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PROVINCIAL COURT JUDGES

THE CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES

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office complex being built in Mississauga and "The Supreme Court of Canada will . . . lease 9,000 square feet in the building." Judge August found this a little hard to believe and called the builder who in turn put him in touch with the rental agent. It turns out the Supreme Court of Canada is not THE SUPREME COURT OF CANADA. He suggest we make an article out of this and during an interminable preliminary inquiry we mused . . .

THE DISAPPEARING
SUPREME COURT OF CANADA CAPER

It was 9:30 a.m. (or if you prefer continental time 9:30). I was sitting in my busy law office in downtown Mississauga. The first edition of the Toronto Star was hot off the presses. I perused it while sipping my morning scotch and water. Legal briefs were piled in front of me. I direct my nine legal secretaries to hold all incoming calls. This would be my moment of leisure from my normal 20 hour working day. Glancing quickly through the newspaper and lacing my drink with a few more fingers of scotch I spied an item that literally lept off the page. A $20 million 15 storey office tower being built in Mississauga and mirabile dictu, "The Supreme Court of Canada will also lease 9,000 square feet in the building which is expected to open in about a year."

Trembling with excitement I plotted my path. I would lease space too – next to the Court, if possible. At last I would be rubbing shoulders with the legal giants of the country. No longer will I have to mingle with the unwashed and listen to the senseless babble of the provincial court judges in Brampton as they convict my clients. No longer will I endure the pomposity of the County Court bench. I will go directly to the top – without leaving downtown Mississauga.

With trepidation I contacted the builder. Yes, such a building was being erected – yes they were taking rental applications.

"Well, I would like 2,000 square feet. Close to the space occupied by the Supreme Court of Canada."

"That can be arranged," said the voice on the telphone. "Would you like it near any particular court?"

Unable to fathom my good fortune in being able to choose such a prestigous location but quick to seize the opportunity I blurted, "I'll take the space next to the office of the Chief Justice."

"Chief Justice?" said the voice. "There must be some mistake. The Supreme Court of Canada is a squash club."

The Canadian Association of Provincial Court Judges

SIXTH ANNUAL MEETING

Charlottetown, P.E.I. **September 11 - 14**

Panel Discussions:
"Users of the Court System"
"Press Responsibility in Shaping the Image of Justice"
"Community Values and the Court"

Committee Reports:
Court Structures
Judicial Discipline

— Plan now to attend —

President's Page

by Judge Gary Cioni
President, C.A.P.C.S.

I would like, in this issue, to pass along some of the more significant recent developments in Association affairs, apart from the reintroduction of the Journal itself.

There have been two executive meetings and one on interim finance. All accounts have been approved and a new contract entered into with the Federal Government. We are in sound financial shape due to the able efforts of Judge Rice. This means that we may proceed with some expanded educational programs: a seminar in Quebec for Judges from across Canada on the procedural problems in bilingual courts, the formation of a Speaker's Roster to be available to Provincial Associations with some subsidization and an expanded Secretariat in Ottawa. In addition, a step has been taken that should ensure the fullest participation by all Provinces. The CAPCJ will now pay the transportation of the Provincial representatives to executive meetings, leaving the balance of cost to the member.

As President I have been privileged to attend Provincial gatherings in Nova Scotia, Quebec, Manitoba, Saskatchewan, Alberta and Ontario. The pleasure of contact and friendship has been mine but I find it strongly reflects the interest of each Province in the others. I am informed that Quebec will consider en bloc membership this year. The opportunity to exchange views with a total of some 800 members of the CAPCJ is exciting indeed. I am pleased to report an enthusiastic and successful meeting with the Minister of Justice in March. I was accompanied by Judge Lessard in the presentation of our resolutions to Mr. Lalonde. He accepted and agreed to: amendments to the Criminal Code to remove the word Magistrate, in applicable Provinces, in favor of words connoting Provincial Courts; with the need for a strong and independent judiciary; with the concept of a unified Criminal Court in each Province, indicating that he was prepared to strike a committee to study Court Structures in Canada and to ask for the co-operation of the Provincial Attorneys-General. He was in sympathy for relief for Judges under the

(Continued on Page 3)

Permettez-moi vous transmettre quelque-uns des développements de grandes portés qui se sont déroulés dans les affairs de l'Association . . . choses distinctent de la publication de la deuxième édition de notre Journal.

Il y a eu deux assemblées exécutives et une assemblée concernant les finances interims. Tous les comptes ont été approuvés et un nouveau contrat a été négocié avec le Gouvernement Fédéral. Nous sommes dans une situation financière solide grâce aux efforts de Monsieur le Juge Rice. Ceci nous permet l'expansion de nos programmes éducatifs: Il y aura une conférence à Québec pour les juges du Canada au sujet des problèmes qui existent au près de la procédure que l'on rencontre dans les cours bilingues; la création d'une liste d'orateurs judiciares a travers le Pays, qui sera disponible aux Associations Provinciales ayant une subvention de quelconque et, additionellement, un secrétariat élargi à Ottawa. En plus, des mesures ont été institutués qui assureront une plus grande participation de toutes les provinces. L'A.C.J.C.P. paiera, sous ces nouveaux, termes, la transportation des représentants provinciaux aux assemblées exécutives — toutes autres dépenses seront au couts des Membres.

Etant Président, c'était mon privilège d'avoir assisté aux assemblées tenues dans les Provinces du Nouvelle Ecoce, du Québec, du Manitoba, du Saskatchewan, de l'Alberta et de l'Ontario. Le plaisir des rencontres et les amitiés rendues étaient les miens, mais j'en suis certain qu'ils reflétaient les intérêts d'une province envers l'autre. Mes informations sont que le Québec considérera un plus grand nombre de membres dans l'Association. L'échange d'idées entre 800 membres de l'A.C.J.C.P. serait vraiement captivante.

J'ai le plaisir de vous rendre compte de notre rencontre avec le Ministre de la Justice au mois de mars. Monsieur le Juge Lessard m'accompagnait lors de la présentation de nos résolutions à M. Lalonde. Ce dernier consentit à ces points: Des modifications au Code Criminel qui enlèveraient le mot 'magistrat', dans les provinces ou il s'applique, avec les mots connotants les cours provinciaux; soulignant les besoins d'un

Editorial

by Judge Rodney Mykle

No one should have to serve a term of incarceration because he or she cannot afford to pay a court-imposed fine. For that very laudable reason, the Saskatchewan Correctional Services embarked on a fine-option program five years ago to ensure that inability to pay would not of itself determine whether or not a person should serve a default period. (The operation of the program is described elsewhere in this issue.) It is a program which has claimed noteable success in achieving its objectives, and, as a result, questions have been raised in other provinces with respect to adopting this program.

Would the fine-option program travel well? It must be remembered that the program was designed to counter a specific local problem, that of an undue number of defaulters in Saskatchewan jails. In deciding whether a similar project should be instituted in another province, attention must be paid to what alternatives to incarceration in default exist already in that jurisdiction. Is there legislation covering short-term detention for intoxicated persons? Are there default alternatives of license or registration suspension under provincial traffic acts? Is time to arrange payment of fines granted routinely by the provincial court, or is "payment forthwith" more the order of the day? Are extensions of time to pay easily obtained, and is information about applying for such extensions readily available? Is the average dollar-to-day ratio of sentences a reasonable one, and imposed uniformly throughout the province? It would appear that, if alternatives to default jail terms already exist within a jurisdiction, the Saskatchewan program might not be applicable.

The program has admittedly been a "stop-gap" solution for Saskatchewan, where time to pay, and extensions of time, had not been granted routinely. There were no legislative provisions for intoxicated persons detention, and no possibility of cancellation of license or registration privileges under the provincial highway Traffic Act. There was also no uniform relationship between the amount of the fine and the default period imposed. For these reasons, the fine-option program

Personne de devrait servir un terme d'enprisonnement parce qu'il n'a pas les fonds nécessaires pour faires face aux amendes imposées par la Cour. A cause de cette raison, digne d'éloges, le Ministère des Services Correctionnels de Saskatchewan c'est engagée, il y a cinq ans, dans un programme de 'substitution d'une amende', afin d'assurer que l'incapacité de payer une amende ne devrait pas, en elle meme, déterminé si la personne devrait servir une periode d'emprisonnement à cause de défaut (le fonctionnement de ce programme est décrit ailleurs dans cette édition). Le programme jouit d'un succès considérable en ce qui concerne l'accomplissement de ses objectives et, comme résultat, les autres provinces se questionnent s'ils doivent aussi embrasser un tel programme.

Est-ce-que le programme ferait bonne chère dans les autres provinces? Il faut se souvenir que le programme a été destiné afin d'aller à l'encontre d'un problême régional, c'est-à-dire le grand nombre de prévenus dans les prisons de Saskatchewan. Tout en prenant la décision d'instituer un programme semblable dans une autre province, il faudrait bien connaître les alternatives qui existent déjà dans une telle juridiction. Il y a-t'il de la législation couvrant une détention à court terme pour les personnes enivrées? Il y a-t'il des alternatives de défaut pour le retrait temporaire de permis de conduires ou de régistrations sous les lois provinciales de trafics? Est-ce-que les cours provinciales accordent, de façon routinière, un délai fixé pour le paiement des amendes, ou est-ce-que l'ordonnance "paiement tout de suite" est plutôt le régime commun? L'extension d'un délai fixé de paiement est-elle facilement obtenu, et est-ce-que le système qui permet de faire une application pour une extension est bien connu? Est-ce-que la décision rendu quant à la raison de la pénalité monétaire vis-à-vis l'alternative de période d'emprisonnement est raisonnable et, est-elle uniformément imposée à travers la province? Si, à ce qu'il paraît, les alternatives de faire défaut aux termes d'emprisonnement existent actuellement dans une juridiction, le programme tel que présenté en Saskatchewan ne serait peut-être pas applicable.

En plus, il y a des coûts cachés dans ce programme, en sus du budget de $123,000. La

SHORTS FROM ONTARIO

The newsletter Ex Curia has regularly supplied Ontario Provincial Judges with intellectual stimulation of the highest order. For those who don't live within spitting distance of the Golden Triangle, excerpts from some of its deeper articles are reprinted. – Ed. note)

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As we all know the Ontario Correctional Services Reformatory at Burwash was closed down a couple of years ago. A consulting firm was hired to determine its best future use. Guess what they recommended? Yes – a prison.

–

New York State has recently passed a "Plain English" law, which requires that residential leases and commercial contracts be written in a clear and coherent manner using words with common everyday meanings. The passage of the law was delayed from June to November because the law itself was not clear and coherent. Here's an excerpt from the clarified version.

"Any creditor, seller or lessor who fails to comply with (the foregoing provisions of) this subdivision shall be liable to a consumer who is a party to a written agreement governed by (the provisions thereof) this subdivision in an amount equal to (the sum of) any actual damages sustained plus a penalty of fifty dollars. The total class action penalty against any such creditor, seller or lessor shall not exceed ten thousand dollars in any class action or series of class actions arising out of the use by a creditor, seller or lessor of an agreement which fails to comply with this subdivision. (These penalties) No action under this subdivision may be (enforced only in a court of competent jurisdiction, but not) brought after both parties to the agreement have fully performed their obligation under such agreement nor (against) shall any creditor, seller or lessor who attemtps in good faith to comply with this (section) subdivision be liable for such penalties."

Some other examples of compliance are – "Death" has been changed to "you die" and in a mortgage the word "instrument" is reduced to a lowly "form".

There's a new lease form that must have been prepared by a lawyer we know. His motto is "if the client doesn't speak English – yell at him". The form is written in large print.

Here's some suggested methods to pass the time during interminable preliminary hearings.

No. 1: Have the clerk prepare a freshly sharpened pencil (preferably a Venus HB 20). Casually insert the sharp end of the pencil in your left ear. Slowly work the pencil through the ear until it emerges from the right ear.

No. 2: Place left hand flat on your desk palm down. Place ball-point pen in right hand in a knife-like grip. Raise right hand 12" above desk more or less then bring it down in a stabbing motion on the back of the left hand. The purpose is to impale the left hand on the desk. (Reserse directions if left-handed).

No. 3: Place lower lip between teeth. Bite down until blood is drawn.

You will note the common masochistic theme running through each of these methods but they do demonstrate the principle that excruciating pain is preferable to excruciating boredom.

–

There is a story making the rounds about a certain judge that goes like this. Counsel had so irritated a witness that the witness (a police detective) wouldn't concede anything. Pressing a particular point, the lawyer asked the witness to conclude that a person might be a robber – if found near the scene of a robbery, wearing a stocking mask and carrying a sawed-off shotgun. Adamant the detective refused to draw any such conclusion. The judge tried to narrow the widening breach and said to the witness – "Now Sir, all he is asking for is a simple conclusion. Suppose you stopped me driving down Eglinton Avenue and saw the back seat of my car filled with law books, – what would you conclude?"

"That you were in the wrong car," offered defense counsel.

–

An issue of the Toronto Globe and Mail headlined a story "Lang proposes referendum on hanging". The article set out the position that the Justice and Transport Minister wants the federal government to hold a referendum on capital punishment. It concluded with the following paragraph:

"Before its abolition, captial punishment had been limited to those convicted of the murder of police officers and prison guards. There has been some speculation that if it were to be restored, the list might include *tourists* and possibly child murderers."

Well now we know the reason for the decline in the tourist industry – and we thought it was our high prices.

–

In light of the number of charges emanating from athletic competitions this comment by comedian Rodney Dangerfield "I went to the fights the other night and a strange thing happened – a hockey game broke out."

–

Judge August has passed along a clipping from the Toronto Star. The story tells about an

* * * *

the public could conclude that someone who does not have a direct interest in the function of the legal profession was part of the deliberations," Gale said.

He therefore suggests that the government should take up its power to appoint two lay people to the seven-member council. He points out with unhappiness that only for one brief period has a lay person been a member of the council.

In this cynical age, the presence of only two outsiders among five senior judges on the council may seem slight assurance that judges aren't protecting their own. But there are other checks.

Despite the demands for confidentiality of the council investigations, Gale thinks the attorney-general should have the power to release its findings if necessary. Obviously this makes the political process a check on the council.

But it is fundamentally important to our judicial system that judges against whom allegations are made feel that they will be dealt with justly. The changes recommended by Gale should be implemented swiftly by the government.

– Johnathan Manthorpe,
The Toronto Star

WITH ALL DUE RESPECT . . .

Without being specific, one cannot help but notice that judges have discovered sex. Or to be more precise that police have discovered that judges have discovered sex. Or to be even more precise that newspapers have discovered that the police have discovered that judges have discovered sex.

Now it seems to us that the human condition is such that if you take a cross section of about 135 adult males (as there are in the Provincial Court bench) you are going to have a cross section of part of the male population. In any cross section of that number it may be likely that you are going to have some who engage in extra marital sexual activity and also some who engage in homosexual activity. In these days which are considered by sociologists to be a period of "enlightened sexual freedom" one would expect a rather blase attitude from our newspapers in reporting the sexual activity of not only judges but any group in society.

We are not offering a defence for the conduct, we only wonder about the rationale for reporting it. We recognize that judges have a responsibility to be more than good.

What we question is the newspaper (and other media) reporting of it in detail.

It does not take a great deal of perception to realize that beneath each of these stories is a profound human tragedy . . . a story of illness and pain of which the conduct complained is only symptomatic. The salacious reporting in detail is in our opinion, if not unnecessary, has little probative value and extreme prejudicial effect. It can only add another layer of suffering not only on the person involved but also his family.

What is the purpose of this type of reporting? If it is essential that the public know why a judge is removed from office or resigns could it not be simply "for personal reasons" or if one has to be more specific, for personal reasons involving alcohol or sex or whatever.

The cataloguing of details can only be attributed to one motive. The newspaper editors think that the public is interested and therefore it sells. If so then the public is also interested in the misfortune and human frailties of publishers, editors, columnists and reporters. But that never happens. There have been journalists convicted of offences but for some strange reason it is never considered newsworthy.

Newsmen who make a virtue of stripping away other people's anonymity, can't bear to become themselves the focus of public attention. They cringe at the thought.

Here's to the pure and perfect journalists who spend their working hours searching for the sin in others.

– Ex Curia

"Can we skip that question and come back to it later?"

helped to correct symptoms, but did not remedy the cause of the problem.

Additionally, there are hidden costs to this program, over and above the annual budget of $123,000. Loss of fine revenue, and local funding for the administrative agencies must also be computed in the total cost of the program. Many of these costs may not in fact be made up by the free labor of the offenders. Some community work would ordinarily be provided voluntarily in any event, so there is not necessarily a direct return to the community for the lost fine revenue.

These considerations, at least, must be reviewed before a fine-option program would be of value in another jurisdiction. There is, however, a wider implication to the project which would be of benefit to Canadian courts in general, and that is a sharing of the Saskatchewan experience as it applies to community service orders.

Assuming that community service orders (dubbed CSO's by somebody) are here to stay, every jurisdiction is currently wrestling with a host of practical difficulties, such as degree of supervision, encroachment on union activity, liability, suitability of types of work, and the intricacies of job-matching. For these and other CSO issues which are bound to arise, the Saskatchewan experiment may indeed provide some helpful guidelines.

* * * *

(President's Page — cont'd from Page 1)

Income Tax Act, particularly for out of pocket expenses paid to attend educational seminars or conferences. He has confirmed his agreement and action by letter.

Plans are well underway for the annual meeting at Charlottetown, September 11-14. Delegates are being chosen in each Province; please communicate their names to Judge Rice. Important committee reports on court structures and the discipline and removal of Judges will be tabled. Broad changes in the Constitution to facilitate the needs of Family and Juvenile Court Judges and Judges with civil jurisdiction will be proposed. I hope to see many of you there. Personally, as a Prairie boy I'm looking forward to feasting on those "little red cows", the ones that pinch, but are so delicious!

perte des revenus devenant des amendes, et les fonds locaux nécessaires pour l'administration des agences, doivent être aussi calculés afin d'arriver au coût total du programme. En fait, un grand nombre de ces coûts ne peuvent pas être dédommagés par la main-d'oeuvre gratuite des offenseurs. Tenant compte des bonnes ouvres accomplis dans les communautés par leurs volontaires, il se peut que la perte des revenus devenant des amendes excéde les bénéfices provenant à la communauté.

Ces considérations, dans le moins, doivent être révisées avant qu'un programme de 'substitution d'une amende' deviendrait de valeur dans une autre juridiction. Néanmoins, il y a des implications inhérentes dans le projet qui serviraient bien les cours Canadiennes en général, c'est-à-dire, le partage de la connaissance du programme de Saskatchewan autant qu'elle s'applique aux ordondonances de services communautaires.

En supposant que les ordonnances de services communautaires (doublées les "OCS") sont ancrées, chaque juridiction doit maintenant luttée avec une légion de difficultés de caractère pratique, tel que le dégrée de surveillance, l'usurpation des activitées des unions, la responsabilité, la convenance des genres de travaux, ainsi que les complexités d'appareiller les tâches. Pour celles-ci et les autres dénouements des OCS, qui surgiront sûrement, la connaissance de Saskatchewan pourrait en effet être un bénéfice.

judiciare de force et d'indépendence; avec le concept d'un cour criminel unifié dans chaque province, tout en indiquant qu'il serait d'accord en ce qui concerne la formation d'un comité qui étudirait la structure des cours au Canada, et de demander la coopération des Avocats des Gouvernements. Il est compatissant envers les monaies dépensées par les juges qui assistent aux conférences éducatives qui ne peuvent pas se reflèter dans leurs déclarations de revenus. Il a confirmé son accord et les mesures qu'il a pris sur ces sujets dans une lettre.

Les plans contemplés pour l'assemblée annuelle à Charlottetown, le 11 au 14 septembre, sont déjà en marche. On choisi les délégués de chaque province; veuillez faire connaître leurs noms à Monsieur le Juge Rice. Les rapports réalisés par les comités importants relatifs à la structure des cours, la discipline et la révocation des juges, seront remis. Des changements de fond en comble dans la Constitution afin de faciliter les besoins des juges de cours juvéniles et les juges avec juridiction civile seront proposés. J'espère bien de vous voir en grand nombre. Personnellement, venant des Prairies, j'envissage faire festin grâce au "petites bêtes rouges", ceux qui pincent, et qui sont si délicieux!

In Brief

THE EDUCATIONAL SECRETARIAT

The Educational Secretariat of the CAPCJ in Ottawa is designed to be of assistance to provincial judges across the country in establishing and maintaining educational programs, and in providing a central repository for papers presented at various judicial seminars.

Mrs. Francine Altman has recently been appointed educational secretary for the Association, and will be happy to make these services available to judges upon request.

Mrs. Altman will be in the Secretariat office every Tuesday and Thursday afternoons from 1:00 to 5:00 p.m. Her telephone number is 613-992-2023. The Canadian Judicial Council number through which she might also be contacted is 613-992-1944.

The mailing address of the Secretariat is 130 Albert Street, Ottawa, K1A 0W8.

* * * *

TO EXTEND CRIME VICTIM COMPENSATION DEADLINE

Attorney-General Gerry Mercier has introduced in the Legislature a bill which would grant victims of crime two years in which to apply to the Criminal Injuries Compensation Board for compensation for injuries and losses received in the course of the crime.

At present, The Criminal Injuries Compensation Act requires application for compensation to be made within one year from the date of injury or death although the board may extend this period as a result of extenuating circumstances.

However, noted Mr. Mercier, some persons have waited to file an application with the board until the criminal was actually convicted. He cited the case of one victim who was injured in September, 1976 but whose assailant was not convicted until February, 1978.

"By extending the period of making application for compensation to two year," he said, "we should cover all those cases where the victim does not make application until after the conviction of his assialant."

He noted that the proposed two-year limitation period is in line with the current limitation period for commencing legal action in motor vehicle accident claims or actions for damages for assault, battery, wounding or other injuries.

The proposed two-year limitation period would take effect from the date the act comes into force.

* * * *

MINISTER URGES JUDGES TO USE MORE CSOs

Ontario Minister of Corrections, Gordon Walker, is urging provincial judges to make wider use of community service orders and other alternatives to incarceration.

Mr. Walker and several staff have made presentations to criminal court judges attending four regional sentencing seminars at Kingston, Sault Ste. Marie, London and Toronto.

The Minister told the judges that the Ministry has set a goal of decreasing the average daily provincial prison population by 1,000 this year, or from 5,400 to 4,400.

"We think this is an attainable target, thanks in good measure to the creative sentencing being practiced by a growing number of judges throughout Ontario who are sending fewer and fewer non-violent petty offenders to jail," he said.

The Minister said that clearly prison is necessary for the protection of the public from violent and dangerous offenders. Such offenders must be housed in secure facilities until they receive training or treatment which will enable them to function in a responsible and law-abiding manner in the community. He pointed out that most of the people who serve time in our institutions have sentences of 30 days or less and that it is difficult to provide meaningful programs for offenders with such short terms. While learning and training opportunities have been improved at local jails and detention centres, most inmates there simply mark time until they are released.

"How much better it would be," Mr. Walker said, "if this young offender, as most are, were required to accept some responsibility for his antisocial behavior on the street . . . if he

Other Views

We have heard a great deal of chest thumping in the past few months about the sanctity of the independence of the judicial process and the need to maintain absolute public confidence in the fairness of the courts.

When one gets an outsider, like former solicitor-general George Kerr, making ill-advised telephone calls, the methods of defending the independence of the courts are fairly cut and dried. And one can say that, despite the messy and politically opportunistic way the Legislature's justice committee went about investigating the Kerr affair.

Much more sensitive in many ways is how one deals with complaints against judges. There is an obvious dichotomy here: How does one preserve the reputation of a judge against frivolous or unfounded allegations and still give the public confidence that knavish judges are not being protected by their peers?

We already have a pretty good system of reviewing allegations against provincial court judges, who used to be called magistrates. But in a rather fine report tabled in the House just before the end of the last session of the Legislature, George Gale, a former chief justice of Ontario, recommends tying off some of the loose ends so that judges and the public can expect justice when allegations are made against a judge.

The agency for investigating allegations of misbehaviour or neglect of duty by judges is the judicial council. Gale has praise for its work in the past, but thinks its roles as the investigating body and the dispenser of justice have got confused.

And Gale gives the government a gentle but pointed rap on the knuckles for not appointing more non-judges to the council so the public can feel it has observers insuring that the be-wigged and be-gowned ones are not protecting their own.

Gale wants changes made so that the judicial council becomes only an investigating body and that the decision to fire a judge found guilty of some misconduct be placed clearly with the government.

A former chairman of the judicial council himself, Gale was happy with most of what the council was expected to do. It looks at allegations against judges and may call the judge in to offer an explanation if warranted.

However, there are problems if the allegation is serious, and, in the opinion of the council, has merited demanding further action. The Provincial Courts Act allows the council to recommend to the attorney-general that a public inquiry be held and that the judge be removed from office.

It is this last little hook that Gale finds unacceptable. "With the utmost respect," he said, "It is not the function of the judicial council to conclude that a judge should be removed, and it is certainly not its function to so recommend when at the same time it recommends that there be an inquiry to determine that very question."

It's a very good point. There would be riots in the streets if the public were subject to a law which said: "This person should be punished and, oh, by the way, you should find out too if he is guilty."

If there is a public inquiry ordered into the activities of a judge it is held in public and Gale believes that situation should continue. But he believes with equal strength that all the proceedings of the judicial council should be in strict privacy. They are private now but Gale thinks that guarantee should be strengthened.

"To me anything else would be unthinkable for the result might well be to destroy the reputation and utility of a judge whose conduct is found to be without fault and thus to harm the administration of justice," he said.

Which, of course is fine and understandable. But having guaranteed the reputation of the judge against scurrilous allegations, how to you guarantee to the public that the council is being tough and honest?

"The work of the council must, of necessity, be done privately and when any activity is carried on in private there naturally arise in the minds of the public suspicions as to the motives behind such secrecy. I believe that many of these doubts would be lessened if

ingenuity of your Court; you have to find accommodation with various decisions of the Supreme Court of Canada whose very character impact on your jurisdiction. To your credit, such changes are made smoothly and your jurisdiction never seems affected to the point where the process suffer nor can it be suggested that the case-load is in any way affected. Similarly, while some motions are sometimes designed and intended to obfuscate and delay the proceedings, your Court always comes back with its usual agressiveness and understanding to the point where the quality of the justice you dispense is never affected.

There is one area which must continue to concern the Provincial Courts across Canada: you preside over and dispose of over 94% of criminal cases and only a small percentage is appealed. As such, you have the unique and enviable position to leave your imprint on Canadian law as protector of our civil rights in this country and to prevent an abuse of process. Despite the heavy flow of cases, the Canadian Bill of Rights cannot be ignored in your day to day rulings. You alone can safeguard its provision and ensure its survival. It is always with a great deal of satisfaction that I notice from time to time your reported decisions in that area.

With the importance of your work and the importance of criminal justice, it is with some concern that I view the recent figures and projection with respect to costs of criminal justice in Canada. Amounts spent on courts have slipped from one-fifth of the total resources in 1969 to approximately one-twentieth in 1977.

It may be too harsh to suggest that we have been ignored but I can certainly say to you that the concern which I express is a legitimate one and I dare say that I am not infringing on the separation of powers between the executive and judiciary in this country when I speak out to suggest that if we are to continue to play the role we have played and indeed improve our performance in what appears to be fairly turbulent times, our legislators will have to re-assess their position towards the importance of Courts.

To attract proper candidates to the Bench, the financial rewards must be such as to provide a person to live with dignity within the community; one should not have to jeopardize financial commitments to his family and to himself to accept a judicial appointment. At a time of inflation it may sound unreasonable to even discuss the financial rewards of judicial office but there is a grave danger that if that aspect is ignored for provincial appointees across Canada, only candidadates who are either unsuited for the position or who seek the appointment for improper motives will come to the Bench in the future. That would be disastrous. Far more, there will be judges who will feel compelled to resign because of financial reasons.

Being deprived of proper compensation is a burden which is shared by our wives and they certainly deserve strong recognition for the support which they have brought over the years in your judicial capacities. I conclude with a plea that judging is far too important a profession to allow it to be assumed by those who are pressured by economic worries and whose security is not completely assured by fair and equitable pensions. You are asked to show courage in your day to day decisions and not to allow yourself to be swayed by the strong regardless of the weakness of their case; that onerous duty can only be discharged when a judicial officer is assured of independence in every possible way, including financial worries.

(In Brief — cont. from Page 1)

Departments of Justice and Social Services, the federal Department of Justice, and the federal Ministry of the Solicitor–General.

In addition to conciliatory and advisory services to young persons who are in conflict with the law, the project will provide for a pre-court screening committee that will attempt to restore the relationship between the offender and the victim without recourse to the judicial process. Lay mediators, that is members of the community without special legal training, will be used on this committee as much as possible in order to increase direct community involvement in dealing with situations involving young offenders.

(Fine Option — cont. from Page 16)

Criminal Code	33%
Food and Drug Act	0
Narcotics Control Act	2%
Other	14%

* April 1, 1977 to March 31, 1978

FINE OPTION PROGRAM STATISTICS*

Entered Fine Option	4,909
Completed	3,789
Incompleted	1,120
Value of fines of clients	$524,027.60
Value of fines worked out	$406,530.10
Days in lieu eliminated – 75,795 @ $20/day	$1,515,900.00

* April 1, 1977 to March 31, 1978

were held accountable for his actions and required to pay back in some way the community or the individuals whom he has harmed."

Mr. Walker explained that last year the Ministry organized arrangements with volunteer agencies in 12 communities where CSOs can be fully supervised. During that first 12 months over 1,000 offenders were placed on CSOs, with the majority of them, or 770, in the CSO project areas. Of this 1,000, only eight individuals failed to fulfill their conditions of probation.

The Minister announced three initiatives aimed at reducing the number of non-violent persons charged with relatively minor offences who are currently sent to jail while awaiting trial. These are:

– bail supervision for remands living at home;

– bail lodgings for inmates requiring minimum supervision;

– bail hostels for remands requiring the greatest degree of supervision short of institutional custody.

It is estimated that one probation officer could handle 35 bail supervision cases at one time at a cost of approximately $2.74 per accused per day, a saving over the $50.00 a day for bed and board in a jail or detention centre.

The Minister stressed that the decision to initiate bail supervision would be in the hands of the judges, and that our probation officers, superintendents and volunteers would be available to provide the background information required by the judge to make or the original detention order. He requested that the judges consider as a prime condition of such an order that the accused continue in employment.

The Minister informed the judges that the processing in and out of insitutions for brief stays of persons with intermittent sentences causes significant logistical problems. He added that our institutional managers feel that offenders serving weekend sentences do not, in the main, take their sentences seriously: many of these offenders are neither employed nor going to school, and far too many of them turn up drunk on Friday nights and prove troublesome. The Minister indicated the view of Ministry staff that regular sentences with recommendations for temporary absence can be more effectively supervised than intermittents.

* * * *

FAMILY RELATIONS ACT PROCLAIMED

British Columbia's new *Family Relations Act*, which intorduces the principle of equal sharing of family assets in the event of marriage breakdown, has been proclaimed.

This sharing only applies after a breakdown; however, the Supreme Court of British Columbia has discretionary power to reapportion family assets if equal sharing is judged to be unfair in light of the circumstances of the marriage or the financial need of a spouse.

The Act, passed in the Legislature last year, took effect at the end of March. Among other things, the Act:

– makes the rights and interests of children the paramount concern in court proceedings;

– introduces the system of deferred sharing of family assets;

– establishes provisions for a marriage agreement wherein spouses can specify their own alternatives to the deferred sharing rule;

– clarifies the liabilities for support and maintenance of parents, spouses and children;

– provides for automatic enforcement of maintenance orders;

– provides for the use of family advocates and family court counsellors.

In addition to its marital property provisions, the Act combines and repeals four other Acts dealing with family law. The *Equal Guardianship of Infants Act*, *Extra-Provincial Custody Orders Enforcement Act*, the *Family Relations Act, 1972* and the *Unified Family Court Act* are all updated and incorporated in this legislation.

* * * *

INDUSTRIAL OPERATIONS AND CORRECTIONS

London – "We have the potential to convert the correctional system into a significant source of new revenue, but we need the help and partnership of private enterprise if our industrial operations are to expand and flourish," Ontario Correctional Services Minister Gord Walker said recently.

The industrial operations, ranging from an abattoir in Guelph to a mattress manufacturing plant in Toronto's Mimico Correctional Centre, lease space to private companies which provide management and supervisory services for a fee. In turn, Correctional Services receive a share of revenues and provides the inmate work force.

"Inmates receive the going market wage as well as job training, which is an important rehabilitative benefit," Mr. Walker said, adding

that the program benefits private companies who cannot find workers to perform these tasks.

For example, 240 inmates were employed in 1978 at the Guelph beef centre for periods varying from one day to seven months. Their gross earnings exceeded $436,000, of which $47,000 was deducted for room and board.

"That's another $47,000 that doesn't have to come from the taxpayer's pocket," Mr. Walker said, emphasizing that operating Ontario's correctional system costs citizens around $130 million a year.

He added that at Guelph, $62,000 of the inmates' gross earnings went toward income tax, $5,600 in unemployment insurance was deducted, along with $3,000 in Canada Pensions and $12,000 in union dues, respecting the plant's collective agreement.

Additionally, nearly $113,000 was spent on family support, while another $164,000 in savings – or an average of $684 per inmate – was put aside.

"This is a highly successful enterprise which processes 1,700 cattle per week and operates as efficiently as any private facility," Mr. Walker stressed, saying it was a model he wanted to use for expansionary plans throughout the province.

Similar successes have been achieved at the Mimico mattress plant, which produces 10,000 mattresses a year, as well as at an automotive parts facility at the Maplehurst Correctional Centre, food service catering firms at nine institutions and an automobile engine scrap metal operation at the Brampton Adult Training Centre.

Mr. Walker said that Correctional Services also runs several of its own enterprises, including a canned goods facility at Burtch Correctional Centre which produces around 60,000 cases of canned goods a year, and the Millbrook Correctional Centre, where inmates manufacture two million license plates annually. At other correctional institutions, products ranging from picnic tables and barbecue grills to wool blankets, pants, shirts and pyjamas are made.

"I doubt that many people have ever considered that our jails and detention centres could actually become sources of tax revenue, yet we have made significant progress in transforming Correctional Services into a revenue-producing ministry," he said.

Correctional Services will consider any proposals from companies interested in leasing space and providing employment for inmates, particularly those which can deliver parts to a detention centre for assembly and manufacture.

* * * *

LEGAL AID CHANGES

Attorney-General Roy Romanow says that in his view the principles of the McClelland Report on the legal aid plan in Saskatchewan are sound and that he will present a bill to amend The Community Legal Services (Saskatchewan) Act during the current session of the Legislature.

The amendments if accepted by Cabinet will follow in part the recommendations contained in the report, Mr. Romanow said. They will include:

– the removal of the commission's power to revoke the certification of an area board without a hearing;

– the removal of the provincial director from the membership of the commission;

- the removal of the requirement that the provincial director be a solicitor;

– an amendment to acknowledge that area boards hold in trust for the commission any assets acquired through funds provided by the commission;

– the repeal of clause b of section 21, the clause under which the majority of referrals to the private bar are made.

Judge McClelland was asked to conduct a judicial review of the legal aid system in September, 1978, because of concern about level, quality and cost of legal aid services and concern about management practices and financial controls within the system. The report was released by Mr. Romanow earlier this year.

Mr. Romanow said the recommendation to repeal section 21(b) of the legal services act may be controversial. However, he says he supports Judge McClelland's view that the repeal of the section is the key to the growth of the clinics and their assumption in the future of increased criminal case responsibilities.

He said members of the private bar will continue to play an important part in the delivery of public legal aid in Saskatchewan both during the transition period toward the growth of the clinics and afterward.

Mr. Romanow also said he views favorably Judge McClelland's recommendations that the provincial director be replaced on the commission by a fourth area board chairman nd that an attorney general's representative be appointed to the commission.

He said he also proposes to discuss with the minister of justice for Canada the possibility of eliminating the federal appointee to the commission.

The attorney-general said he supports as well those recommendations which are the principal responsibility of the commission in its capacity as the governing body of legal aid in the province.

further question whether in some cases the backlog is not due in part to an intemperate use of legislation resulting in a myriad of offences and not the judicial process and the way in which we deal with our day to day cases.

Often we are accused of taking too much time to deal with Court cases and I cannot countenance such accusations; it must be realized that a criminal trial is a very personal drama and in each there is some tragedy, frustrated human hopes and aspirations, some misery and degradation. While the number of trial could be looked upon as items to be dealt with, those tried are human beings who are in conflict with issues and whose very freedom and liberty rests upon your ability to deal with them. They are human beings with feelings, desires and aspirations and they come to you as a neutral arbiter hoping for an equitable solution. The question in issue may on its face appear trivial to the casual observer but to the person in conflict with the law it may be his only brush with the law and to him it is the most important aspect of his exposure with justice and it takes place in your Court. You will not only be forgiven for taking the time and effort to assist him but indeed you must and it is part of your sworn duty to do so. To suggest that less time be spent on cases is to suggest that decision-making is unimportant and that your impact on the law is minimal; such a suggestion must be repudiated, ignored and strongly resisted. One cannot measure the effectiveness of the judicial process by the number of cases disposed of anymore than one can judge a surgeon by the amount of surgery he is able to perform in any given day.

The late Governor General George Vanier welcomed the delegates to the Fifth National Congress of Criminology in August of 1965 in the following words:

> "Law is not an exact science, as Lord Halsbury reminds us. Despite the majesty and gravity with which its administration is properly invested, it is a very human affair after all. The raw material of the cases in criminal court is composed of the struggles and rivalries, the desires and emotions to which all of us fall heir. This material cannot be analysed with the cold precision of the chemist in a laboratory."

While these situations prevail and make your every day life a difficult one there is still a need for you to remain constructive and alert and to work within criminal justice in a way which will show sensitivity on your part as trial judges. The Chief Judge of the United States District Court in St. Paul, Minnesota in addressing trial judges of the United States observed that trial judges occupy the most important place in the scheme of things. He alluded to the close proximity of the lawyers and the litigants by judges as placing upon us a burden of public responsibility much greater than could be appreciated at first glance. He told a story which I cannot summarize but would like to relate fully.

"A certain bishop of Paris, known throughout Europe for his great learning and humility, came to the conclusion that he was unworthy of his high place in the church and successfully petitioned the Pope for reassignment to service as a simple parish priest. The legend is regrettably vague as to whether this happened in the twelfth century or the thirteenth, or indeed as to whether our almost unbecomingly humble prelate was bishop in Paris or someplace else, but it is perfectly clear as to what came of the reassignment. After less than a year of parish work, the former bishop was back in Rome with another petition, this one praying for his restoration to episcopal status, and for good and sufficient reason. "If I am unworthy to be Bishop of Paris," he said, "how much more unworthy am I to be priest of a parish. As bishop, I was remote from men and women of lowly station, my shortcomings and weaknesses concealed from them by distance and ecclesiastical dignity. But as parish priest, I move intimately each day among the members of my flock, endeavoring by comfort, counsel and admonition to make their hard lot on earth seem better than it is. I am the Church to them; when my faith flags or my wisdom fails or my patience wears thin, it is the Church that has failed them. Demote me, Your Holiness, and make me bishop again, for I have learned how much easier it is to be a saintly bishop than to be a godly priest." The trial judge is the parish priest of our legal order."

He concluded by suggesting that he was not inviting all appellate jurists to become trial judges on the action line of the law but by suggesting to them that the responsibility of the trial judges is one which rests heavily on us.

So true are the Chief Judge's remarks that in those European countries where judicial training commenced in law school, the new or student judge, if you wish, starts at the Appellate Division and finally winds up as a trial judge after years of experience. In my travels abroad in Sweden I was struck by the relative youth of some appellate judges in Stockholm and was amazed to hear that in a scheme of things that Government, as indeed other Governments in Continental Europe, has chosen to have trainees go to the Appellate level where one always has the comfort and assistance of colleagues and the Trial Division is only attained after considerable experience.

I often marvel at the flexibility and

Reflections on the Provincial Court

by Judge Rene J. Marin

Judge Marin is a County Court Judge for the Judicial District of Ottawa-Carleton. These are excerpts from an address to the Provincial Judges Association of Ontario.

I have spent several happy and fulfilling years with the Provincial Court, Criminal Division; it is with some pleasure and a degree of apprehension I accepted your President's invitation to address your dinner. My roots with various Provincial Judges' Associations in Canada have remained as strong as they were when I resigned as a Provincial Judge. I have had the privilege and honour of addressing your Canadian Association in Halifax, your brothers in Manitoba and your New Brunswick colleagues in their joint meeting with the Canadian Bar Association, New Brunswick section.

I would be remiss not to reflect briefly on some of the amusing events which I have shared with you over the years. I well recall how brother Hayes dragged us to North Bay for a sentencing seminar and in our haste to leave North Bay (without disrespect for the place), a number of us decided to avoid a Toronto stop and chartered an aircraft. The idea appeared sound not only to Ottawa Judges but a few brave souls from Southern Ontario. The three wise men Hayes, Perkins and Carson just waved us off. After a few minutes in the air, the aircraft became loaded with ice and we had to struggle for half an hour to bring it back to the ground; I have never witnessed such mass conversion in my life. The Pope would have been jubilant to see so many Protestants learning to recite Hail Mary's while biting at their white knuckles. Our joy at landing safely was much reduced by the three wise Judges who remained behind and had the best laugh of their life.

The following year we decided that train travel was safer. On our way to Sudbury, we chartered a railway coach and proceeded to prove that C.P. Rail did not have to make a deficit on its dining room and bar. Judge Beaulne however, decided that duty is to be preferred over pleasure. He left us in North Bay and discovering that he had a few hours to wait before the next bus, he entered a talent contest and won first prize. Such sobriety, such talent.

Some of us were sent out drifting on Lake Winnipeg a few years ago on the M.V. Selkirk; I would like to reassure you that any rumour that the damage we did to the ship caused the Manitoba Government to dispose of it is totally unfounded. Then, of course, there was always the unity in our ranks when we confronted management board for better salaries and pensions. I often reflect on these happy and fulfilling experiences and you will forgive me if I share them with you.

To suggest that a judicial officer administering criminal justice has an easy task would be to ignore the difficult times we are going through. Hardly a day goes by without the news media, groups or individuals expressing extensive and exhaustive comments with respect to judicial delays, suggestions for improvements and possible inadequacies in our criminal justice system. We have been studied, surveyed and almost researched to death. While some criticism may be well founded, much of it has little or no foundation whatsoever. We, of the judiciary however, cannot and indeed must not get involved in public debate which could affect our judicial independence or place us as judicial officers in a position of controversy either with other sectors of the criminal justice system or with the elected authorities.

Judicial reform is slow, sometimes painful, and inevitably accompanied by a degree of frustration since expectation in our criminal justice system is high and in some cases unjustifiably founded on premises that not only do we settle disputes between the state and individuals and between citizens but we are also able to dispense social justice and accordingly restore social imbalance within our society. I hardly need to remind you that judicial intervention is not the panacea to all the social ills in this country. The public must recognize the less essential limitations of our criminal justice system and admit that when used properly it can go a long way to remove social injustice but it is not a magic cure for all our social ills.

It is often not appreciated that the Courts are merely one of several components within the criminal justice system and we neither have control or a say with respect to a variety of matters before us. The initial process of laying charges is not within our control; the creation of a multitude of new offences each month and each year is not within our control; neither is the accused after he has been sentenced.

Some offences bring a citizen in a situation of confrontation with the law and ultimately with the Courts. I am often perplexed whether our legislators have sufficiently canvassed alternatives to the Court process in some cases and whether over-legislation has not accounted for the sheer number of cases confronting trial judges. I

He said Judge McClelland also feels that the level of services offered through the plan can be increased, not through an infusion of substantially more resources, but by redirecting funds away from the private bar into an expansion of the case-carrying capacities of the clinical component of the system.

MOTOR VEHICLE TASK FORCE INTERIM REPORT

An Interim Report by the B.C. Government's Motor Vehicle Task Force recommends that driving while under suspension by made a Provincial offense punishable by a mandatory jail term.

The report describes the present procedure for processing traffic offenses as "cumbersome and ineffective". It states that the system, as it exists, is "totally inappropriate for violators who show a flagrant disrepect for the law."

In addition, the report contents that the present system lacks effective immediate impact on bad "high point" drivers, frustrates police, wastes public time and money.

The Task Force recommends that high-point drivers and drivers convicted of serious driving offenses who fail to pay their fines be incarcerated and calls for an intensive campaign to encourage better driving habits in B.C.

It recommends, as well, that there be no Court appearance for minor breaches of the law which constitutes the majority of traffic violations and that the Court Referee system be expanded to include traffic adjudicators to hear ticket disputes.

In addition, the Task Force recommends expanding the police computer information system to provide a more effective means of identifying high-point drivers at the roadside.

Other recommendations include:

– the implementation of the concept of deemed notice to drivers whose licences have been suspended (mailing of the notice of suspension will be considered sufficient to prove suspension);

– Motor Vehicle Branch and police information systems be upgraded as soon as possible;

– I.C.B.C. penalty point premiums be abolished;

– extensive information program be used to explain the new system.

* * * *

SEVERANCE PROVISIONS PROPOSED FOR JUDGES

Manitoba Attorney-General Gerry Mercier has introduced in the Legislature a bill which would entitle provincial judges to receive severance pay upon retirement, permanent lay-off or death on the same basis as Manitoba Government employees receive such payments.

The proposed amendment to The Provincial Judges Act was required, said Mr. Mercier, because The Civil Service Act does not apply to provincial judges. This means that they are not entitled to benefits under the collective agreement or under the regulations made under The Civil Service Act.

"We feel it is only right and proper that provincial judges be accorded some of the benefits which accrue to public servants," said the attorney-general.

* * * *

DISCIPLINARY PROCEDURES

A committee set up to review the disciplinary procedures of the British Columbia Judicial Council is currently preparing its report to Attorney-General Garde Gardom.

Committee chairman Bill Pearce of the Ministry's Legal Services Division said the 10-man committee has met twice since the beginning of February and may meet once more before handing over its findings.

The committee, which includes the Chief Jusitce of the Court of Appeal, Nathan Nemetz, the Chief Justice of the Supreme Court, Allan MacEachren and the Chief Judge of the Provincial Court, Lawrence Goulet was asked by the Attorney-General to study the provisions of the *Provincial Court Act* which pertain to the powers of the Judicial Council to discipline Provincial Court judges concerning improprieties or misconduct.

Other members of the committee are Judge McGivern of the Provincial Court, Peter Fraser and Leon Getz of the Law Reform Commission, Bruce Cohen of the Law Society, Don Sarochan of the Canadian Bar Association, Roger Walker, a legal officer with Court Services and Mr. Pearce.

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NEWFOUNDLAND JUVENILE DIVERSION PROJECT

The federal Department of Justice is contributing $12,130 towards the funding of a juvenile diversion project in the St. John's, Newfoundland metropolitan area.

The project, which commenced in May, is funded jointly by the Newfoundland

(Continued on Page 24)

PREPARATION DU PROCES CRIMINEL

par M. le juge J.G.J. O'Driscoll

Du point de vue du juge de première instance, quel est le sens de notre thème de discussion? On m'a dit que certains juges de première instance refusent de lire ou d'entrendre quoi que ce soit au sujet du procès criminel sur lequel ils sont sur le point de statuer à titre de président (que la source des renseignements soit la présence de l'avocat de la défense et du procureur du ministère public lors d'une consultation préalable au procès ou qu'elle soit un rapport écrit préparé pour la consultation préalable au procès par tous les avocats, en présence ou en l'absence du juge). Pourquoi? Parce que ces juges affirment qu'ils risquent d'être influencés et/ou prévenus par la consultation préalable au procès ou par le compte rendu de ladite consultation, surtout lorsque l'accusé n'est pas lui-même présent lors de la consultation préalable.

Dès le premier coup d'oeil jeté sur la thème de discussion "Préparation du procès criminel", un juge pourrait fort bien affirmer: "la préparation du procès est l'affaire des avocats et non pas celle des juges", mais, en 1978, un juge de première instance peut-il adopter cette attitude de façon réaliste?

Est-il juste, convenable, équitable, pour l'accusé, pour le ministère public, pour le contribuable et pour moi-même, que j'arrive au tribunal, que je revête une robe, que j'entre dans la salle d'audience, que je m'installe sur le banc et que je mette en marche un procès, avec ou sans jury, sans savoir:

1. Le nombre d'accusés et le nom du ou des accusés;
2. Les chefs d'accusation soutenus contre lui;
3. Le libellé de l'acte d'accusation;
4. L'allure générale de l'affaire;
5. La durée probable du procès;
6. Les voir dire éventuels ou probables de témoins qui auront lieu, les questions à poser au cours de ces *voir dire*, si le procès se déroulera sur des déclarations de l'accusé ou sur les enregistrements de tables d'écoute, etc.;
7. S'il y a lieu de mettre en doute l'aptitude de l'accusé à subir son procès;
8. Si l'article 16 du code criminel est applicable en l'espèce, si la Couronne cherche à produire des témoignages psychiatriques relatifs à l'état mental de l'accusé lors de la commission de l'infraction alléguée;
9. Si des faits allégués contre l'accusé ont été admis par l'avocat en vertu de l'article 582 du Code, en ce qui concerne la continuité des pièces à conviction, la cause de la mort, le rapport du médecin législate, les rapports du laboratoire médico-légal, etc.;
10. Si l'affaire comporte des points de droit difficiles, qu'ils soient anciens ou nouveaux et si lesdits points de droit ont trait à des questions de procédure, à l'admissibilité des preuves ou à l'admissibilité des preuves ou à l'un ou l'autre des milliers de problèmes qui se posent durant le déroulement d'un procès;
11. Si l'accusé cherchera une ré-élection de tribunal;
12. S'il s'agit d'un nouveau procès.;
13. Si l'avocat tentera de faire une récusation motivée?
14. S'il y aura motion pour procès séparés.

J'ai entendu un avocat de la défense expérimenté affirmer qu'il est heureux de trouver une porte de sortie au cours d'une affaire criminelle, qu'il est ravi s'il en trouve deux, mais qu'il sait fort bien qu'il n'en trouvera jamais 15; en d'autres termes, la plupart des affaires ne comportent en fin de compte qu'une ou deux questions en litige.

De concert avec M. le juge Estey, juge en chef de la Haute Cour (maintenant juge en chef de l'Ontario) et M. le juge Hartt, j'ai préconisé, à plusieurs occasions en 76-77 le recours aux consultations préalables en ce qui a trait aux procès criminels figurant au rôle de la Cour suprême de l'Ontario. Je ne revendique aucune connaissance spéciale sur ce chapitre, mais je suis persuadé de la véracité de la proposition selon laquelle le procureur du ministère public, l'avocat de la défense et le juge de première instance (avec ou sans un jury) touchent un traitement ou des honoraires pour juger des véritables questions en litige dans une affaire, et non pas des faux problèmes. De plus, au cas où l'avocat de la défense agit en vertu d'un certificat d'assistance juridique (en Ontario, 85% des affaires criminelles sont jugées sur assistance juridique), alors ledit avocat, ainsi que le procureur du ministère public et le juge de première instance touchent un traitement ou des honoraires provenant d'une source commune, le contribuable. A titre de juges, ne nous incombe-t-il pas véritablement de faire de notre mieux pour juger le procès dans les meilleurs délais, sans jamais oublier d'atteindre notre but sans porter atteinte en quoi que ce soit aux droits de la défense?

Si une consultation ou un rapport écrit préalables au procès m'apprennent que la Couronne tient à invoquer des témoignages psychiatriques relatifs à l'état mental de l'accusé lors de la commission de l'infraction alléguée, peut-on m'acuser de partialité si je

manufacturer's contract was with the wholesaler, not with her. Lord Atkins (and this is how I read Lord Denning's account of, and gloss on, the case) said that a man ought to love his neighbour, that therefore he ought not to harm his neighbour, and that in law his neighbour was anyone who was so closely and directly affected by his actions that he ought to have them in mind when he acted. The woman recovered damages.

So, thence the whole of the English law of negligence? "It can be said to have developed from that, yes."

From the tenets of religion, and from a Commandment, Love thy Neighbour?

"Yes."

And was that the single biggest change in the English cvil law this century? "Oh yes; altered the whole picture completely."

Lord Denning had to go out to pay his gardener. He pointed out the stream and the island on his estate, the silk mill in the middle distance where they made the material for QC's and judges' gowns, his plantation of poplars, and, over by the church, a yew tree 1,000 years old. He spoke again of his Norway spruce. "All over the country," he said, "there's this thieving of Christmas trees."

Back in his library which is, he thinks, better than any other judge's, because the others sell their books, we talked about women. First the case of Gillian Ward, 1971.

"The Bradford one?" he asked.

It was. She was found with a man in her room at night at training college. She was expelled. She came to the Court of Appeal. On the face of it, there was not just one breach of natural justice, but several in the manner of her dismissal, the sort of breaches on which Denning might have been expected to fasten, and had fastened, in his development of the judicial control of tribunals. But he found against her. Why?

"She'd had a man in her bedroom for over three months, from outside, and was concealing him there. I didn't think that was at all right."

But there were many irregularities in the manner of her dismissal? "Perfectly true. If I thought it was a wrong decision I would probably have taken (advantage of) those to interfere."

But ought he as a judge to allow his personal view of her conduct to overset his knowledge that the tribunal had acted improperly? "Well, I would say so, yes. No injustice was done to her. She deserved all she got, so to speak. You're right in this sense, I was overriding the irregularities in the procedure."

Condoning them? "Well, yes, if you put it like that; or overlooking them, in favour of what was in the end a right decision as I regarded it."

But what about the next case? Suppose a judge of first instance were taking the next case, where the merits might be different but the facts the same? The irregularities of a tribunal would have been condoned, and by Denning of all people, and he would have to follow the precedent. What could he do? Distinguish the case on narrow grounds? But Lord Denning would not approve of such distinguishing? "No, but I am prepared to say, you see, that sometimes I am wrong. I may have been wrong in that case."

Then we talked about women in general. In 1950 he addressed the Marriage Guidance Council on the quality of women, a proposition he clearly favoured. But he had referred to ancient Rome, where, when woman became more free, the results were disastrous to society. He quoted Bertrand Russell as saying that women who had been virtuous slaves become free and dissolute. We should look upon this and take heed.

That was 28 years ago. Women had since become more free. Had they become more dissolute? "Ah, you are asking me to form a judgment on contemporary society now."

No. I was asking him what he had observed. That, he said, was almost a judgment.

I insisted that mine was a fair question, and Lord Denning that he would rather not make a judgment.

But he was now showing a caution which he had rarely shown in court before? (Laughter) "I know you may well be reporting this. It may have more notice. Yes."

Neither of us more than mentioned the Profumo inquiry, which Lord Denning conducted. He said it was old hat now. He felt sympathetic towards Profumo.

We talked about his family history. I said I hoped he might write it. He said he would if he had time. "Although my father was a small draper here," he said, "he had a long and distinguished lineage." This was derived in part from the Poyntz family, who had come over with the Normans. Lord Denning asked if his book was going to be a flop, which is a strange question from a man famous for the lucidity of his judgments, and who could easily have made a living, and a great reputation, as a writer had he chosen.

He talked about the longevity of judges. Coke, Mansfield, and Esher had all, he thought, been 82 or 83.

Now, he did not need to retire. He could not be obliged to retire. But now that he is 80, would he retire? "No. The newspapers have been speculating, but I'm not going to retire."

as the first medieval Common Law judge who ever allowed an Action on the Case? (Where the law offered no remedy but the judge, considering the case "similar" to an old one, which it often wasn't by any stretch of the imagination, in fact created a new remedy and a new cause of action.) "Oh yes . . . That's been my approach. But of course, 'tisn't everybody's."

The medieval judge would have done this to expand his jurisdiction and therefore his revenue? Lord Denning hoped the judge might also have done it to ensure justice, but yes.

Lord Denning, too, would have done what he did to expand his jurisdiction, say between the citizen and the State? He said that would be his instinct. In dealing with tribunals, he'd searched for ways to control them, and had done ever since.

In that sense he was clearly in the line of Common Law judges. But he had also praised the proceedings of the European Court of Justice at Luxembourg, which was Civil (derived from Roman) law. But some of the European judges saw the Treaty of Rome as a constitution of a federal Europe, and gave themselves the widest discretion in interpreting it? "That's right. Same as the Supreme Court of the United States. Far more political than we are."

He would have been happy in the United States? "Well, I don't know I would have got the others to agree with me. Nine of them."

Lord Denning has said he is "a Portia man." It has always seemed to me, considering Shylocks's Case, that she wasn't the brightest of counsel. Any competent advocate should immeidately have taken the point that the contract was not only void but criminal. Surely he was better than a Portia man? (Laughter). "Well yes, in that way. But I'm a Portia man in so far as she says: 'For, as thou urgest justice, be assured. Thou shalt have justice, more than thou desirest'."

To go, as Lord Denning did in 1962, from the Lords to be Master of the Rolls, seems, on the face of it, a demotion, though it gave him far more power. It is generally assumed he wanted less glory, but more power. "I don't know what discussions were made when I became Master of the Rolls. I didn't solicit it. I perhaps murmured it once or twice. I hadn't really said anything about it. They must have been taking a chance on it, asking me to go there."

Many more cases in the Court of Appeal? "They (the Lords) have such a few. And they all get very upset, and I got upset, that the case you'd like to be on, you're not on."

As Master of the Rolls, he had a good say in what he did. An absolute say? "Well, I can't do everything. I have to leave something to the others, you see. But I do have a general supervision of it. Some people think that's wrong. But I say, 'What am I Master of the Rolls for?' "

Lord Denning's most celebrated recent case is that of Gouriet. The Post Office Union announced that it was going to stop all mail to South Africa for a week. This was unlawful. Mr. Gouriet, whose standing was no more than that of any citizen, asked the Attorney-General for leave to bring an action to prevent the proposed breach of the law. This was denied. Gouriet went to the Court of Appeal, who on a Saturday morning gave him his injunction. Lord Denning told the Attorney-General he had no prerogative to tell the courts whether the law should be enforced or not. He also remarked that the Attorney-General's claim was a challenge to the rule of law, and uttered his words about being never so high.

It happened that he was reversed by the Lords, but for the moment that is neither here nor there. But wasn't Lord Denning, by denying the prerogative and virtual dispensing power of the Attorney-General, going in a straight line back to the constitutional disagreements of James I and Coke? "I was perfectly conscious of that."

Then Lord Denning in his forthright Whitchurch accent, enacted a passage of conversation between monarch and judge.

James I (very angry): "Am I to be under the law? 'Tis treason to utter it."

Coke (quoting Brackton): "The king is under no man, but under God, and the law."

But, I said, look what happened to Coke? "Yes. He was sacked. I can't be."

Lord Denning is one of the few judges still to have a freehold. Those appointed in recent years have to retire at 75. He can stay as long as he lives or likes.

Lord Denning called himself a turbulent Master of the Rolls. His reference was to a previous Lord Chancellor, Becket. He agreed that no judge of his rank had ever delivered so many dissenting judgments, or had so many judgments reversed. Except, he thought, for Justice Holmes, of the US Supreme Court, but he doubted that. Then we came to religion. Lord Denning is very much a Ten Commandments man. He believes that without religion there is no morality, and without morality no law. And, to me at any rate, his most convincing demonstration of this had not been in his frequent denunciations of sin and immorality, but in his comments, made in a lecture 25 years ago, on the celebrated case of Donoghue v. Stevenson, 1932. This case virtually created the law of negligence. A manufacturer of ginger beer left a snail in a bottle. A woman drank it and became ill. She could not claim in contract because the

me rends à la bibliothèque de droit pour lire la jurisprudence la plus courante dans laquelle est appliqué l'article 16 du code criminel? Au cas où je ne lis pas ladite jurisprudence, le contribuable n'a-t-il pas le droit de s'étonner de l'arrogance dont je fais preuve en me refusant à me préparer à juger un procès?

Peut-on douter que des avocats compétents et bien préparés du ministère public et de la défense — et l'accusé lui-même et le jury — ne soient bouleversés lorsqu'il se trouve devant eux un juge de première instance évidemment sans aucune connaissance, ni aucune opinion, relativement aux questions en litige soulevées au cours du procès? Voient-ils, dans ce manque de préparation du juge de première instance l'expression d'une impartialité judiciaire ou celle d'une ignorance à laquelle il aurait pu remédier?

Vers le mois de juin 1976, M. le juge Hartt revint à la Haute Cour de justice après avoir été pendant cinq ans le premier président de la C.R.D. Avec l'aide, l'appui et le soutien de M. le juge Estey, alors juge en chef à la Haute Cour (maintenant juge en chef de l'Ontario), M. le juge Hart et d'autres juges de la Haute Cour mirent en marche on projet de consultations préalables relatives aux accusations qui allaient faire l'objet d'un procès devant la Cour suprême de l'Ontario.

Les consultations préalables étaient assorties de trois conditions:
1. Que le procureur du ministère public et l'avocat de la défense vinssent volontairement assister auxdites consultations;
2. Que le juge présidant lesdites consultations ne fût *pas* le juge de première instance; cette condition devait rassurer tous les avocats, celui de la Couronne aussi bien que celui de l'accusé, en établissant que ces consultations préalables ne devaient être, ni en théorie, ni en fait, des sessions de machandage sur les moyens des plaidoiries;
3. Que l'avocat de la Couronne fût disposé à divulguer, avant ou pendant les consultations, toutes les modalités de ses moyens, et que l'avocat de la défense ne fût soumis à aucune contrainte ni à aucune intimidation en vue de l'obligier à divulguer ou à admettre quoi que ce soit.

Au début, on estimait que le projet procéderait par deux étapes:
1. On limiterait d'abord, au cours des consultations, le nombre des questions en litige, afin d'instruire le procès d'un manière plus valable et plus intelligente; et
2. On supprimerait l'interrogatoire préliminaire dans les affaires qui devaient, en vertu des dispositions du Code criminel, être instruites devant la Cour suprême de l'Ontario ou qui seraient vraisemblablement instruites devant ladite Cour.

Nous estimons que, au lieu de suivre la pratique habituelle d'après laquelle le ministère public citait 10 ou 12 témoins au cours d'un interrogatoire préliminaire relatif à une accusation de meurtre et selon laquelle la défense citait les autres témoins présentés par le ministère public et qu'il a préféré ne pas citer, la Couronne ferait à l'avocat de la défense une divulgation totale et complète et *alors seulement* le procureur du ministère public et l'avocat de la défense se présenteraient, devant un juge de la Cour suprême de l'Ontario à une audition préalable. Si, au cours de cette audition, l'avocat de la défense affirmait avoir reçu une divulgation complète et s'il acceptait que l'accusé fût cité à procès, le juge qui présidait les consultations préalables consentirait, séance tenante, à la présentation d'une accusation en vertu de l'article 507(3) du Code criminel.

Si, cependant, l'avocat de la défense déclairait vouloir entendre un, deux ou plusieurs témoins avant que l'accusé ne soit cité à son procès, l'affaire suivrait son cours habituel et le juge de la Cour provinciale entendrait les dépositions des témoins choisis.

Durant cette période, nous avons posé, à titre hypothétique, les questions ci-après:
1. Le juge de la Cour suprême pourrait-il entrendre la déposition es témoins au lieu de renvoyer l'affaire devant le juge de la Cour provinciale et de consentir ensuite à la présentation du chef d'accusation en vertu de l'article 507(3)?
2. Le juge de la Cour suprême pourrait-il faire entendre lesdits témoins par un commissaire-enquêteur spécial au lieu de renvoyer l'affaire devant le juge de la Cour provinciale pour y faire entendre leur déposition?

Le seul but de notre initiative était d'abréger la durée du délai depuis l'arrestation jusqu'au procès, tout en assurant à l'accusé une communication complète de la preuve et sans porter aucunement atteinte aux droits de l'accusé.

Une des conséquences indirectes de cette procédure aurait été de réduire quelque peu le volume de travail de la Cour provinciale.

Les avocats de la défense et les procureurs du ministère public accueillirent favorablement, chacun pour des motifs qui leur étaient propres, l'idée des consultations préalables.

Les avocats de la défense exigeaient cependant, de façon catégorique et absolue, que l'enquête préliminaire ne soit ni supprimée, ni modifiée, ni altérée en aucune manière.

Au cours de l'été de 1976, pendant nos discussions avec des fonctionnaires du ministère du procureur général de l'Ontario, nous avons appris que les procureurs du ministère public tenaient aussi obstinément à l'enquête préliminaire que les avocats de la défense car, disait-t-on, le procureur du

ministère public y trouve souvent (TRADUCTION) "un élément favorable à la commutation de sa proprie thèse."

Il résultait de toutes nos réunions tenues au cours de l'été 1976, que la décision fut prise d'organiser des consultations préalables au procès dans les affaires dont était saisie la Cour suprême de l'Ontario à Toronto, mais seulement *après* que l'accusé eût été effectivement *cité* à procès.

Pendant les mois d'août, de septembre, d'octobre, de novembre et de décembre 1976, MM. les juges Hartt et Galligan et moi-même organisions à Toronto des auditions préalables à des procès. Des procureurs du ministère public et des avocats de la défense se rendaient dans notre cabinet à des heures convenues; laccusé n'était pas présent et il n'y avait pas de sténographe de séance. Durant ces réunions, le juge avait recours au (TRADUCTION) "rapport sur les consultations préalables" (annexe D) pour couvrir les sujets de discussion y énoncés.

Après la fin des auditions, je juge qui avait dirigé les consultations préalables faisait dactylographier le rapport et en faisait parvenir un exemplaire à chacun des procureurs et avocats du ministère public et de la défense, ainsi qu'un exemplaire au greffier pour envoi au juge de première instance.

Au début de 1977, le juge en chef de la Haute Cour décida que le nombre de juges siégeant à la Cour suprême et disponibles pour s'occuper du volume de travai ne permettait plus d'affecter un juge aux consultations préalables. Depuis cette époque, des procureurs du ministère public et des avocats de la défense ont tenu des réunions à Toronto en l'absence du juge et one rédigé des rapports identiques en matière de consultations préalables.

Je ne puis citer aucune statistique en vue d'établir que les procès auraient été plus rapides, que le nombre de témoins cités aurait été moins élevé, que la durée des procès aurait été réduite de plusieurs jours, parce que les avocats se seraient mis d'accord sur certains éléments comme la continuité des pièces à conviction, l'identité de la personne décédée come étant celle nommée dans l'acte d'accusation et sur le corps de laquelle l'autopsie a été faite, l'admission des faits dans le cas où l'art. 16 est invoqué comme moyen de défense, mais j'estime que les tribunaux y ont gagné un temps considérable.

Quoi que l'on puisse dire au sujet de cet élément "temps", tous ceux à qui j'en ai parlé — avocats de la défense, procureurs du ministère public et d'autres juges — ont eu l'impression que des consultations préalables conduites sous la présidence présidence d'un juge et sanctionnées par un rapport mettent en place des conditions favorables à un *procès meilleur et plus ordonné*. C'est que les procureurs du ministère public et des avocats de la défense, tout comme le juge de première instance, sont tous au courant des aveux, des questions en litige, des problèmes spéciaux, de la durée probable du procès, etc., *avant* même que l'accusé ne soit appelé à plaider sa cause. Tous conviennent que le procès se déroule dans des conditions plus favorables, étant donné que le juge de première instance a une notion prèalable exacte du déroulement éventuel du procès.

Je souhaite qu'en Ontarion nous soyons de nouveau en mesure de confier à un juge, à Toronto, la direction es consultations, préalables et que des dispositions soient prises en vue de procéder ainsi dans les agglomérations importantes de l'Ontario. Il y a peut-être là, de ma part, une certaine naïveté, mais je demeure convaincu que la présence d'un juge lors de ces consultations préalables confère à celles-ci un sens des réalités et même un certain dynanisme, alors même que cette présence résulte de l'accord des parties intéressées.

"Get up, you idiot. When I say, 'how do you plead?' I wanna know if you're 'guilty' or 'not guilty'."

. . . And a Good Judge Too

by Terry Coleman

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Lord Denning has been a judge for nearly 35 years, which he believes to be longer than any other man has ever been a judge in the whole history of English law. He will be remembered. Some judges leave no more than a few footnotes, but he has left his mark on the law. He is almost universally remembered as the judge who last year told the Attorney-General of England, and told him in the rich Hampshire accent which he still retains, "Be you never so high, the law is above you."

Well, the Attorney-General won on appeal to the House of Lords. And, as it seemed to me, a close reading of Denning's judgment showed that it was not the Attorney-General he was admonishing at all, but, on a strict construction of the words, the Post Office Union, which happened to be mixed up in the case.

"Ah," said Lord Denning, "but it would be taken as (referring to) the Attorney-General."

It was so taken by almost everybody, surely? "Quite right. I think that's true . . . It was taken in a way out of its context. Ah . . . but I don't mind that."

Quite right indeed. Denning is a judge who would have been happy denying the prerogatives of a Stuart king, and later in a meeting he enacted an exchange between Chief Justice Coke and James I. Lord Denning is not Lord Chief Justice. He is Master of the Rolls. This means that he is chief judge of the civil Court of Appeal, which, since very few cases go to the Lords, declares, and in declaring sometimes makes, large parts of English law.

He lives in the village of Whitchurch, 60 miles from London, where he was born. His father was the village draper and sang 50 years in the church choir. The war memorial bears the names of two brothers killed in the 1914 war. Inside, on the church wall, is an illustrated table of the Ten Commandments, with one vignette (which might be out of the Rake's Progress) depicting both murder and adultery, the first as a result of the second.

We sat first in Lord Denning's library, I in a handsome red wooden chair, with the Prince of Wales's feathers painted on the back. Lord Denning said they were Lord Snowdon's chairs, designed by him for the investiture at Caernarvon. "He designed them. He's in the news now." He had bought his own and Lady Denning's chairs, and four others, from peers who did not want them. In his London flat he had six Coronation chairs too.

"Now," said Lord Denning, having told me about the chairs, "you've got a lot of questions to ask me? Because of my birthday, or what?" He was 80 in January. We talked about the Ten Commandments, and then about trees. Thieves had been chopping down trees in his plantation of Norway spruce, for Christmas trees. "Spoiled my lovely trees, 96 of them." He talked about his two brothers who survived, one to become an admiral and the other a general, and then about his own early years. At Andover Grammar School, from the age of 11, he always won the English prizes. When he went to Oxford he got a first in mathematics, and taught maths for a year at Winchester College before he decided he was not a good enough mathematician, and had not the instinct for it.

Why had he then chosen law? Because, he said, he was ambitious, and saw that as the best way to advancement. He took a first in law in eight months. One day, in hall, the President of Magdalen handed him down a note saying he'd won the Eldon Prize. "Saying, 'You're a marked man. Perhaps you'll be a Lord of Appeal some day.' I wish I'd kept that note."

Having no means of his own, he lived on the 100 Pounds a year which he won later for coming top in the Bar exam. He practised law. He became one of the editors of Smith's Leading Cases, never being content just to report the case but always thinking what the principle ought to be ("ought to be" are his words), and putting that into the book, too. He took silk. In 1944 he became a judge, in 1948 he went to the Court of Appeal, in 1957 became a Lord of Appeal in Ordinary (in the Lords), and then in 1962 went back to the Court of Appeal as Master of the Rolls.

On the very date of his eightieth birthday, he has published a book called The Discipline of Law (Butterworths). As its epigraph he has adopted the following words from one of his own judgments: "What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere."

"That was quite a good little thing to put in," said Lord Denning, "wasn't it? (Laughter) I thought to myself, well, that rather shows my attitude to things."

In saying that, wasn't he saying the same

the relationship between the various provincial associations and Judges with a Chief Judge and/or Administrative Judge, the Judicial Council or the Government. The latter panel is to be chaired by Judge Cy Perkins, of Chatam, and is already well underway. This panel is to give to the provincial executives an opportunity to respond to a panel of Chief Judges in Calgary in 1978.

The regional conferences and to a lesser degree the annual meeting have in past run separate programmes for Judges sitting in the Criminal and the Family Divisions of the various Provincial Courts. A substantial number of Provincial Court Judges in Canada wear two hats and since there are a number of subjects in both the Educational and Administrative fields which are common to the Judges of both divisions, the Committee felt that in 1979 at least, it would try to emphasize those things we had in common. Many areas of the Law (particularly Juvenile Law) are possibly at least as well understood in a position of contrast rather than isolation.

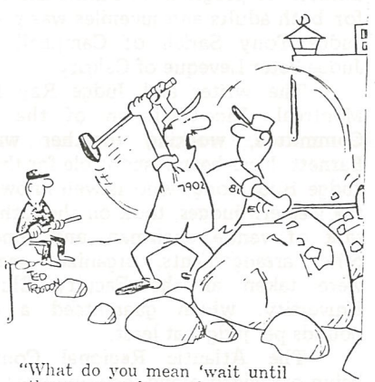
Following the annual meetings in September, the New Judges Programme will be held in Ottawa at the Holiday Inn, Centreville, from November 16th to November 24th, 1979. Judge Ray Bernier, of Montreal, has already provided an outline for the Criminal Programme and Judge Peter Nasmith from the County of Frontenac in Ontario, has agreed to look after the Family Court Programme. The venue Chairman for the New Judges Conference in Ottawa is Judge Jean Marie Bordeleau, who has already completed many of the preliminary requirements for the Conference. The writer was in Ottawa in March to discuss the matter with Judge Bordeleau. Everything appears to be running smoothly and ahead of schedule at this time.

While in Ottawa applicants for the position of permanent secretary of the Education Committee were interviewed. The purpose for which the Secretariat is contemplated is to keep abreast of Judicial Education and legal expertise in North America, in order that future programmes of the Association may have the highest quality of content. The concept was originally envisaged by Judge Sandra Oxner of Halifax and Chief Judge Larry Goulet of Vancouver (each past Chairman of the Education Committee) and is one which the present Committee is working to establish.

Plans to run a cross-country one day floating seminar to touch major centres in Canada has proven to be administratively extremely difficult and been abandoned.

The Education Committee is presently compiling a roster of speakers and if funds are available and the programme can be approved by the next meeting of the executive of the Association, the Committee will be endeavouring to assist various Provincial Associations to acquire speakers from anywhere in Canada to speak at any of their own meetings with the cost of transportation being borne by the Association. The Committee at this time sees no reason why speakers who are not already on the roster could not be invited as well, since the purpose of this scheme would be to encourage the exchange of information and to assist the various Provincial Associations with their own programmings.

The author is chairman of the Education Committee of the C.A.P.C.J., and is Assistant Chief Judge of the Family and Juvenile Courts of Alberta.



"What do you mean 'wait until the governor hears about this' —I am the governor . . ."

Images of the Court

by Judge Arnold J. Conner

[Although these remarks were directed towards a local situation, there is an underlying general application contained in the issues raised here. It is a blunt statement of some of the day-to-day problems which must be faced for Provincial Courts to function effectively and well. – Ed. Note]

It was my intention to convey to you my own thoughts on the images of our Court. However, I subsequently concluded that it might be more meaningful if I included in my remarks the views of others who regularly appear in our Court and how they perceive our Court. Consequently, I have consulted with two defence counsel with extensive experience before our bench, two senior Crown Attorneys and one probation officer. Needless to say, the identity of my consultants will remain anonymous.

Therefore, what I am about to say is not all my own. In fact, the majority of what I say is the result of my meetings with these individuals, but I endorse the comments made by these individuals and I assume full responsibility for any damaged egos that may result.

At the outset, let me say that the forthcoming criticism is offered because of our mutual concern that we, as Judges, are under-paid, under-pensioned and do not receive the other amenities which Judges of the other Courts routinely receive.

Bob Kopstein (past Manitoba Judges' Association President) has probably worked harder and longer than any of his predecessors to accomplish these things for us and although he has realized some success, we are still being paid some $14,000 less than County Court Judges and some $18,000 less than Queen's Bench Judges. We are still the recipients of an inferior pension plan and we still do not receive the other amenities which the Judges of the other Courts receive.

Why is it that we are under-paid, under-pensioned and generally receive less than our due?

One reason advanced is that we are paid what we are worth – that the quality of the Judge in this Court is not as high as the quality of the Judge in the other Courts. We answer that suggestion with the advice that if the Judges of this Court were better paid, had a better pension plan and received more amenities, we could attract more qualified and competent people to our bench.

I suggest that we will not begin to receive equitable remuneration until we are able to convince our paymaster that the first premise is false and that the second premise is true. It is with respect to the first premise that I direct the balance of my remarks.

I think that the proper place to start is with the Manitoba Judges Act. By that Act, and by definition, we, the Judges, comprise a *court*. By Section 26 of the Act we have the same power and authority to preserve order in Court as may be exercised by a Judge of the Queen's Bench.

In this regard, I suggest we are not running our Court as a Court. Many of us are displaying a lack of judicial tempermant on the bench and we are not exercising the authority we do have so that there is proper decorum and dignity in the court room, with the result that respect for our Court is lacking.

I suggest we are not firm enough concerning the Court starting on time. Too many of us wait around for everyone to arrive and for the clerk to come and get us, ten, fifteen or twenty minutes after the time appointed for the starting of the Court. When we walk into Court, usually no explanation or apology is given to the Court and we do not request an explanation. Neither do we make a point of telling counsel or the accused or whoever is responsible that such conduct is not acceptable and that your Court will start on time.

I concede there are justifiable reasons for starting late on occasion, but generally we should insist on Court starting on time.

On the matter of recesses, I suggest we are lax in this regard. If there is a recess, then I suggest that a time limit for the recess be imposed and that court reconvene immediately upon the expiration of that time limit. The Court should not be kept waiting while counsel socialize in the hallways and finish their coffee.

And of course, we should be on time. We should not be the ones to delay the start of court and on what should be the rare occasion that we are late, we should not be above apologizing to those we have kept waiting.

I also suggest that we fail in applying the rules of procedure in a more meaningful and consistent manner.

How many times do counsel argue between themselves rather than address their remarks to the bench and how many times do we countenance this by not stopping and correcting them? Or what about docket courts? There are usually several counsel sitting in Court carrying on a conversation between themselves while awaiting their turn and we do

nothing to stop these conversations. I personally find these conversations distracting, but, more importantly, we should exercise our authority and maintain proper order in our court.

And how many times have you had counsel tell you that they are remanding or adjourning a matter for a week? Whether this is done out of ignorance or disrespect is immaterial. What is material is that the granting of a remand or an adjournment is an exercise of judicial discretion and counsel should be corrected. Or how many times have counsel told you that such and such an item will become Exhibit 10 or whatever? Again, the admission into evidence of an exhibit is an exercise of our judicial function and requires our ruling on the matter. We as judges should make it clear to counsel that they are only tendering an item as an exhibit and that we, as Judges, may receive that item as an exhibit if satisfied that it is properly admissible.

On the same point, how many of us actually tell counsel that the remand or adjournment is granted or that the item is admitted as an exhibit? Or do we just sit silently when the remand is requested or the item is tendered as an exhibit on the basis that our silence infers agreement. If you do the latter, I suggest that it appears to the public as if counsel is running the Court and not you, the Judge.

Or, what about the "Jack in the Box Syndrome" where counsel jump up and down during a submission to the Court, each counsel taking the view that he who speaks loudest or last will win the day. I suggest that we as judges should put a stop to this. Each counsel should be allowed to address the bench once and once only on a particular matter and in proper cases, the first counsel who addressed the bench should be given the right of reply.

And how many times have counsel appeared in court ill prepared or not prepared at all? We can take the position that that is not our concern. It is the Crown or the accused who will suffer. But the matter goes beyond that. I suggest that we should not tolerate incompetence – and I don't mean incompetence because of lack of knowledge but imcompetence because of lack of effort and lack of preparation.

As an example of what I mean, recently, I presided over a matter where Crown Counsel advised that he and the accused's counsel had agreed on the facts to be presented to the Court and that Counsel would argue the law based on the agreed facts. As soon as Crown Counsel began to recite the facts, the accused's counsel rose to object that the facts being recited were not those he agreed to. I recessed court to allow counsel to try and reach an agreement on the facts. When court resumed, the same thing happened. Crown counsel began to recite facts and defence counsel stated that he had not agreed to all the facts being recited. How I dealt with the matter is immaterial. What is material is that counsel were not prepared and would not have conducted themselves as they did in another court.

I believe we as Judges owe a duty to our Court to curb this attitude of counsel and where necessary we should bring to counsel's attention that they are acting incompetently and that their conduct in Court is not acceptable.

What about our own performances in Court? We are at all times under public scrutiny and the first thing which is noticed is our judges' robes. Some of us wear the robe, vest, white shirt, collar and tab. Others of us only wear the vest and robe over an ordinary shirt and tie.

I wonder if there is any significance to the fact that the Judges of the other courts wear their entire judicial outfit?

I think that one of the reasons Judges wear robes is to set them apart from the public and counsel – to put distance between them and ourselves – perhaps a physical manifestation of the judicial independence we are supposed to have. We wear robes today because of tradition – a tradition that has its roots in the respect with which the Judiciary is usually held.

I also remind you that Judges are few in number. Not many attain this position and I would have thought that we would be proud of our position and that we would wear our entire judicial outfit with pride – after all, it is a mark of the office we hold.

I suggest we are too friendly in Court. By this I don't mean that we must appear to be stern and without a sense of humour. I mean that we must maintain proper decorum and dignity in Court. Although the matters that come before us may sometimes seem routine to us, to the public and to the accused the matter is serious and we should conduct ourselves in such a manner so as to preserve the seriousness of the situation.

We should not be flippant in Court. Nor should we be sarcastic or rude. Those of us who are flippant, sarcastic or rude in Court bring our Court into disrepute.

Along the same lines, I suggest that many of us do not control our dispositions in Court. We too readily show impatience, anger and loss of temper. I suggest it is a requirement of our position that we be able to control these propensities. Our position on the bench does not entitle us to vent our anger and frustration upon those who appear in our court room.

How can we expect to be respected when

The Education Committee: Alive and Well

by Assistant Chief Judge Walder G.W. White

The first major programme of the Education Committee of the Canadian Association of Provincial Court Judges in 1979 was the Western Regional Education Conference held at the University of British Columbia.

Registration and conviviality commenced on May 27, and the seminar ended May 30.

Judge Dennis Challeen, a County Judge from Minnesota, combined a program with Judge Cunliffe Barnett from Williams Lake, British Columbia, dealing with Community Service Orders and Probation Orders. Judge Challeen is a recognized expert and pioneer in the developing field of Community Service Orders.

Mr. John Hogarth, of the University of British Columbia, the author of "Judging as a Human Process", spoke to the seminar on "The Myth of Impartiality", and Mr. Ted Harrison, the Regional Director of Corrections of the Province of British Columbia, spoke on "The Effects of Incarceration".

Ever popular, Judge Doug Reid was chairman of a panel dealing with miscellaneous current legal problems coming before the various benches of the Western Provinces.

One morning of the seminar was taken up with a panel of psychiatrists who answered a variety of questions for the Judges, as to the accuracy of psychiatric experts, the extent to which treatment requirement should affect the length of sentences, special sentencing considerations for alcoholics, drug users, natives, or anti-social personalities.

Professor Peter Burns spoke on Sentence Hearings and the Law, followed by a series of sentence scenarios orchestrated by Judge Barnett. A program on Fining and Restitution for both adults and juveniles was presented by Judge Tony Sarich of Campbell River and Judge Peter Leveque of Calgary.

The writer and Judge Ray Bernier of Montreal, Vice-Chairman of the Education Committee, working together with Judge Barnett, have been responsible for the program. Judge Bud Wong, who is well known to all of the western judges, took on the rather onerous task of venue chairman, and, among many other arrangements, organized meals which were taken at the Faculty Club of the University, which guaranteed a couple of pounds per judge, at least.

The Atlantic Regional Conference is being organized along the same lines as those of Vancouver. The writer and Judge Bernier are responsible for the programme and Judge Blake Lynch, of Fredericton, is looking after the venue site. The subject of the 'Myth of Impartiality' will be spoken to by Dr. Edgar Freedenberg of Dalhousie University. Dr. Freedenberg's capabilities are internationally recognized. Mr. Thomas P. Richards of the Department of Justice will speak on the 'Effects of Incarceration'. On June 14th Dr. Alan Robertson, M.D., of St. John, has agreed to chair a panel of psychiatrists to discuss the same kinds of problems as at the Western meeting. Professor Grant Garneau, a professor of the Faculty of Law (and ex-Crown Prosecutor) will speak on the 'Law Surrounding the Sentence Hearing' to be followed by the sentence scenarios, again being conducted by Judge Barnett. Judge Barnett will also present a paper on Probation Orders and Terms which he has presented in the west successfully on previous occasions.

Judge Lynch has plans for an outing on the first evening which is to be away from the University of New Brunswick.

The contributions of Judges Lynch and Wong in the Atlantic Regional Conference and the Western Regional Conference are invaluable and will go a long way to ensuring the success of both of those meetings.

The Education Committee is also assisting in the planning of the Education portion of the Annual Convention programme. Judge W. Chester S. MacDonald, of Prince Edward Island, the convention committee Chairman, and first Vice-President of the Canadian Association, met with the writer, Judge Bernier and others to formulate the programmes of interest to all of the Judges at the Annual Convention. It has always been considered that the convention programme should be one which spouses and friends may attend and participate. For this reason the kinds or programme which might be discussed at a regional seminar are generally not included in the Annual Convention.

The Convention will take place between the 11th and 14th of September, 1979 at Charlottetown, Prince Edward Island. There will be a panel on the 'Responsibility of the Press to the Community in the Shaping of the Image of Justice', a panel on 'Users of the Court System' – (The usual people who are involved in Court proceedings on some kinds of a regular basis), a panel on 'Community Values and the Court – (Regarding youths and consisting of representatives of the Church, School educators, a Judge and perhaps a housewife), and a panel of representatives of Provincial Executives setting out their view of

need of a job – 73 per cent are unemployed, 74 per cent are single, 73 per cent are Indian or Metis and 82 per cent are male. They are working off fines under the Criminal Code (33 per cent), Liquor Act (25 per cent), Vehicles Act (26 per cent) and other acts (16 per cent).

Anyone can work off a fine, but statistics show that most people using the program are below the poverty line.

Occasionally high-income earners inquire about working off a fine but usually minimum-wage scale is enough to discourage them. Mrs. Heath laughed as she told of a doctor who wanted to work off his income tax fine.

"He was quite upset that he would have to work it off at minimum wage."

Interest in fine option programs has increased since the introduction last spring of amendments to the Criminal Code which would formally recognize such programs. The amendments, if they become law, leave the responsibility for establishing and administering fine option programs to the provinces.

"The proposed amendments will give such programs credibility," Mrs. Heath said, although she believes the provinces probably have the authority to run such programs without the Criminal Code amendments.

Alberta has also developed a province-wide fine option program. The Alberta program began as a pilot project in Edmonton in 1975.

"Our program is set for any person who can't pay a fine," Peter Hughes of the Department of the Solicitor-General in Edmonton said. "We do look at income and we encourage a person to pay as much of the fine as possible."

While Saskatchewan's program is administered by community groups, the Alberta program is administered by regional probation offices of the Department of the Solicitor-General, which are responsible for interviewing the offenders and assigning work with some community group.

Pilot projects or studies are also under way in several other provinces.

Mrs. Heath, director of the Saskatchewan program recently told The Journal, "The Program continues to have a positive impact on the days served (or days of care) in correctional institutions for fine default. In the fiscal year 1974-75 fine defaultors served 25,298 days as compared to 1977-78 when 19,360 days were served.

"Many of the problem areas we have been struggling with over the past four years are resolving themselves. Since the early days of the program there has been a question regarding the legitimacy of a community service work settlement in lieu of cash for fines payable to the Federal government. Bill C51 when passed and enacted, will provide the sanctions required, however, in Saskatchewan we have included these fines in the program based on the premise that the province is responsible for incarcerating defaultors and therefore has the right to provide a reasonable alternative.

"Another problem area during the early period of the program was the process of getting the fine defaultor into the Fine Option Program at some point between the time of assessment of the fine and execution of a warrant for default. This has since been satisfactorily resolved by introduction to the court system of the Notice of Fine which instructs the offender on how to pay the fine or use the Fine Option Program. It is issued to the offender at the time of sentence when time to pay is allowed.

"A recent phenomena is the increasing number of female fine defaultors entering the correctional institutions – it appears almost one-third more than in the years just prior to introduction of the Fine Option Program. There may be several reasons such as increased female criminal activity, application of more equality in charging and sentencing as well as execution of warrants for default. We are presently reviewing the Fine Option Program to ensure that women are aware of this option and that suitable work placements are available. Travel and family responsibilities may be two factors mitigating against female participation in some rural areas. One suggestion has been to make available piece-work activities that can be done in the home – leather products, sewing, etc."

SASKATCHEWAN FINE OPTION PROGRAM STATISTICS*

OFFENDER PROFILE

Male	82%
Female	18%
Married	26%
Single	74%
Indian/Metis	73%
Other	27%
Unemployed	73%
Employed	16%
Student	11%
Grade 1-8	41%
Grade 9-12	59%

OFFENCE PROFILE

Vehicles Act	26%
Liquor Act	25%

(Continued on Page 24)

we do not demonstrate respect for those who enter our court rooms?

I also suggest tha it is improper for Judges to make extra-judicial comments which may be politically orientated or of controversial nature. We should not be holding press conferences or expanding our reasons for judgment through the news media. If it is worth saying, then we should say it in our judgment.

On the occasion where we are asked to speak to a gathering outside of court, whether the news media are present or not, I suggest we should weigh our comments carefully, because, as judges, our comments not only reflect upon ourselves, but also reflect upon our Court and upon the administration of justice.

Returning to the topic of reasons for judgment, I suggest that we fall short in this area as well. I begin with the premise that the accused, counsel and the public are entitled to know our reasons for concluding as we have. In most cases these reasons need not be elaborate or lengthy. But by our reasons we should at the very least demonstrate that we have considered the evidence and the issues. And those reasons should be given in a clear and coherent manner. If that means that we should recess court for 10 or 15 minutes or even longer, to sketch out what we will say, than that is what we should do. Rightly or wrongly, the public expects words of wisdom from a Judge. Most of us are not eloquent enough to give our Judgments extemporaneously. If we expect counsel to prepare and be competent, should we not at least demand the same of ourselves?

One of the counsel I spoke with made a suggestion which is worthy of some consideration. The suggestion goes more to form than to substance but the counsel suggested that in all but the most simple of cases, we recess to consider our reasons for judgment – for ten, fifteen or twenty minutes. Even if we feel we can give judgment immediately, the fact we recess leaves the impression we are considering the matter before us. If we leave that impression, it will not hurt us. And if we do take that recess, it also won't hurt us to utilize that time in collecting our thoughts.

There are some cases that we deal with that deserve more than just a cursory review of the facts and a pronouncement. I think we as judges should not shy away from reserving decisions and writing learned judgements – and I mean *learned* judgements. I am not prepared to concede that the abilities on this Court is inferior to that of the other Courts. If there is a lack of learned judgments we should bear in mind that these judgments may be read by counsel and other Judges. In particular, the judgment may be appealed and I would think that our own self-esteem would cause us to deliver a judgment that appears learned even though the appeal court may say we erred.

One of the counsel I spoke to stated that there is a certain lack of respect for our court which flows from the lack of effort we put into our deliberations. How can we expect counsel to treat us with respect and to respect our bench in general if we leave the impression with counsel that we don't consider what is before us.

Another suggestion which was made to me is that we should require counsel to submit more written arguments. Certainly this would ease the amount of research we would have to do and it would convey to counsel that we are prepared to consider an important issue in a learned way. This tactic would also have a secondary benefit in that counsel would be less likely to raise a far fetched argument if he or she thought there was a chance of being called upon to submit written argument on the point.

On a corollary point, one counsel suggested that we appear lazy. Because the administration chooses to have us sit in various parts of the city, on many occasions, when a case folds, we have the balance of the day free. We could and should use that time to study the law and write Judgments. But, as important is counsel's comment that we appear lazy. This counsel suggested that it is not unusual to find a provincial judge hanging around the coffee shop or somewhere in the court building with seemingly nothing to do. I cannot comment on the accuracy of this particular assessment, but the counsel suggested that we be more discreet in this regard. Perhaps the Judges of the other courts are more fortunate in that their chambers are more private and ours are more readily visible to the eye of counsel and the public but I think it is a point worthy of consideration because it has made this unfavourable impression on one experienced counsel.

One of the individuals I spoke with told me that there appears to be a lack of respect by certain Judges of our Court for their brother Judges. How does this person come to this conclusion? He has overheard, so he says, some of our Judges openly criticizing other Judges of our Court in the presence of other lawyers. Whether this lack of respect for a brother Judge is justified or not is not an issue within the scope of my remarks. But how can we expect the respect of those that appear in our court when we do not respect each other? This type of conduct can do nothing but damage the already tarnished reputation of our court.

And along a similar line, it may be that we fraternize with counsel too much. Aside from the fact that our objectivity may be

impaired, consciously or unconsciously, the accused or a witness who may be sitting at the next table in the restaurant, and who is scheduled to appear in your court, may not understand this fraternization. Or that same accused or witness may oversee counsel joking with us in the general office of the Judges Chambers. The impression conveyed can only be negative, if anything.

Along the same line is counsel calling us by our first names in public places such as the corridors of the Court House. I am sure none of us are offended by being addressed by our first name by our contemporaries or by others we know on a first name basis. But that same accused person or that same witness may overhear counsel addressing us by our first name and then that person appears before us and wonders about our impartiality or wonders about this "Your Honour" thing you are called in Court.

Perhaps if we act more dignified and perhaps if we demand more respect, we will be called snobbish. But I suggest that is a small price to pay for judicial independence. And it is interesting to note that the Judges of the other courts are not being called snobbish.

This next point is more applicable to the Judges who sit at the Law Courts Building in Winnipeg, but I believe that the point can be generalized so that it is applicable to all of us. When one walks into the general office in Room 139, one is faced with a bulletin board loaded with cartoons concerning the judicial system. Most of them are funny and we should not be so overwhelmed with our importance that we cannot laugh at ourselves. But I wonder about the public's impression when they walk into that office and are faced with those cartoons. I suggest that the general office of the Judges Chambers should reflect a more serious decor.

The next point I raise is one of personal experience. On occasion, when a clerk comes to get me to go into court, and this is particularly true of the Public Safety Building, the clerk will say something to the effect, "You've got Mr. X today, he's a bad actor" or "he just got out of the pen" or some such prejudicial comment. I am sure I am not the only one to have experienced this occurence. Have you told that clerk that you don't want to hear those comments or have you said nothing about the matter? I suggest that we should all have sufficient respect for our office and for ourselves to tell the clerk that we don't want to hear these remarks. After all, if such a comment were made in open court, it may be grounds for a mistrial. Why should we allow this to go on behind the scenes when it is not permissible in Court?

The next point I wish to make is perhaps the most important point and that is that we, as judges owe a duty to the public, to our office and to ourselves to continually educate ourselves in the law and we are sadly lacking in this regard. A glaring example of this, and the example applies only to those of us who sit in the Criminal Division, is The Family Maintenance Act which came into effect in October last year. Occasionally the Judges of the Criminal Division have to sit on domestic matters when we are on circuit. To my knowledge, no seminar has been held by the judges of the criminal division to discuss this new legislation. Yet we are expected to go on circuit and be omniscient and apply the provisions of the new legislation.

To my knowledge, there have not been educational seminars held by the Manitoba Association on either a regular or irregular basis in the last two years. I believe it should be one of the main functions of this Association to organize educational seminars for the Judges of this Court on a regular basis – seminars at which we can not only discuss and study areas of the law, but at which we can discuss areas and problems that face us all in our daily functions as a member of the judiciary.

In summary, I believe it can be fairly stated that we have presided over our Court without insisting upon there being proper decorum in our Court room and without our demanding proper respect from those that appear before us. We have contributed to these faults by ourselves not acting in a dignified and learned manner.

Each of the points I have touched upon may not in itself be responsible for the lack of respect shown our Court but collectively, they are a good part of the reason for the lack of respect shown to us and the lack of esteem in which we are held.

In closing, I leave you with one further consideration. You may not accept all or some of the criticism as being valid or of importance. But you will recall that I stated at the beginning of my remarks that the majority of what I say comes from the people with whom I have consulted. I think it very important to realize that our reputation as a Court is established by those that appear in our Court rooms, be they the public, the accused or Counsel.

I suggest that these very same people have found us lacking. Our image as a Court is what it is perceived to be; not by us, but by those that appear in our Court.

Judge Conner is a Judge of the Manitoba Provincial Judges Court (Criminal Division). These remarks were made at a meeting of the Manitoba Provincial Judges Association.

Saskatchewan Works: The Fine Option Program

by Donald Purich

The 17-year-old serving hot meals at Saskatoon's Friendship Inn is not an employee, nor is he a volunteer. He is spending 12½ hours at the inn working off a $50 speeding fine.

He is one of almost 5,000 Saskatchewan residents who, every year, choose to work off fines for federal and provincial offences through the province's fine option program. The program, started as a pilot project in 1974, now covers the whole province.

"The program provides an option to going to jail for people who don't have the money to pay a fine," program director Margery Heath of Regina said.

She figures the province saves more than $1½-million a year by not having to put people who can't pay their fines in jail.

"If not for the program we would have had to build more correctional centres sooner. Almost 50 per cent of admissions to jail prior to the program were for non-payment of fines. By 1976-77 that figure had dropped to 35 per cent."

Anyone who asks for time to pay a fine is informed that he can work the fine off. If he chooses to work, the offender must get in touch with an administering agency which is responsible for assigning him to a community organization job and for setting a completion date for the work.

Mrs. Heath and her staff of two field workers, operating on an annual budget of $123,000, have picked 157 such administering agencies in the province. The agencies vary from municipal offices in towns, villages and rural areas to organizations like the John Howard Society in Regina and the Indian Metis Friendship Centre in Saskatoon.

The agency interviews the offender and finds work with charitable and community organizations which are responsible for supervising the work done. Agencies receive a $10 fee for each placement. Fines are worked off at the Saskatchewan minimum wage of $3.25 an hour.

In smaller centres the administering agency, often the municipal office, is also the community organization for which the offender will work.

"The fact that community people assign the work keeps the program flexible," Mrs. Heath said. "At first the program had to prove itself. A lot of suspicion was around that the program would not be properly supervised."

As people saw work done for the community and with some community people actually involved in administering the program, suspicion lessened, Mrs. Heath said.

Vance Winegarden, a court worker at the Indian Metis Friendship Centre, said the centre tries to provide some choice in work assignments but, even though more than 20 organizations are registered with the program in Saskatoon "sometimes we have to say to the offender: 'This is what you're going to do.' " Each community organization lists the work it will offer. The YWCA, for example, offers general labor and office work.

"It's not a slave market and it's not intended to replace jobs," Mrs. Heath said.

People in the program are covered by workers' compensation and those who are drawing unemployment insurance benefits may, by special agreement reached with the Canada Employment and Immigration Commission, continue to draw benefits while working off their fines.

Many of the placements in Saskatoon are to the Friendship Inn. Supported by local churches and the United Appeal, the inn serves as a recreation centre and provides hot meals and a clothing depot for those with insufficient funds to go elsewhere.

Inn manager Delores Halabura said the program has been a tremendous help to an organization like hers which is always short of money and help. In August the inn had 12 people working off their fines, contributing a total of 176 hours of labour. The work includes scrubbing floors, serving meals, washing dishes and general cleaning.

"Eighty-five per cent of the people do really good work," Mrs. Halabura said. "Only two per cent goof off." Mrs. Heath said that those who don't finish the work term usually come up with the money to pay off their fines. Failure to pay the fine or complete the job means going to jail.

"Some guys who come to work off their fine continue to come in and do volunteer work," Mrs. Halabura said.

A side benefit of the program, according to Mrs. Heath, is that it introduces people to job possibilities. For example, the city of Weyburn has hired people who did a good job while working their fines off. One man, assigned to a nursing home, ended up getting a job there.

Many of the people in the program are in

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