet this year and since this is attended by the Attorney General of each Province I wrote to each Provincial representative enclosing a copy of the brief and requesting each to have his Provincial Association approach the Attorney General to acquaint him with the proposal and seek his support for our request.

At the request of our President I also forwarded copies of the brief to the President of each of the Provincial Associations.

I received encouraging reports from a number of the Provincial representatives, and in a luncheon address to the Ontario Association the Attorney General for Ontario, The Hon. Roy McMurtry said publicly that he supported our request for increased jurisdiction.

Our prime objective at the moment seems to have become entwined with the revision of the Code and overshadowed by the constitutional concerns of the Federal Government.